UNION INTERNATIONALE DES AVOCATS

INTERNATIONAL ASSOCIATION OF LAWYERS
INTERNATIONALE ANWALTS-UNION

UNION INTERNACIONAL DE ABOGADOS
UNIONE INTERNAZIONALE DEGLI AVVOCATI

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Working Party on Domestic Regulation (WPDR)
WTO Trade in Services Division

Attn: Mr. Dale Honeck, Secretary

Transmitted by E-mail: Dale.Honeck@wto.org

Re: Potential Applicability of Elements of the Disciplines on Domestic Regulation in the Accountancy Sector to the Legal Profession

Dear Mr. Honeck:

This letter responds to the three questions propounded to the Union Internationale des Avocats ("UIA") by the WTO Secretariat regarding the potential applicability of elements of the *Disciplines on Domestic Regulation in the Accountancy Sector* ("Accountancy Disciplines") to the legal profession. In addition, as requested, this letter provides information concerning the UIA's activities in regard to international regulatory issues.

(a) Question One: Are there any elements of the disciplines which you consider are not appropriate for your profession?

The UIA is of the view that *ab initio* the concept of applying the Accounting Disciplines to regulate the legal profession is misplaced because of the dissimilarity between the fundamental natures of the two professions. For reasons we will discuss below, it is wholly inappropriate for trade negotiators to create rules that treat legal services as though they could be equated with accounting services and that ignore the effect that the rules might have on the quality of the national legal justice systems in the countries where the "international" rules would be put into effect.

One must ask whether there is any crisis or urgent need in the relationship between lawyers and their clients that justifies imposing an international regulatory regime on the legal professions in

WTO member states. One must further ask why anyone would attempt to apply accounting sector disciplines in a field so radically different from accountancy as the legal profession. The methodology for regulating an essentially homogeneous profession such as accountancy simply cannot be used to regulate an infinitely more heterogeneous profession such as the legal profession. Rather the matter should be left to the authorities in each member state that are responsible for administration of justice.

An accountant analyzing the adequacy of a financial statement is confronting a set of issues of near universal application, and an argument might well be made that there is a single model of education, professional training, skill sets and qualifying examinations which should make the aspiring accountant or auditor equally competent to perform that task regardless of where his or her training took place and without regard to the place in which the financial analysis occurs. The same, however, cannot be said of lawyers who work within a set of historical, cultural and legal references that are inherently localized. Each country (and, within some countries, each state within a federated system) has developed largely unique methods of regulating the education, licensing and establishment rights of lawyers, not for the purpose of excluding lawyers from other countries or states, but for the purpose of providing what that country or state believes to be the best and most effective legal justice system for its citizenry.

In the early 1990s, the major international accounting firms, with offices in hundreds of cities around the world, began championing the concept of "multidisciplinary practice." The accounting profession espoused the point of view that lawyers could practice within the corporate framework of the accounting firms and still maintain allegiance to the applicable professional standards of the legal profession. Numerous critics – including national and international bar associations – rose up to speak against the concept because of three significant incompatibilities between the two professions.

> First, it was recognized that the fundamental role of the accounting profession (*i.e.,* public disclosure of the affairs of an enterprise) was at odds with the fundamental character of the legal profession (*i.e.,* absolute confidentiality regarding all consultations with clients).
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> Second, it appeared to many that the rules applicable to the legal profession with respect to avoidance of conflicts of interest were inconsistent with the rules used generally in the accounting profession to determine whether conflicts of interest existed.
>
> Third, many questioned whether lawyers working as employees in gigantic corporate accounting and consulting firms could maintain the independence of thought that had been the hallmark of effective counseling and advocacy since the origin of the legal profession.

As a result, the UIA opposed the multidisciplinary model except in certain limited circumstances. *See* "UIA-Recommended Minimum Standards for Multidisciplinary Practices." (A copy of those standards is attached hereto as Appendix A.) The reasoning that underlay that decision underlies our response to Question One. In light of the many differences and incompatibilities between the two professions, the UIA believes that it is unwise and illogical to begin with the Accounting Disciplines as a paradigm for regulating the legal profession.

One example will suffice to illustrate the UIA's point. Consider the deceptively simple principle contained in paragraph 2 of the Accounting Disciplines, which imposes *inter alia* the obligation to avoid "creating unnecessary barriers to trade in accountancy services," *i.e.*, measures that are "more trade-restrictive than necessary to fulfil a legitimate objective." Paragraph 5, in turn,

requires members to defend the "rationale" of its domestic regulatory measures to other members on demand. The application of such rules to each member's legal profession necessarily raises the question of who should determine what is "necessary" or "legitimate" to the functioning of a particular state's legal system. Should it be trade bureaucrats or should it be that state's bar, judiciary, or other authority which is traditionally and properly responsible for maintaining the integrity of the justice system? It seems obvious to the UIA that it should be the latter.

The unique historical and cultural factors that have gone into the development of the educational, ethical, and regulatory requirements deemed by each state to be appropriate to protect the quality and excellence of its justice system cannot and should not be second-guessed by other states or by WTO trade panels.

(b) Question Two: Are there any points or areas which you consider are missing from the disciplines and which you feel should be included?

The WTO should focus on the needs of clients and the needs of society for a legal system perceived to be fair and just (as opposed to one thrust upon it by international trade negotiators). Legal services must ultimately be client-centric. The profession has no purpose but to serve society, and it serves society by serving clients, one client at a time. No peaceful society can survive without a body of trained and independent lawyers who understand how the peaceful resolution of disputes can lead to greater benefit for all and who adhere to the first principles of the legal profession: confidentiality, loyalty, and avoidance of conflicts of interest.

Therefore, the WTO should focus first on maintaining these bedrock principles by establishing them as the sine qua non against which all cross border services arrangements are judged. Only then can measures be adopted that will identify and reduce any barriers to cross border legal services that are shown to be unrelated to the maintenance of the quality of the justice system in a given country.

(c) Question Three: Are there any elements of the disciplines which you feel need to be improved?

Yes, they should be rewritten to focus on those fundamental principles that are most important to citizens to ensure that the WTO promotes stability and justice within the world's legal systems while increasing the efficiency of cross border legal services.

(d) UIA's Activities re: International Regulatory Issues

The following section responds to your question about the UIA's activities regarding international regulatory issues. As soon as the General Agreement on Trade in Services was signed, it became quite clear within the UIA that our profession would be involved. Since one of UIA's main objectives is the defense of the legal profession and the promotion of its main principles, it became a duty of the UIA to act on these issues and, accordingly, the organization has prepared three key documents described below.

A seminar was organized in Brussels on February 18, 1995 on the theme, "GATS and the Legal Profession." It set the ball rolling for a debate on the issue. In 1998, a working method was determined: first, multi-disciplinary practice was to be analyzed before examining the other

implications of the liberalization of the provision of legal services, leading later to a charter of general applicability defining the fundamental characteristics of the legal profession.

In September 1998, a sub-committee on multidisciplinary practice was established with the objective of making a recommendation. The efforts of that working group led to a vote on a resolution on November 3, 1999 at the UIA General Assembly, held in New Delhi, India, adopting "UIA-Recommended Minimum Standards for Multidisciplinary Practices." (A copy of those standards is attached hereto as Appendix A.)

Having crossed that bridge, the next task was the preparation of a resolution relating to cross-border legal practice. The General Assembly adopted the resolution "UIA Standards for Lawyers Establishing a Legal Practice Outside Their Home Country," on October 27, 2002 in Sydney, Australia. (A copy of those standards is attached hereto as Appendix B.) During the same period, another UIA working group formulated what came to be called the "Turin Principles of Professional Conduct for the Legal Profession in the 21st Century," which was also adopted on October 27, 2002 and officially celebrated in Turin, Italy, on March 24, 2004. (A copy of those standards is attached hereto as Appendix C.)

As national bars around the world were becoming aware of the WTO negotiations potentially affecting legal services, the UIA joined with the American Bar Association's Section of International Law to organize a visit to the WTO in Geneva. The UIA/ABA joint visit occurred on January 25, 2002, and during it, leaders from the UIA and the ABA expressed directly to WTO representatives the concerns of bar leaders worldwide that the commercial negotiators were focusing on lawyers merely as participants in commercial transactions and not focusing carefully enough on the role of lawyers as essential participants in the unique legal justice system in every country. This program was followed by a colloquium on the issue of regulating cross-border legal practice organized by the UIA and the Association of the Bar of the City of New York on January 30, 2003, which in turn led to the publication by the UIA of a book on this issue.

Most recently, the UIA devoted one of the three Main Sessions at its Annual Congress in Geneva, Switzerland, on September 4, 2004, to the topic "International regulation of national legal practice: Whose profession is it anyway?" This main theme highlighted three important arenas where national boundaries have been called into question as lawyers -- and non lawyers -- challenge the relevance of borders in modern law practice. Panels of experts considered the following subtopics: (1) Regulation of legal services by the World Trade Organization: The application of GATS to legal services; (2) "Regulation of legal services by the European Commission: Would partial deregulation stimulate competition?"; and (3) "Self-regulation of cross-border legal services by the organised bar: The UIA, IBA, and ABA standards."

Since 1927, the UIA has been bringing together the world's lawyers to improve and defend the legal system and increase awareness of the similarities and differences in legal systems worldwide. With hundreds of collective members consisting of bars, bar associations and law societies, the UIA represents the interests of millions of lawyers and is uniquely positioned to assess, and contribute to the resolution of, the problems presented by the increasing level of international activity.

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We hope that these comments prove helpful to the Working Group in its consideration of the issues. I and other representatives of the UIA stand ready to confer with the members and staff of the Working Group at your convenience.

Sincerely yours,

Paul NEMO

Cc: ***Delos N. Lutton***
President Elect, UIA

William M. Hannay
President, UIA Subcommittee on International Legal Practice

Jacques LEROY
Immediate Past President, UIA