

UNCTAD workshop on
**Recognition of qualifications to facilitate
movement of natural persons**

Co-organized by UNCTAD-ACP Secretariat

Geneva, 3 May 2019

The WTO approach

by

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WORKSHOP ON RECOGNITION OF QUALIFICATIONS TO FACILITATE MOVEMENT OF NATURAL PERSONS

SESSION 3 **THE WTO APPROACH**

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Outline

- Importance of recognition of foreign qualifications for Mode 4
- Approaches in WTO on Services Domestic Regulation (DR)
 - Negotiating mandate in GATS Article VI:4
 - Accountancy disciplines
 - Joint Ministerial Statement on DR launched in December 2017
 - Key Features of India's latest DR proposals
- Concluding remarks
- Suggestions for UNCTAD Work

Why is recognition of foreign qualifications important

- Non-recognition of foreign professionals' home-country qualifications, training, experience and licenses is a major impediment to Mode 4
- All the other problems stem from this fundamental issue:
 - costly and time-consuming evaluation of prior qualifications
 - undertaking costly examinations
 - taking courses that at least in part repeat prior education
 - undergoing training that duplicates at least in part prior training
 - acquiring more experience than their local counterparts and
 - with the added burden that all these requirements can only be met in host jurisdictions after obtaining visas

Why is recognition of foreign qualifications important

...contd.

- It is therefore critical that Members ensure that their competent authorities take account of qualifications and licenses acquired in the territory of another Member on the basis of equivalency of education, experience and /or examination requirements
 - Critical to ensure meaningful access as a *professional (Mode 4)* and not as a *student (Mode 2)*
- Will address bulk of the LDC Collective Request (S/C/W/356) under the LDC Services Waiver
- **GATS Article VI:6**
 - WTO Members ‘*shall*’ provide adequate procedures to verify competence of foreign professionals, in sectors with specific commitments

DR Negotiating mandate in GATS Article VI:4

- Aims to discipline measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures
- Such disciplines shall aim to ensure that these measures do not constitute disguised restrictions on trade in services
- Council for Trade in Services shall develop any necessary disciplines

Some key WTO Decisions

- Decision on Professional services (S/L/3)
 - Recognized the impact of regulatory measures on expansion of trade in professional services
 - Decided that work programme of Article VI:4 of the GATS to be put into effect immediately
 - A Working Party on Professional Services (WPPS) to be established
 - WPPS recommended disciplines in Accountancy sector
- Disciplines in Accountancy Sector:
 - Strong interest by Accounting profession (IFAC)
 - Proposals by Canada, EU, US, Australia NZ
 - Accounting bodies of various organizations involved: OECD, UNCTAD, IASC, IOSCO

Key agreed disciplines of Accountancy services

(S/L/64, December 1998)

- Relating to recognition of qualifications:
 - *Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.*
 - *A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.*
 - *The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought.*
 - *Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.*

Key agreed disciplines of accountancy services

...contd.

- *Verification of an applicant's qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six 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.*
- *Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.*
- *A concessional fee for applicants from developing countries may be considered.*

No later than the conclusion of the forthcoming round of services negotiations, the disciplines developed by the WPPS were intended to be integrated into the GATS.

Establishment of the Working Party on Domestic Regulation -WPDR (S/L/70, April 1999)

- WPPS dissolved and WPDR established
- Terms of reference for WPDR:
 - WPDR to develop any necessary disciplines under Art VI:4
- Activities of the WPDR – 1999 -2014
 - Several text proposals;
 - Two key Chair Texts: 2009 Text, 2011 Text

Joint Ministerial Statement on DR

- Joint Ministerial Statement (JMS) issued by 60 WTO Members during MC11 (December 2017)
 - in absence of multilateral consensus
- Concerns on GATS VI:4 Disciplines being developed under the JMS
 - CTS Decision on DR (S/L/70, 1999) mandates the WPDR to develop necessary disciplines
 - More than half the membership not on board
 - In terms of content:
 - Structure: Disciplines proposed not on 5 mandated elements of LR, LP, QR, QP and TS *but* on ‘authorisation’ around themes
 - JI draft disciplines do not have any commercially meaningful disciplines on QRs
 - VI:4 mandate cannot be used to multilateralise the TISA/CP-TPP template

Key Features of India's latest DR proposals in the WTO

S/WPDR/W/61 (discussed in WPDR in December 2018)

S/WPDR/W/61/Rev.1 (discussed in WPDR in March 2019)

- Emphasis on Commercially meaningful disciplines on Qualifications requirements and procedures (QRP)
- Temporary entry related disciplines
- Meaningful S&DT
- Scope limited to specific commitments

India's proposals re-energized formal WTO process

Key Features contd...

Key Disciplines on QRP:

- ***Verification and assessment of foreign qualifications*** – due consideration to professional experience & membership in professional association
- ***Identification of deficiencies*** – details of how deficiency in qualification can be addressed
- ***Examinations*** – through electronic means, and from home country
- ***Recognition / MRAs*** – adequate opportunity to developing country members to negotiate accession to existing MRAs (as per GATS Article VII) to ensure that MRAs are actually trade creating and not trade distorting
- ***Development*** - reduced administrative fees for service suppliers from developing countries

Key Features contd...

- **Temporary Entry related disciplines**, to apply only when
 - entry is required to fulfill a GATS Art VI.4 measure (QR, QP, TS, LR, LP);
 - electronic authorization is not possible;
 - visa required but visa procedures (such as timelines, procedures, fees, etc) are overly burdensome as to nullify the Mode 4 commitment;
 - there is a specific Mode 4 commitment;
 - Temporary entry is not relating to citizenship, residence or employment on a permanent basis.

Key Features contd...

- **Temporary Entry related disciplines**
 - Expeditious processing of applications (CHAFTA)
 - Notification about status of application (AANZFTA)
 - What to do in case of an incomplete application (India-Malaysia CECA)
 - Fees are reasonable and transparent (CPTPP)
 - Online processing of applications (CHAFTA)

Concluding remarks

- Mode 4 is the key mode of export interest to developing countries and LDCs
- Non-recognition of foreign professionals' qualifications, training and experience is a major impediment to real Mode 4 access
 - Constitutes only around 5% of world TIS
- GATS mandate under Article VI:4 to be fulfilled in letter and spirit
 - 12th Ministerial Conference
- Commercially meaningful facilitation of Mode 4 can be mutually beneficial, as changes in demographics and patterns of investment in human capital have created increased scope for international trade in professional services.

Suggestions for UNCTAD work

- UNCTAD Study could focus on three professional services
 - Nurses, Accountants and Technology professionals
- Possible research issues could include:
 - Estimate of shortage of skilled professionals in developed countries over the next 10 years
 - Which countries might be expected to be the main exporters and importers?
 - What is the role for trade in fulfilling such shortage?
 - What are the key barriers to trade?
 - Role of recognition of foreign qualifications and licenses

THANK YOU