INTERNATIONAL BAR ASSOCIATION

Resolution in Support of a System of Terminology for Legal Services for the Purposes of International Trade Negotiations

Approved/ Adopted by IBA Council
San Francisco, September 2003
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 cross-border 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.”

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.

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