

Council for Trade in Services

LEGAL SERVICES

Background Note by the Secretariat¹

1. This Note has been prepared at the request of the Council for Trade in Services, with a view to stimulating discussions in the Council on the sector of legal services. It provides background information and updates a previous Note on Trade in Legal Services (S/C/W/43, dated 6 July 1998). This Note focuses on developments and issues considered to be most relevant to the GATS. It is not intended to provide a comprehensive account of the sector.

I. OVERVIEW

2. The background Note seeks to provide an approximation of the size of the market for legal services (chapter II) and highlight trends from a business perspective (chapter III). Chapter IV addresses the definition of legal services both in light of the Central Product Classification (CPC) and various alternative approaches to classification. Chapter V provides a detailed overview of the state of specific commitments and MFN exemptions; and chapter VI explores liberalization trends in the context of Economic Integration Agreements (EIAs). In closing, chapter VII reports on developments in international professional bodies.

II. SIZE OF THE LEGAL SERVICES MARKET

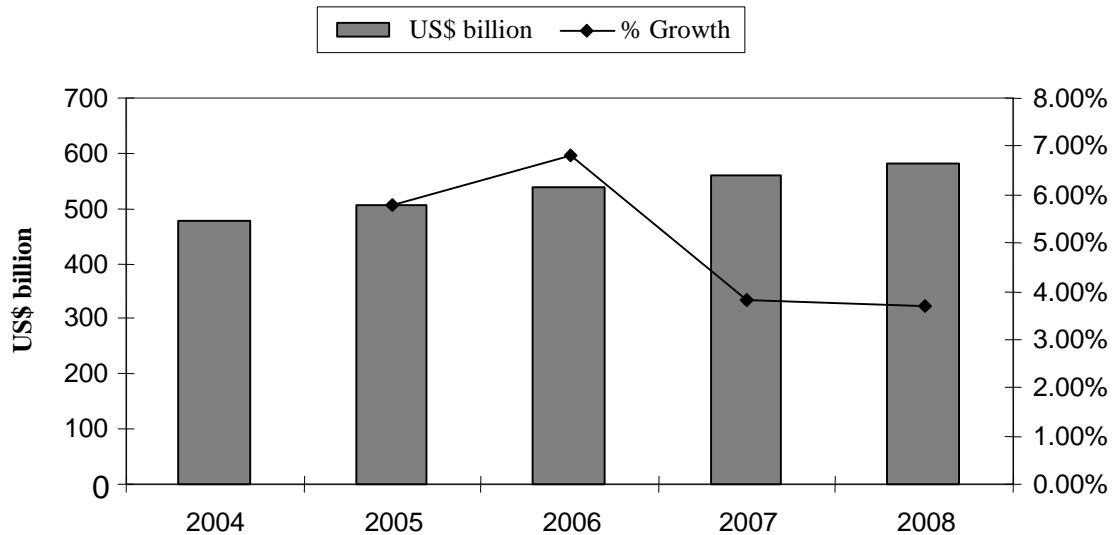
3. The 1998 Secretariat background Note on legal services observed that the legal services sector had experienced continuous growth as a consequence of the rise in international trade and of the emergence of new fields of practice, in particular in the area of business law. This trend has further continued over the last decade, and brought about sizable growth to the legal services sector. The widening and deepening of international trade and investment links, combined with strong economic growth in many developing countries have increased worldwide demand for legal services, and encouraged the establishment of foreign affiliates in China, Russia, and other fast growing emerging markets. In addition to the expanding business activities in areas such as corporate restructuring, cross-border mergers and acquisitions, intellectual property rights, new financial instruments and competition law, two elements are important to note: the increasing use of alternative business-to-business dispute resolution, and outsourcing.

4. The global market for trade in services is estimated to have generated total revenues of US\$581 billion in 2008, representing an annual growth rate of 5 per cent for the period from 2004-2008.² This figure is calculated on the basis of globally received revenue by law firms. It should be noted that in principle, all legal services are tradable through the four modes of supply, as defined in the GATS.

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² Datamonitor; Global Legal Services, December 2009.

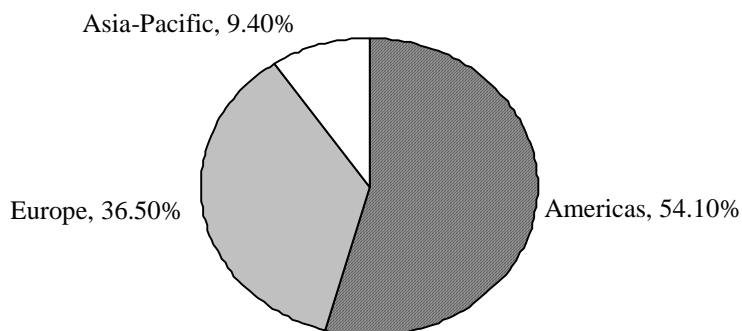
Chart 1: Global Legal Services Market Value: 2004-2008
US\$ billion



Source: Datamonitor, December 2009

5. A segmentation of the legal services market by geographic region shows that the Americas account for 54 per cent of services, followed by Europe (36.5 per cent), and Asia-Pacific (9.4 per cent)³

Chart 2: Global Legal Services Market Segmentation: 2008
Percentage share by value



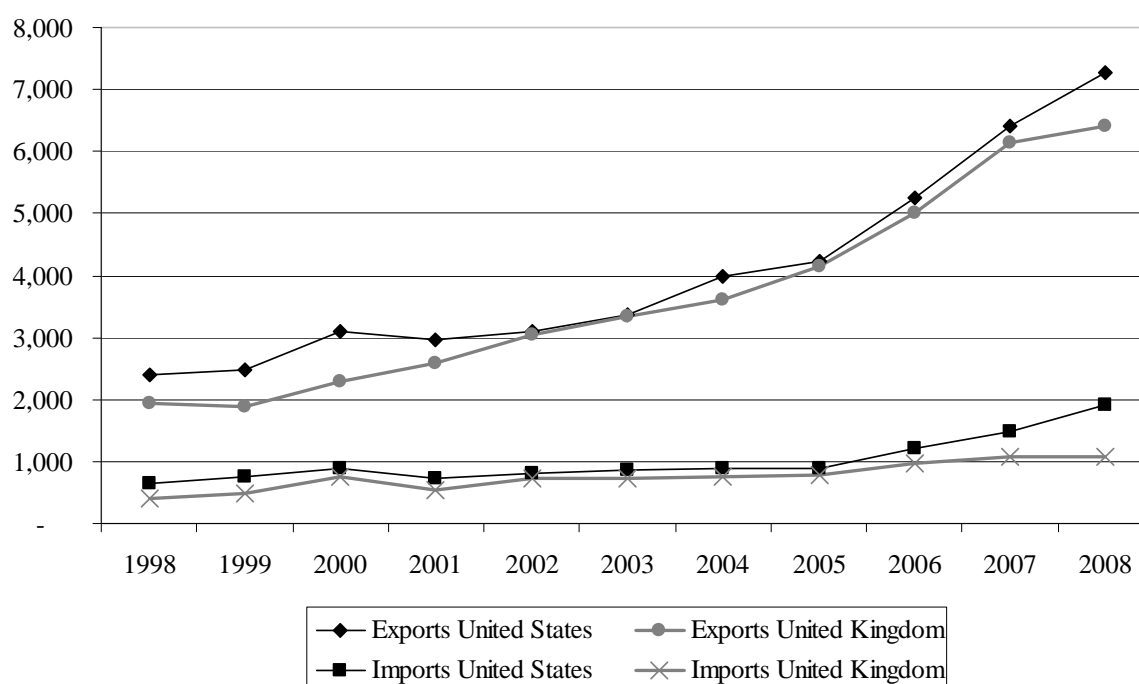
Source: Datamonitor, December 2009

³ Datamonitor; Global Legal Services, December 2009; note that the calculations are made on the basis of proxies from the largest regional markets, and do not contain figures for the Middle-East and Africa.

6. An accurate assessment of the size of trade in legal services is difficult, since trade statistics do not reflect the modal approach of the GATS, and most jurisdictions do not collect data at a sufficiently disaggregated level to separate legal from other business services.

7. Nevertheless, all available indicators point to sustained growth of the legal services market over the last decades. BOP data from the two largest legal services markets, the US and the UK show strong growth, particularly of exports, over the last six years. Due to the relevant statistical conventions, trade data mostly reflect trade under modes 1 and 2 of the GATS.

Chart 3: United States and United Kingdom - Exports and Imports of Legal Services (BOP basis), 1998-2008
US\$ million



Source: U. S. Bureau of Economic Analysis; UK National Statistics.

8. There is similarly little comparable data for Mode 3 trade in legal services, for which the United States is estimated to be the largest supplier. Legal services by foreign affiliates of US law firms amounted in 2006 to US\$2.6 billion, with 80 per cent of sales occurring in Europe (UK 36 per cent, France and Germany (14 per cent each), and Japan, with 6 per cent being the largest non-European market.⁴ Annex II shows that the top 100 international law firms are in large part of US origin and that the vast majority of them have offices in a variety of jurisdictions.

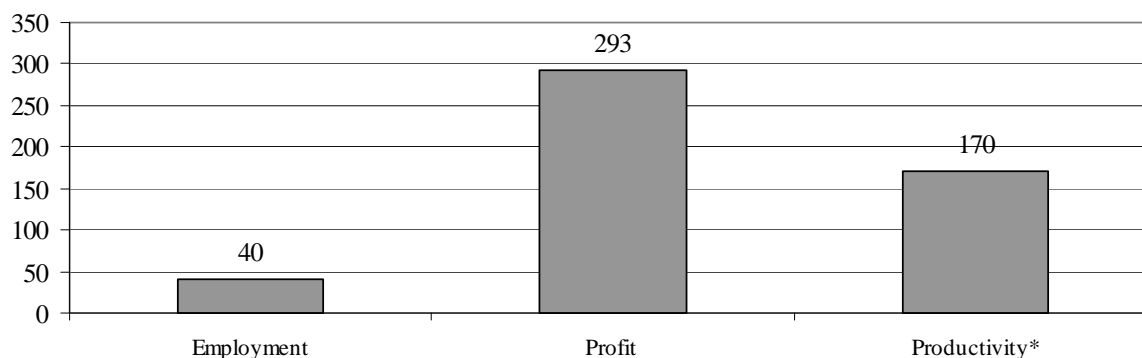
9. The legal services sector has experienced significant growth in revenues and consolidation over the past decade, resulting in the creation of a growing number of multinational law firms with vastly increased numbers of lawyers. An overview of the largest law firms, ranked by number of lawyers shows a clear nexus between size of company and internationalization of practice (Annex II).

⁴ USITC, Recent trends in US Services Trade; chapter 6; 2009.

The top ten firms have offices in more than ten countries, and seven of them have more than 60 per cent of their lawyers outside the home office. Also the overall number of lawyers employed by the top ranking firms has risen sharply. Between 1998 and 2008, the head count of the top 50 firms grew by some 40 per cent (see chart 4). While the 1998 background Note reported that in 1988, only one law firm employed more than 1000 lawyers, and only three others more than 500 lawyers, today more than 30 law firms employ in excess of 1000 lawyers, see Annex II. Chart 4 shows that over the period of 1998-2008, profits by the top 50 law firms increased by over 290 per cent and productivity by 170 per cent.⁵ Some 39 per cent of earnings came from corporate and finance related services, 28 per cent from dispute resolution, and 7 per cent from real estate.

10. Ranked by revenue, 74 of the top 100 law firms were from the United States, followed by the UK (14) and Australia (5), see Annex II.

Chart 4: Growth of legal services
Percentage growth of top 50 firms, 1998/99 - 2007/08



* Profit/Revenue

Source: IFSL calculations based on Legal Business data

11. The size of services trade through consumption abroad (Mode 2) is similarly difficult to assess. A 2003 survey of law firms suggests that roughly one quarter of firms without international offices received fee income from international clients.⁶ Mode 2 appears further to be of particular significance in dispute resolution centres for international parties. Trade in arbitration services, which has significantly grown in numerous jurisdictions, is an example (Table 1).

⁵ Productivity is expressed as profit by lawyer.

⁶ Alison Hook; Sectoral Study on the Impact of Domestic Regulation on Trade in Legal Services, OECD 2006

Table 1: International arbitration services - Number of cases in major arbitration centres, 1995-2008

	HKIAC	AAA	CIETAC	ICC	JCAA	KCAB	KLRCA	LCIA	SIAC	SCC	BCICAC	AFEC
2008	602	703*	1,230	663*	12	47*	47	213*	71*	176	N/A	51
2007	448	621*	1,118	599*	15	59*	40	137*	70*	84	82*	40
2005	281	580*	979	521*	11	53*	30	118	45*	56	77*	55
2000	298	510	543	541	10	40	11	81	55	73	88	100
1995	184	180	902	427	7	18	7	49	37	70	40	100

Note: AAA - American Arbitration Association; CIETAC - China International Economic and Trade Arbitration Commission; HKIAC - Hong Kong International Arbitration Centre; ICC - International Chamber of Commerce; JCAA - Japan Commercial Arbitration Association ; KCAB - The Korean Commercial Arbitration Board; KLRCA - Kuala Lumpur Regional Centre for Arbitration LCIA* - London Court of International Arbitration; SIAC - Singapore International Arbitration centre; SCC - Arbitration Institute of the Stockholm Chamber of Commerce; BCICAC* - British Columbia International Commercial Arbitration Centre; AFEC - International Arbitral Centre of the Austrian Federal Economic Chamber.

Source: HKIAC⁷, and websites of other Arbitration Centres.

III. DEVELOPMENTS AT THE FIRM LEVEL

12. An initial look at the spread of international law firms suggests two principal patterns of expansion: one could be termed the "follow your client" model, whereby law firms expand into foreign markets in unison with the expansion of their main client companies. Such client-focussed expansion, which is undertaken with a view to providing comprehensive and often exclusive legal advice to client companies had taken place in the 1980s and 90s within developed country markets, but has now spread to most developing countries in which large multilateral enterprises are operating. The law firms concerned usually deal with corporate law matters and do not engage in work in the purely domestic legal services market.

13. A variant of the model can be seen in emerging markets like Hong Kong, China; Singapore; or the United Arab Emirates where international law firms have created hubs from which they serve the wider regional markets.⁸

14. A different pattern of expansion can be observed within developed economies, where foreign owned law firms expand with a view to servicing a broader range of clients, and areas of practice. In the UK, over 50% of the revenue of the largest 100 law firms is generated by international firms based in London.⁹ Half of these firms are from the US, with the remainder mainly from Europe, Australia, and Canada, and many of these firms have developed almost full-service English law capability.¹⁰

15. Over time, and depending on the development of a market and its regulatory structure, a firm's focus may broaden from the "follow your client" model to increasingly serving also the local legal services market. A study of the Brussels Bar has shown that foreign law firms initially opened

⁷ http://www.hkiac.org/show_content.php?article_id=310.

⁸ ILSAC's Second International Legal Services Statistics Survey (2006-2007).

⁹ IFSL Research, Legal Services 2009.

¹⁰ Ibid.

offices in Brussels with a view to practicing EU law, but that they have gradually diversified into Belgian commercial law.¹¹

16. The way law firms operate in foreign markets also depends critically on their size. While larger firms tend to establish overseas offices, smaller ones tend to rely on network relationships in which the individual suppliers retain separate outlooks and approaches.¹²

17. A good measurement of what types of services international law firms are providing has been developed by Silver et al., who examined 64 US law firms with overseas offices.¹³ In the late 1980s, these firms had established their overseas offices by sending US-trained lawyers abroad, in large part due to regulatory barriers limiting multi-jurisdictional firms. As regulatory barriers fell in Europe in the 1990s, and law firms acquired more local knowledge, they diversified their staff with local and third-country lawyers, or through take-over of local law firms. In the latter case in particular, the foreign law firms continued to offer the portfolio of services of the previously local firms.

18. Silver et al. trace the number of non-US lawyers working for the 64 US firms in various markets. Generally, offices in Europe employ the lowest number of US lawyers (from 4 per cent in Germany, 11 per cent in France and 17 per cent in England) and in only four jurisdictions do US lawyers account for more than 20 per cent of all lawyers employed (Singapore 32 per cent; UAE 40 per cent; Japan 41 per cent; Hong Kong, China 45 per cent; and China 46 per cent). It is interesting to note that in some jurisdictions, the remainder of the lawyers are not necessarily locally trained. In several of the larger markets (UK; Hong Kong, China; Singapore) a majority of non-US trained lawyers have acquired their qualifications in third countries rather than the host country.

19. Certain developments have also influenced the relationship between accounting and law firms in the United States. Collectively, in 2001, the Big Five accounting firms had more lawyers than the largest five law firms in the world. However, two events have frustrated efforts to create multidisciplinary firms within the United States. First, the American Bar Association issued a report in 2000 in which it declined to amend its Model Rules that preclude lawyers from sharing fees with non-lawyers (including other professional service providers). Secondly, the collapse of Enron and WorldCom highlighted the potential for conflicts of interest and fuelled the passage of restrictive legislation, such as the Sarbanes-Oxley Act of 2002, which precludes accounting firms that provide auditing services to corporate clients from providing several other professional services, including services of a legal nature.¹⁴ A somewhat dissimilar approach has been followed in the United Kingdom which adopted in 2007 a "Legal Services Act" containing provisions enabling lawyers to share management and control of law firms with non-lawyers, including accountants and others. These "Alternative Business Structures" are open to outside investment, subject to a "fitness-to-own" test.

20. Outsourcing is another phenomenon that has influenced the legal services landscape and has contributed to further internationalization.¹⁵ Much like other companies, law firms outsource parts of

¹¹ Mathieu Van Criekingen et al., *Local Geographies of Global Payers: International Law Firms in Brussels*, 13 J. CONTEMP. EUR. STUD. 173 (2005). (quoted in Silver).

¹² Silver, Carole, Phelan, Nicole De Bruin and Rabinowitz, Mikaela, *Between Diffusion and Distinctiveness in Globalization: US Law Firms Go Global*. Georgetown Journal of Legal Ethics, Vol. 22, 2009; Georgetown Law and Economics Research Paper No. 1406123. Available at SSRN: <http://ssrn.com/abstract=1406123>

¹³ Ibid.

¹⁴ Williams, Sean and Nersessian, David, *Overview of the Professional Services Industry and the Legal Profession*, A report provided to the Alfred P. Sloan Foundation by the Harvard Law School Center on Lawyers and the Professional Services Industry, (2007).

¹⁵ K. William Gibson; *Outsourcing Legal services abroad*; Law Practice, July/august 2008, Vol. 34 No 5.

their administrative business processes to reduce their operating costs. At the same time, it has been reported that many firms are increasingly outsourcing part of their core business related to legal work. Outsourcing in legal services, although not an entirely new phenomenon, with first forays already reported in the mid-1990s, continues to be a growing trend, increasingly in the form of offshoring to other jurisdictions.

21. There is no consolidated data on outsourcing destinations, but it is believed that India, which graduates some 80,000 lawyers per year, is the main destination for legal services outsourcing. According to ValueNotes, an Indian research company, revenue in India from legal outsourcing is expected to grow from US\$ 146 million in 2006 to US\$640 million by the end of 2010, with employment growing from 7'500 to 32'000 over the same period.¹⁶ The main clients for outsourced legal work to India are law firms, contributing some 45 per cent to offshore revenue in India. Corporate law departments account for another 36 per cent of revenue.

22. Outsourcing of high value work from the US and United Kingdom to jurisdictions with similar legal systems and education, such as Australia, Canada, New Zealand, or South Africa, has been reported to be a growing trend, allowing highly trained professionals to deliver work to a high standard, but on the back of a lower cost-base.¹⁷

23. Two main business models are reported in the offshoring of legal services. Some larger law firms, such as Clifford Chance in India, have established their own facilities abroad, with their own staff, controlling thereby recruitment and training of the employees. The more common model is to subcontract certain services to an independent provider in another jurisdiction.

24. Typically outsourced are routine tasks such as document review, legal transcription, litigation support and legal publishing services. It is reported that with growing confidence in the execution of lower-value tasks, increasingly also higher value tasks are being considered for offshoring. However, some authors have expressed scepticism as to whether high-end legal advice is suitable for outsourcing, suggesting that the in-house execution of routine tasks provides a valuable opportunity to train new lawyers to develop the judgment which provides the basis for the reputation of the top law firms.¹⁸

25. Offshore companies are reported to charge up to US\$25 per hour for lower-end work, and up to US\$90 per hour for more advanced tasks. A junior Indian lawyer is estimated to earn just over US\$8'000 per year, compared to some US\$160'000 for an associate in a major US city.

26. Outsourcing of legal services poses several ethical challenges, related to confidentiality, disclosure, and billing for the outsourced work. A formal opinion by the New York City Bar considered outsourcing to be ethically permitted, provided compliance with several conditions and ethical considerations, including the supervision of the person carrying out the work, information of and permission from the client that work is outsourced, and the operation of a conflict-checking system. Absent a specific agreement with the client to the contrary, the New York City Bar considered that the lawyer should charge the client no more than the direct cost associated with

¹⁶ ValueNotes Outsourcing Weekly, Legal Outsourcing hype: can India deliver; 6 October 2006: Vol. III, No. 40.

¹⁷ See: Stephen Denyer, Legal Outsourcing remains high on the agenda, Times Online, 9 September 2008.

¹⁸ Mary C. Daly and Carole Silver; Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-related Services; Georgetown Journal of International Law, Spring 2007, Vol 38, No 3.

outsourcing, plus a reasonable allocation of overhead expenses directly associated with providing that service.¹⁹

IV. DEFINITION OF LEGAL SERVICES

A. THE CENTRAL PRODUCT CLASSIFICATION

27. A broad definition of legal services would include advisory and representation services as well as all the activities relating to the administration of justice (judges, court clerks, public prosecutors, state advocates, etc.). This second aspect, however, is effectively excluded from the scope of the GATS as in most countries it is considered a "service supplied in the exercise of governmental authority" according to Article I:3(c) of the Agreement. The GATS covers advisory and representation services in the various fields of the law and in statutory procedures.

28. In the WTO "Services Sectoral Classification List" (document MTN.GNS/W/120), "legal services" are listed as a sub-sector of "(1) business services" and "(A) professional services". This entry corresponds to the CPC number 861 in the United Nations Provisional Central Product Classification of 1991. In the UN CPC, the entry "legal services" is sub-divided into "legal advisory and representation services concerning criminal law" (86111), "legal advisory and representation services in judicial procedures concerning other fields of law" (86119), "legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc." (86120), "legal documentation and certification services" (86130) and "other legal and advisory information" (8619).²⁰ The Services Sectoral Classification List and the CPC cover legal services of any

¹⁹ K. William Gibson; Outsourcing Legal services abroad; Law Practice, July/august 2008, Vol. 34, No 5.

²⁰ 861 Legal services

8611 Legal advisory and representation services in the different fields of law

86111 Legal advisory and representation services concerning criminal law

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to criminal law. Generally, this implies the defence of a client in front of a judicial body in a case of criminal offence. However, it can also consist of acting as a prosecutor in a case of criminal offence when private legal practitioners are hired on a fee basis by the government. Included are both the pleading of a case in court and out-of-court legal work. The latter comprises research and other work for the preparation of a criminal case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports), and the execution of post-litigation work, in relation to criminal law.

86119 Legal advisory and representation services in judicial procedures concerning other fields of law

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to law other than criminal law. Representation services generally consist of either acting as a prosecutor on behalf of the client, or defending the client from a prosecution. Included are both the pleading of a case in court, and out-of-court legal work. The latter comprises research and other work for the preparation of a case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports), and the execution of post-litigation work, in relation to law other than criminal law.

8612 86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to statutory procedures. Generally, this implies the representation of a client in front of a statutory body (e.g. an administrative

jurisdiction, regardless of whether such foreign services are considered to be legal services under the laws of various jurisdictions.

29. The CPC has been revised three times since the provisional version was launched. The latest revision, CPC Version 2, of December 2008, leaves most elements of the legal services classification substantially unchanged.²¹ However, CPC Version 2 contains a number of changes and further specifications. It explicitly identifies in its explanatory notes for the first time advisory and representation services in international law, as "Legal advisory and representation services concerning other fields of law" (8212). In addition, this CPC code merges CPC Prov. 86119 "Legal advisory and representation services in judicial procedures concerning other fields of law", and CPC Prov. 86120 "Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc."

30. More importantly, since its first revision in Version 1.0, the CPC includes as a subclass of legal services "Arbitration and conciliation services," which is contained in CPC Prov. as part of management consultancy services, CPC 86602:

Assistance services through arbitration or mediation for the settlement of a dispute between labour and management, between businesses or between individuals.

Exclusions: Representation services on behalf of one of the parties in the dispute and consulting services in the field of labour relations are classified in subclass 86190 (Other legal advisory and information services), 95110 (Services furnished by business and employers organizations) and 95200 (Services furnished by trade unions), respectively.

31. The description of CPC 86602 raises the question of whether only the arbitrator's activity is covered by this code, or also other assistance to one of the parties to the dispute. The description suggests the former ("assistance services *through* arbitration ..."). However, as the explicit exclusion with reference to CPC 86190 relates only to representation services in the field of labour relations, it might be assumed that representation services on behalf of clients *in business to business arbitration* are covered by CPC 86602. CPC Versions 1.1 and 2.0 more broadly exclude all "representation services on behalf of one of the parties in the dispute" which would encompass disputes between labour and management, between businesses or between individuals.

tribunal). Included are both the pleading of a case in front of authorized bodies other than judicial courts, and the related legal work. The latter comprises research and other work for the preparation of a non-judicial case (e.g. researching legal documentation, interviewing witnesses, reviewing reports), and the execution of post-litigation work.

8613 86130 Legal documentation and certification services

Preparation, drawing up and certification services of legal documents. The services generally comprise the provision of a number of related legal services including the provision of advice and the execution of various tasks necessary for the drawing up or certification of documents. Included are the drawing up of wills, marriage contracts, commercial contracts, business charters, etc.

8619 86190 Other Legal advisory and information services

Advisory services to clients related to their legal rights and obligations and providing information on legal matters not elsewhere classified. Services such as escrow services and estate settlement services are included.

²¹ For a detailed overview of the CPC concerning legal services, see Annex 1.

32. A second question relates to the assertion by the CPC that representation services on behalf of one of the parties in the dispute and consulting services in the field of labour relations are classified in subclass 86190 (Other legal advisory and information services). The definition of these services does not, however, extend to representation services. Later versions of the CPC consistently classify representation services under the heading of "legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.", which corresponds to CPC Prov. 86120. It would appear that both these inconsistencies have been resolved in subsequent classifications.²²

33. Another change worth noting is that CPC provisional does not contain any explicit reference to patent and copyright law. However, as of CPC Version 1, there is mention of patent and copyright law as activities falling under "Legal documentation and certification services" (CPC Version 1 8213), which is indicated as directly corresponding to CPC Provisional 8613, "Legal documentation and certification services". CPC Version 1.1 streamlines the text further, and Version 2.0 does not contain any changes.

34. The services explicitly mentioned in CPC Version 2.0 are described as follows:

- drafting and certification of documents and other related legal services concerning patents, copyrights and other intellectual property rights
- drafting and certification of documents and other related legal services concerning other legal documents, such as wills, marriage contracts, commercial contracts, business charters, etc.

B. ALTERNATIVE APPROACHES TO CLASSIFICATION

35. It appears that the UN CPC distinction between advice and representation in criminal law, other fields of the law and statutory procedures was not as relevant to Members scheduling commitments as the distinction between advice and representation in host country, home country and international law. Only 13 Members have used the classification contained in W/120, referring to CPC 861, without any modifications. Some 60 Members have instead preferred to adopt the following distinctions in scheduling GATS commitments, which appear better suited than the UN CPC to express different degrees of market openness in legal services:

- (a) host country law (advisory/representation);
- (b) home country law and/or third country law (advisory/representation);
- (c) international law (advisory/representation);
- (d) legal documentation and certification services;
- (e) other advisory and information services.

36. A Member may allow foreign professionals to practice its domestic law, international law and the law of his home country or of a third country. In all these circumstances, the commitment may cover only advisory services or it may extend to representation services, so that a foreign professional may represent a client before a domestic court or an arbitration tribunal in the host country. Professionals practising international, home and third country law are often referred to as Foreign Legal Consultants (FLCs). This definition has also been adopted in some GATS schedules.

²² Neither classification provides clear guidance on the classification of advisory services in investor-to-state arbitration, as is typically provided for in bilateral investment treaties.

37. Whereas there is wide agreement that the disaggregation contained in CPC Prov. does not accommodate the practical nature of international trade in legal services, Members have held different views on preferable approaches to classification. Australia, in particular, has advocated the use of a differentiated classification to "include subcategories that reflect the reality of trade in transnational legal services".²³ Australia proposes the use of twelve subcategories, eight of which allow for a distinction on the basis of the jurisdiction in which a qualification has been obtained (i.e. home, host, third-country) and the type of legal activity (i.e. advisory or representation services). In addition, the proposal contains the following four categories of legal services: International commercial arbitration services; Other alternative dispute resolution services; Preparation and certification of legal documents; Other legal advisory or consultancy services.²⁴ In making specific commitments, subcategories for which no differences in terms of market access or national treatment restriction exist, may be combined, while those, for which no commitments are undertaken, can be omitted from a schedule of specific commitments.

38. In contrast, a proposal by the European Communities advocates the use of the integrated CPC 861 category on legal services, supplemented with "arbitration and conciliation services".²⁵ The

²³ Communication from Australia, Negotiating Proposal: Legal Services Classification Supplement." Document S/CSS/W/67/Suppl.2; 11 March 2002.

²⁴ The proposal divides legal services into the following subcategories:

- (a) Home-country law (advisory services) – limited to providing advice or consultancy services in the law of the legal practitioner's home country or jurisdiction in which the practitioner has a legal right to practise law;
- (b) Home-country law (representation services) – extends to representing clients before a court or judicial body in the law of the practitioner's home-country or jurisdiction;
- (c) Third-country law (advisory services) – limited to providing advice or consultancy services in the law of a third-country or jurisdiction where the practitioner has competency in the law of that country or jurisdiction;
- (d) Third-country law (representation services) – extends to representing clients before a court or judicial body in the law of a third-country or jurisdiction where the practitioner has competency in the law of that country or jurisdiction;
- (e) Host-country law (advisory services) – limited to providing advice or consultancy services in the law of the host country or jurisdiction;
- (f) Host-country law (representation services) – extends to representing clients before a court or judicial body in the law of the host-country;
- (g) International law (advisory services) – limited to providing advice or consultancy services in international law;
- (h) International law (representation services) – extends to representing clients before a court or judicial body in international law;
- (i) International commercial arbitration services – extends to the right to prepare and appear in international commercial arbitration on behalf of clients;
- (j) Other alternative dispute resolution services - extends to advice or consultancy and participation in mediation and similar non court-based dispute resolution services;
- (k) Preparation and certification of legal documents – including providing advice and the execution of various tasks necessary for the drawing up or certification of documents; and
- (l) Other legal advisory or consultancy services – extends to advisory or consultation services to clients on their legal rights and obligations and providing information of legal or law-related matters not elsewhere classified.

²⁵ Communication from the European Communities: Classification of Legal Services. Document S/CSC/W/39, 24 March 2003. The Classification is supplemented by a footnote: "Provision of legal services is only authorised in respect of public international law and the law of any jurisdiction where the service supplier or its personnel is qualified to practice as a lawyer, and, like the provision of other services, is subject to licensing requirements and procedures applicable in [COUNTRY]. For lawyers providing legal services in respect of public international law and foreign law, these may take *inter alia* the form of compliance with local codes of ethics, use of home title (unless recognition with the host title has been obtained), insurance requirements, simple registration with the host country Bar or a simplified admission to the host country Bar

proposal considers that commitments should cover all legal services without further specification of the scope of activities. There was no need to reflect different fields of law in the schedules, but it was seen to be useful that Members indicated whether commitments were limited to the laws in which the service supplier or its personnel are qualified lawyers or cover also laws in which the service supplier or its personnel are not qualified. The proposal notes that a distinction by qualification is unknown to other services sub-sectors, and unnecessary in so far as, through licensing requirements imposed on legal services providers, a Member is able to ensure that a lawyer can only provide legal services in fields of law for which he/she is qualified to practice. The proposal further notes that the distinction by "qualification of the lawyer" is irrelevant for supply through commercial presence, where it is not the law firm but its personnel who is qualified to practice.

39. Both approaches to classification are suitable for different circumstances. It would appear that a Member that wants to make commitments on both foreign and host country law, including representation, and does not impose different limitations on either market access or national treatment for either activity, could well use the classification proposed by the European Communities. Such a combined classification would not presuppose that a lawyer who is qualified in one jurisdiction would be permitted also to supply services beyond the scope of his qualification, nor would it imply that a lawyer who only wanted to supply home country law would need to be qualified also in host country law.

40. In contrast, following a more disaggregated classification would be suitable where a Member wishes to commit only on certain of the sub-sectors, or maintains different types of measures subject to scheduling as either market access or national treatment limitations.

41. In 2005, a group of Members which have used different approaches to classification circulated a "Joint Statement on Legal Services" which emphasizes that the lack of uniformity in classification should not undermine the value of GATS commitments in legal services.²⁶ The Joint Statement suggests the use of specific terminology for "Legal advisory services"; "Legal representational services"; and "Legal arbitration and conciliation/mediation services". The definitions specifically exclude services performed by service suppliers entrusted with public functions. The Joint Statement also suggests definitions for "Domestic law (host country law)", "Foreign law", and "International law".

C. SPECIFIC CLASSIFICATION ISSUES

42. Several Members have specifically excluded certain activities performed by suppliers entrusted with public functions from the scope of their commitments, in particular notaries and bailiffs. It should be noted that these activities would not fall outside the scope of the GATS in line with Article I:3 of GATS, as this Article does not exclude services on the basis of their public function, but only where they are supplied neither on a commercial basis nor in competition with one or more service suppliers. Members making commitments in host country law, and maintaining restrictions on the supply of such services by foreign suppliers should hence either exclude the services from the scope of their commitments, or enter the relevant limitations in their schedules of commitments. The Joint Statement, by specifically excluding services carried out by suppliers with a

through an aptitude test. Legal services in respect of [COUNTRY] law shall in principle be carried out by or through a fully qualified lawyer admitted to the [COUNTRY] Bar acting personally. Full admission to the Bar in [COUNTRY] might therefore be necessary for representation before courts and other competent authorities in [COUNTRY] since it involves practice of national procedural law."

²⁶ "Joint Statement on Legal Services"; Communication from Australia, Canada, Chile, the European Communities, Japan, Korea, New Zealand, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States; TN/S/W/37; S/CSC/W/46 dated 22 February 2005.

public function, suggests specific exclusion through incorporation of its proposed definitions on advisory and representational services.

43. As noted above, the CPC Prov. does not specifically classify legal services in international law. Subsequent versions of the CPC place services relating to international law under the subsector "Legal advisory and representation services concerning other fields of law", and establish concordance with CPC Prov. 86119. While the CPC Version 2 lists several areas of law to which the subsectors apply (i.e. civil law, administrative law, constitutional law, international law, military law and other fields of law, except criminal law), it does not define the concept of international law, nor whether the meaning of the term should be confined to public international law. Absent a common definition, international law could be considered as international by its sources, by its content (more than one country is involved) and by the jurisdiction charged with its application and/or interpretation (an international court or tribunal).²⁷ In the "Joint Statement", Members suggest to define "international law" to "include the law established by international treaties and conventions, as well as customary law".

44. Several schedules and proposals refer to the concept of "third country law" in addition to "home country law". The border-line between these two categories is not self-evident. Third country law could either refer to the law of a jurisdiction in which the practitioner is qualified, but which is not his home country, or as the law of a jurisdiction other than the home and host country, in which the supplier is not qualified. Neither explanation is satisfactory: in the former case, there would not be a need for the distinction of the law of two jurisdictions in which a supplier is qualified; in the latter case, it would be unlikely that a Member would specifically liberalize an activity for which the respective supplier is *not* qualified. It might be that the concept of third country law was intended to draw a semantic distinction with "home country law", to account for situations where a national of one country is qualified in the law of another country, other than the host country. However, for regulatory and scheduling purposes, such a distinction would be redundant. This also appears to be the conclusion arrived at by Members in the Joint Statement, which uses the term "foreign law" to combine both home country and third country law and is defined to encompass "the law of territories of WTO Members and other countries other than the law of the territory of the specific Member scheduling those commitments", and contrasting only with domestic or host-country law.

D. IMPLICATIONS OF CLASSIFICATION ON SCHEDULING OF COMMITMENTS

45. Law firms wishing to operate in foreign markets are typically interested in supplying legal services in domestic, foreign and international law. To this end, they are interested either to employ lawyers qualified in domestic law or to establish partnerships and other forms of commercial association with domestic lawyers/law firms.

46. Restrictions on employment of, or cooperation with lawyers from other jurisdictions are of paramount economic importance. It should be noted nonetheless that such restrictions do not need to be scheduled as national treatment limitations, where a Member's commitment only extends to the supply of services on foreign and international law, which accounts for the majority of commitments. In such cases, a Member undertakes no commitment to permit supply of legal services in domestic law, and hence any restriction on such services would be permissible. Where a Member wishes to commit on cooperation with domestic lawyers/law firms, it could do so by inscribing an additional commitment pursuant to Article XVIII of the GATS.

²⁷ See Communication from the European Communities; footnote 25. For a discussion of the issue see also: Anne-Marie Slaughter "International Law in a World of Liberal States", *European Journal of International Law*, 1995, pages 503-538.

47. In contrast, where a Member liberalizes both the supply of foreign and domestic law, restrictions on cooperation between foreign and domestic suppliers should be scheduled as limitations on the type legal entity (Art XVI:2 (e)), where such measures would restrict or require any specific legal entity, or restrict any type of joint venture between suppliers. It should be noted that the GATS does not contain a definition on the term "joint venture", and that interpretations of the term vary greatly between jurisdictions, ranging from a limited cooperation of two legally separate entities to achieve a shared objective, to the joint establishment of a affiliate company without limitation in terms of duration or objectives.

V. SPECIFIC COMMITMENTS AND MFN EXEMPTION LISTS

A. OVERVIEW OF SPECIFIC COMMITMENTS

48. A total of 76 Members have taken commitments in Legal Services.²⁸ Only 13 Members have used the classification contained in W/120, referring to CPC 861, without any modifications. Three Members have made commitments on "Legal Services" without any reference to the CPC.

49. The most common departure from the classification in W/120 and the CPC is the limitation of the commitments to advisory/consultancy services on home country (i.e. foreign) law, and international law, to the exclusion of services in host country (i.e. domestic) law. Some 60 schedules contain variants of such scheduling.

50. The largest number of commitments exists in advisory services in home country law, where 69 Members made at least partial commitments for cross-border supply, and 68 for commercial presence (see Chart 5).

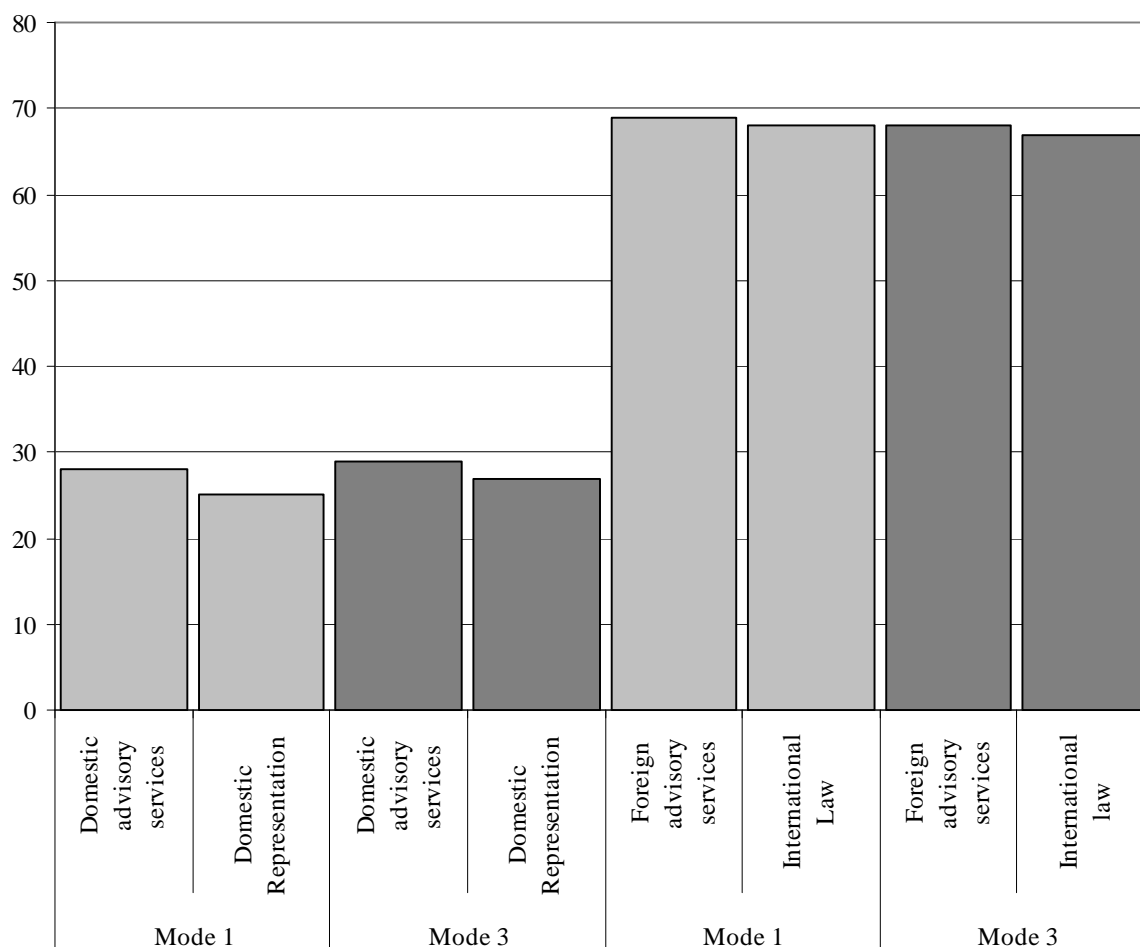
51. There are considerably fewer commitments on the practice of the law of the host jurisdiction. Twenty-eight Members scheduled commitments on advisory services in host country law for cross-border supply, and 29 for commercial presence. Slightly fewer commitments still have been made for representation services in host country-law, with 25 commitments for Mode 1 and 27 for Mode 3.

52. Commitments in international law typically follow those for foreign law. Sixty-eight Members have made commitments on Mode 1, and 67 for Mode 3.

53. Specific commitments for the movement of natural persons are governed, with very few exceptions, by referral to the horizontal section of Members' schedules.

²⁸ Separate schedules exist for Aruba and the Netherlands Antilles, bringing the number of schedules with commitments to 78.

Chart 5: Overview of GATS commitments



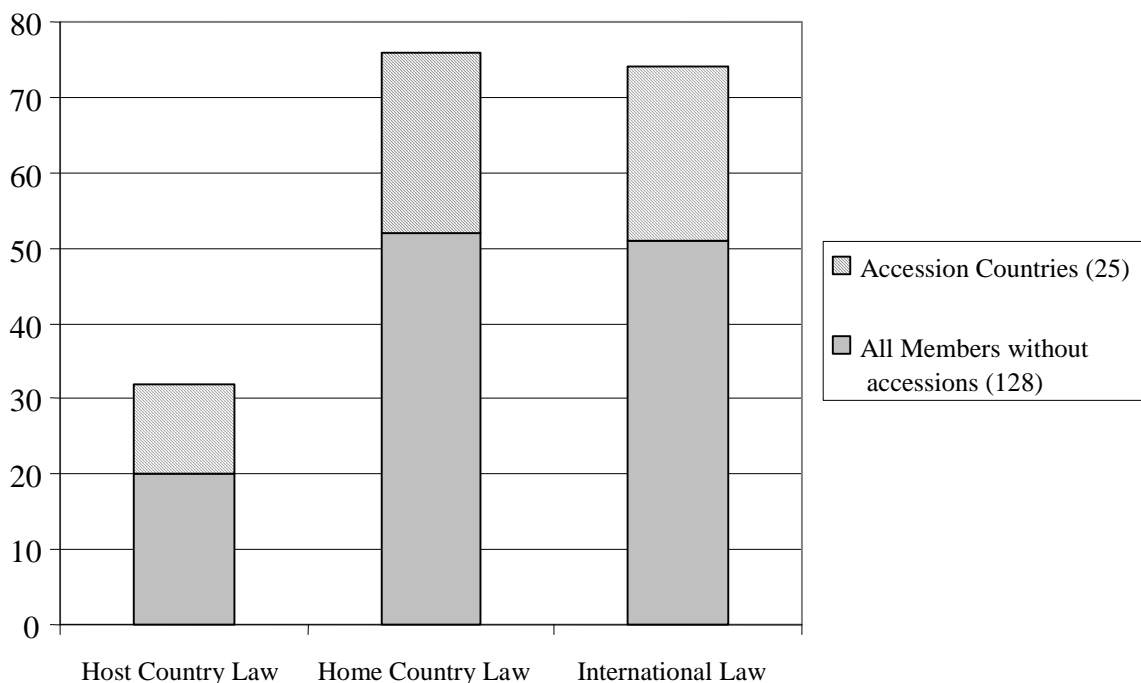
Source: WTO Secretariat

54. About one-third of legal services commitments (24 schedules) come from countries that acceded to the WTO since 1995 under Article XII of the WTO Agreement (See Chart 6). While 43 per cent (54 of 127) of original WTO Members made commitments in Legal Services²⁹, all but one Member (96 per cent) that acceded to the WTO since 1995 made such commitments. Broken down by type of legal services committed, 13 acceded Members (52 per cent) made commitments in host country law, whereas the incidence of such commitments for original WTO Members stands at only 16 per cent (20 of 127). Ninety-six per cent of accession countries made commitments in foreign advisory services, compared to 41 per cent (52 of 127) of other Members, and 92 per cent of accessions (23 of 25) committed on International Law, compared to 40 per cent (51 of 127) of other Members.³⁰ This indicates that commitments on legal services, at least for home country and international law, are for all practical purposes part of the expected entry package in accession cases.

²⁹ For the purpose of categorization, the count of original WTO Members includes also five countries (Grenada, Qatar, Papua New Guinea, St Kitts and Nevis, and the United Arab Emirates), who became WTO Members through a special procedure not involving the typical accession process.

³⁰ The only accession country without commitments on legal services is Mongolia, an early accession to the WTO which was completed in 1996. Mongolia became a WTO Member in January 1997.

Chart 6: Share of specific commitments in Legal Services by recently acceded Members



Source: WTO Secretariat

B. MAIN RESTRICTIONS IN SPECIFIC COMMITMENTS

55. The number of scheduled market access and national treatment restrictions in legal services is relatively modest. It should be kept in mind, however, that aside from those Members which have made no commitments - and can therefore deny market access and national treatment – a majority of Members which have undertaken commitments in legal services have restricted access to their domestic legal services market by excluding such services from the scope of their commitments in the sector column. Thus, for example, commitments in host country law have been taken by less than half of the 76 Members which made commitments in legal services generally, and roughly a quarter of the overall membership.

56. Other important limitations exist with regard to the low number of Mode 4 commitments on contract service suppliers (31 entries) and independent professionals (7 entries), which may severely impede fly-in-fly-out services. As these latter limitations are governed by horizontal Mode 4 limitations, they are not further discussed in this context. An overview of the access conditions under Mode 4 can be obtained from the Secretariat background Note on Presence of Natural Persons (Mode 4), document S/C/W/ 301.

57. Moreover, even in those limited cases where there is a full commitment in legal services, including advisory and representation services in host country, international and home country law for all modes of supply (12 Members), foreign lawyers may still face high domestic regulatory barriers, and in particular qualification requirements.

1. Market Access Restrictions

58. The most commonly scheduled limitations on market access are restrictions on the type of legal entity, with 17 incidences. In most of these cases, Members have limited the choice of legal form to natural persons (sole proprietorship) or partnerships, thus excluding limited companies. In a few instances, partnerships have also been excluded.

59. Four Members which have committed in Mode 1 have kept it unbound for the drafting of legal documents. Thirteen Members have scheduled nationality and citizenship limitations; in some cases, these are limited to geographic areas (Quebec) or to a particular sub-sector such as representation services or notary services. One Member has scheduled a nationality requirement only with respect to establishment (under modes 3 and 4). Other market access restrictions are in two cases sector-specific foreign equity limitations of 49 per cent and 75 per cent, respectively. In one case, the discretionary consent of the Bar Association is required for establishment of a commercial presence, which corresponds to an economic needs test on the number of service suppliers in the sense of GATS Article XVI:2 (a).

60. Four Members have scheduled a requirement to be a member of the local Bar in order to supply services in host country law, while two others require both citizenship and Bar membership in order to supply domestic legal services. It would appear that in the former case, membership in the local Bar would not constitute a market access limitation, unless a numerical limitation on entry into the Bar existed.

2. National Treatment Restrictions

61. The majority of scheduled national treatment restrictions are *residency requirements*, with eight incidences. In some cases, these requirements are linked to a nationality requirement: where both nationality *and* residency are required for the same sub-sector and mode of supply only the former should be scheduled under market access limitations, while the latter, which is a national treatment limitation in its own right, would not need to be scheduled. When, on the other hand, the requirement is citizenship *or* residency, only the second should be scheduled as a national treatment limitation, as foreign service suppliers can bypass the market access restriction (citizenship) by taking up residency. In one case a specific time-limited residency is required (for a minimum of 180 days per year), while in two cases only a legal domicile is required. In two cases, residency requirements have been specifically scheduled under modes 1 and 2, i.e. for Modes of supply in which the service supplier is by definition *outside* the territory of the importing country. In one of these cases, the right to supply the service through modes 1 and 2 depends on whether the service supplier otherwise stays in the country for less than 180 days per annum.

62. *Local education requirements*: In six instances, Members require graduation from local universities. In four of these cases, this limitation applies specifically to the practice of domestic law. Albeit apparently origin-neutral, such requirements discriminate *de facto* between domestic and foreign practitioners. In fact, the vast majority of the former would have attended domestic universities, while the latter are far less likely to have done so. In practice, foreign service suppliers would be faced with a requirement of full re-qualification in the host country, irrespective of whether all or part of their home qualification was equivalent to that obtained at a local university.

63. Other scheduled national treatment restrictions include: (i) recognition of foreign degrees only for own nationals who have studied abroad; (ii) the requirement that foreign ventures be competitive institutions in their country of origin; and (iii) the requirement for foreign lawyers to take active part in the business in order to be able to maintain an interest in a local law firm. All these measures constitute national treatment restrictions in the sense of Article VII if they discriminate *de jure* or *de facto* against foreign service suppliers.

64. Several other entries have been scheduled as national treatment limitations, such as the requirement to be a member of the home country Bar to supply services in home country law through Mode 1, and to use the home title. Two Members have scheduled language requirements for the practice of domestic law. It is not obvious how these measures would modify the conditions of competition between local and foreign services or suppliers, taking into account, in particular footnote 10 to Article XVII which clarifies that national treatment commitments "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 suppliers".

3. Domestic Regulation

65. Legal services, like other professional services, is a sector where the number of Members which have scheduled domestic regulatory measures is rather high (26 instances). Most of these measures are licensing and qualification requirements, which may constitute important barriers to trade in legal services. However, scheduling domestic regulatory measures is not necessary and does not exempt the scheduled measures from the disciplines under other provisions of the GATS. Among scheduled domestic regulatory measures in legal services, an important distinction concerns qualification requirements for host country law as opposed to those for home and third country law.

66. Qualifications in host country law are normally required of those service suppliers who intend to practice domestic law (advisory and representation) or appear before a domestic court, even if only in cases concerning their home country law or international law. Qualifications in the law of other jurisdictions, on the other hand, are relevant where a Member has made commitments only in home country, third country or international law and wants to ensure that the foreign professional is qualified and licensed for the field of the law he intends to practice in the host country. Home and third country licences and qualifications are normally sufficient only for the supply of advisory services in foreign and international law. However, some Members seem to imply in their schedules that they would be willing also to allow foreign advocates to appear before a domestic court on subjects covered by their qualifications on the basis of their foreign licence and qualifications.³¹ Both host country law qualification requirements and home/third country law qualification requirements are domestic regulatory measures according to the GATS and, therefore, are not subject to scheduling under Articles XVI and XVII.

67. Some countries impose - whether they have scheduled them or not - domestic law qualification and licensing requirements in domestic law for professionals wishing to provide advisory services only in international and home country law. These requirements also represent domestic regulatory measures according to the GATS, outside the scope of Articles XVI and XVII.

C. MFN EXEMPTIONS

68. Five Members have MFN exemptions in legal services³², while five other Members maintain exemptions in professional services.³³

69. Two legal services-specific exemptions allow for MFN-inconsistent discretionary approval for the establishment of law firms. One of the legal services-specific exemptions covers all measures pertaining to the provision of legal services, and applies to all countries on the basis of reciprocity. Another exemption allows attorneys from foreign countries to participate as advocates in court only in accordance with bilateral agreements on legal assistance. The fifth exemption extends full national

³¹ This, however, would be normally subject to registration with the local Bar.

³² Brunei Darussalam, Bulgaria, Dominican Republic, Lithuania, and Singapore.

³³ Costa Rica, Honduras, Panama, Turkey.

treatment for Modes 3 and 4 to companies and citizens of countries with which preferential arrangements exist.

70. All the professional services exemptions maintain reciprocity as a condition for authorizations to exercise professional activities, including legal services.

VI. LIBERALIZATION TRENDS FOR LEGAL SERVICES IN ECONOMIC INTEGRATION AGREEMENTS

71. Numerous Economic Integration Agreements (EIAs) partially liberalize trade in legal services between the parties. However, an analysis of 33 selected EIAs covering some 50-plus WTO Members does not show clear trends or patterns in liberalization. Broadly, three scenarios might be distinguished. First, several Members have not undertaken commitments on the liberalization of legal services in EIAs beyond their commitments in the GATS. This is true in particular for a large number of those Members without or with only very limited GATS commitments, such as Brazil, India, or Malaysia.

72. A second group of Members has committed in some of their EIAs to liberalization broadly in line with present DDA offers. For example, Chile's commitments undertaken in several EIAs expand on its GATS commitments on international law by allowing practice of foreign law. An equivalent commitment is contained in Chile's DDA offer. New Zealand, which at present only has a commitment in international law, permits in its EIA with China the practice of domestic law, and offers this commitment in the context of the DDA. EIA commitments by Australia and the European Union reflect broadly their offers in the DDA.

73. A third group of Members has made EIA commitments beyond their GATS commitments or DDA offers. For instance, the EC - CARIFORUM Economic Partnership Agreement contains new commitments on domestic law for Jamaica and Dominica, and on advisory services in foreign law for Barbados, Belize, Dominican Republic, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

74. The China - Hong Kong, China Closer Economic Partnership Arrangement permits, *inter alia*, Hong Kong law firms that have set up representative offices in the Mainland to operate in association with mainland law firms, except in the form of partnership. Mainland law firms are permitted to hire Hong Kong lawyers, provided the latter do not handle mainland Chinese law. In addition, Hong Kong residents with Chinese citizenship may sit the legal qualifying examination in the mainland and acquire mainland legal professional qualification, and subsequently to engage in non-litigation legal work in mainland law firms.

75. Singapore, in its EIA with the United States, permits, under certain conditions, US firms to enter into Joint Law Ventures with domestic law firms to advise on Singaporean law, and commits to reducing the minimum number of US lawyers required to maintain a Joint Law Venture, as well as reducing minimum experience requirements for US lawyers. Similarly, in its EIA with Australia, Singapore permits Australian law firms to provide advisory services on foreign and international law, and to hire qualified foreign lawyers. In both Agreements, participation in international commercial arbitration is permitted (jointly with a Singapore lawyer where the applicable law is the law of Singapore). As an additional commitment, Singapore further commits, under certain conditions, to recognize legal education obtained by Singaporean citizens and permanent residents for the purpose of admission as advocate or solicitor with the Singapore Supreme Court.

76. As an additional feature, numerous EIAs contain specific provisions on regulatory cooperation in professional services, which comprise legal services. Such cooperative models, although phrased mostly in best endeavour formats, may over time contribute to increased recognition

or regulatory harmonization in legal services. Examples typical provisions include encouragement of relevant bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers (e.g. several US EIAs, Chile - Korea, Singapore -Peru); encouragement of relevant professional bodies to jointly develop and provide recommendations on mutual recognition (EC - CARIFORUM); establishment of contact points to exchange information on professional qualification and registration/licensing, including on recognition (e.g. Australia - Chile); support for profession-led mutual recognition initiatives (e.g. Australia - Chile); establishment of a working group to facilitate the granting of license and certificates to suppliers (e.g. Chile - Colombia).

77. Only few Economic Integration Agreements in services contain obligations on professional services which are similar to those under discussion in the Working Party on Domestic Regulation. One of few examples can be found in the Chile - Korea Agreement, which contains an obligation to ensure that the competent authorities, within a reasonable time after the submission of an application for a license or certification make a determination on the application and inform the applicant of that determination; in cases where the application is not complete, the competent authorities are obliged to inform the applicant, without undue delay, of the status of the application and the additional information that is required under the Party's law.

78. Specific regulatory provisions concerning foreign legal consultants are contained in the US - Chile EIA. These mandate the parties, *inter alia*, to obtain recommendations from their relevant professional bodies on the form of association or partnership between lawyers authorized to practice in their territories and foreign legal consultants. Further, recommendations are to be sought on the development of standards and criteria for the authorization of foreign legal consultants, and consultations between the regulatory bodies of the parties are encouraged. The parties also undertake to encourage their competent authorities to implement recommendations consistent with the EIA within one year. Likewise, regular meetings are envisaged to assess the implementation of these measures, and to address, where appropriate, removal of non-conforming measures.

VII. DEVELOPMENTS IN INTERNATIONAL BODIES

A. INTERNATIONAL BAR ASSOCIATION

79. Since 1998, the International Bar Association (IBA) has adopted three resolutions relevant to trade in legal services.

80. In 2003, the IBA Council adopted a *Resolution in Support of a System of Terminology for Legal Services for the Purposes of International Trade Negotiations*, which recommends the use of common terminology for the purpose of scheduling commitments. The terminology suggested encompasses the terms "home country", "host country", "third country", "international law", "advisory services", "representation services", and "international arbitration and mediation services".³⁴

81. In the same year, the Council also adopted, in the form of a Resolution, a "*Communication to the World Trade Organization on the Suitability of Applying to the Legal Profession the WTO Disciplines for the Accountancy Sector*." This Resolution was prompted by the WPDR process of consultations by the WTO Secretariat with international professional associations. It contains detailed annotations to the text of the Accountancy Disciplines to make these suitable for the Legal profession.³⁵

³⁴ The Resolution is attached in Annex IV.

³⁵ A detailed overview of the comments provided by the IBA is contained in document JOB(03)/126/Rev.6, 15 September 2005.

82. In 2008, the IBA Council of the International Bar Association (IBA) adopted a *Resolution on Transfer of Skills and Liberalization of Legal Services*. The resolution encourages WTO Members without or with limited legal services commitments to undertake or improve upon, commitments, subject to the conditions that foreign lawyers might be required to participate in the provision of legal education or training programmes by the host country authorities, or to provide such training to local lawyers with whom they are associated. Any such regime should be (i) transparent, (ii) not unreasonably burdensome, (iii) non-discriminatory as between foreign lawyers; and (iv) not adopted or designed for the purpose of constituting an obstacle to the establishment of foreign lawyers in the host jurisdiction. Further, any such measures should not require disclosure of proprietary or confidential information.³⁶

B. INTERNATIONAL UNION OF LAWYER (UIA)

83. The Governing Board of the International Union of Lawyers (UIA) adopted in 2001 "*Standards for Lawyers Establishing a Legal Practice Outside Their Home Country*" which contains, *inter alia*, definitions of the terms "international legal practice", "home country", "host country", and "foreign lawyer", and provides standards on the role of the lawyer, fundamental social values, compliance with host country ethical rules, registration, form of economic enterprise, and integration of foreign and host country lawyers.³⁷

³⁶ The Resolution is attached in Annex V.

³⁷ See:

<http://www.wisbar.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=53452>

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ANNEX I

Evolution of classification of Legal Services in the Central Product Classification

CPC Provisional	CPC 1. 0	CPC 1. 1	CPC Version 2
<p>86111 Legal advisory and representation services concerning criminal law</p> <p>Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to criminal law. Generally, this implies the defence of a client in front of a judicial body in a case of criminal offence. However, it can also consist of acting as a prosecutor in a case of criminal offence when private legal practitioners are hired on a fee basis by the government. Included are both the pleading of a case in court and out-of-court legal work. The latter comprises research and other work for the preparation of a criminal case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports), and the execution of post-litigation work, in relation to criminal law.</p>	<p>82111 Legal advisory and representation services concerning criminal law</p> <p>This subclass includes: -advice, representation, drafting of documents and related services (defence, search for evidence, witnesses, experts, etc.) concerning criminal law.</p>	<p>82111 Legal advisory and representation services concerning criminal law</p> <p>This subclass includes: - advice, representation, drafting of documents and related services (defence, search for evidence, witnesses, experts, etc.) concerning criminal law.</p>	<p>8211 Legal advisory and representation services concerning criminal law</p> <p>This subclass includes: - advice, representation and related services (defence, search for evidence, witnesses, experts, etc.) concerning criminal law.</p>
<p>86119 Legal advisory and representation services in judicial procedures concerning other fields of law</p> <p>Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to law other than criminal law. Representation services generally consist of either acting as a prosecutor on behalf of the client, or defending the client from a prosecution. Included are both the pleading of a case in court, and out-of-court legal work. The latter comprises research and other work for the preparation of a case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports), and the execution of post-litigation work, in relation to law other than criminal law.</p>	<p>82119 Legal advisory and representation services in judicial procedures concerning other fields of law</p> <p>This subclass includes: -legal advisory and representation services during the litigation process -drafting services for legal documentation in relation to law other than criminal law. Representation services generally consist of either acting as a prosecutor on behalf of the client, or defending the client from a prosecution -pleading of a case in court -out-of-court legal work: -research -other work for the preparation of a case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports) -execution of post-litigation work in relation to law other than criminal law.</p>	<p>82119 Legal advisory and representation services in judicial procedures concerning other fields of law</p> <p>This subclass includes: - advice, representation, drafting and certification of documents and other related legal services in judicial procedures concerning other fields of law.</p>	<p>8212 Legal advisory and representation services concerning other fields of law</p> <p>This subclass includes: - advice, representation and other related legal services in judicial and quasi-judicial procedures concerning civil law, administrative law, constitutional law, international law, military law and other fields of law, except criminal law.</p>

CPC Provisional	CPC 1. 0	CPC 1. 1	CPC Version 2
<p>86120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.</p> <p>Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to statutory procedures. Generally, this implies the representation of a client in front of a statutory body (e.g. an administrative tribunal). Included are both the pleading of a case in front of authorized bodies other than judicial courts, and the related legal work. The latter comprises research and other work for the preparation of a non-judicial case (e.g. researching legal documentation, interviewing witnesses, reviewing reports), and the execution of post-litigation work.</p>	<p>82120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc</p> <p>This subclass includes: -legal advisory and representation services during the litigation process, and drafting services for legal documentation in relation to statutory procedures. Generally, this implies the representation of a client in front of a statutory body (e.g. an administrative tribunal) -pleading of a case in front of authorised bodies other than judicial courts -related legal work: -research -other work for the preparation of a non-judicial case (e.g. researching legal documentation, interviewing witnesses, reviewing reports) and execution of post-litigation work</p>	<p>82120 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.</p> <p>This subclass includes: - advice, representation, drafting and certification of documents and other related legal services in statutory procedures of quasi-judicial tribunals, boards, etc.</p>	
<p>86130 Legal documentation and certification services</p> <p>Preparation, drawing up and certification services of legal documents. The services generally comprise the provision of a number of related legal services including the provision of advice and the execution of various tasks necessary for the drawing up or certification of documents. Included are the drawing up of wills, marriage contracts, commercial contracts, business charters, etc.</p>	<p>82130 Legal documentation and certification services</p> <p>This subclass includes: -patent, trademark and copyright consultancy services -preparation, drafting and certification services concerning patents and copyrights -provision of a number of related legal services, including the provision of advice and the execution of various tasks necessary for the drawing-up or certification of patents and copyrights -preparation, drafting and certification services for legal documents, other than for patents and copyrights -provision of a number of related legal services, including provision of advice and the execution of various tasks necessary for the drawing-up or certification of such documents -drawing-up of wills, marriage contracts, commercial contracts, business charters, etc.</p>	<p>82130 - Legal documentation and certification services</p> <p>This subclass includes: - advice, representation, drafting and certification of documents and other related legal services concerning patents, copyrights and other intellectual property rights - advice, representation, drafting and certification of documents and other related legal services concerning other legal documents, such as wills, marriage contracts, business charters, etc.</p>	<p>8213 Legal documentation and certification services</p> <p>This subclass includes: - drafting and certification of documents and other related legal services concerning patents, copyrights and other intellectual property rights - drafting and certification of documents and other related legal services concerning other legal documents, such as wills, marriage contracts, commercial contracts, business charters, etc.</p>

CPC Provisional	CPC 1. 0	CPC 1. 1	CPC Version 2
<p>86602 Arbitration and conciliation services</p> <p>Assistance services through arbitration or mediation for the settlement of a dispute between labour and management, between businesses or between individuals.</p> <p>Exclusions: Representation services on behalf of one of the parties in the dispute and consulting services in the field of labour relations are classified in subclass 86190 (Other legal advisory and information services), 95110 (Services furnished by business and employers organizations) and 95200 (Services furnished by trade unions), respectively.</p>	<p>8219: Other legal advisory and information services</p> <p>82191 Arbitration and conciliation services</p> <p>This subclass includes: -assistance services involving arbitration or mediation for the settlement of a dispute between labour and management, between businesses or between individuals</p> <p>This subclass does not include: -representation services on behalf of one of the parties in the dispute and consulting services in the field of labour relations, cf. 82120</p>	<p>8219 Other legal services</p> <p>82191 Arbitration and conciliation services</p> <p>This subclass includes: - assistance services involving arbitration or mediation for the settlement of a dispute between labour and management, between businesses or between individuals</p> <p>This subclass does not include: - representation services on behalf of one of the parties in the dispute, cf. 82120</p>	<p>8219: Other legal services</p> <p>82191 Arbitration and conciliation services</p> <p>This subclass includes: - arbitration or mediation services aimed at the settlement of disputes between labour and management, between businesses or between individuals</p> <p>This subclass does not include: - representation services on behalf of one of the parties in the dispute, cf. 82120</p>
<p>86190 Other legal advisory and information services</p> <p>Advisory services to clients related to their legal rights and obligations and providing information on legal matters not elsewhere classified. Services such as escrow services and estate settlement services are included.</p>	<p>82199 Other legal advisory and information services n.e.c.</p>	<p>82199 Other legal services n.e.c.</p> <p>This subclass also includes: - escrow services and estate settlement services</p>	<p>82199 Other legal services n.e.c.</p> <p>This subclass includes: - escrow services - other legal services n.e.c.</p>

ANNEX II

Largest law firms by number of lawyers, gross revenue, office spread; and percentage of lawyers based abroad, 2009

Firm Name	Location ^(a)	Number of lawyers	Countries in which firm has offices	Gross Revenue US\$ million	Percentage of lawyers outside home country
1. Baker & McKenzie ^(b)	International (US)	3949	39	2112	82
2. Clifford Chance	International (UK)	2837	21	2340	69
3. DLA Piper Intl. ^(c)	International (UK)	2459	28	1085	60
4. Linklaters	International (UK)	2367	19	2407	68
5. Jones Day	National (US)	2348	13	1540	27
6. Freshfields Bruckhaus Deringer	International (UK)	2263	15	2386	65
7. Latham & Watkins	National (US)	2147	12	1923	25
8. Allen & Overy	International (UK)	2122	22	2023	61
9. White & Case	International (US)	2120	25	1467	66
10. Skadden, Arps, Slate, Meagher & Flom	National (US)	1995	13	2200	16
11. Mayer Brown	National (US)	1841	9	1294	43
12. Garrigues	International (Spain)	1835	9	457	11
13. Sidley Austin	National (US)	1777	9	1489	16
14. Greenberg Traurig	National (US)	1760	5	1204	5
15. K&L Gates ^(d)	National (US)	1569	6	1569	15
16. Reed Smith	National (US)	1482	7	979	30
17. Lovells	International (UK)	1421	18	984	82
18. Fidal (France)	National (France)	1420	2	437	<1
19. DLA Piper US	National (US)	1386	1	1178	0
20. Kirkland and Ellis	National (US)	1383	4	1400	8%
30. Minter Ellison	National (Australia)	1027	4	421	17
32. Freehills	National (Australia)	1017	2	421	1
42. Cuatrecasas Gonçalves Pereira	National (Spain)	954	9	354	4
47. Mallesons Stephen Jaques	National (Australia)	907	3	470	12
50. Allens Arthur Robinson	National (Australia)	872	9	402	9
51. Loyens Loeff	National (Netherlands)	871	13	439	8
66. Borden Ladner Gervais	National (Canada)	757	1	n/a	0
71. Gowling Lafleur Henderson	National (Canada)	710	3	n/a	1
72. Blake Dawson	National (Australia)	701	5	n/a	6
76. Salans	National (France)	690	16	345 ⁽¹⁾	n/a
79. Gide Loyrette Loel	National (France)	679	19	380	51

Firm Name	Location ^(a)	Number of lawyers	Countries in which firm has offices	Gross Revenue US\$ million	Percentage of lawyers outside home country
83. Fasken Martineau DuMoulin	National (Canada)	650	3	n/a	9
85. McCarthy Tetrault	National (Canada)	636	2	445	3
99. Clayton Utz	National (Australia)	612	1	419	0

Note: The table depicts the top-20 firms, and lists all other non-US law firms in the top 100.

(a) A law firm is defined as international if more than 40 per cent of their lawyers are working outside their home country

(b) Baker & McKenzie's figures are as of June 30, 2009

(c) DLA Piper International and DLA Piper US are treated as separate entities.

(d) The firm changed its name to K&L Gates from Kirkpatrick Lockhart Preston Gates & Ellis in July 2008

Source: The American Lawyer

ANNEX III

Legal Services - Specific Commitments

COUNTRY	HOST COUNTRY LAW		INTERNATIONAL LAW		HOME COUNTRY LAW		OTHER	MODES
	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION		
Albania	X	X	X		X			2 for host country only
Antigua and Barbuda			X		X			All
Argentina	X	X	X	X	X	X		All
Armenia	X	X	X	X	X	X	86130	
Aruba			X		X			All
Australia			X	X	X	X		All
Austria			X		X			1,2,4
Barbados							86130	3, 4
Bulgaria			X		X			All
Cambodia	X		X		X			All
Canada			X		X			All
Cape Verde			X		X			All
Chile			X					3, 4
China			X		X			All
Colombia			X		X		(1)	1, 2
Croatia	X	X	X	X	X	X		All
Cuba	X	X	X	X	X	X		2, 3, 4
Czech Republic	X	X	X	X	X	X		All
Dominican Republic							86190	All
Ecuador			X		X			All
El Salvador							86190	All
European Communities (12)	(France and Luxembourg)	(France and Luxembourg)	X		X			All
Estonia	X	X	X	X	X	X		2 for host country law
Finland			X		X			All
FYR Macedonia			X		X			All
Gambia	X	X	X	X	X	X		All
Georgia	X	X	X	X	X	X		All
Guyana	X	X	X	X	X	X		All

COUNTRY	HOST COUNTRY LAW		INTERNATIONAL LAW		HOME COUNTRY LAW		OTHER	MODES
	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION		
Hungary					X			All
Iceland	X		X		X			All
Israel	X	X	X	X	X	X		All
Jamaica			X		X			All
Japan	X	X	X	X	X	X	(2)	All
Jordan					X			All
Kyrgyz Republic	X	X	X	X	X	X		All
Latvia	X	X	X		X			All
Lesotho	X	X	X		X			3, 4
Liechtenstein			X		X			1, 2,4
Lithuania			X		X			All
Malaysia	(3)		X		X			1, 2, 4; (4)
Moldova	X	X	X		X			All
Nepal			X	X	X	X		All
Netherlands Antilles			X		X			All
New Zealand	X	X	X					All
Norway					X			All
Oman			X		X			All
Panama			X		X			All
Papua New Guinea	X	X	X	X	X	X		All
Poland	X	X	X	X	X	X		1, 2
Romania	X	X	X	X	X	X		1, 2
Rwanda	X	X	X	X	X	X		All
Saudi Arabia			X		X			All
Sierra Leone	X	X	X	X	X	X		All
Slovak Republic	X	X	X	X	X	X		All
Slovenia	X	X	X	X	X	X		All
Solomon Islands			X	X	X	X		All
South Africa	X	X	X		X			3, 4
Sweden			X		X			All
Switzerland			X		X			All
Chinese Taipei			X	X	X	X		All
Thailand	X	X	X	X	X	X		2, 3
Tonga	X	X	X	X	X	X		All
Trinidad and Tobago			X					All

COUNTRY	HOST COUNTRY LAW		INTERNATIONAL LAW		HOME COUNTRY LAW		OTHER	MODES
	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION	ADVISORY	REPRESENTATION		
Turkey			X		X			All
Ukraine	X	X	X		X			All
United States	X	X	X	X	X	X		All
Venezuela	X		X		X			2, 4
Viet Nam	X		X	X	X	X		All
TOTAL	34	29	73	27	73	27	6	

"X" indicates a full or partial commitment

"All" indicates that each Mode of supply is covered by at least part of the commitments

"86130": legal documentation and certification services

"86190": other legal advisory and information services

- (1) All modes for legal advisory services relating to mining
- (2) Services supplied by qualified patent attorneys and maritime procedure agents
- (3) Domestic Offshore corporation laws
- (4) Mode 3 limited to Federal territory of Labuan

Source: WTO Secretariat

ANNEX IV

International Bar Association Resolution in support of a System of terminology for legal services for the purposes of international trade negotiations

The International Bar Association:

seeking to uphold the Rule of Law;

noting the resolution passed by the Council in 1998 on *General Principles for the Establishment and Regulation of Foreign Lawyers*;

noting also that, within the framework of the Doha Round, international trade negotiations are taking place on the subject of cross-border legal practice;

reaffirming its commitment to further liberalisation of regulations affecting crossborder legal practice;

believing that there should be a neutral framework within which such negotiations should take place;

believing also that an appropriate system of terminology is one which:

- is consistent with the core values of the legal profession;
- provides a solid, neutral foundation for negotiations so that ambiguity and uncertainty are minimised;
- facilitates those negotiations without pre-determining the negotiated outcome; and
- assists in minimising disputes over what has actually been agreed through negotiation;

recognising that the elements of such a system may be used in formulating either commitments or reservations to commitments within the framework of the General Agreement on Trade in Services, and expressing no view as to which of the two approaches will more fully achieve the objectives described above;

recognising as well the role of law firms in cross-border legal practice, and reserving for further consideration the question whether additional standard terminology may facilitate negotiations on this important issue;

noting finally that the WTO Secretariat has reported that: "*As the UN CPC classification in this sector did not reflect the reality of trade in legal services, Members have preferred to adopt the following distinctions in scheduling GATS commitments, which appear better suited than the UN CPC to express different degrees of market openness in legal services: (a) host country law (advisory/representation); (b) home country law and/ or third country law (advisory/representation); (c) international law (advisory/ representation); (d) legal documentation and certification services; (e) other advisory and information services.*"¹

¹ World Trade Organisation Council for Trade in Services Background Note by the Secretariat S/C/W/43, 6 July 1998.

RESOLVES to recommend that the following system of terminology be used for such purposes:

- (a) Home-country law
 - (i) advisory services
 - (ii) representation services
- (b) Third-country law
 - (i) advisory services
 - (ii) representation services
- (c) Host-country law
 - (i) advisory services
 - (ii) representation services
- (d) International law
 - (i) advisory services
 - (ii) representation services
- (e) International arbitration and mediation services.

RESOLVES FURTHER that the forgoing terminology should be understood in accordance with and qualified by the definitions set out in the schedule to these resolutions, and

RESOLVES FINALLY to invite all members of the World Trade Organization to adopt this terminology for the purposes of negotiations on trade in legal services.

SCHEDULE

- (a) "*Home country*" means, with reference to a particular lawyer, any country in the territory of which such lawyer is fully qualified and authorized to engage in the provision of legal services involving application and interpretation of the domestic laws of such country, and "Home country law" means the domestic law of such Home country.
 - (b) "*Host country*" means, with reference to a particular lawyer, any country, other than a Home country, in the territory of which such lawyer provides legal services, and "Host country law" means the domestic law of such Host country.
 - (c) "*Third country*" means, with reference to a particular lawyer providing legal services in the territory of a Host country, any other country which is not a Home country of such lawyer, and "Third country law" means the domestic law of such Third country.
 - (d) "*International law*" means law established by international treaties and conventions as well as customary law.
 - (e) "*Advisory services*" includes:
 - (i) provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of the specified body of law;
 - (ii) participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and
 - (iii) preparation of documents governed in whole or in part by the specified body of law, and the verification of documents of any kind for purposes of and in accordance with the requirements of the specified body of law;
 - (f) "*Representation services*" includes:
 - (i) preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of the specified body of law; and
 - (ii) appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of the specified body of law.
 - (g) "*International arbitration and mediation services*" includes:
 - (i) serving as an arbitrator in any dispute involving parties from two or more countries, without regard to the body or bodies of law that may ultimately be determined to have a bearing on the dispute;
 - (ii) serving as a mediator in attempts to resolve any such dispute; and
 - (iii) preparation of documents to be submitted to, preparation for and appearance before, arbitrators, or mediators in any such dispute.
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ANNEX V

International Bar Association Resolution of Transfer of Skills and Liberalization of Trade in Legal Services

WHEREAS the IBA Council in 1998 and in the years thereafter has adopted several resolutions all aiming at providing guidance for, and facilitating, the liberalization of cross-border legal services, which are of ever growing importance for the global economy;

WHEREAS among these is a resolution adopting a "Statement of General Principles for the Establishment and Regulation of Foreign Lawyers" in which certain terms are defined, and such terms when used in capitalized form herein have the meanings as so defined;

WHEREAS a number of countries, in particular Developing Countries as referred to in Article IV of the General Agreement on Trade in Services (the "GATS"), so far have not been willing to open their legal services markets to Foreign Lawyers or have done so only to a limited extent, in particular as regards scope of practice rights and scope of rights of association with Local Lawyers;

WHEREAS the IBA Council recognises that lawyers have certain responsibilities to the legal system and to society regardless of where they practice;

WHEREAS these responsibilities relate inter alia to the standards of skill and competence of lawyers required in order effectively to serve the needs of justice and the rule of law and thus may encompass, inter alia, the transfer of skills relating to substantive legal practice and law firm management ("Skills Transfer");

WHEREAS the extent and the modalities of Skills Transfer in cross-border legal services by Foreign Lawyers in a given Host Jurisdiction necessarily depend, inter alia, on the extent to which Foreign Lawyers in such Host Jurisdiction are permitted to practice law and to associate with Local Lawyers;

WHEREAS a regime permitting the association of Foreign Lawyers with Local Lawyers likely provides the most efficient and effective means of Skills Transfer by permitting Local Lawyers to work with more experienced Foreign Lawyers within the same firm, thus enabling them to gain practical experience and substantive knowledge in a way that would otherwise be impermissible due to the risk of breach of confidentiality;

NOW THEREFORE BE IT RESOLVED, by way of supplement to (and without modification or limitation of) the Resolutions by IBA Council referred to in the first preambular paragraph above:

- (1) Countries that so far have not been willing to open their legal services market to Foreign Lawyers, or that have done so to a limited extent only as regards the scope of practice rights or rights of association with Local Lawyers, may wish to grant Foreign Lawyers access to their legal services market, or to reduce or remove any existing restrictions on such access, subject to one or both of the following conditions:
 - (A) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction may be required by the Host Authority to participate, directly or indirectly, in the provision of formal continuing legal education and training programs sponsored or approved by the Host Authority or other bodies responsible for the development of the legal profession of the Host Jurisdiction and open to Local Lawyers generally.

- (B) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction in association with Local Lawyers may be required, in the course of his/her practice, to provide, directly or indirectly, individual training and mentoring in relevant legal skills and disciplines, as well as supervised work experience, to Local Lawyers with whom the Foreign Lawyer practices in such association.
- (2) In order to be consistent with the general principles of the GATS, any regime adopted by a Host Authority for the purpose of implementing Skills Transfer as contemplated by Paragraphs (1)(A) and (1)(B) of this resolution would need to be: (i) transparent; (ii) not unreasonably burdensome; (iii) non-discriminatory as between Foreign Lawyers and (iv) not adopted or designed for the purpose of constituting an obstacle to the establishment of Foreign Lawyers in the Host Jurisdiction.
- (3) Any measures taken pursuant to Paragraph (1)(A) of this resolution should not require a Foreign Lawyer to disclose information that is proprietary or confidential to the Foreign Lawyer, his/her firm or any client.
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ANNEX VI

Union Internationale des Avocats UIA Standards for Lawyers Establishing a Legal Practice outside their Home Country

(As approved by the Governing Board of the Union Internationale des Avocats on August 29, 2001
for circulation and comment)

Everywhere in the world, citizens and others subject to the rule of law must have available the possibility of recourse to the services of an independent lawyer. The lawyer undertakes representation of clients before the courts as well as legal consulting in the national and international legal system.

Representation before the courts, and legal consultancy, require the existence of and compliance with rules of ethics and fundamental values. These rules and fundamental values, in their essence, know no legal boundaries – regional differences in substantive law being no obstacle to the universality of the role of the lawyer. The ethical rules and fundamental values of the lawyer have as their foundation loyalty, independence and absolute respect of the confidences and secrets of the client and of the rules prohibiting conflicts of interest. The rules also carry with them an obligation of competence. The respect of these ethical rules and principles must be overseen and enforced by an independent authority.

The possibility of a transnational legal practice by the lawyer, or an international legal practice, must not be limited to the detriment of clients as long as the ethical rules and fundamental values of the legal profession are respected and assured. However, the obligation of competence and regional differences in the substance of local laws could justify some restrictions on international legal practice.

Consequently, and in order to better inform the public, international organizations and governments regarding the role of the lawyer and the social values which must be preserved and respected in connection with international legal practice, the Union Internationale des Avocats adopts these Standards and encourages their circulation to all interested persons.

STANDARDS

1. Definitions

- (a) "International legal practice" means the provision of legal services on a continuing basis by a foreign lawyer participating in a law firm which has been established in a host country other than the foreign lawyer's home country.
- (b) "Home country" means the country or a subdivision thereof in which the foreign lawyer has met all legal requirements to practice law including membership in the bar, bar association or law society which regulates the practice of law in that country or subdivision.
- (c) "Host country" means the country in which has been established a law firm which offers or intends to offer legal services from a foreign lawyer to persons in that country.
- (d) "Law firm" means a partnership, corporation or other economic enterprise including one or more lawyers who offer legal services to clients other than their employer in exchange for fees. The law firm must regularly use a location in the host country

from which it offers or provides its services to host country residents, or there must be substantial evidence that it actively seeks persons in the host country as potential clients at such a location in order for the host country to regulate the activities of the law firm and its lawyers as envisaged under this statement.

- (e) "Foreign lawyer" means a lawyer, barrister, solicitor or its equivalent in any country who is authorized to render legal services by the bar (or its equivalent) in his or her home country but who is not fully licensed to practice or otherwise authorized to render legal services in the host country in the same manner as host country lawyers who are fully licensed members of the bar, bar association or law society of the host country.
- (f) "Public international law" means the law governing relations between states, including the treaties, rules and regulations concerning the creation and operation of international organizations such as the United Nations and the World Trade Organization, but not dispute resolution involving the interests of specific private parties conducted under rules and regulations of such multilateral organizations.

2. Role of the Lawyer. Lawyers are by definition part of the legal system in every country. As direct participants in the system of justice, lawyers ensure and maintain the quality of the legal system. Lawyers also play a critical role as counsellor and assistant in accomplishing many commercial and civil transactions. However, clients of lawyers must be viewed not only as possible participants in a commercial transaction, but also and more importantly as citizens who are to be informed, counseled, aided and defended by lawyers who, in so doing, are ensuring the efficient operation of the justice system.

3. Fundamental Social Values. The following social values are of primary importance and deserving of special recognition in order to preserve the quality and efficiency of the system of justice in host countries:

- (a) Free Choice of Lawyer. A person in a host country should be free to choose a lawyer of his, her or its choice for consultation on legal matters and/or for legal proceedings in its courts or administrative agencies. However, the host country may choose to require that foreign lawyers engaged in international legal practice who wish to offer services in areas other than their home country law and public international law demonstrate, by legal education or otherwise, that they provide the same assurances to host country clients as do host country lawyers, without regard to nationality. Membership in the host country bar, bar association or law society, entitling the foreign lawyer to render legal services in the host country in the same manner, and subject to the same burdens, as host country lawyers, should be available to foreign lawyers who otherwise meet the requirements for membership, without regard to nationality.
- (b) Loyalty and independence. Persons in a host country should be confident of the loyalty and independent judgment of any lawyer engaged to serve in the host country, since the combination of these characteristics in the lawyer is commonly considered to be the necessary foundation of the lawyer-client relationship. Therefore, a host country should require that any foreign lawyer desiring to engage in international legal practice in the host country avoid conflicts of interest in order not to call into question the foreign lawyer's loyalty to the client in the host country.

- (c) Professional Secret/Privilege. Since the justice system operates efficiently only when clients can communicate their private matters without fear of disclosure, a host country client of a foreign lawyer should be entitled to the protection of the attorney-client privilege and/or the professional secret to the same extent and for the same purposes as govern the attorney-client privilege and/or professional secret in connection with legal services provided by a host country lawyer. A foreign lawyer desiring to provide legal services in the host country must commit to take all necessary steps in order to ensure the host country client of the full application of the attorney-client privilege and/or professional secret, as the case may be, to no lesser degree than would be the case if the matter were handled by a host country lawyer. Any derogation from this requirement should only be permitted if the client, after full communication of the consequences, consents to the derogation and then only if the client is fully capable of understanding the nature and extent of the derogation and the derogation is not contrary to the public policy of the host country.
 - (d) Confidentiality. To the extent that confidentiality is required of host country lawyers, foreign lawyers should be obligated to abide by the same rules in order to meet the expectations of host country clients. Accordingly, foreign lawyers should be required to take all necessary steps to ensure that confidential information of a client in the host country is maintained as confidential to the same extent as with host country lawyers.
 - (e) Competence. A host country client should be entitled to presume that a foreign lawyer engaged in international legal practice is competent to provide the services offered. A foreign lawyer should not attempt to practice any law in which the lawyer is not properly qualified or trained, by education or otherwise. Any foreign lawyer who engages in international legal practice in the host country should be treated as having warranted to every client in the host country that the services he or she provides will be competent in connection with the matter for which the lawyer was engaged.
 - (f) Advertising. A person in the host country should be entitled to accurate information about the legal services to be provided by a foreign lawyer. Accordingly, if advertising of legal services is permitted in the host country, a host country should require that a foreign lawyer engaged in international legal practice undertake not to engage in any false or misleading advertising of legal services to persons in the host country.
 - (g) Holding out as lawyer. Persons in a host country should be able to easily determine the status and role of a foreign lawyer engaged in international legal practice. Therefore, the host country should require any such foreign lawyer to use the same title as is used in the foreign lawyer's home country (without translation except as necessary to make the characters readable in the host country language); and to identify and explain any restrictions on the right of the foreign lawyer to render legal services in the host country. Any foreign lawyer who identifies, by the use of a business card, curriculum vitae or otherwise, his or her legal education, or a university or higher degree in law or membership in a bar, bar association or law society as one of his or her qualifications to render services should be automatically deemed to be engaged in offering legal services in the host country and required to comply with this standard.
4. Compliance with host country ethical rules. Host country clients should be assured that those who provide legal services in the host country are subject to the same ethical rules as host country

lawyers, in order to avoid confusion and potential loss of rights. Therefore, foreign lawyers engaged in international legal practice must be subjected to and undertake to comply with all relevant ethical rules applicable to host country lawyers.

5. Registration. In order to adequately audit and control the services provided by foreign lawyers in a host country, and in order to assure host country clients of compliance with applicable standards, the host country should require that any foreign lawyer who engages in international legal practice in the host country register with the bar, bar association, law society or other institution under host country law having primary responsibility for the regulation of legal services in the host country. Such registration should require that all necessary information about the foreign lawyer and any economic enterprise with which the foreign lawyer is affiliated be filed with the regulatory authority in order that the necessary actions can be taken to determine and enforce compliance with applicable standards.

6. Form of Economic Enterprise. The host country should permit foreign lawyers who are otherwise lawfully engaged in international legal practice in the host country to establish or be employed by any form of economic enterprise for the practice of law which is permitted to a host country lawyer. In order to protect persons in the host country from confusion or unintended loss of rights, the host country should condition the rendering of legal services by lawyers in a multidisciplinary practice upon compliance by its lawyers with the Resolution on UIA-Recommended Minimum Standards for Multidisciplinary Practice as adopted by the Union Internationale des Avocats on November 3, 1999.

7. Integration of Foreign and Host Country Lawyers. The increasing integration of economies across the globe means that lawyers, in order to best perform their services, should take into account both the laws, practices and methods of the host country and the laws, practices and methods of other countries which may be relevant to a legal matter in the host country. Therefore, a law firm with foreign lawyers engaged in international legal practice should incorporate host country lawyers into its practice, directly or indirectly, in order that its clients receive the full benefit of host country lawyer expertise. Host country law firms should endeavor to ensure that the services of foreign lawyers are available in the host country in appropriate cases in order that their clients receive the full benefit of foreign lawyer expertise.
