

CURRENT DEVELOPMENTS REGARDING THE GATS AND LEGAL SERVICES:

THE CANCUN MINISTERIAL GATS NEGOTIATIONS

by Laurel S. Terry

This is an update on the General Agreement on Trade in Services (GATS) and how it affects legal services. Because the U.S. is a member of the World Trade Organization (WTO), it is bound by the provisions of the GATS. For background information about the GATS and legal services, see the author's previous BAR EXAMINER articles.¹

During the fall of 2003, several significant developments occurred that are relevant to the GATS and legal services. These developments include the suspension of some GATS negotiations following the WTO's Fifth Ministerial Conference in Cancun, Mexico, two resolutions adopted by the International Bar Association, and continued publicity in the U.S. concerning the GATS. This update on the GATS addresses the Cancun Ministerial Conference. An upcoming BAR EXAMINER article will examine the recent publicity in the U.S. regarding the GATS, which includes the activities of the new ABA GATS Task Force. That piece will also explain the two resolutions unanimously adopted by the International Bar Association (IBA) in September 2003 that relate to the GATS.

The treaty creating the WTO requires that a "Ministerial Conference" be held "at least once every two years." The Ministerial Conference is the WTO's highest-level decision-making body. Since its formation in 1994, the World Trade Organization has held a "Ministerial Conference" every two years.²

As noted in a prior BAR EXAMINER article, in November 2001, at the Fourth Ministerial Conference, WTO Member States agreed to a new

round of trade negotiations called the Doha Development Agenda or Doha Round.³ These Doha negotiations, which include negotiations concerning trade in legal services, originally were scheduled to end on January 1, 2005. In the prior BAR EXAMINER articles, I have referred to the Doha Round negotiations regarding legal services as Track #1 of the GATS.⁴

At the time when the deadlines for these Track #1 negotiations were set, WTO Member States agreed that at the WTO's Fifth Ministerial Conference, they would engage in "stock-taking" regarding the status of these ongoing negotiations.⁵ The Fifth Ministerial Conference took place in Cancun, Mexico, on September 10-14, 2003. During this Conference, a number of WTO Member States expressed significant differences about the direction of the Doha negotiations, especially with regard to issues involving agriculture and the so-called "Singapore Issues."⁶ By the end of the Cancun Conference, the Doha negotiations had broken down and there was no consensus and no Ministerial Declaration.

Following the breakdown of negotiations at Cancun, the WTO Director General and the General Council Chair jointly issued a statement announcing the suspension of various WTO negotiations that

included the Track #1⁷ negotiations regarding the GATS and legal services.⁸ Although the European Union recently issued a paper and press release calling for resumption of the Doha negotiations,⁹ the Track #1 GATS negotiations had not yet resumed at the time this article was written.¹⁰

Despite the suspension of Track #1 negotiations following Cancun, WTO Member States have continued to negotiate in the WTO Working Party on Domestic Regulation concerning Track #2 of the GATS.¹¹ As noted in a prior BAR EXAMINER article, Track #2 of the GATS addresses the issue of whether to apply the Disciplines for Domestic Regulation in the Accountancy Sector, S/L/64 (“the Accountancy Disciplines”) to other service sectors, such as legal services.¹² Therefore, as the prior BAR EXAMINER article urged, lawyers and regulators in the U.S. and elsewhere should consider the issue of whether the Accountancy Disciplines are suitable for the legal profession. This issue was the subject of one of the IBA’s September 2003 resolutions and likely will be considered in the future by the ABA GATS Task Force. Therefore, it is appropriate and timely for U.S. lawyers and regulators to begin thinking about these issues. 

LAUREL S. TERRY is a member of the faculty of Penn State Dickinson School of Law in Carlisle, Pennsylvania. Terry is Vice-Chair of the Transnational Legal Practice Committee of the ABA Section of International Law and is a liaison from the ABA Center for Professional Responsibility to the ABA GATS Task Force. Terry also serves on the International Bar Association’s WTO Committee and was the principal drafter of the International Bar Association’s GATS Handbook. She maintains a website with GATS information at <http://www.personal.psu.edu/faculty/1/s/lst3/>.

ENDNOTES

1. See 71 BAR EXAMINER 2:25 (May 2002), 71 BAR EXAMINER 4:20 (Nov. 2002). 72 BAR EXAMINER 3:27 (Aug. 2003). These BAR EXAMINER articles are available at the GATS website of the ABA Center for Professional Responsibility, see http://www.abanet.org/cpr/gats/gats_home.html and at Professor Terry’s website, see <http://www.personal.psu.edu/faculty/1/s/lst3/publications%20by%20topic.htm#2>.

2. The prior Ministerial Conferences were held as follows: Doha 9-14 Nov. 2001; Seattle 30 Nov.-3 Dec. 1999; Geneva 18 & 20 May 1998; and Singapore 9-13 Dec. 1996. See http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm.
3. *See* Ministerial Declaration, adopted on 14 November 2001 WT/MIN(01)/DEC/1 (20 November 2001) available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm and cited in 71 BAR EXAMINER 2:25, 28 (May 2002) (citing the Doha Ministerial Declaration).
4. Track #1 is discussed in the first BAR EXAMINER article. See 71 BAR EXAMINER 2:25 (May 2002), also available at <http://www.personal.psu.edu/faculty/1/s/lst3/publications%20by%20topic.htm#2>. This term refers to the GATS negotiations that currently are underway. Article XIX of the GATS required WTO Members to engage in successive rounds of negotiations within five years of the signing of the GATS. The intent of these negotiations is to achieve a progressively higher level of liberalization.
5. *See* Ministerial Declaration, *supra* note 5 (“The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary.”)
6. The “Singapore Issues” concern trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation *See, e.g.*, http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_11sept_e.htm; and <http://commerce.nic.in/wtosep2003.htm#h1> (Government of India’s summary of the Cancun breakdown.).
7. Track #1 is discussed in the first BAR EXAMINER article. See 71 BAR EXAMINER 2:25 (May 2002), also available at <http://www.personal.psu.edu/faculty/1/s/lst3/publications%20by%20topic.htm#2>.
8. *See* WTO News, Oct. 14, 2003, Statements by the Chairman of the General Council and the Director-General, available at http://www.wto.org/english/news_e/news03_e/stat_gc_dg_14oct03_e.htm
9. *See* Press Release: “European Commission proposes to put Doha Round of trade talks back on track,” Nov. 26, 2003, available at http://www.esf.be/f_e_news.htm#top.
10. *See, e.g.*, “Informal Heads of Delegation Meeting, Statement by the Chairman of the General Council” (9 Dec. 2003), available at http://www.wto.org/english/news_e/news03_e/stat_gc_chair_9dec03_e.htm.
11. *See, e.g.*, “Working Party on Domestic Regulation, Annual Report of The Working Party on Domestic Regulation To The Council For Trade In Services” (2003), S/WPDR/6 (3 Dec. 2003)(summarizing the activities of the year, including a meeting on September 30, 2003, after Cancun and announcing a meeting on December 3, 2003).
12. *See* 71 BAR EXAMINER 2:25, 26-27 (May 2002) explaining Track #2 of the GATS. The BAR EXAMINER article, the Accountancy Disciplines themselves, and commentary from other bar associations are available at the GATS website of the ABA Center for Professional Responsibility, see http://www.abanet.org/cpr/gats/gats_home.html and at Professor Terry’s website, see <http://www.personal.psu.edu/faculty/1/s/lst3/wpdrweb.htm>.