DRAFT DISCIPLINES ON DOMESTIC REGULATION IN THE ARCHITECTURAL SECTOR

As proposed for submission to the
Working Party on Domestic Regulations
World Trade Organization
Geneva, Switzerland

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As approved by the
Council, International Union of Architects
Vancouver, British Columbia, Canada

and as submitted by the

Professional Practice Commission
International Union of Architects

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)
Article VI:4

Draft Disciplines on Domestic Regulation in the Architectural Sector

The Council for Trade in Services [Members],

Recalling that the objectives of the General Agreement on Trade in Services (GATS) are to:

- promote higher levels of liberalisation in trade in services;
- improve levels of transparency, particularly in areas covering sub-sectors in which specific commitments are made; and
- recognise 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;

Recognising the mandate to develop disciplines on domestic regulation under Article VI:4 of the GATS as a means to augment and give effect to market access commitments;

Recalling the decision of the Council for Trade in Services on 26 April 1999 (S/L/70) establishing the Working Party on Domestic Regulation to develop and make recommendations on domestic regulatory disciplines prior to the end of the current round of services negotiations;

Having regard to the Disciplines on Domestic Regulation in the Accountancy Sector adopted by the Council for Trade in Services on 14 December 1998 (S/L/64);

Recognising the benefit to Members of building on the Accountancy Disciplines to develop meaningful disciplines to cover other areas, including the architectural sector;

Recognising that architects hold the basic tenet of safety, health and welfare of the public as well as the protection of both the natural and built environment in accordance with the principles of sustainable development as being of paramount importance;

Hereby *agree* on the following disciplines on domestic regulation in the architectural sector:

I. OBJECTIVES

1. The purpose of these disciplines is to facilitate trade in architectural services by ensuring that domestic regulations affecting trade in architectural services meet the requirements of Article VI:4 of the GATS. The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.

II. GENERAL PROVISIONS

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS[1], relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to, or

[1] The text of GATS Articles XVI and XVII is reproduced in an appendix to this document.

with the effect of, creating unnecessary barriers to trade in architectural services. For this purpose, Members shall ensure that such measures are not more burdensome or trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of architectural services and the public generally), the quality of the service, professional competence, the avoidance of conflicts of interest, and the integrity of the profession.

3. Members note that regulations should be designed and administered in a manner which promotes the interests of clients and encourages and facilitates the effective delivery of architectural services to the fullest extent practicable, consistent with the protection of the public in the host jurisdiction as well as the maintenance of professional standards of the architectural profession of the host jurisdiction.

4. Members shall take such reasonable measures as may be available to them to ensure that qualifications, licensing and technical standards requirements and procedures maintained by different levels of government, including by regional, state and local governments and authorities and non-governmental bodies, are not applied in a way that they make the supply of architectural services across the various jurisdictions of the territory of the Member unduly burdensome or expensive.

III. TRANSPARENCY

5. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities (i.e. governmental or non-governmental entities responsible for the licensing and/or disciplining of professionals or firms).

6. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

(a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;

(b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities' monitoring arrangements for ensuring compliance;

(c) information on technical standards; and

(d) upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

7. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the architectural sector, in relation to legitimate objectives as referred to in paragraph 2.

8. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

IV. LICENSING REQUIREMENTS

9. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorisation to practice) shall be pre-established, publicly available and objective. In this and subsequent articles where the words 'qualification' and 'licensing' appear, they shall have the following meanings:

(a) 'qualification' shall mean the educational requirements that an architect is required to fulfil to obtain a certification or licence,

(b) 'licensing' shall mean those substantive requirements, including qualification or other requirements, such as education, examination, practical training and experience, language or continuing professional development requirements; with which an architect must comply in order to obtain and maintain formal permission to supply architectural services.

10. Where residency requirements not subject to scheduling under Article XVII of the GATS exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

Alternatives should be available which may include:

(1) Members shall also consider implementing a 'temporary licence' system, based on the foreign architect's home licence or recognised professional body membership, to facilitate access for foreign architects to provide architectural services on a temporary basis or in relation to specific projects. However, Members shall ensure that such a temporary licence or registration is not implemented in place of providing longer-term access to the local market and should not operate to prevent a foreign architect from gaining a local architectural licence subsequent to satisfying the necessary local licensing requirements. A temporary licensing system may require foreign architects to be:

(a) bound by the codes of professional conduct established and enforced by their home jurisdiction and by the host jurisdiction;

(b) held individually accountable for their actions, both through requirements imposed by the licensing body in the host jurisdiction and through legal processes;

(c) temporary licenses should be issued based on home registration without further assessment or examination;

(d) that temporary licenses should not have a time limit of less than 1 year, and should be renewable if the project is incomplete; and

(e) that architects must be able to apply for a full license while holding a temporary licence.

(2) Members shall consider implementing a "Protocol for Practice in A Host Nation" as adopted by the International Union of Architects as a policy within the International Union of Architects Accord on Recommended International Standards of Professionalism in Architectural Practice.

11. Licensing requirements may include education, examinations, practical training, experience, language skills and maintaining continuing professional development. Language fluency requirements, when part of examination requirements, should be based on meeting legitimate objectives such as the safety of the consumer, ensuring quality of the services or where working knowledge of the language is essential for practice. Language should not be used as a barrier in itself to prevent foreign service suppliers from sitting in such exams. Neither should residency in host country or experience in specific locations in host country be made a pre-requisite for eligibility for licensing requirements unless found necessary for meeting legitimate public objectives.

12. Where membership of a professional organisation is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organisation is required as a prior condition for application for a licence (i.e. an authorisation to practise), the period of membership imposed before the application may be submitted shall be kept to a minimum.

13. Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective.

14. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member, subject to Members being permitted to put the burden, including the costs of the exercise, on to foreign applicants to show the extent of their existing insurance, and the solvency and security of the company providing such insurance. The same principles shall apply to any existing pension or social security arrangements or fidelity fund for which Members have requirements covering foreign applicants.

15. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations.

V. LICENSING PROCEDURES

16. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

17. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall

be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

18. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within three months, separate from any periods in respect of qualification procedures referred to below.

19. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

20. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

VI. QUALIFICATION REQUIREMENTS

21. A Member shall ensure that its competent authorities take account of education qualifications acquired in the territory of another Member, on the basis of equivalency so that qualifications that are not necessarily the same as those required for architects by the host Member, but are equivalent, are recognised. In doing so, equivalent criteria/standards as applied to domestic recognition of qualifications may prima facie be applied to recognition of foreign qualifications. This does not imply harmonisation of criteria/standards but that unduly burdensome requirements should not be applied to verify foreign qualifications which could result in impairing market access commitments.

22. A Member shall ensure that its competent authorities take account of other licensing requirements met in the territory of another Member, on the basis of experience and/or examination requirements so that qualifications that are not necessarily the same as those required for architects by the host Member, but are equivalent, are recognised. In doing so, equivalent criteria/standards as applied to domestic recognition of qualifications may prima facie be applied to recognition of foreign qualifications. This does not imply harmonisation of criteria/standards but that unduly burdensome requirements should not be applied to verify foreign qualifications which could result in impairing market access commitments. Members shall ensure that a 'temporary licence' or ‘Protocol for Practice in A Host Nation’ if implemented, will be granted on the basis of the foreign architect’s home qualifications and without the requirement to undertake additional written or oral examinations.

23. The scope of examinations and of any other education qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Residency in host country or experience in specific locations in host country shall not be made a pre-requisite for eligibility for such examinations unless found necessary for meeting legitimate public objectives.

24. Members note the role which existing signed bi-lateral and/or regional mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

VII. QUALIFICATION PROCEDURES

25. Verification of an applicant's university qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within two months and, where applicants' qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

26. Examinations, if required, shall be scheduled at reasonably frequent intervals, preferably more than once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. The possibility of using electronic means for conducting such examinations, wherever feasible, and of providing opportunities for taking such exams in the home country of the foreign services supplier should also be explored having regard also to the extra costs and administrative burdens this might entail amongst all relevant factors. Applicants shall be allowed a reasonable period for the submission of applications. Oral examinations should also be considered where possible as a legitimate alternative to written examinations.

27. Appeal/review channels should be provided for non-recognition of qualifications. Further, possibility of re-submission of applications and other materials substantiating the case for meeting the qualification requirements should be allowed, including provision for the re-submission of applications for the recognition of qualifications that have been previously rejected. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations.

VIII. TECHNICAL STANDARDS

28. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

29. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of any internationally recognized standards of relevant international organisations[2] applied by that Member.

IX. REFERENCE ANNEX

30. In furtherance of Paragraph 29, the existence of the internationally recognized standards established, adopted and promulgated by the International Union of Architects are referenced as they may be applicable to this discipline on the domestic regulation in the architectural sector. The UIA Accord on Recommended International Standards of Professionalism in Architectural Practice and all of the accompanying Recommended Guidelines for the UIA Accord Policies may be consulted at www.aia.org/about_uia.

31. Detailed national information on the existing domestic regulation of architects throughout the world is to be found at two internet sources – www.coaoc.net/internacional/praprof_w.htm and www.ncarb.org/overseas/index.htm.

[2] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

APPENDIX

For the purpose of clarity, the text of GATS Articles XVI and XVII is reproduced below.

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[3]

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[4]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of engineering entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment.

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[3] If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

[4] Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[5]

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

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[5] Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplies.