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**REPORT ON THE OECD-WORLD BANK SIXTH SERVICES EXPERT MEETING**

**Paris, 27-28 March 2007**

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## **REPORT ON THE OECD-WORLD BANK SIXTH SERVICES EXPERT MEETING PARIS, 15-16 FEBRUARY 2007**

### **Introduction**

The sixth Services Experts Meeting, devoted to Domestic Regulation and Trade in Professional Services, was held at OECD Headquarters on 15-16 February 2007. This was the fourth services experts meeting to be organised by the OECD jointly with the World Bank. Approximately 80 persons participated, including from 20 non-Member countries. As well, experts from academia, NGOs, BIAC and other international organisations took part.

The aim of the Meeting was to assist trade policy makers and negotiators to gain a greater insight into the particular issues related to domestic regulatory measures. It focused on professional services where domestic regulatory measures, such as qualification and licensing requirements and procedures and technical standards, are used: accounting, legal, architectural, engineering and medical services.

The meeting was organised around three main sessions. The first was a broad sectoral session which was divided into sub-sessions covering the five sectors mentioned above. Presenters and discussants addressed the following questions:

- What is the current extent and pattern of trade in the professional service and how has it evolved in recent years?
- What do the current regulatory regimes in destination countries look like from an exporter perspective?
- What do the current regulatory regimes in origin countries look like from an importer perspective?
- Are there other, less trade restrictive means to meet the public policy objectives that domestic regulatory measures aim to achieve, and if so, what are they?
- How can we understand the political economy of regulatory regimes?

A second session presented empirical work on the economic impact of regulatory measures, with a focus on professional services. Taking into account the results of the previous panels, the final session explored implications for international services negotiations in the area of domestic regulation.

The agenda for the meeting is attached hereto. Background papers and participants' presentations can be downloaded from: <http://webdomino1.oecd.org/COMNET/ECH/SSEM.nsf?OpenDatabase>

The report which follows sets out highlights of the presentations and discussions in each of the seven sessions. It is not intended to be a summary record of the meeting. For more detail, readers are invited to turn to the website where they will find the consultants' papers and discussants' presentations.

## SESSION I. LEGAL SERVICES

*Presenter: Alison Hook, Head of International Law Society of England and Wales*

*Discussants: Carlo Gamberale, Trade in Services Division, WTO and Jinxi Wang, Professor, China University of Political Science and Law*

*Alison Hook* explained that although good data are lacking, anecdotal evidence suggests that the legal sector currently represents an output of \$400 billion and is experiencing rapid growth. Trade in legal services is dominated by large multinational firms based in anglophone countries, with significant intra-industry trade, but there are signs of diversification with several emerging economies becoming considerable exporters of these services. Other trends in the sector include legal outsourcing, greater specialisation and competition, and differential regulation.

A number of regulatory issues have been identified which affect both firms and individual service providers. The main hurdles to trade for law firms relate to licensing, staffing, corporate structure and 'double deontology' (the need to comply with two codes of conduct). For individual lawyers, key domestic regulatory issues relate to rules on eligibility to register as a foreign lawyer and those governing prequalification. All of these measures can reinforce negative attitudes to foreign competition in the domestic market and thus regulatory reform can be highly beneficial. Strengthening education systems can further help by changing perceptions in importing countries.

A number of trade-facilitating solutions that could ease the burden of regulation were proposed. These include increasing transparency and the applicability of GATS disciplines, as well as enhancing the role of mutual recognition agreements and model rules. Potentially highly beneficial to trade, but difficult from a political standpoint, would be the expansion of differential regulation and harmonisation of ethical rules. From a political economy perspective, the conservative attitude of professional associations, often protected by governments, and the limited role so far played by corporate clients add to the complexity of reforms. Governments need to engage with the legal profession, but impose some leadership.

*Carlo Gamberale* noted that while some services are clearly more tradable than others (i.e., advisory services on home country and international law), we should be careful in carving out representation services and host county law as non-tradable, considering that the GATS also applies to these services. The absence of regulations permitting collective legal practice or the employment of lawyers may amount to restrictions on legal form within the meaning of Article XVI(2)(e) and should be scheduled as limitations on Market Access, in cases where specific commitments are undertaken. The point that restrictions on collective legal practice and the employment of lawyers are often not truly concerned with the protection of the consumer, is underscored in those cases whereby such rules are circumvented with the assent of regulators. Many substantive issues, particularly in the area of qualification requirements, are more easily addressed through bilateral or plurilateral Mutual Recognition Agreements (MRAs). However, there is also scope for developing GATS multilateral disciplines going beyond the issue of transparency and addressing the most restrictive practices in the areas of requirements and procedures.

*Jinxi Wang's* intervention focused on the Chinese experience in reforming the legal services sector. China has undertaken significant steps to liberalise its legal market and lifted a number of restrictions according to its WTO commitments. There are more than 150 offices of foreign legal firms established in China and residents from Honk Kong and Macao are free to provide legal services in mainland China. These developments have significantly increased competition for local providers. Some restrictions remain in place, however. For example, there are restrictions on legal form and on foreign law firms to enter into partnerships with and employ locals to provide integrated legal services. Discussions are ongoing, though, on the feasibility to lift some of these restrictions. Apparently there is also a gap between

regulation and actual implementation, with foreign firms being “freer” in practice than what the regulation stipulates.

In the ensuing **discussion**, a number of participants mentioned the changing nature of the legal profession and trade in the sector, and stressed the need for regulatory reform to keep pace with these developments. The importance of the sector in facilitating business and its vital role as part of the infrastructure that supports world commerce was also mentioned. As such, the costs of trade restrictions in legal services can be very significant and extend well beyond the sector itself. Indeed several participants pointed to a range of restrictions that hamper trade in legal services, echoing Ms. Hook’s assessment of the regulatory landscape. A major hurdle to reform efforts identified by participants is the conservative stand of professional associations, who often are the regulating bodies.

## **SESSION II. ARCHITECTURAL SERVICES**

*Presenter: Russell Keune, Resident Fellow, International Relations, The American Institute of Architects (AIA)*

*Discussants: Nathalie Burke, permanent mission of Barbados to the WTO and Hiroshi Kobayashi, Ministry of Land, Infrastructure and Transport, Japan.*

*Russell Keune’s* presentation emphasised that international trade in architectural services largely follows construction projects. Trade is dominated by large firms and ICT technology has facilitated cross-border trade. Mutual recognition agreements are being signed, but are still in their infancy in terms of implementation. Regulation is introduced for public health and safety reasons and for preserving cultural heritage. In the US, regulation rests with the individual states, but a certificate in the federal system facilitates registration in multiple states. Regulatory practices that restrict trade are residency requirements, mandatory fee schedules and prohibition on advertising.

*Nathalie Burke’s* comments focused on market access for small and medium size enterprises and she argued that good regulation and international standards can improve certainty and facilitate trade.

*Hiroshi Kobayashi* focussed on liability and litigation issues and argued that local presence is necessary in order to protect consumers.

In the **discussion** that followed architectural services were held up as an example of good practices and it was argued that the mutual recognition agreements in this sector are trail blazers for other sectors. The relation between governments and the professional associations was also seen as an example for other professional services. The potential for outsourcing following the proliferation of computer software for mode 1 trade, and the position of developing countries in this trade were also discussed. It was pointed out that the public sector is an important buyer of architectural services and that public procurement issues need to be addressed in order to facilitate trade. It was noted (and reinforced in the OECD presentation on regulatory indicators) that architecture together with engineering are among the most lightly regulated professional services. A key regulatory issue is regulation through building codes or through regulation of the architect services provider. Here practices differ between countries.

### SESSION III. ENGINEERING SERVICES

*Presenter: Zavareh Rustomjee, MEC Projects, South Africa*

*Discussants: Kåre Kristoffersen, Det Norske Veritas and Dale Honeck, Trade in Services Division, WTO*

In his presentation, which focussed on South Africa and the Southern African region, **Zavareh Rustomjee** emphasised that engineering services and trade in such services are closely related to engineering projects. The sector is relatively lightly regulated as regulation mainly falls on the end product, where international standards are important. The engineering sector was presented as a competitive sector where regulation and legislation relate to licenses, accreditation and registration. The Washington and Sydney accords address accreditation of engineering academic programs, while the Dublin accord ensures mutual recognition of qualifications between Canada, Ireland, South Africa and the UK. South African regulation and its implementation were seen as largely non-discriminatory towards foreign services providers.

**Kåre Kristoffersen** confirmed that the South African case was representative of international practices in the engineering sector. He also pointed out that international product standards are commonly adopted in most countries. Nevertheless, regulation and safety standards in for instance the offshore petroleum sector can in practice restrict foreign suppliers, who typically need to find a local partner in order to enter the market.

**Dale Honeck** focused his comments on regulatory transparency and accreditation procedures for South Africa. He noted the potential multilateral application of South Africa's policy of ensuring statutory public participation in the governing bodies of the professional associations, and enquired whether there was a role for increasing communication between host and home country regulators, and professional associations, in the assessment of qualifications. He also informed the meeting about the initiatives and proposals related to the engineering sector in the WTO.

Since domestic regulation in the areas mentioned in Article VI of the GATS are not seen as particularly trade restricting in the engineering sector, the **discussion** focused on general issues related to trade in professional services, mutual recognition, accreditation and services trade statistics.

### SESSION IV MEDICAL SERVICES

*Alexandra Sidorenko, National Centre for Epidemiology and Population Health (NCEPH) and the Australian Centre for Economic Research on Health (ACERH) of the Australian National University*

*Judith Oulton, Chief Executive Officer of the International Council of Nurses*

*Debjani Ganguli, Fellow of the Indian Institute of Management in Bangalore*

**Alexandra Sidorenko** presented the results of her study on the *Regulation of Temporary Movement of Health Professionals in ASEAN*. Ms. Sidorenko outlined the demographic and economic capacity factors that contributed to the excess supply and demand in various ASEAN countries that made healthcare services one of the priority sectors for ASEAN economic integration. The study identified three groups of countries in the region with differing yet complementary characteristics. Group I, which included Singapore, Malaysia and Thailand, consisted of wealthier member states with a relatively aging population demographic and net importers of health workers. Group II, which included Vietnam, Indonesia and the Philippines, identified countries with healthy fertility rates and a relatively abundant endowment of health care professionals. The Philippines represents a prominent exporter of nurses in the region, with the majority of nursing graduates employed abroad each year. Group III, which included Lao, Cambodia, and

Myanmar, consisted of member states who had yet to meet their demographic potential in order to participate actively in the trade of health professionals.

Ms. Sidorenko illustrated the implicit barriers to trade in the sector such as qualification and licensing procedures, citizenship requirements, and language proficiency. Explicit barriers included the costs of education, testing, registry, regulations on participation in private or public settings, visa regimes, quotas on foreign providers, and minimum wage requirements. The study compared policies toward the inward mobility of health professionals through the analysis of commitments in GATS and in the ASEAN Framework Agreement on Services (AFAS). The analysis also developed a registration procedure index, which demonstrated that Group I countries tended to create policies that facilitated mobility to meet their excess demand of health workers.

The presentation highlighted on-going regional efforts to facilitate the mobility of health care professionals. The ASEAN Mutual Recognition Arrangement (MRA) on nursing services represents a step forward in alleviating the difficulties encountered while trading nursing services, especially for nurses meeting education and experience requirements in their home countries. Other relevant regional facilitation initiatives included the APEC GOS project on “Skills Standardization for the Nursing Profession”, the Western Pacific and South East Asian Region Common Competencies for Registered Nurses, and other bilateral agreements. Ms. Sidorenko concluded by emphasising that professional regulations can be a significant impediment to trade in health services, and even more so for doctors than nurses, but also described the ASEAN efforts as a good example of coordination outside of the WTO.

**Judith Oulton** presented on the theme of *Facilitators and Barriers in Health Services*, focussing on the situation for nurses. She emphasised the increasing demand for nursing services worldwide and the challenges created by the inconsistency of regulation procedures. This situation tests the ability of delivering adequate staffing responses as increasing concerns about patient and public safety emerge. The upcoming issuance of the UK White Paper on the regulation of healthcare professionals is expected to set out a programme of regulatory reform that will influence the international policy agenda on trade in nursing services.

Among the most relevant constraints encountered by the nursing profession, there is the increasing phenomenon of false documentation supporting professional qualifications. This has been a recent problem, and policy response has been difficult due to the lack of systemic coordination. Ms. Oulton recognized the need for common global standards including uniform education requirements, MRAs in nursing services trade, training for export adaptation programs as well as credit and qualification frameworks to facilitate trade and deal with explicit and implicit barriers that exist. These barriers include language, culture, examination requirements, access to adaptation programmes, poor workforce planning, unethical recruitment, and lack of standards in educational requirements. Examination requirements, in particular, often come short in testing basic skills and in understanding location specific cultural and practical competency. There is therefore a need to keep examinations up to date for continuous competency.

Technical and policy responses should focus, in Ms Oulton’s view, on the implementation of adaptation programs, the electronic transfer of information between countries, pre-test and licensing exam centres in various locations, as well as the guidelines offered by the Bologna/Tuning processes and the enforcement of international education standards. Encouraging progress has been made at regional level with the inclusion of MRA provisions in NAFTA, CARICOM, Australia-New Zealand as well as in the ASEAN Agreement on Regulatory Infrastructure and ESCACON. Further implementation of services trade facilitating policies is important for assuring quality and for creating positive opportunities to migrant nurses.

**Debjani Ganguli** presented on the topic of *Domestic Regulation in Health Services*, focusing on a case study of the United States. Ms. Ganguli illustrated some of the requirements for foreign healthcare professionals to practice in the United States as well as the qualification costs associated with medical, dental and nursing professions. She noted that significant requirements for licensure include verification of education credentials, completion of medical certification programs, additional training, procurement of appropriate work and entry visas, and application for medical licensure in individual states. It is estimated that minimum licensing expenditure for physicians is around \$7 600 and \$142 200 for dentists.

Ms. Ganguli also highlighted the difficulties faced by foreign healthcare workers. Multiple verification of education credential and administration of exams and personal interviews in the US lead to significant delays, costs and travel expenses, particularly for professionals from developing countries. Furthermore regulations tend to encourage a permanent rather than temporary status, with many states granting licenses only to US citizens or permanent residents. Ms. Ganguli advanced possible policy recommendations that could be applied not only to the US case but also extended to other regions. These include greater coordination between federal and state verification agencies, the reduction in time and cost of accreditation and licensing procedures through the establishment of international testing locations and teleconferencing for interviews, the expansion of temporary licensing, and bilateral agreements to promote mutual recognition systems. International associations could also play a significant role in lowering trade barriers by promoting uniformity in accreditation standards.

In the **discussion**, participants generally agreed that trade in the health services sector was increasing in relevance across regions and acknowledged the challenges in creating a proper regulatory framework due to the fundamental nature of health services and relevant consumer protection issues. Several participants noted concerns about the social impacts of the trade in depleting the local stock of professionals and a tendency to result in permanent migration. Concerns about public investment in training and education and the corresponding losses associated with the brain drain of health professionals were also noted. Participants noted that barriers to Mode 4 trade in the sector are resulting in increased trade in Modes 1 and 2 including telemedicine, teleradiology, telepathology, as well as health service motivated tourism. Mode 1 trade was discussed in light of the local legal responsibility issues associated with the healthcare sector. It was noted that Mode 4 trade could be encouraged in lieu of permanent migration through temporary licensing and migration facilitation.

## **SESSION V. ACCOUNTANCY SERVICES**

*Olivier Boutellis-Taft, Fédération des Experts Comptables Européens (FEE)*

*Ndung'u Gathinji, Eastern, Central and Southern African Federation of Accountants (ESCAFA) and Claude Trolliet, Counsellor at the World Trade Organisation (WTO)*

**Olivier Boutellis-Taft** began by explaining that the European Federation of Accountants represents over 500 000 accountants grouped in 44 member bodies in 32 countries. FEE is also one of the regional organisations of the International Federation of Accountants (IFAC). The multiple and evolving functions performed by contemporary accountants and accounting firms include audit and assurance engagements, preparation of accounts and analysis of financial statements, taxation, human resources, certain legal services, financial services, information technologies and report and assurance in sustainability as well as corporate social responsibility (CSR). Consequently, functions of accountants have moved beyond the concept of pure “number crunching” to include other trade enabling roles that service local and global markets as well as promote best practices in the pursuit of transparency.

Overall, Mr. Boutellis-Taft categorized accountancy as a regulated profession which provides many non-regulated services. The auditing function of accounting is often subject to multiple sources of

regulation including self-regulation by institutes, national audit regulators, and supra-national regulators. He noted that accounting is the only profession with a global Code of Ethics. Within the EU context, sector regulation has been shaped by two relevant Directives. The first is the Directive 2005/36/EC, adopted on 7 September 2005, which consolidates and modernises the rules currently regulating the recognition of professional qualifications. In particular, this Directive formally recognizes national treatment of qualified professionals and provides for the use of aptitude tests or adaptation periods to compensate for the absence of harmonisation. It also provides for temporary and occasional cross-border provision of services, excluding statutory audit. This can be done without any aptitude test, under the use of the title of the member state of origin and adherence to the rules of the member state of destination. In the case of non-EU auditors providing services in the EU, these are subject to approval on the basis of reciprocity and evidence of education equivalence as required in the EU 8th Directive on Statutory Audit (2006/43).

This Directive, which requires implementation at the EU member-state level by June 2008, realises the partial harmonisation of statutory audit requirements. It provides for approval, professional ethics, international auditing standards, quality assurance systems as well as public oversight systems. The Directive also supplies the tools for mutual recognition on technical matters between member states and it acknowledges aptitude testing as a relevant instrument for statutory audit to enable accountants to practice in different member states more easily. Non-EU auditors and auditing companies listed in the EU must register where the securities are listed and are subject to member state oversight, quality assurance and sanction systems.

*Ndung'u Gathinji*, who participated via video link from the World Bank office in Lilongwe, Malawi, commented on trends in the regulatory environment for accounting in the African region. Mr. Gathinji traced the origin of the current accountancy standards in Africa back to pre-colonial accounting traditions. Independence brought about a variety of new standards. For example, in Kenya there were 17 different local accounting standards before the adoption of the international uniform standard in 2000. Anglophone countries tend to be more uniform than Francophone and Portuguese speaking countries. In the region, 22 of the 53 countries are currently members of IFAC, and only one or two are francophone while the remainder anglophone. South Africa has the largest concentration of accountants, which is highly correlated to its rate of economic growth. In the majority of African countries, membership bodies are still small consisting of less than 1000 members and membership is not compulsory. Demand for accountants is influenced by investment patterns which create demand for particular systems of reporting. Public sector demand is low due to low wages and attitudes toward the value of accountancy.

Movement of professionals in the region remains low due to normal migration requirements, protectionist tendencies and demands for reciprocity. These impediments mostly affect certified professionals, while subcategories like accounting technicians have experienced a substantial growth in demand. The facilitation of greater movement will require the strengthening of both national and regional systems. ECSAFA is in the process of establishing a technical centre to serve its member bodies in the process. The goal is also to enter in the development plans of regional groups as the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Mr Gathinji concluded advocating a progressive move in policy making from being driven by the interests of national regulatory bodies to a more public interest, oversight-based approach.

*Claude Trolliet* focussed his presentation on recent regulatory developments in the accountancy sector in the EU and US, and their implications for trade. These developments mainly focussed on listed multinationals, on their accounts and the audit of such accounts. For the most part, they have been a reaction to the Enron scandal, the demise of Arthur Andersen and related regulatory failures. These developments have ignored the very large part of the accountancy sector servicing local markets according to local standards. This is leading to a growing dichotomy between regulatory efforts (harmonisation of



standards, etc.) at the international level and the bulk of activity of the sector for which international rules are not relevant.

In the US, the Sarbanes Oxley Act was adopted in 2002. Among other things, it promulgated stricter rules on auditor's independence and created the Public Company Accounting Oversight Board (PCAOB) with which all auditors of US listed companies and their subsidiaries shall now register. In the EU, a new Audit Directive was crafted in 2006 and will soon come into force. Both of these regulations make a clearer distinction between the management's and the auditor's responsibilities, promote higher auditing and independence standards, and improve dramatically the oversight of the auditing profession, which he felt were very positive developments. By requesting foreign auditors involved in any part of the audit of a multinational to be locally accredited, however, both have an extraterritorial impact potentially devastating for trade in the sector, which he deplored and perceived as an overreaction of regulators to recent scandals. One main difference between the two approaches, though, concerns the recognition of auditors' foreign credentials, which is not possible under the Sarbanes-Oxley Act but is envisaged by the EU Directive under specific circumstances.

In light of these regulatory evolutions, Mr. Trollet concluded that the WTO-agreed 1998 Disciplines on Domestic Regulation in the Accountancy Sector provided little guidance to national regulators. These Disciplines, which are due to go into effect at the end of Doha Round, have not been taken into account in the US or the EU, suggesting that there is little awareness of them among non-trade policy makers. This leads to the possible conclusion that the WTO might not represent an effective regulatory body for professional services. Whether it could instead play a significant role in promoting consciousness of trade implications of regulation and in fostering concepts like proportionality in regulatory policy making remains to be seen.

The **discussion** following the presentations touched on a number of issues. Participants commented on the possibility of using the existing WTO accountancy disciplines and guidelines to curb some of the unnecessary regulation that resulted from the Arthur Andersen demise. Other participants highlighted the growing difficulty of regulation in the profession for developing countries due to the increasingly diversified roles of accountants as well as the lack of adequate assessment of domestic regulatory situations. Concerns were also expressed with regards to double taxation, social security and pension reimbursement issues when service trade is permitted. Other participants emphasised the need to shift toward a global, public interest-based approach and acknowledged the need to balance national and international public interest when making regulation. Participants also expressed interest in fostering a better relationship between the WTO and national accountancy regulators.

## **SESSION VI. EMPIRICAL STUDIES ON THE ECONOMIC EFFECTS OF REGULATORY MEASURES ON SERVICES TRADE**

*Presenters: Paul Conway, OECD Economics Department and Hildegunn Kyvik Nordås, Trade and Agriculture Directorate*

*Discussants: Simon Evenett, University of St Gallen and Sherry Stephenson, Department for Trade, Tourism and Competitiveness, OAS*

*Paul Conway* presented the OECD's indicators of product market regulation, which measure the extent to which policies promote or inhibit competition in markets for goods and services. In his presentation he focused on the indicators of regulatory conditions in the professional services. According to these indicators, on average across OECD countries, the regulatory environment is most restrictive of competition in legal services, followed by accounting, architecture, and then engineering. In all four professional services, the regulatory environment hasn't changed a great deal since 1998. A lot of the

cross-country differences in professional services regulation stem from differences in conduct regulation – for example, the extent of restrictions on advertising, marketing, incorporation, and price setting. In contrast, restrictions on entry to the professions tend to be more similar across countries, although there is a small group of countries with relatively liberal entry criteria. As well as presenting the professional services indicators, Mr Conway also briefly introduced the OECD’s economy-wide indicators of product market regulation and recent work on the affect of regulation on ICT investment and business sector productivity.

*Hildegunn Kyvik Nordås* presented the recent OECD study on services trade and domestic regulation, which provides quantitative estimates of the impact of domestic regulation on international trade in services. The study analyses the level of regulation in each country as well as differences in regulation among countries. Differences in regulation imply that services exporters must incur upfront costs in order to comply with regulation in each country before entering. Therefore, regulatory heterogeneity contributes to a market structure with fewer and larger exporting firms and less trade compared to a scenario with harmonized or mutual recognition of regulation. The study finds that excessive regulation in a country not only impedes imports of services, but also has a negative impact on the competitiveness of local services firms in the export market. Regulation that successfully corrects market failures such as asymmetric information or moral hazard on the other hand, can stimulate international trade in services.

In discussing the OECD work on Product Market Regulation indicators, *Simon Evenett* made four major points. He encouraged policy makers to take the PMR indicators seriously, as a tool whereby a few composite indicators can show the direction a country is taking in its reform efforts. Secondly the PMR indicators are important in distinguishing competition–restricting measures from regulations designed to meet social objectives and therefore where to focus reform efforts. Third, as they have components which distinguish domestic regulations hindering entry from those affecting conduct of operations, they can also provide guidance on the extent to which regulations discriminate against foreign service providers. Finally they should be put to intelligent use, for example by benchmarking the regulatory situation before the reform programme in order to assess progress under reform and be subjected to the ‘laugh test’, to see if they are reasonable.

*Sherry Stephenson* found the study “Domestic regulation and Services Trade” not only well done in setting out a convincing manner to empirically estimate the magnitude posed by regulatory barriers in services, but also useful for its policy implications. The finding that regulations not only affect the ability of foreign firms to enter markets, but also of domestic firms to export, thus posing a drag on competitiveness from both sides, was particularly interesting.

Concerning the definitions on pages 7 and 8, the authors distinguish between “trade liberalization” as policies that remove barriers that have a similar effect as quotas in merchandise trade – like a tariff – constituting up-front variable costs whereas “regulatory reforms” are defined as policies that reduce the fixed cost of entering a market. However, for services, almost all barriers are regulatory in nature and affect fixed costs – as per the examples on page 8 in the illustrative Box. Trade liberalization in services implies reducing the overtly discriminatory element of these regulatory measures to provide a level playing field for foreign service providers, or to reduce the unnecessarily strict, though non-discriminatory elements of regulation (Art. VI-type measures). These regulatory measures affecting trade in services are exactly those that appear in the GATS Schedules and undertaking regulatory reforms in services should be the same thing as trade liberalization. Therefore the concept used by the authors (removal of trade barriers or policies involving variable costs) is more appropriate to be applied to the case of trade in goods, while fixed cost reduction is more appropriate to apply to trade in services. However, it would seem that both of them result in trade liberalization.

Her second point concerned the use of data in the study. Not through any fault of the authors, the data were limited to those for cross-border trade. When data become available on bilateral trade in services for mode 3 through the FATS (foreign affiliates sales), it would be useful to expand the calculations to include this mode, as it represents over half of the value of services trade. While the conclusions on the relative magnitude of regulatory barriers would not necessarily change, it would be interesting to confirm this.

In the **discussion**, the need for better data on trade in services as well as regulation was emphasised, including for non-OECD countries. Co-operation with other relevant institutions could help broaden the database in this regard. Many participants argued that lack of information can hold back progress in trade negotiations. In particular, if necessity is to be evaluated, information is crucial. For instance when determining whether regulation is more burdensome and more trade restricting than necessary, information is needed to assess how regulation restricts trade and competition as well as having an idea of the cost to firms of complying with regulation. A useful approach could be to look at how regulation impedes competition and to focus on how to design regulation that meets legitimate social objectives while restricting competition as little as possible. While the benefits of horizontal disciplines on transparency can be assessed from existing knowledge, sector-specific disciplines need to be based on better and more detailed information. Better data and further empirical research will be particularly useful in highlighting and documenting the cost of regulation and, on the basis of that information, how regulation can be improved.

## **SESSION VII. IMPLICATIONS OF THE SECTORAL FINDINGS AND EMPIRICAL STUDIES FOR THE NEGOTIATIONS**

### ***Introduction: Regulatory Impediments to International Trade in Professional Services*** ***Aaditya Mattoo, International Trade Department, World Bank***

Trade in professional services is large and growing due to changes in demographics, changing patterns of investment in human capital and technological developments. Another important recent development is the fragmentation of services, similar to that for goods, where for example basic architectural plans or legal research and documentation are outsourced to foreign providers.

The fundamental regulatory impediment faced by professionals is the non-recognition of their qualifications, training and experience. All the other problems stem from this: the evaluation of qualifications, undertaking examinations, duplicating prior education and training, acquiring more experience than their local counterparts etc. In most countries, the binding constraints on the presence of professionals are quantitative restrictions implemented through visas, work permits and establishment restrictions. In these circumstances, domestic regulations do not affect the number of foreign professionals but impose a tax on them, e.g. re-qualifying, obtaining a license, income foregone, etc. A rough estimate of the financial cost of the regulatory burden on Indian professionals in the US – the 10 000 or so Indian professionals that entered in a given year -- is that they paid a “regulatory tax” of around \$750 million.

How can we deal with regulatory impediments? Mutual recognition can be achieved more easily bilaterally, although so far the north/south mutual recognition agreements are limited. This notwithstanding, there are potential incentives for mutual recognition resulting from inter-modal bargaining. Heterogeneity of standards within exporting countries adds to the complexity of liberalisation.

On a multilateral level possible the following avenues are available:

- (a) Leveraging mutual recognition agreements concluded by partner countries through the MFN principle
- (b) Securing and enforcing national treatment commitments by trading partners.

- (c) Negotiating deeper disciplines on domestic regulations either under Article VI:4 of the GATS or in the form of additional commitments under Article XVIII of the GATS.

The cornerstone of the multilateral trading system is the national treatment obligation, which applies to qualification and licensing requirements. Unfortunately, the large Members of the WTO have not made commitments to guarantee national treatment under mode 4 in the professions. National treatment is potentially the most important guard against regulatory protectionism. If a country retains the right to discriminate, then negotiating an elaborate set of rules for domestic regulations would be like creating a building with no edifice. Hence, in addition to pushing for greater market access in professional services, the highest priority in the current negotiations would be to secure commitments from its main trading partners on national treatment.

***Panel: Peter Govindasamy, Chair of the WTO Working Party on Domestic Regulation; Mina Mashayekhi, Division of International Trade, UNCTAD; Carlo Gamberale, Trade in Services Division, WTO; Johannes Bernabe, International Centre for Trade and Sustainable Development***

***Peter Govindasamy*** provided background on the current negotiations mandated by GATS Article VI:4. Currently in the negotiations, Members are focusing on horizontal commitments. By June 2006 18 proposals had been submitted on the Article VI.4 mandate. There is no North/South division in the negotiations -- both developed and developing countries are actively participating. For the moment, no formal compromise has been found but much work has been accomplished; at the end of the day Members will have to decide. One of the key challenges is to find the balance between Members' right to regulate as stipulated in the preamble to the GATS and the need for a minimum consensus for meaningful disciplines. In addition, the development perspective must be taken into account.

***Mina Mashayekhi*** noted that UNCTAD had also worked on different aspects of domestic regulation. There are important differences between services sectors, with some of them being more conducive to commoditization and trade than others. Health services have an important social dimension, suggesting that quality and safety standards have to be met and that cost of trade regulations may not be the primary concern. The heterogeneity in countries' regulatory frameworks and supply capacities renders a harmonization approach difficult. Harmonization should realistically only be sought among similar countries, such as those of the OECD. Developing countries need to strengthen their regulatory and institutional capacities and to preserve the right to regulate and policy space.

Concerning future disciplines, the value of transparency obligations should not be underestimated. Disciplines would also be important in removing market entry barriers and underpinning market access commitments particularly on Mode 4. A priori transparency and necessity tests could be problematic for developing countries given their weak administrative and regulatory frameworks. The development aspects need to be taken into account, including special and differential treatment, carve-outs, dispute settlement and capacity building and technical assistance. Areas for future work include analysis of the impact of MRAs on MFN and interests of developing countries; exchange of best practices and experience with reform; and improving multi-stakeholder approaches to regulatory reform and negotiations on disciplines on domestic regulation.

***Carlo Gamberale*** noted that future GATS disciplines on domestic regulation pursuant to Article VI:4 of the GATS should be applicable to all WTO Members in all sectors where specific commitments are undertaken. Such broad scope of application explains the broad, flexible and in some cases best endeavour obligations which have been proposed in the negotiations. While the solutions provided by GATS VI:4 horizontal disciplines might fall short of addressing many of the regulatory concerns highlighted in these two days of discussions, there seems to be scope for multilateral rules in this area.

The WPDR negotiations are currently seeing two main "disenchanted" groups of negotiators: those who find it difficult to negotiate a set of horizontal disciplines applicable to all services sectors (mixed reactions from domestic stakeholders; concerns about one-fits-all binding legal tests, etc.) and those who see a progressive watering-down of the principles of Article VI:4 in these negotiations. In spite of the difficulties, failure to agree on Article VI:4 disciplines in the Doha Round should not be an option. In this respect, one should not underestimate the value of any disciplines underpinning specific commitments, even if expressed in the form of flexible or best-endeavour rules, and the importance of sending the right message to regulators and industry. Article VI:4 GATS horizontal disciplines would address some of the most restrictive and "unjustified" regulations and would provide a basis for future GATS sector-specific negotiations on more in depth disciplines as well as for bilateral and plurilateral efforts.

*Johannes Bernabe's* intervention focused on the delicate distinction between discriminatory and non-discriminatory regulations, and the fact that, unlike the private sector, WTO negotiators see new disciplines to be developed under the Article VI.4 mandate as only applying to non-discriminatory measures. Maintaining a clear distinction between discriminatory measures to be scheduled under Article XVI or XVII and those falling under Article VI.4 makes for 'cleaner' disciplines. However, the irrelevance of such a distinction for the private sector and regulators, and recent events such as the direction of negotiations in the WPDR and the Gambling Case (which according to some has blurred this distinction) question the value and feasibility of such 'clean' disciplines. It would seem preferable to have genuinely meaningful and effective disciplines, whether in the current or future rounds of negotiations, specifically applicable to professional services, building on the similarities in the core principles of regulation and the work of the respective professional bodies and regulators. In the context of an extended or a future round of services negotiations, another important dimension relates to gaining a better understanding of the meaning and scope of national treatment under Article XVII.

The presentations gave rise to a lively concluding **discussion** with most participants highlighting the difficulties in distinguishing between different kinds of regulatory measures for negotiating purposes. More specifically, notwithstanding the number of years the negotiations have been ongoing, there remain uncertainties between which measures should fall under market access (Article XVI), national treatment (Article XVII) and the mandate for new disciplines on domestic regulation (Article VI.4). These uncertainties, also reflected in the *Gambling Case* between the US and Antigua and Barbuda, represent a major constraint to progress on developing WTO disciplines on domestic regulation.

There was also a sense of frustration that without meaningful market access and national treatment commitments, disciplines on domestic regulation would be of little value. In addition, progress has been achieved at the bilateral and regional level, and multilateral negotiations may be falling behind. At the same time, the importance of developing multilateral disciplines was also stressed. While it may be easier to achieve progress between fewer countries, a multilateral approach may be preferred for political economy reasons (to overcome domestic interests) or because of balance of power (problems of smaller countries in negotiating with bigger ones). In any event, it is also important to recognise that disciplines on domestic regulation are about good governance and it is in the interest of countries to adopt them anyway.

Several ideas were put forward to advance the negotiating process. On the question of horizontal versus sectoral disciplines, there seems to be recognition that the two approaches need not be mutually exclusive. Broad horizontal disciplines can be complemented by more targeted sectoral disciplines that can better address the specificities of different sectors. Another idea that was reiterated relates to making more use of Article XVIII on additional commitments, by for instance adopting more ambitious disciplines on transparency. The importance of enhancing information about what are countries' needs and concerns about domestic regulatory issues was also raised, in order to have more informed negotiations. Finally, the need to recognise that this is a "two-way street" and that progress is to be expected by all parties was pointed out by a number of participants, from both developed and developing countries.

## ANNEX: RESULTS OF THE FEEDBACK FORMS

On their feedback forms, participants were laudatory about the meeting - both in their numerical markings and their comments. The following Annex and the appended graphs set out the main findings from the feedback forms.

On the **content** of the meeting, 87% of the responses found the overall quality of the background papers, and 96% the overall quality of the presentations, to be good or excellent. Concerning **organisation**, 95% of respondents found the number and choice of participants to be good or excellent. The number and structure of the sessions were also found for more than 80% to be good or excellent.

The aspect scored most critically concerned the **time allocated for discussion**. Just over one-half rated the time allocated for discussion as average or poorer (a 1, 2 or 3 on the scale of one to five) Concerning the **interaction between participants**, one-third scored this aspect as mediocre to average, i.e. two-thirds still found it to be good or excellent.

The main comments, added by respondents on their feedback forms, were the following:

Aspects of the meeting found **most** useful:

### *On setting and participants:*

- informal atmosphere in which to interact with academics and other negotiators
- chance to meet in informal setting allowing for frank and open discussions (2)
- bringing Geneva-based key negotiators out of the tense WTO environment to engage in an open and informal debate of issues of direct relevance to the negotiations in a relaxed atmosphere
- possibility to exchange directly with the authors and discussants
- wide-based stakeholder involvement: governments, private sector, IGOs and NGOs
- direct involvement of business experts invaluable
- discussants on papers and the ensuing discussions

### *Content:*

- legal panel (4)
- empirical papers (3)
- up-to-date information on MRA and curricula harmonisation for architects (2)
- sections of papers suggesting less trade-restrictive ways of regulating
- background documents providing concrete sectoral analyses
- presentations were constructively critical and provided complementary vision and triggered interesting discussion.
- sector/industry experts highlighting real and specific regulatory challenges and ideas on how they can be addressed
- empirical tools

- specific sector studies focussing on US, ASEAN and South African experiences
- country-specific information and tables and charts comparing country situations
- final session flagging need for more debate on National Treatment since arguments in Geneva on necessity test have blocked out this issue
- allowed useful comparisons across the professions to see how trade and regulation were evolving

Aspects of the meeting found **least** useful:

*Content:*

- presentation on engineering (2)
- difficult to extract global lessons from country-specific papers
- some theoretical parts but recognise that may be impossible to avoid them
- Geneva-based delegates tended to repeat well-known positions on domestic regulation negotiations
- participants did not really engage with the implications identified in the backgrounders

*Participants:*

- not enough regulators present; too many negotiators

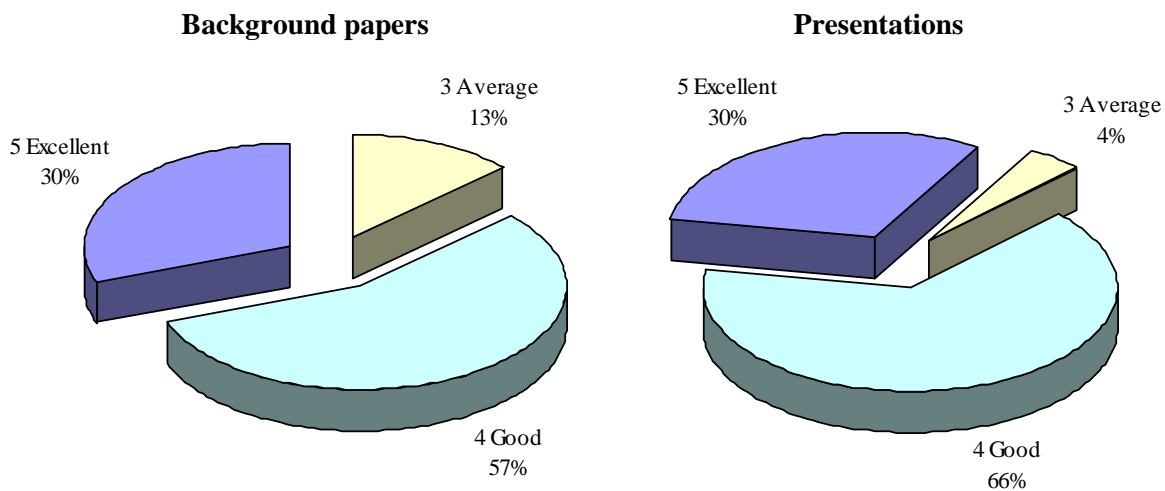
*Organisation:*

- not enough time for discussion (4)
- lunch should have been organised on site to allow interaction with others
- in view of a certain tendency to repeat positions, discussion could be encouraged by putting forward hypothetical scenarios to provoke discussion
- consider rotating the chair from session to session

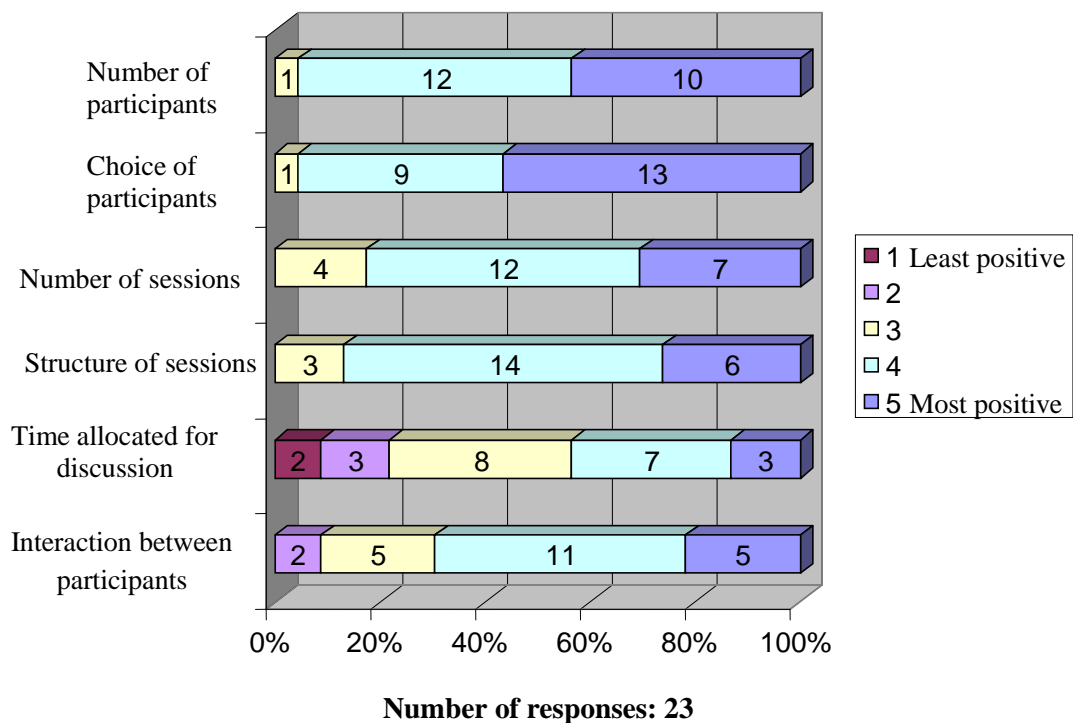
## RESULTS OF FEEDBACK FORMS

### I. Overall quality of background papers and presentations

(on scale of 1 = least positive to 5 = most positive)



### II. Overall organisation





## AGENDA

<b>THURSDAY 15 FEBRUARY 2007</b>	
<b>09.30-10.00</b>	<p><b>Introduction</b></p> <p>Welcome Remarks by the Chair, Ken Ash, Deputy Director, OECD Trade and Agriculture Directorate</p> <p>Setting the scene: presentation by the World Bank and OECD Secretariats</p>
<b>10.00-11.15</b>	<p><b>Session I: Legal services</b></p> <p>Alison Hook, Head of International Law Society of England and Wales</p> <p><i>Discussants:</i></p> <p>Carlo Gamberale, Trade in Services Division, WTO Secretariat</p> <p>Jinxi Wang, China University of Political Science and Law</p> <p><i>Discussion</i></p>
<b>11.15-11.45</b>	<b>Coffee break</b>
<b>11.45-13.00</b>	<p><b>Session II: Architectural services</b></p> <p>Russell V. Keune, American Institute of Architects</p> <p><i>Discussants:</i></p> <p>Natalie Burke, Permanent Mission of Barbados to the WTO</p> <p>Hiroshi Kobayashi, Ministry of Land, Infrastructure and Transport, Japan</p> <p><i>Discussion</i></p>
<b>13.00-15.00</b>	<b>Lunch</b>
<b>15.00-16.15</b>	<p><b>Session III: Engineering services</b></p> <p>Zavareh Rustomjee, MEC Projects, South Africa</p> <p><i>Discussants :</i></p> <p>Kåre Kristoffersen, Det Norske Veritas, engineering certification firm, Norway</p> <p>Dale Honeck, Trade in Services Division, WTO Secretariat</p> <p><i>Discussion</i></p>
<b>16.15-16.45</b>	<b>Coffee break</b>
<b>16.45-18.00</b>	<p><b>Session IV: Medical services</b></p> <p>Alexandra Sidorenko, Regulations in ASEAN countries, Australian National University</p> <p>Judith Oulton, International Council of Nurses</p> <p>Debjani Ganguli, International consultant</p> <p><i>Discussion</i></p>
<b>18.00</b>	<b>Cocktail Reception</b>

<b>FRIDAY 16 FEBRUARY 2007</b>	
<b>09.30-10.45</b>	<p><b>Session V: Accountancy services</b></p> <p>Olivier Boutellis-Taft, Fédération des Experts Comptables Européens</p> <p><i>Discussants:</i> Ndung'u Gathinji, ECSAFA, Kenya (via video link from Malawi) Claude Trolliet, WTO Secretariat</p> <p><i>Discussion</i></p>
<b>10.45-11.15</b>	<b>Coffee break</b>
<b>11.15-13.00</b>	<p><b>Session VI: Empirical studies on the economic effects of regulatory measures on services trade</b></p> <p>Paul Conway, OECD Economics Department Hildegunn Kyvik Nordås, Trade Policy Linkages and Services Division, OECD</p> <p><i>Discussants :</i> Simon Evenett, University of St Gallen, Switzerland Sherry Stephenson, Department for Trade, Tourism and Competitiveness, OAS</p> <p><i>Discussion</i></p>
<b>13.00-15.00</b>	<b>Lunch</b>
<b>15.00-17.00</b>	<p><b>Session VII: Implications of the sectoral findings and empirical studies for the negotiations</b></p> <p><i>Introduction</i> Aaditya Mattoo, International Trade Department, World Bank</p> <p><i>Panel:</i> Peter Govindasamy, Chair of WTO Working Party on Domestic Regulation Carlo Gamberale, Trade in Services Division, WTO Secretariat Mina Mashayekhi, Division of International Trade, UNCTAD Johannes Bernabe, International Center for Trade and Sustainable Development</p> <p><i>Discussion</i></p>
<b>17.00-17.30</b>	<p><b>Concluding session</b></p> <p>World Bank and OECD Secretariat</p>