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**STRENGTHENING REGULATORY TRANSPARENCY: INSIGHTS FOR THE GATS  
FROM THE REGULATORY REFORM COUNTRY REVIEWS**

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## STRENGTHENING REGULATORY TRANSPARENCY: INSIGHTS FOR THE GATS FROM THE REGULATORY REFORM COUNTRY REVIEWS

1. While recognising the essential link between domestic efficiency gains and the broad regulatory environment, the focus of this paper is on the importance of transparency in trade-related domestic regulation (encompassing regulatory decision making, implementation, administration and enforcement) as a facilitator of international trade in services. It has been prepared at the request of the June 1999 Informal Meeting of Services Trade Experts, convened under the auspices of the Trade Committee. The Experts Meeting agreed that it would be useful to deepen the analysis of potential “synergies” between material gathered to date in OECD Regulatory Reform country reviews and preparations for multilateral trade negotiations on services.<sup>1</sup> The Experts Meeting agreed to focus in the first instance on the issue of transparency in trade-related domestic regulation.

2. Transparency is the first of six “efficient regulation principles” deployed in the examination of market openness issues in the OECD Regulatory Reform country reviews.<sup>2</sup> Transparency in domestic trade-related regulation is also encouraged by the multilateral trade regime for services (the GATS), as most barriers to trade in services arise from domestic regulations. However, it is important to bear in mind at the outset that the OECD horizontal Regulatory Reform project is broader in scope than trade; whilst the GATS is concerned with measures pertaining to or affecting trade in services. Hence some of the “regulatory transparency” mechanisms and procedures identified through the Regulatory Reform project will be more relevant to GATS than others.

3. Accordingly, in seeking to provide a firmer empirical basis for assessment of how emerging lessons from the Regulatory Reform project might contribute to strengthening the GATS framework, specifically in regard to transparency of trade-related domestic regulation, the paper covers the following issues:

- An overview of the role of transparency in domestic regulatory decision-making and implementation in facilitating and promoting international trade in services (*Section I*);
- An outline of existing multilateral trade rules for transparency in trade-related domestic regulation (*Section II*);
- An assessment of the various processes and mechanisms for promoting transparency in domestic regulation *per se* that have been identified in the OECD Regulatory Reform country

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<sup>1.</sup> An initial assessment of potential lessons from the market openness element of the Regulatory Reform exercise for the WTO system was provided in TD/TC/WP(99)16, Insights from the OECD Regulatory Reform country reviews for further multilateral rule making.

<sup>2.</sup> The six “efficient regulation principles” are transparency, openness of decision-making and appeal procedures; ensuring non-discrimination; avoidance of unnecessary trade-restrictiveness; use of internationally harmonised measures; recognition of the equivalence of other countries’ regulatory measures; and application of competition policy from an international perspective.

reviews conducted to date and emerging good practices that appear most relevant to trade-related domestic regulation (*Section III*);

- Some suggestions for enhancing GATS disciplines in the area of transparency in the design, implementation, administration and enforcement of trade-related domestic regulation (*Section IV*).

## **I. Transparency in domestic regulation -- why it matters**

4. Transparency in domestic regulation relates to the openness and impartiality of decision making in the design, introduction, administration and enforcement of new or amended regulations. Such transparency is particularly relevant to the domain of trade in services, as most barriers to entry and operation in services markets arise from numerous and diverse domestic laws, regulations and practices that can have social as well as economic objectives.

5. Transparency in such regulatory processes is not a static or preliminary element, but a dynamic and ongoing process that goes to the heart of fair and rational policy making and regulation. In both social and economic terms, it plays an important role in revealing the costs and benefits of (and the losers and beneficiaries from) policy decisions and their regulatory implementation. Thus for economic and trade policy, transparency in domestic regulation is a crucial tool in making the public, policy-makers and business aware of the costs and benefits to national welfare of maintaining protectionist policies versus market-oriented reform and liberalisation.

6. At the international level, transparency in trade-related domestic regulatory processes is a key means of providing business with more predictable conditions for access to and operation in foreign markets. When trade-related regulatory decision-making, implementation, administration and enforcement processes are open and transparent, foreign businesses are able to obtain information on:

- the conditions and constraints they will encounter in entering and operating in a market;
- what procedures they could take to comply with regulatory requirements;
- a more accurate picture of costs and returns on their investment or presence; and
- time and flexibility to adjust to potential changes in regulation.

7. Transparency also helps to reveal covert discrimination in market regulation that can arise from regulatory *practices*, including “administrative guidance”, discretionary decisions, exemptions from competition laws, denial of access for foreign businesses to crucial networks and other resources, and to trade associations and professional bodies. Furthermore, transparency enables foreign business -- which, in the context of increasingly global markets, is more subject to disparate regulatory regimes -- to find out whether subordinate rules and implementation practices deviate from the founding legislation or regulations. As transparency permits business and other parts of civil society to be better informed, it creates additional incentives for bureaucrats to apply regulation in a non-discretionary (and thus non-discriminatory) way. The knowledge that foreign business and other parts of civil society could gain through regulatory transparency mechanisms will be the basis not only for dealings with the government concerned but also an input to future trade negotiations between governments. Transparency therefore helps to reduce the incidence and impact of arbitrary decisions at the regulatory *implementation* level as well as at the regulatory *policy-making* level.

## II. The role of transparency in the multilateral trading system

8. Transparency as a principle is now of central significance in the multilateral trading system, and is conceived more broadly than in the GATT 1947 (which does not use the term - *see Box I*). The underlying rationale for the emphasis placed on transparency in the WTO Agreements has been summarised as follows:

- First, to promote a rules-based approach to trade policy and measures at the national level. A basic condition for the rule of law in this area is that of publication of all legal requirements and, wherever possible, their non-enforcement before persons subject to them have a chance to become acquainted with them. The provisions concerning the impartial administration of such legal requirements and the scope for review by an independent body of decisions concerning their application also serve this function.
- Second, to provide information to economic actors and other parts of civil society so that they can take maximum advantage of the opportunities created by WTO rules and commitments, and assess the interaction of WTO rules and domestic regulation, respectively.
- Third, to facilitate monitoring of compliance with obligations under the WTO and, through this means, the avoidance of trade disputes.
- Fourth, to facilitate future trade negotiations with a view to further liberalisation of international trade.<sup>3</sup>

### *Transparency provisions in the GATT*

9. The main requirements in the GATT 1994 and Annex 1A Agreements are to publish, or at least make publicly available, all relevant regulations and, as a general rule, not to apply or enforce them until this has been done; to administer them impartially; and to provide a right of review of decisions taken under them. Most of the Annex 1A Agreements, such as the Agreement on Technical Barriers to Trade (the “TBT Agreement”) and the Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”), also require notifications to the WTO and other Members.

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<sup>3</sup> See WT/WGTCP/W/114, “The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency”, Background Note by the Secretariat, 14 April 1999, Geneva.

### **Box 1. Transparency provisions in the GATT**

#### **GATT 1947**

**Article X** of the GATT 1947 (and the subsequent GATT 1994) deals with “Publication and administration of trade regulations”. It required that “laws, regulations, judicial decisions and administrative rulings of general application” affecting goods products in various ways “shall be published promptly in such a manner to enable governments and traders to become acquainted with them”. “Agreements affecting international trade policy ... shall also be published.” Furthermore, the enforcement of more burdensome, restrictive rules, or prohibition, on imports and payments therefor shall not be made before any measure has been “officially published”. These laws (etc) shall be administered in a “uniform, impartial and reasonable manner”, and for “customs matters” there have to be “independent judicial, arbitral or administrative tribunals or procedures for ... the prompt review and correction of administrative action”, with provision for appeal to a “court or tribunal of superior jurisdiction” should the decision be believed to be “inconsistent with established principles of law or of the actual facts.”

In addition, **Article XXII** of GATT (1947) calls on each contracting party to “accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations ... with respect to any matter affecting the operation” of the GATT. If in this way “it has not been possible to find a satisfactory solution” then the contracting parties may consult with any party or group of parties. This wording was carried over into the GATS Article XXII to which the WTO dispute settlement understanding also applies.

Although the term “transparency” was not used in either of these two articles, they are the ancestors of today’s broader principle.

#### **The Tokyo Round Understanding**

The disciplines of the GATT were not found to be strong enough, however, where countries turned to protective measures not specifically foreseen and as a result not directly subject to GATT rules. Therefore an attempt was made during the Tokyo Round to strengthen the operation of the dispute settlement system which resulted in the adoption in 1979 of the “Understanding regarding notification, consultation, dispute settlement and surveillance”. **Again the term transparency did not appear.** The precise legal status of the Understanding is not clear, and it was neither a stand-alone treaty nor a formal waiver, nevertheless it was influential and formed a sort of constitutional framework for these processes. The introduction of the discipline of notification, the right of counter-notification, and the strengthening of the consultation procedures greatly extended the operational value of the implicit, broader concept of transparency.

#### ***The Uruguay Round Decision***

The setting up of the “Functioning of the GATT System” negotiating group in the Uruguay Round reflected growing awareness that the lack of openness and information on national policy making helped protection seekers. The group recommended greater transparency at the domestic level to help counteract protectionist bias in the policy environment, so that governments could better understand business interest in GATT negotiations, and become aware of the domestic costs of protection and subsidies. Transparency was moved towards centre stage with the “Decision on Notification Procedures” which set out the “general obligation to notify”, and established a “Central Registry of Notifications” to streamline deposit of and access to information generated by the various notification requirements. The Decision aims to “**thereby contribute to the transparency of Members’ trade policies**”. **This was the first formal appearance of the term in the multilateral trading system’s treaty framework.** Further information on Members’ trade policies became available after the decision to establish the Trade Policy Review Mechanism in 1989; an important tool for macro-transparency, which produces regular reports on Members’ trade policies.

*Transparency provisions in the WTO TBT and SPS Agreements*

10. Transparency disciplines in the TBT and SPS Agreements go somewhat beyond the present requirements of the GATS. The principal transparency provisions of the TBT Agreement are as follows:

- A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of other Members, explain the justification for that technical regulation. If the regulation is for legitimate policy objectives listed in the TBT Agreement (e.g. national security, prevention of deceptive practises, health, safety and environment) and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.
- Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall
  - publish a notice in a publication at an early stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;
  - notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objectives and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
  - upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;
  - without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.
- Members shall ensure that central government standardising bodies accept and comply with a Code of Good Practice attached to the Agreement and shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardising bodies within their territories also accept and comply with this Code. This Code states that, at least once every six months, the standardising body shall publish a work programme containing its name and address, the standards it is currently preparing and standards which it has adopted in the preceding period and also that, before adopting a standard, the standardising body shall allow a period of at least 60 days for the submission of comments by interested parties within the territory of a Member of the WTO. (It should be noted that central government standardising bodies could be private sector bodies and the Code of Good Practice is thus the means of promoting transparency in the trade-related activities of those bodies. Also noteworthy is the fact that the Code's notice and comment procedure is not done through the WTO notifications, but at the domestic level through direct communication by interested parties with the standardising bodies).

11. The SPS Agreement requires Members, upon request from other Members, to provide through an official enquiry point, information about risk assessment procedures, factors taken into consideration therein, and the determination of the appropriate level of sanitary or phytosanitary protection required. It is possible to view the risk assessment process as a specific form of regulatory impact analysis undertaken in the context of food safety regulation. In this context, the SPS Agreement is unique among the WTO Agreements in requiring a risk assessment process before implementation of new measures.

### *Transparency provisions in the GATS*

12. The GATS was established as a result of the Uruguay Round, and adapts a number of concepts from the GATT, including transparency elements as those had evolved up to that time. Unlike the GATT, GATS features the concept of transparency in its Preamble: “Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of **transparency and progressive liberalisation...**”.

13. However, the goal of strengthening GATS transparency provisions in respect of domestic regulation and legislative rules and procedures, has to be seen in the overall context of the GATS’ objectives, also stated in its Preamble, which speaks of:

- Securing “an overall balance of rights and obligations, while giving due respect to national policy objectives”; and
- “The right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives.”

These elements in the GATS's objective are particularly important where prior notification of regulation and subsequent consultation with foreign governments and business are concerned.

14. An additional difference is that, whereas GATT Article X is entitled “Publication and Administration of Trade Regulation”, in the GATS the requirements on publication and administration of domestic regulations affecting trade in services are contained in two separate Articles. Article III, entitled “Transparency” contains the requirement to publish regulations, together with several requirements for WTO notifications; whilst requirements on administration of domestic regulations are contained in Article VI, entitled “Domestic Regulation”. As well, several other GATS Articles contain specific requirements on notifications to the WTO and bilateral consultations with other WTO Members.

### *GATS Article III (Transparency)*

15. This Article contains the general obligation regarding transparency of measures affecting the operation of the GATS. Its scope is broader than some other GATS obligations (e.g. market access and national treatment) in that all but one of its sub-paragraphs applies regardless of whether a Member has made specific commitments under the GATS. It is noteworthy that, apart from Article III:1, the focus of Article III is provision of information at the multilateral level, hence its obligations in this regard relate to the provision of information from one Member to another on request and to the Council for Trade in Services. In particular, the requirement in Article III:4 to establish one or more enquiry points is aimed at facilitating responses to requests for information from other Members (i.e. central governments) and not more generally (e.g. from business and civil society).

16. The requirements of Article III are as follows:

- Members shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of the GATS (Article III:1). When publication is not practicable, they shall make such information otherwise publicly available (Article III:2).
- In addition, Members shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services *covered by specific commitments* in their GATS schedules (Article III:3).
- Members shall also “respond promptly to all requests made by any other Member for specific information on any measures covered by Article III:1; and establish one or more enquiry points to provide specific information to other Members upon request on matters covered by Article III:1 and on those subject to Article III:3 (Article III:4).
- Members may also notify to the Council for Trade in Services of any measure taken by any other Member which affects the operation of the GATS (Article III:5).

#### ***Article IV (Increasing Participation of Developing Countries)***

17. Article IV:2 requires developed country Members, and to the extent possible other Members, to establish “contact points” to facilitate access of developing country Members’ service suppliers to information, related to their respective markets, concerning (a) commercial and technical aspects of the supply of services, (b) registration, recognition and obtaining of professional qualifications, and (c) the availability of services technology.

#### ***GATS Article VI (Domestic Regulation)***

18. The primary focus of Article VI is the implementation and administration of domestic regulations affecting trade in services. Whilst the word “transparency” is not mentioned, several of the requirements of the Article in fact aim to create more transparent domestic regulatory decision-making, implementation, administration and enforcement. One noteworthy aspect of this Article is that the right of service suppliers to information on regulatory and administrative decisions, and to judicial and administrative review and appeals processes, is explicitly recognised (Article VI:2 and 3). Another is that Article VI contains no provisions on notifications to the WTO or on bilateral consultations with other WTO Members.

19. The requirements of Article VI include the following provisions relevant to regulatory transparency:

- In sectors where Members have undertaken specific commitments, they shall ensure that all measures of general application affecting trade in services are administered in a “reasonable, objective and impartial” manner (Article VI:1).
- Each Member shall also maintain or establish as soon as practicable mechanisms (through “judicial, arbitral or administrative tribunal or procedures”) providing, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not

independent of the decision-making agency, the Member shall ensure that the procedures in fact provide for an objective and impartial review (Article VI:2(a)).

- In cases where authorisation is required to supply a service, on which a specific commitment has been made, the competent authorities shall, within a reasonable period of time inform the applicant of the decision concerning the application, and shall provide, without undue delay, information concerning the status of the application (Article VI:3).
- The Council for Trade in Services shall develop any necessary disciplines ensuring that qualification requirements are based on objective and transparent criteria, such as competence and the ability to supply the service, that they are not more burdensome than necessary, and in the case of licensing procedures that they are not in themselves a restriction on the supply of the service (Article VI:4).
- In the meantime, in sectors in which a Member has undertaken specific commitments, it shall not apply licensing and qualification requirements and technical standards that nullify its specific commitments in a manner which does not comply with the principles of Article VI:4 and could not reasonably have been expected at the time it made its specific commitments (Article VI:5).
- In sectors, where specific commitments regarding professional services are undertaken, Members shall also provide for adequate procedures to verify the competence of professionals of other Members (Article VI:6).

### ***Other GATS Articles***

20. Some other GATS Articles provide for the exercise of transparency procedures between WTO Members, i.e. at the multilateral level, such as notifications to the WTO and/or Member-to-Member consultations under WTO auspices. However, these Articles contain no specific requirements on transparency in domestic regulatory decision-making and administration.

- **Article VII (Recognition)** addresses recognition of education and experience obtained in another country. It contains an obligation to inform the Council for Trade in Services of existing recognition measures, of the opening of negotiations on an agreement or arrangement on recognition and of the adoption or modification of any new recognition measure.
- **Article VIII (Monopolies and Exclusive Service Suppliers)** contains a provision whereby the Council for Trade in Services may, at the request of a Member, request another Member to supply specific information concerning a monopoly supplier of that Member, and a requirement to notify the Council of new monopoly rights regarding supply of a service covered by a Member's specific commitments.
- **Article IX (Business Practices)** obliges a Member to enter into bilateral consultations when another Member requests it to do so in order to eliminate "those practices that may restrain competition and restrict trade in services. The Member subject of such a request shall cooperate through the supply of publicly available non confidential information" and "provide other information subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of confidentiality."

- **Article XIII [Government Procurement] and Article XV [Subsidies]** at this time do not contain substantive disciplines. Based on experience in GATT, procedures to promote transparency in trade-related decision-making could be an important element of efforts to create GATS disciplines in these areas.

21. It is noteworthy that the transparency obligations in these Articles are for actions at the WTO level. That is, notification to the WTO (all three Articles) and bilateral consultation under WTO auspices (Articles VIII and IX, although in the case of Article VIII, the Council for Trade in Services appears to have something of a discretionary role in granting the request for consultations. Article VII does not contain a bilateral consultative mechanism). None of these Articles contains specific requirements on transparency in domestic regulatory decision-making, implementation, administration or enforcement; which are therefore covered generically by Article III and, to a lesser extent depending on the scope of a member's specific commitments, by Article VI.

22. The **Reference Paper on Basic Telecommunications** also contains provisions relevant to regulatory transparency:

- Signatories agree to refrain from various “anti-competitive practices” including non-transparent practices such as not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.
- It requires that interconnection is “ensured on terms, conditions and cost-oriented rates that are transparent”. The procedures applicable for interconnection must be publicly available and a major supplier shall make publicly available either its interconnection agreements or a reference interconnection offer.
- Universal services obligations shall be administered in a transparent, non-discriminatory and competitively neutral manner and shall not be more burdensome than necessary.
- Licensing criteria shall be publicly available and the reasons for the denial of a licence will be made known to the applicant upon request.
- Any procedures for the allocation and use of scarce resources will be carried out in an objective, timely, transparent and non-discriminatory manner.

23. **Disciplines for the accountancy sector:** The Council for Trade in Services adopted the “Disciplines for domestic regulation in the accountancy sector” in December 1998. The disciplines provide a basis for expanding transparency provisions in a sectoral context. Although they are without immediate legal effect it is expected that they will be integrated into the GATS at the end of the ‘Services 2000’ Round. Examples of legitimate objectives for regulation are given: the protection of consumers (direct users and the general public), the quality of the service, professional competence, and the integrity of the profession. Specific ways for Members to increase the transparency of trade-related regulation in this sector are listed:

- Making available the name and address of competent authorities;
- Making available information describing the activities and professional titles which are regulated or must comply with specific technical standards; requirements and procedures to obtain, renew or retain any licences and professional qualifications; the rationale behind the measures;

- Informing another Member, upon request, of the rationale behind domestic regulatory measures, in relation to legitimate objectives described above;
- Endeavour to provide opportunity for affected parties to make comments, and give consideration to such comments, before adoption of regulations; and
- Making available details about procedures for the review of administrative decisions (under Article VI.2) including prescribed time limits. (The other disciplines on requirements and procedures for licensing, qualifications and technical standards also serve to increase transparency in a broader sense).

24. For ease of reference, the foregoing listings of the various transparency requirements in the GATS Articles and sectoral instruments are summarised in **Box 2**; organised into two columns: transparency procedures to be undertaken by Members in their own domestic jurisdictions and transparency procedures to be undertaken between Members at the WTO level (e.g. notifications, bilateral consultations, etc). Box 2 shows that existing GATS provisions on transparency in trade-related regulation presently tend much more to be requirements for steps by Members within their domestic jurisdictions.

<b>Box 2. Summary of GATS requirements pertaining to transparency in domestic trade-related regulation</b>	
<b>Procedures to be employed by Members in their domestic jurisdictions</b>	<b>Procedures to be employed between WTO Members</b>
<p><b>Article III</b></p> <ul style="list-style-type: none"> <li>◆ Prompt publication or other means of making publicly available all relevant measures of general application which pertain to or affect the operation of GATS.</li> <li>◆ Establish one or more contact points for handling requests from other Members for information on relevant measures of general application which pertain to or affect the operation of GATS.</li> </ul> <p><b>Article VI</b></p> <ul style="list-style-type: none"> <li>◆ In sectors where Members have specific commitments, they shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.</li> <li>◆ Each Member shall maintain or establish judicial, arbitral or administrative tribunals or procedures for prompt review and remedy of administrative decisions affecting trade in services. Where such review is conducted by the decision-making agency, Members shall ensure the procedures provide for objective and impartial review.</li> <li>◆ Where authorisation is required for supply of a service, the competent authorities shall without undue delay provide the applicant with information about the status of the application and inform the applicant of the decision concerning the application within a reasonable period of time.</li> <li>◆ In sectors where a Member has made specific commitments, it shall apply any licensing and qualification requirements and technical standards based on objective and transparent criteria, ensuring they are not more burdensome than necessary, or a restriction on the supply of the service.</li> <li>◆ In sectors where a Member has undertaken commitments on professional services, it shall provide adequate procedures to verify the competence of professionals of other Members.</li> </ul>	<p><b>Article III</b></p> <ul style="list-style-type: none"> <li>◆ Respond promptly to requests from other Members for information on relevant measures of general application which pertain to or affect the operation of GATS.</li> <li>◆ Notification to WTO of enquiry point details.</li> <li>◆ Annual notification to WTO of new, or changes to existing, laws, regulations and administrative guidelines affecting sectors where the Member has specific commitments.</li> <li>◆ Opportunity to notify other Members' measures to the Council for Trade in Services.</li> </ul> <p><b>Article VII</b></p> <p>Notification of existing recognition agreements, opening of negotiations on recognition, and the adoption or modification of a new recognition agreement.</p> <p><b>Article VIII</b></p> <ul style="list-style-type: none"> <li>◆ A Member may request the Council for Trade in Services to request another Member to supply specific information concerning a monopoly supplier of that Member.</li> <li>◆ Notification of new monopoly rights regarding supply of a service covered by a Member's specific commitments.</li> </ul> <p><b>Article IX</b></p> <ul style="list-style-type: none"> <li>◆ A Member is obliged to enter into consultations when requested by another Member in order to eliminate practices that may constrain competition and restrict trade in services. The Member subject of the request shall supply publicly available information and other information of a non-confidential nature.</li> </ul>

<i>(contd.)</i> <b>Box 2. Summary of GATS requirements pertaining to transparency in domestic trade-related regulation</b>	
<b>Procedures to be employed by Members in their domestic jurisdictions</b>	<b>Procedures to be employed between WTO Members</b>
<p><b>Reference Paper on Basic Telecommunications</b></p> <ul style="list-style-type: none"> <li>◆ Provision on a timely basis to other service suppliers of technical information about essential facilities and commercially relevant information necessary for their provision of services.</li> <li>◆ Procedures for interconnection must be publicly available and major suppliers shall make publicly available either its interconnection agreements or a reference interconnection agreement.</li> <li>◆ Universal service obligations shall be administered in a transparent, non-discriminatory and competitively neutral manner and shall not be more burdensome than necessary.</li> <li>◆ Licensing requirements shall be publicly available and the reasons for denial of a licence will be made available to an applicant on request.</li> <li>◆ Any procedures for the allocation and use of scarce resources will be carried out in an objective, timely, transparent and non-discriminatory manner.</li> </ul> <p><b>Disciplines for the accountancy sector</b></p> <p>Making available, through enquiry and contact points, the following information:</p> <ul style="list-style-type: none"> <li>◆ The name and address of competent authorities;</li> <li>◆ Information on the activities and professional titles which are regulated or must comply with technical standards, requirements and procedures to obtain, renew or retain any licences and professional qualifications, and the rationale behind the measures;</li> <li>◆ Details on procedures for the review of administrative decisions in the sector, including prescribed time limits; and</li> <li>◆ Endeavouring to provide opportunity to make comments and give consideration to comments received, before adoption of the regulations concerned.</li> </ul>	

### *Assessment of GATS enquiry points and notification procedures*

25. To gain an appreciation of how the GATS provisions requiring establishment of enquiry points and notification of various measures affecting trade in services contribute to transparency, and thus of how they might reasonably be improved, the Secretariat undertook some research as a “user” of GATS enquiry points and information contained in notifications.

#### *Enquiry Points*

26. Pursuant to GATS Article III:4, 58 (+15<sup>4</sup>) enquiry points have been established between 1995 and 1999 and notified to the WTO, which makes the postal addresses, telephone and fax numbers available on the WTO website (<http://www.wto.org>). However, the information, once notified, has rarely been updated and some telephone or fax numbers notified a few years ago are no longer in use.

27. The GATS enquiry points are usually located in Trade Ministries and the person contacted is typically not an expert on domestic regulations. While the GATS enquiry points notified to the WTO could serve as the first contact point for third countries and foreign business, the need to co-ordinate with other administrations and the delay this involves in obtaining the information could hinder the effectiveness of the obligation contained in GATS Article III. Questions can also be raised as to the timeliness and accuracy of information provided; for example how willing/reluctant is the administration to provide the information to third countries and foreign business, and whether all the relevant information is provided.

28. In addition to notifying a GATS enquiry point within their Trade Ministry, some countries maintain websites providing information on the GATS and other relevant texts regarding trade in services. However, these websites do not provide information on domestic regulations relevant to services. Instead, they are about the GATS itself; e.g. New Zealand, Australia, Canada have websites containing the full text of the GATS and/or links to the WTO and other websites and provide some background information on the agreement and on the forthcoming negotiations. These websites also aim at gathering information from the private sector regarding trade barriers they encounter abroad, with the objective of preparing for the next round of GATS negotiations. However, this type of consultation is not widely used by the private sector, and in practice governments do not obtain a lot of feedback from business if they rely only on such websites.

29. An example of this more “interactive” type of contact/enquiry point is the European Commission’s GATS database, set up in 1996. It provides business with the possibility to “ask questions about their rights under the GATS and to receive advice and information directly from the Commission Services Experts.” However, whereas the purpose of GATS enquiry points established pursuant to Article III is to provide information on *domestic regulations*, this is not the purpose of the EC GATS website, which does not contain information regarding EC regulations and does not provide users with the possibility of requesting such information. It rather aims at enabling the private sector to obtain information on the functioning of the GATS, and on the contents on GATS Members’ specific commitments. In practice, this database is mainly consulted for the schedules of commitments it contains [either by governmental bodies (50%) or by business (50%)]. It also encourages the private sector to provide the European Commission with information on market access problems.

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<sup>4</sup> Each EC Member State has got its own enquiry point.

30. Practically, it appears that the enquiry points required under GATS Article III to enable WTO members to obtain easily information on other Members' domestic regulations are not truly effective for that purpose. They are not commonly used as a primary source of information by WTO members who prefer to obtain information through Geneva WTO Missions and in capitals. Although GATS Article III does not require that enquiry points be open to queries from business, the list of notified enquiry points is available from the WTO website. Furthermore, there is little evidence that contact points have been established to facilitate access of developing country Members to information about services markets, as required by Article IV:2.

### ***GATS Notifications***

31. As outlined above, notifications to the Council for Trade in Services are required by several GATS Articles. Up to 1999, 106 notifications have been made, of which the main types are as follows:

- Seventeen (17) notifications under Article V [Economic Integration];
- Four (4) notifications under Article XXVIII(k)(ii) [Definitions] -- these notifications aim at informing WTO Members that the notifying Member accords substantially the same treatment to permanent residents as to nationals.
- Twenty-eight (28) notifications under Article VII: 4 [Recognition].
- Fifty-five (55) notifications under Article III:3 [Transparency, notification of the introduction of any new or any changes to existing laws, regulations or administrative guidelines, etc].

32. The content of the notifications varies widely. Of the notifications under Article V concerning regional integration agreements, some simply aim at informing the Council for Trade in Services of the existence of such an agreement. Others are more detailed and explain the purpose of the agreement and each provision dealing with trade in services is explicitly mentioned. Notifications under Article VII concerning recognition agreements are of a similar nature.

33. Of the fifty five notifications under Article III:3, three are "negative notifications", informing the Council for Trade in Services that no measure affecting trade in services has been adopted during the previous year. The other notifications under Article III:3 usually specify the provisions of the adopted legislation, which affect trade in services. They also give either the reference of the text (which is apparently not always available in a WTO language) or the name and address of the agency from whom the text is available. In some cases this refers simply to the national enquiry point, in other cases to the agency which can provide the text. Once again this raises the question of the utility of the enquiry point in providing ready access to national legislation and regulations affecting trade in services. The most striking aspect is the low rate of notifications overall, and particularly under Article III:3 (new or amended laws and regulations).

### **III. Domestic transparency processes and mechanisms identified in OECD Regulatory Reform reviews**

34. The OECD commenced country reviews as the major focus of its Regulatory Reform project in 1998. Reviews of four countries, namely the Netherlands, United States, Japan and Mexico, were conducted by expert committees; and integrated reports for each country were discussed in a multidisciplinary meeting in March 1999. The review of another four countries, Denmark, Spain, Korea

and Hungary is underway, with the expert committee reviews of these four countries having all been completed in 1999.

35. In the country reviews, various practices to improve regulatory transparency are registered and it is a useful exercise to compare those practices emerging at the various stages of regulation with the more limited and generalised GATS requirements. In the following section, the analysis focuses on transparency processes and mechanisms that may be assumed to be directly relevant for trade-related regulation, by virtue of there being an existing WTO requirement to utilise such approaches. Thus by providing country examples of ways that transparency is employed in making and applying regulation -- mainly drawn from Regulatory Reform reports on the first eight countries that have been reviewed by expert committees (Netherlands, United States, Japan, Mexico, Denmark, Spain, Hungary, Korea) -- it is hoped to illustrate ways that GATS disciplines for transparency in trade-related domestic regulation might be enhanced. In turn, some emerging "good practices" for transparency in domestic regulation are identified.

(a) *Making regulations*

(i) *Notice and comment procedure*

36. GATS Article III requires that relevant measures affecting trade in services should be publicly available *at least by the time of entry into force*. On the other hand, the OECD Regulatory Reform country reviews conducted to date have shown there is a tendency toward *two-way* consultation processes, through public notice and comment procedures at the domestic level, prior to regulatory decision making.

37. Consultation is more effective when information is made available early and the public has enough time to submit comments about proposed regulations. It helps government choose better options for industry when alternatives are still under consideration and gives industry a better perspective on future regulations, which also may contribute to better enforcement. Sudden changes in regulation would create additional cost for adjustment and may lead to loss of business opportunities.

38. Of the countries reviewed so far, Japan and US have more systematic consultation with the entire public on almost all regulations. The tendency toward systematic consultation is also found in the other reviewed countries.

- **Denmark** -- There are no standardised procedures on consultation with the public, but there is a wide range of consultation before regulation is finalised. Most recently, the practice of posting Bills on the Internet at the time they are made available for comment has been adopted.
- **Hungary** -- There are no formal public notice and comment procedures for consulting with concerned constituencies, though informal consultation exists in the course of preparation of regulations.
- **Japan** -- Notice and comment procedure is applied to almost all regulatory decision making since April 1999 and a standardised comment period is one month.
- **Korea** -- Ministries and agencies are obliged to hear the opinion of interested parties, civic groups and others through public hearings, notices and any other means.

- **Mexico** does not have a comprehensive law or government policy requiring the use of consultation in making regulation. Consultation exists in some areas and a wide variety of forms of consultation are used to some extent.
- **Netherlands** -- Notice and comment procedure is increasingly, though not widely, used. Some laws require pre-publication of regulatory proposals and invitation to comment from the public. However, there is a wide range of informal consultation before regulation is finalised.
- **Spain** -- Consultation process is a constitutional requirement and it provides a reasonable period for consultation. Regulators have discretionary power in deciding who will be included in the consultation process.
- **United States** -- Proposed regulations are published in the Federal Register and the public generally must be given a reasonable period of time for comment (usually a minimum of 30 days).

(ii) *Other prior consultation processes*

39. In countries with a corporatist tradition, where councils are formulated to build consensus and balance various interests in a regulatory project, it may constitute an “inner circle” from which foreign business and other parts of civil society is excluded. Any prior consultation if it is done should be in a transparent and non-discriminatory manner. Some reviewed countries, while diminishing the role of such forums, are making efforts to increase transparency by opening discussions to the public or publishing minutes.

- **Netherlands:** The Dutch government is reducing the importance of tripartite consultation mechanisms whose rigid structure risks neglecting legitimate “outside” interests, including those of foreign countries.
- **Japan:** The Japanese government has decided advisory councils in principle should meet in open session and publish minutes, whilst also reducing the number of those councils making policy recommendations.

(iii) *Regulatory impact analysis*

40. Most of the OECD members reviewed to date in the Regulatory Reform project conduct Regulatory Impact Analysis (RIA) in the early stages of making regulations. The basic elements of RIA consist of describing the purpose of the proposed regulation, analysing its impact on industry and comparing possible alternatives. If the contents of the RIA are also released to the public for comment, it enables foreign trading partners to clarify the purpose of regulation and propose less trade-restrictive options. It should be noted that RIA is not specifically required by WTO Agreements, including GATS.

41. The RIA process undertaken by reviewed OECD members does not systematically conduct an assessment of the proposed regulations’ impact on trade and investment. However, if RIA processes did conduct such assessment, future trade frictions could be reduced. This is because trade disputes in the WTO often involve consideration of whether the disputed regulatory measures are “necessary” for achieving the policy objective/s underlying the regulation and whether there were less trade-restrictive regulatory options that would fulfil those objectives. Therefore, if the contents of the RIA are made

available to trading partners, with the opportunity to provide comments, it could help to avoid trade disputes in the future. As well, a WTO Member defending a dispute before a panel would be able to point to its RIA process as having fulfilled a number of the criteria of WTO disciplines regarding preparation, adoption and implementation of measures affecting trade.

42. The use of RIA processes by reviewed OECD members can be summarised as follows:

- **Denmark:** RIA includes assessment of impact on business and industry and the result of the business impact assessments is released on an Internet site since 1999.
- **Hungary:** RIA is required to focus on cost-benefit analysis and questions on enforcement costs, budgetary costs, alternative costs, etc.
- **Japan:** There is no RIA and very limited efforts to assess the impact of regulation.
- **Korea:** RIA is done on a compulsory basis, but it is not released to the public.
- **Mexico:** RIA considers alternative regulatory approaches and it is released to the public for their comments.
- **Netherlands:** RIA is not published and it does not include any comment procedures for affected parties. Neither does RIA include consideration of alternative regulatory approaches.
- **Spain:** Ministries use Evaluation Questionnaires to evaluate proposals of laws and royal decrees on a compulsory basis. The Questionnaire includes consideration of the necessity of the regulatory project and its social and economic impacts.
- **United States:** RIA considers alternative regulatory approaches and it is released to the public for comments.

*(b) Applying regulation*

*(i) Enquiry points and consolidated code of regulations*

43. The GATS (Article III) requires each Member to establish an enquiry point to provide information to other Members. Enquiry points of Members are in most cases located in trade ministries. Members also must inform the Council for Trade in Services of changes in existing laws, regulations and administrative guidelines, and any new ones, that significantly affect trade in services.

44. It is therefore noteworthy that some of the countries reviewed in the OECD Regulatory Reform context go beyond an enquiry point approach by operating a consolidated code of regulations (i.e. not only those covered by GATS) and use the Internet as a means of disseminating regulatory information. Although we should be aware of the cost effects of establishing and maintaining such codes and difficulties that may arise in integrating sub-federal level regulations, it should be also, however, noted that information technology is reducing the cost of creating and maintaining a code that is readily accessible by the public (see **Box 4 in Section IV**).

- **Denmark:** Has established a computerised, easily searchable code covering all legislation and lower level rules. It is accessible via Internet.

- **Hungary:** While there is no central official code, the Investment Promotion and Trade Development Agency assists foreign parties in accessing the Hungarian market.
- **Japan:** There is no centralised system for regulations.
- **Korea:** Laws and subordinate regulations are available on the Internet site of the Ministry Legislation.
- **Mexico:** All Federal business formalities have been identified and published on the council's Internet site and a compendium of all current laws and other major legal regulatory is continually maintained.
- **Netherlands:** While there is no central code, the Netherlands Foreign Investment Agency assists foreign parties in accessing the Dutch market and organises contacts with government authorities.
- **Spain:** There is no consolidated regulatory code.
- **United States:** Final regulations are published in the Federal Register and codified in the Code of Federal Regulations. The Code is periodically updated and is also available for the public on the Internet.

45. From a functional perspective, the practice of a central code of regulations containing information on actual regulations is more beneficial than the GATS requirement to establish one or more “enquiry points” because:

- ⇒ The performance of an enquiry point (in most cases located in the trade policy authority) depends on whether a central code of regulations is available and the extent of co-ordination between regulatory authorities and the enquiry point in providing substantive information.
- ⇒ A central code maintained at the local market level is more effective than a WTO registry of enquiry points because the former is usually more systematically structured and gives foreign business operating at the local market direct access to information about that market.
- ⇒ The difficulty of determining whether measures affect trade could give the agency co-ordinating a response through an enquiry point an excuse not to disclose all relevant information.

(ii) *Processing applications*

46. The GATS requires transparent and impartial authorisation procedures for the supply of a service on which a specific commitment has been scheduled. The competent authorities should inform applicants of decisions within a reasonable period of time and also provide information on the status of an application upon request (Article VI).

47. The OECD Regulatory Reform country reviews conducted to date have shown that some of the reviewed countries have enacted “Administrative Procedures” legislation to ensure transparency in applying regulations. They require ministries and agencies to publish objective criteria for judging applications and standard periods of time for a decision, to explain why applicants are rejected, and to guarantee hearing procedures before disciplinary actions for violation. For example:

- **Japan:** Has enacted the Administrative Procedure Law and required ministries and agencies to adopt the above procedures.
- **Korea:** Has enacted the Administrative Procedure Law and required ministries and agencies to adopt the above procedures.
- **Mexico:** The Federal Administrative Procedure Law includes improvements related to regulatory procedure such as a clearer administrative appeal mechanism and time limits for authorities to respond to a public request for authorisations.
- **Spain:** By law all Spanish agencies publish and explain their decisions.
- **United States:** Has enacted the Administrative Procedures Act and required federal agencies to comply.

(iii) *Sub-national government*

48. A serious issue for businesses operating internationally is lack of transparency in sub-national and local government regulation. Foreign business has difficulty in obtaining clear and complete information at local government level in comparison with the central government. The GATS covers measures taken by central and local government, but it is a question whether GATS is able to be effectively enforced at the level of local government actions. The existence of national and sub-national regulatory jurisdictions with distinct powers and the lack, for some members, of substantive multilateral commitments at the sub-federal level poses challenges for national regulatory reform efforts as well as any initiative to strengthen transparency provisions of GATS. Examples from the Regulatory Reform country reviews conducted to date include:

- **Mexico:** The states have made commitments to implement conceptually similar regulatory reform programs to that of the federal government.
- **United States:** Federal regulatory reform does not significantly affect state regulations. Foreign trading partners as well as U.S. out-of-state service suppliers sometimes have difficulty in obtaining clear and complete information on regulation at sub-federal level.

(iv) *Self-regulation*

49. In situations where trade associations, industry organisations or professional bodies impose sector-specific rules, transparency in setting such rules is generally much lower than in the case of formal regulation. The GATS non-binding disciplines for the accountancy sector is one attempt to address the impact on trade of self-regulation by those organisations.

- **Netherlands:** Self-regulatory institutions, or PBOs, have legal powers to regulate their sectors. Their regulation may not be transparent for foreign parties.

*Emerging good practices in transparency of trade-related domestic regulation*

50. From the foregoing, it is possible to identify some emerging “good practices” to promote greater transparency in trade-related domestic regulation (i.e. where WTO disciplines exist but might be made more specific and consistent across Agreements):

- Promote systematic two-way consultation through procedures for public notice and comment on proposed regulations.
- Establish a central code of regulations covering all regulations and make it readily accessible to the general public (e.g. via government gazette, government website).
- Create the legal and institutional framework to ensure transparency and impartiality in processing applications and permits required by regulations, and “due process” mechanisms providing affected suppliers with an avenue for requesting information, review of decision-making and appeal of decisions.
- Encourage reform in these directions at all levels of government and in self-regulation by private organisations.

**IV. Enhancing GATS provisions on transparency of trade-related domestic regulation**

51. Enhancing the GATS provisions on transparency of trade-related domestic regulation approaches could conceivably be pursued by a number of means. One approach could be to develop further multilateral disciplines on transparency measures that shall be taken within Members’ domestic jurisdictions and between Members, with sufficient flexibility in implementation to accommodate countries’ different circumstances. Another approach could be to encourage the building-up of patterns of desired behaviour on a voluntary basis and through peer pressure and review.

52. In improving the transparency of domestic regulatory decision-making, implementation and administration that affects entry to and operation in services markets, both approaches are probably needed in some combination. This is because the more the desired domestic transparency practices are actually implemented, the greater the prospect of the multilateral transparency disciplines being adhered to. Otherwise, if only a “stronger multilateral rules” approach to transparency is utilised, there will likely be failures to implement the new requirements, with little or no direct penalty that can effectively be applied.

53. An indicative list of potential enhancements to GATS transparency disciplines is provided in **Box 3**. This seeks to identify emerging “good practices” identified in the Regulatory Reform country reviews that appear most relevant to trade-related regulation that could enhance existing GATS requirements. Specific improvements could also be made to individual aspects of existing GATS transparency disciplines, such as enquiry points and notifications. Although the discussion could start with the principle that any new obligation on transparency should be standard and uniform to all sectors, an alternative approach would be to develop a more sector-specific approach.

54. There are a range of possible options for the form that new measures to improve transparency could take. For example, a reference paper for domestic regulatory authorities might be considered. It could include undertakings on matters set out in **Box 3**, such as prior notice and comment procedures, maintenance of a central code of regulations, use of transparent and objective criteria in application of regulations, adherence to a standard period of time for decisions, explanation of reasons for decision, right of appeal and legal redress, and so on. The precise coverage and content of any such reference paper would

of course be for negotiation and Members could accept it in full or in part, on a voluntary basis. Depending on negotiation on its nature, scope and coverage, options for consideration might include whether a reference paper could be a new Annex to the GATS constituting a set of horizontal disciplines for all sectors, or be akin to the Reference Paper on Basic Telecommunications, and inscribed voluntarily by Members into their GATS schedules for sectors where specific commitments are undertaken. This would permit Members the flexibility to improve their practices if they do not already have the capacity to accept those practices or should they face constitutional constraints; and may be a more practical way to involve the various kinds of competent regulatory authorities at both the federal and sub-federal level in efforts to facilitate trade in services.

55. As for the relevance to GATS of the TBT Agreement, it is worth noting that the encouragement of international standards as a means to reduce trade barriers plays a greater role in the TBT Agreement, and it is not really clear whether GATS needs to include similar provisions. Nevertheless, the GATS does have a mandate for development of disciplines to ensure that various types of domestic regulatory measures are not more burdensome than necessary to ensure the quality of services. Therefore transparency elements from the TBT Agreement such as providing an explanation on the rationale or justification for covered measures, upon request from other Members, could be considered as a relevant discipline for the GATS context.

56. As for TBT notification requirements for proposed technical regulations, including provision of opportunity for other Members to make comments, it would not seem operationally efficient for GATS to require Members to undertake prior consultation through notifications of proposed regulations in the same manner as the TBT Agreement. A number of factors differentiate GATS from TBT in this respect, including the lack of well-established international standards and standardised procedure for services, existing low rates of notifications under Article III: 3 suggesting costly administrative burdens associated with such advance notifications, insufficient capacities of developing countries and possible delay in finalising regulatory decisions. Also, as we described in the identified practices of the reviewed countries, notice and comment procedures is increasingly being adopted as domestic processes and mechanisms. Therefore, it may be more practical for competent regulatory authorities to provide opportunity to make comments for all interested parties within the territory of a Member via domestic procedures; as central government standardising bodies do in accordance with the Code of Good Practice attached to the TBT Agreement. It could also avoid heavy administrative burdens associated with the WTO notifications.

57. As for Regulatory Impact Analysis procedures, the view has been expressed that their scope being broader than trade matters, it would not be appropriate to require them via trade agreements. As well, the capacity of all WTO Members to undertake them is doubted. Nevertheless, publication of minimum elements derived from RIA practices, such as the justification or rationale of a regulation affecting trade in relation to its policy objective/s, could be considered as a relevant discipline in the GATS context, akin to the requirement to do so for technical regulations found in the TBT Agreement. However, it should be noted that a Member is required to explain the justification or rationale of a regulation only if requested by another Member in the TBT/SPS Agreement as well as in the Disciplined for the accountancy sector.

**Box 3. Indicative list of potential enhancements to GATS disciplines on transparency of trade-related domestic regulation**

*Before any regulations are adopted or changed*

- Conduct any prior consultation (e.g. advisory councils) in a transparent and non-discriminatory manner
- Public notice procedures: publication of the justification or rationale of the proposed regulation in relation to its policy objective/s, its scope and content, and outcome of any regulatory impact assessment that may have been undertaken
- Public consultation procedures with the private sector within the jurisdiction and foreign governments
- Establishment of enquiry and contact points for follow-up consultation

*After the adoption of regulations*

- Public notice of the regulation's adoption, publication of the final text and regulatory objectives in readily accessible form, and entry of the regulation into central code of regulations
- Ensure objective, impartial and reasonable administration of laws and regulations and processing of applications within a reasonable period of time
- Prompt publication of decisions and rulings pursuant to a regulation
- Existence of procedures for independent review and appeal of decisions
- International peer review of regulatory transparency practices through the TPRM

*GATS enquiry points*

58. Rather than the existing static "contact" points, a more interactive interpretation of the GATS Article III:4 "enquiry point" could be considered. The key area for improvement is in provision of access to domestic regulations. Certainly the introduction of websites enabling access to national regulations would be more useful to other Members, to business and to other parts of civil society. This could be either a central code of regulations where this is technically and constitutionally feasible or a comprehensive list of contact points of the Member's competent regulatory authorities both at federal level and at sub-federal level from whom regulatory information can be obtained. This would permit *all interested parties* (other Member governments, business, civil society) to obtain easily and promptly the necessary information and overcome any administrative reluctance to provide information. Such a code could build on the efforts of many governments to introduce so-called Electronic Government (**see Box 4**).

*GATS notifications*

59. As noted in **Section II**, the content of GATS notifications varies from country to country and issue to issue. Some notifications contain great detail, while others are very general. It would therefore be useful to standardise the format of GATS notifications, while balancing the need to improve transparency and the need to avoid new overly bureaucratic administrative burdens; for example:

- Under GATS Article III:3 (at least annual notification of new or amended laws, regulations and administrative guidelines), the notification procedure could be standardised to include a requirement to notify and provide details on the purpose of the notified regulation, and to state and describe the relevant provisions dealing with trade in services. It could also be useful to codify the practice of some Members into a requirement to make “negative notifications” advising when no new or changed legislation or regulations affecting trade in services have been adopted in the previous year (although it has been suggested that this would create a new administrative burden on WTO Members).
- Under GATS Article III:4 (establishment of one or more enquiry points), the notification procedure could be standardised to require notification of the existence and location of a central code or, where this does not exist, a requirement to specify the principal regulatory agencies responsible for individual service sectors and their contact information, including website and email addresses where these exist.
- Under Article VI, there could be a new notification requirement to provide standardised information on the regulatory decision-making process, including on timeframes, procedures and remedies (Article VI:2), the bodies responsible for decisions on authorisation to supply a service (Article VI:3) and the bodies responsible for the design, implementation and administration of licensing and qualifications requirements and the criteria and timeframes they employ (Article VI:4). (The disciplines for the accountancy sector require this type of information to be made available through contact points.)
- Members’ policies and practices on regulatory transparency in the services domain could also be assessed regularly by adding this topic to the coverage of the Trade Policy Review Mechanism (which at present does not adequately cover services trade policy issues compared to its coverage of goods trade policy issues).

### *Concluding remarks*

60. It is true that multilateral disciplines alone cannot secure, or sustain, a liberal world trading environment. A stronger demonstration, however, is needed of the crucial link between trade policy and securing domestic gains to national efficiency of enterprises and thus general welfare. WTO disciplines should promote national domestic welfare at the same time that they address trade restrictions. The transparency disciplines described in this paper will help make the public aware of the crucial link between trade policy and securing domestic gains.

#### **Box 4. E-Government**

The rapid uptake and extension of information technology by the public sector has enabled countries to improve the transparency of domestic administrative action. In this respect, some countries (France, Netherlands, UK, Canada, among others) have adopted digitalisation plans in order to make all public documents available on-line. Major public data (official publications, legal texts, administrative information, administrative forms, public procurement tenders) are now available on the Internet.

This not only facilitates access to public documents (which are available at anytime, and instantaneously, reducing administrative burdens), but it also facilitates interaction between administrations and with the private sector. Indeed, this process of digitalisation has served to significantly increase administrative transparency by expanding and standardising the consultation process, particularly in countries that did not traditionally have a systematic process for such consultations. For example, online publication of draft legislation, green papers and parliamentary reports is being generalised, where these documents were previously only communicated to a small group of interested people. This widens the consultation process, as the private sector, and the civil society can submit their comments on proposed legislation, without having to be directly invited to do so.

Similarly, the generalised availability of e-mail addresses and the publication on-line of administration directories facilitates direct contact with civil servants.

However, because legislation enacted before the adoption of these plans is not available on-line, the digitalisation process can take time before all the legislation can be accessed. In addition, texts are not always available in their consolidated version. Relevant information is often spread over different databases or information points of local administrations.

The need to create metadata (information on the available information) to facilitate appreciation of the location of relevant information has therefore been underlined in several governmental papers on E-Government, and some countries have developed a single gateway to access any public information on the web; for example in the US, the GILS (government information locator service), in the UK the GIS (government information service search system), and the GTIS in Canada.<sup>5</sup>

*Source:* OECD Secretariat research

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<sup>5</sup> <http://www.gils.net/index.html>

<http://canada.gc.ca>

<http://www.open.gov.uk/search/search.htm>