



# GATS

## **General Agreement on Trade in Services**



*A Handbook for*  
International Bar Association  
Member Bars

This Handbook is drawn in large part upon an article written by Professor Laurel S. Terry, Penn State Dickinson School of Law, USA, entitled *GATS' Applicability to Transnational Lawyers and its Potential Impact on Domestic Regulation of U.S. Lawyers*, 34 Vanderbilt J. of Transnational Law 989 (2001) as revised Vol. 35, no. 1 Vanderbilt J. Transnational Law \_\_\_\_ (2002)(forthcoming).

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Professor Terry thanks the editors of the Vanderbilt Journal of Transnational Law for permission to use the material from that article in this Handbook.

## Foreword

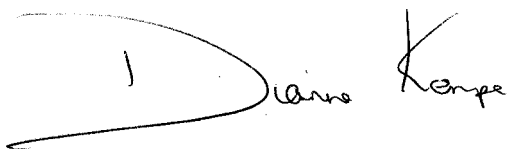
On behalf of the International Bar Association (“IBA”), I am pleased to offer this Handbook for IBA Member Bars and Law Societies regarding the General Agreement on Trade in Services (“GATS”).

The Handbook is designed primarily to give a clear overview of the requirements of the GATS as it relates to the legal services sector. I hope that you will find in addition to an explanation of the relative provisions of the GATS, important practical information which will assist your Bar Association in understanding that the GATS is going to have a significant impact on the provisions of legal services in your country in the future. Consequently, it is extremely important that you become involved in the discussions and negotiations.

Member countries are being asked to put in their initial requests by **30 June 2002** and their initial offers by **31 March 2003**. Currently, the deadline for the close of the present “round” of negotiations is 1 January 2005.

Accordingly *now* is the time for all IBA member Bars and Law Societies to get involved and to make representations to their respective national trade representatives. It is also important to consider the services provided by the legal profession in your country in the context of the various “Modes of Supply” and see whether your country’s legal profession could benefit from commitments in one of these modes.

On behalf of the IBA, I would like to thank Professor Laurel Terry and Jonathan Goldsmith for all their assistance in preparing this Handbook

A handwritten signature in black ink that reads "Dianna Kempe". The signature is written in a cursive style with a large, sweeping initial "D".

**Dianna Kempe**  
*IBA President*

May 2002

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# I. Executive Summary

## What Is the Purpose of this Handbook?

In the next few months or the next few years, IBA Member Bars may be approached by the trade negotiators from their own countries. These negotiators may ask Member Bars questions such as:

- Do you want foreign lawyers to be able to practise here, and if so under what conditions? and
- Do the members of your bar want access to any foreign markets?

It is also possible that the trade negotiators may ask these questions in a much more technical fashion. They might, for example, ask questions such as:

- What is your bar's position about whether the 1998 *Disciplines for the Accountancy Sector* should be applied to the legal profession in your country?
- Does your bar have an opinion about the classification system that should be used for legal services in the Doha Round of negotiations?
- In the current Doha round of negotiations, what is your bar's position about whether legal services should be included on your country's *Schedule of Specific Commitments*?
- If legal services are already included on your country's *Schedule of Specific Commitments*, do you believe there should be any changes made to the way your country has "scheduled" legal services in Modes 1, 2, 3 or 4? and
- If legal services are already included on your country's *Schedule of Specific Commitments*, do you believe there should be any changes made to the way your country has "scheduled" legal services in the *market access* and *national treatment* columns of your country's *Schedule*?

This Handbook is intended to help IBA Member Bars answer these questions, regardless of the form in which they are asked. Even the seemingly simple and casual questions will ultimately require someone to provide answers that are highly technical. This Handbook gives guidance on how these questions can be answered

Furthermore, it is possible that the questions will be posed to Member Bars in the second, more technical, fashion. If you are like most lawyers, you probably have very little idea what these more technical questions mean and have no idea how these questions should be answered. This is quite understandable. The questions listed above involve trade law terms. Most lawyers are not trade lawyers and are not familiar with this kind of trade law terminology.

For better or worse, however, bar leaders and regulators will soon have to become familiar with this trade law terminology if they want to participate in important ongoing discussions and decisions about legal services. As this Handbook will explain, all services, including legal services, are now covered by the World Trade Organization (WTO) trade agreements. Thus, if your country is a member of the World Trade Organization (as 144 countries are), then some of the regulation of legal services in your country is

already subject to the provisions of the General Agreement on Trade in Services (commonly known as the GATS.) Most lawyers in the world are unaware of the fact that the GATS governs some of the regulation of legal services in their country.

In short, developments that are important to legal services and IBA Member Bars have already happened at the WTO. The reason for this Handbook, however, is that *new developments are currently underway*. The IBA leadership believes that it is very important for bar associations to participate in these ongoing dialogues insofar as the developments affect legal services.

Therefore, the purpose of this Handbook is to educate all Member Bars so that someone in each bar can respond intelligently and appropriately to the types of questions listed above. The goal is to teach you enough about the GATS and trade law terminology to enable you to participate in the important discussions and decisions that are ongoing and that may affect the delivery of legal services in your country.

As you might imagine, giving someone an “instant education” in trade law as applied to legal services does not make for fast or easy reading. This Handbook is dense and detailed. The reason for this “nitty-gritty detail” is to provide a single resource, tailored to legal services, that your bar can consult in order to respond to questions such as those posed on the prior page. This Handbook contains everything we can think of that a bar would need to know about:

- the substantive provisions of the GATS;
- how the GATS’ substantive provisions apply in the context of legal services;
- what has happened since the adoption of the GATS and its relevance to legal services;
- where the debates have occurred with respect to legal services (and to give you a flavor for the disagreements); and
- the developments that IBA Member Bars might be asked to respond to.

Not *everyone* who reads this Handbook will want or need to master the level of detail contained in this Handbook. But at some point in time, every IBA Member Bar may need or want to find *someone* in that Member Bar who will respond to the questions posed at the beginning of this section. This Handbook should give that person or persons all the detailed information they will need to know in order to develop their own answers, which are suitable for their legal profession, country, culture, history and context.

This Executive Summary section is intended to provide all the information necessary for bar leaders who only want to know the “big picture” about the GATS and legal services and do not want or need to understand the specific terminology and detailed provisions. The remainder of the Handbook, however, is intended to provide, as simply and as clearly as possible, the information and detail that every IBA Member Bar likely will need to know in order to respond to questions such as those posed at the beginning of this section.

## What Should Every Bar Leader Know about the GATS and Legal Services?

This section is intended to introduce IBA Member Bars to all of the key facts about the GATS and legal services. All of the terminology used in this section is explained in much greater detail in the Handbook sections that follow. Similarly, all of the developments referred to in this section are explained in much more detail in the sections that follow. The purpose of this section is to try to convey the “big picture” of the GATS and legal services and persuade you as to the importance of the details that follow.

The starting point is the World Trade Organization or WTO. The *Agreement Establishing the World Trade Organization* was signed in 1994. There were several other agreements attached or “annexed” to the *Agreement Establishing the World Trade Organization*. Therefore, when a country decided to join the WTO (as 144 countries now have), that country also agreed to abide by the terms of the annexed agreements.

One of the agreements annexed to the *Agreement creating the World Trade Organization* is the *General Agreement on Trade in Services* or “GATS.” (The GATT and TRIPS are two other agreements, in addition to the GATS, that were “annexed” to the *Agreement Creating the WTO*. Many lawyers are familiar with the GATT, which focuses on trade in GOODS. The GATS focuses on trade in SERVICES.)

The GATS was the very first multilateral trade agreement that applied to services, rather than goods. The GATS applies to all services, including legal services. Thus, health services, engineering services, accounting services, architecture services, tourism services, and all other kinds of services imaginable are covered by the provisions of the GATS.

The WTO Secretariat, which is based in Geneva, Switzerland, is the administrative body of the WTO. The WTO Secretariat has around 500 staff and is headed by a Director General. It does not have branch offices outside Geneva. Unlike some other international bureaucracies, the Secretariat does not have a decision-making role. It is responsible for synthesizing the information collected from WTO Member States, preparing minutes of meetings, collecting statistics and preparing analyses.

In July 1998, the WTO Secretariat had prepared a “sectoral analysis” of legal services. The Secretariat has prepared other analyses that are relevant to legal services and are described in greater detail in the body of the Handbook.

Currently, there are two different sets of events ongoing in Geneva of which member bars should be aware (and may want to participate.) The first ongoing activity is the development of horizontal disciplines on domestic regulation. The second development is the new Doha Round of negotiations for further liberalization of trade in services. Although there is some overlap between these two “tracks” or developments, they are different and Member Bars should be aware of both.

The basis for the “disciplines track” is as follows. In December 1998, the WTO Council for Trade in Services issued a document called *Disciplines for the Accountancy Sector*. As its name suggests, this document applies only to accounting services. This document was prepared pursuant to GATS Article VI, which requires the WTO Council for Trade in Services (or its delegate) to prepare disciplines on domestic regulation to ensure, among other things, that licensing and qualification measures are not more

burdensome than necessary to fulfill a legitimate objective and do not constitute barriers to trade. The *Disciplines for the Accountancy Sector* contain twenty-six paragraphs.

Currently, there is a WTO entity called the Working Party on Domestic Regulation that is studying whether the *Disciplines for the Accountancy Sector* can and should be extended “horizontally,” that is, to ALL service sectors, including legal services. Many service sectors, including representatives of legal services, have argued that their sector deserves its own discipline. Thus, one of the issues that WTO Member States will have to resolve is whether to adopt a horizontal discipline and whether legal services should be included within the coverage of that horizontal discipline or whether legal services should have its own discipline. Each WTO Member State is entitled to participate in the Working Party on Domestic Regulation.

Some WTO Member States have already issued statements indicating whether, in their view, the *Disciplines for the Accountancy Sector* should be extended horizontally to all other service sectors. Some bar associations have already issued position papers in which they indicate those provisions in the *Disciplines for the Accountancy Sector* they find acceptable and those provisions they find unacceptable. The WTO Member States have agreed that each country’s representative should be consulting the relevant domestic organizations about these issues.

The second ongoing “track” of development of which IBA Member Bars should be aware is the new Doha Round negotiations to further liberalize trade. IBA Member Bars should know that the GATS itself REQUIRED WTO Member States to engage in negotiations for progressive liberalization within five years of the signing of the GATS. This new round of negotiations originally was referred to as either GATS 2000 or as the “built-in agenda” negotiations. As part of the GATS 2000 negotiations, WTO Member States agreed to try to submit negotiating proposals by December 2000. By mid-2001, several countries had submitted proposals that addressed legal services in some fashion. The countries that have already submitted negotiating proposals that address legal services include: Australia, Canada, Columbia, the European Union, India, Japan, Kenya, Switzerland and the United States.

In order to understand this second “track” of events, however, one must know that in November 2001, in Doha, Qatar, WTO Member States agreed to begin a new comprehensive round of negotiations. The Doha Ministerial Declaration explicitly recognized the work that had already been done in the GATS 2000 negotiations and stated that the new round should build on that work.

The Doha Ministerial Declaration specified the dates for the various stages of the negotiations and the date by which the final negotiations should be completed. According to paragraph 15 of the Doha Ministerial Declaration, WTO Member States are to submit their initial “requests” for specific commitments to other countries by June 30, 2002. WTO Member States are to submit their initial “offers” of specific commitments (liberalization) by March 15, 2003. The final round of negotiations is to be completed no later than January 1, 2005.

As a result of these developments, it is very important for lawyers around the world to understand that if they belong to a WTO member state, then their trade representatives will be engaged in negotiations about liberalization of the conditions under which foreign lawyers may practice in that WTO state. Because these negotiators

often are not lawyers and because legal services may be “bundled” or swapped as part of a deal involving other goods or services, lawyers may want to begin educating their trade representatives about the nature of lawyers in the country and the desired regulation (and access to foreign markets.) Accordingly, the GATS raises new issues that IBA Member Bars may not previously have faced. As the WTO webpage explains: “This wide definition of trade in services makes the GATS directly relevant to many areas of regulation which traditionally have not been touched upon by multilateral trade rules. The domestic regulation of professional activities is the most pertinent example.” The professional services to which the GATS applies include legal services.

With respect to the substantive obligations contained in the GATS, it is important for Member Bars to understand that there are two different kinds of obligations created by the GATS: 1) some GATS provisions apply to every WTO Member State and every type of service provided in that country, including legal services; 2) other obligations, however, apply only if a country listed legal services on its document called “*Schedule of Specific Commitments*.”

The *Schedules of Specific Commitments* were completed by every WTO Member State by December 1993, when the negotiations leading up to the WTO and the GATS closed. Each WTO Member State’s *Schedule of Specific Commitments* is different and unique. The *Schedules* contain two kinds of promises. First, the *Schedules* include promises that apply “horizontally,” that is, to all sectors. In addition, each country identifies those specific service sectors for which the country is willing to assume additional obligations. These additional obligations are assumed by listing a particular service sector – such as legal services – on a country’s *Schedule of Specific Commitments*.

Fifty-eight countries listed legal services on their *Schedules of Specific Commitments*. Unfortunately, however, the story is even more complicated. There are some obligations that will apply to legal services as soon as a country included legal services on its *Schedule*. Whether other obligations in the GATS apply, however, depends on the *manner* in which the country included legal services on its *Schedule*. In other words, when a country listed legal services on its *Schedule*, it could elect the degree to which it wanted to comply with certain obligations, such as *market access*, *national treatment* and certain *domestic regulation* obligations.

Thus, in order to understand what your country has promised with respect to legal services, you will need to be able to read and understand your country’s *Schedule of Specific Commitments*. In order to understand the *Schedule*, you will need to understand the terminology used in the *Schedules*, which includes references to legal services being delivered through Mode 1, Mode 2, Mode 3 and Mode 4.

The sections of the Handbook that follow describe all of these concepts in more detail and explain what is meant by the terminology used above. The goal of the sections that follow is to provide every IBA Member Bar with enough knowledge about the GATS and its terminology so that the Bars can have someone respond appropriately to the questions posed at the beginning of this section.

## II. An Introduction to the GATS

### What is the WTO?

The WTO is the acronym used to refer to the World Trade Organization. The World Trade Organization was created in 1994. The document or treaty creating the WTO is called the *Agreement Establishing the World Trade Organization*.

### What is the GATS?

“GATS” stands for General Agreement on Trade in Services. The GATS is part of the agreements that were signed in April 1994 when the *Agreement Establishing the WTO* was signed.

The GATS was the first multilateral trade agreement that applied to services, rather than goods. Accordingly, the GATS raises new issues that Member Bars may not previously have faced. As the WTO web page explains: “This wide definition of trade in services makes the GATS directly relevant to many areas of regulation which traditionally have not been touched upon by multilateral trade rules. The domestic regulation of professional activities is the most pertinent example.”

### Are Legal Services Covered by the GATS and How are They Defined?

The GATS applies to all trade in services, including professional services and thus legal services. Although it is clear that the GATS applies to all “legal services,” it is less clear how “legal services” should be defined in the context of the GATS.

In a document entitled 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 classification system corresponds to the United Nations classification system, in which “legal services” are 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);
- other legal and advisory information (8619); and
- arbitration and conciliation services, previously part of management consultancy services (added in the February 1997 revision).

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\* Each WTO document has a unique symbol assigned to it. Many WTO documents are available on the WTO website. Section IX of this Handbook explains what these symbols mean and how to locate documents on the WTO website.

\*\* The numbers in parentheses are the UN classification numbers for this particular service subsector.

In its legal services sectoral analysis, the WTO Secretariat said that during the Uruguay Round negotiations, the UN classification system did not reflect the reality of trade in legal services and did not appear to be as relevant to Members as the distinction between advice and representation in host country, home country and international law.

Accordingly, during the current round of services negotiations, some countries have offered alternative definitions for legal services and have responded to the Secretariat's observations. The developments concerning the classification of legal services to be used in the new round of negotiations is discussed in greater detail in Section XIII of the Handbook.

### **When Was the GATS Created?**

The GATS and other trade agreements emerged from a round of trade negotiations that are commonly referred to as the "Uruguay Round." These multi-year negotiations concluded on December 15, 1993. The final documents were signed on April 15, 1994 in Marrakech, Morocco.

### **Were All Countries Pleased that Legal Services Were Covered by the GATS?**

Legal services were included within the coverage of the GATS despite the objections of some countries. France, for example, did not want legal services to be covered by the GATS. Although the United States initially sought inclusion of legal services in the GATS and preferred a special annex addressing legal services, the annex approach was rejected and, by the conclusion of the GATS negotiations, many U.S. lawyers were unhappy that legal services had been included. Regardless of objections, however, legal services are now part of the GATS.

### **How Is the GATS Enforced?**

An important fact to know about the GATS is that the WTO does not monitor or "police" a country's regulations and that the GATS may not be enforced by individuals. It is a government-to-government agreement. It may only be enforced by governments, which allege that another WTO Member State has not honored its promises. Should a WTO Member State fail to honor its commitments, it can be subject to retaliatory trade sanctions. Disputes are handled in a multi-stage process; the WTO Appellate Body has the ultimate right to resolve disputes and authorize retaliatory trade sanctions. As a result, this remedy may be cumbersome to invoke because a lawyer may have difficulty persuading his or her government to bring a claim. Once a claim is brought, however, this remedy is a very powerful tool. Because the dispute resolution system is driven by complaints from other Members, the system is somewhat similar to the lawyers' disciplinary systems present in many IBA Member States, in which discipline against lawyers is instigated primarily by complaints made against a lawyer by another lawyer, clients or judges.

### **What are Some of the Myths about the GATS?**

One of the myths of the GATS is that the WTO has the power to impose its will on WTO Member States. However, countries join the WTO voluntarily; the WTO agreements and documents are the result of consensus among governments. Further, any WTO Member State may withdraw from the WTO on six months' notice.

A second important fact to realize about the WTO is that it requires liberalization of restrictive trade rules, but not necessarily deregulation. Each WTO Member State is free to choose its own regulatory objectives. So long as a country's objectives are legitimate, the focus is on the *means* used to achieve those objectives and whether the means are more trade restrictive than necessary. Indeed, in some cases, trade liberalization could lead to the need for more regulation, rather than less regulation.



### III. The Key Provisions in the GATS that are generally-applicable

#### What Should IBA Member Bars Know About the Four-Part Structure of the GATS?

It is useful to think about the GATS as having a four-part structure. First, a Member Bar must learn which provisions of the GATS apply to trade in ALL legal services in all WTO Member States. Second, one must determine if a country exempted itself from the most-favored nation provision in the GATS (the *MFN Exemption List*). Third, one must consult the *Schedules of Specific Commitments* to find out what additional obligations in legal services, if any, the country agreed to (and whether the country listed any limitations or “standstill” provisions in its Schedules.) Fourth, one should recognize that two provisions in the GATS mandate ongoing work that is relevant to legal services.

This four-part analysis can be represented as follows:

Step 1	Step 2	Step 3	Step 4
Analyze the general commitments that a country assumes by virtue of joining the WTO and signing the GATS.	Has the country exempted itself from the MFN requirement that is part of the general commitments?	What does the country's <i>Schedule of Specific Commitments</i> promise with respect to legal services?	What ongoing work does the GATS mandate?

The Handbook sections that follow will analyze each of these steps in turn so that the reader will understand the GATS provisions that apply during each stage of the analysis.

#### What are the Most Important GENERALLY-APPLICABLE Provisions in the GATS For Legal Services?

By agreeing to become a WTO Member State, a country agrees to abide by the GATS. The GATS includes some provisions that are generally-applicable and thus apply to trade in legal services in every WTO Member State.

Below are FOUR generally applicable provisions that are usually considered the most important. These four GENERALLY-APPLICABLE provisions are: 1) the most-favored nation requirement (art. II); 2) transparency (art. III); 3) the procedural review section of the domestic regulation provision (art. VI, para. 2 ); and 4) recognition (art. VII).

(In addition to these generally-applicable provisions, it is important to realize that two additional provisions require ongoing work by WTO Members. These two provisions are the progressive liberalization provision (art. XIX) and the obligation to develop disciplines on domestic regulation (art. VI, para. 4). They are described in Section IV of the Handbook.)

### **What is the Most-Favored Nation Provision in the GATS?**

Article II of the GATS is the most-favored nation (MFN) provision. This provision requires each country to accord *all* WTO Member States the same (“no less favourable”) treatment that it provides to *any* WTO Member State with respect to measures affecting trade in legal services. In other words, it is an “equal protection” type of provision that requires equal treatment as between foreign countries.

The GATS MFN provision thus prohibits reciprocity provisions insofar as the reciprocity requirement is applied to foreign legal services providers. It is important, therefore, to stress that if your country has not exempted itself from the MFN provision in relation to legal services, your Member Bar will not be able to enter into specific reciprocity agreements with other Bars to give their lawyers more favorable access to your market or use reciprocity as a condition for admission. Many WTO Member States may have provisions that may violate the MFN requirement insofar as the countries give preferential treatment to other countries with which they have a historical relationship (e.g., reciprocity among countries with former colonial relationships).

There are three circumstances in which this MFN requirement need not be applied. As is described in the next section, very few countries exempted themselves from this MFN requirement. Second, GATS Article VII permits a WTO Member State to negotiate a “Mutual Recognition Agreement” with another country, provided that the WTO is notified at the onset of such negotiations and provided that each country is willing to offer the same MRA to all other WTO Member States. Third, provided notice is given, GATS Article V permits more favorable treatment resulting from Economic Integration agreements, such as the European Union and NAFTA agreements.

### **What is the Transparency Requirement in the GATS?**

Article III of the GATS is a transparency requirement. It applies to all WTO Member States. This provision requires that all relevant measures be published or otherwise publicly available. Thus, Member Bars should work to insure that all of the measures regulating legal services in its country are, or will be, published or publicly available. This may mean a change in the way your Bar undertakes rule-making and the publicity relating to rules made.

### **What is Paragraph 2 in the “Domestic Regulation” Provision in the GATS?”**

Article VI of the GATS is the domestic regulation provision. Domestic Regulation provisions include a country’s licensing and qualification rules for its own lawyers. The Domestic Regulation article in the GATS has six subsections, only one of which is generally-applicable to all WTO Member States.

Article VI, paragraph 2 is the generally-applicable provision in the Domestic Regulation provision in the GATS. Paragraph 2 requires each WTO Member State to maintain or institute procedures to have an objective and impartial review of any negative decisions by a country to exclude foreign service providers, in this case, foreign lawyers. Remedies must be available. Article VI, paragraph 2 expressly states, however, that it does not apply if it would be inconsistent with a country’s constitutional structure or the nature of its legal system. (The other five paragraphs of Domestic Regulation provision are discussed in Sections IV and XI of the Handbook.)

### **What is the “Recognition” Provision in the GATS?**

Article VII of the GATS is titled “Recognition.” Some regulators of legal services may decide that they are willing to “recognize” the qualifications of lawyers who are already licensed in another jurisdiction and permit those lawyers to practice in the Member State.

Article VII envisions that recognition issues may be handled through “Mutual Recognition Agreements” negotiated between GATS Member States. This section creates a structure by which Member States can negotiate “Mutual Recognition Agreements” or MRAs. These are bilateral agreements and may seem a good way to avoid the MFN rule mentioned above. However, any Member State — and the MRA is signed between Member States — which enters into an MRA with another must give all WTO Member States the opportunity to participate on an equal footing in an MRA. The WTO has been notified of very few MRA’s to date, and none, apparently, in the field of legal services.

## IV. The Provisions in the GATS that require ongoing work

Two provisions in the GATS require ongoing work on the part of WTO Member States. These provisions are important and are described below.

### **What is the “Progressive Liberalization” Provision in the GATS?**

Article XIX of the GATS contains the “progressive liberalization” provision. This article is important because it *REQUIRED* that a new round of negotiations about services begin within five years of 1994. These negotiations were launched by the WTO in February 2000 and are currently underway. When these negotiations began, they were referred to as the GATS 2000 or “built-in agenda” negotiations. As explained in more detail in Section XIII of the Handbook, the Doha Ministerial Declaration established principles and a timetable for more comprehensive negotiations. These negotiations are currently called the Doha Development Agenda Negotiations but will likely come to be referred to in the future as the Doha Round of Negotiations. These negotiations – whatever they are called - probably will lead to further liberalization of legal services by many countries.

### **What Happened in November 2001 at Doha, Qatar and How Is it Related to the GATS?**

On November 14, 2001, at the Fourth Ministerial in Doha, Qatar, the WTO Member States adopted a Ministerial Declaration. This Ministerial Declaration set the timetable for the “progressive liberalization” negotiations required by Article XIX of the GATS. This new round of negotiations is discussed in further detail in Section XIII, *infra*.

### **What is the Obligation in Article VI, para. 4 to Develop “Disciplines”?**

In addition to the ongoing work required by the “progressive liberalization” provision, the GATS requires ongoing work to develop “disciplines.” Article VI of the GATS is the domestic regulation provision. In the context of legal services, “domestic regulation” provisions include a country’s licensing and qualification rules for its own lawyers. Article VI, paragraph 4 requires ongoing work because it directs the Council for Trade in Services (or its delegate) to develop “disciplines” to ensure that measures relating to qualification and licensing requirements do not constitute unnecessary barriers to trade. This paragraph states:

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines.

Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Sections XI and XII of the Handbook explain the developments that have occurred in implementing this paragraph.

IBA Member Bars will want to monitor both the ongoing developments with respect to the GATS 2000/Doha Round negotiations about legal services AND the efforts to develop domestic regulation disciplines that would apply to legal services.

## V. The MFN Exemption

As explained above, Member Bars may find it useful to think about the GATS as having four parts: first, the generally-applicable provisions of the GATS; second, the MFN exemption lists; third, the GATS requirements that apply only if, and to the extent that, legal services are listed on a country's *Schedule of Specific Commitments*; and fourth, the provisions that require ongoing work. This section addresses the second part of the analysis.

### What is the MFN Exemption List?

Article II of the GATS is the most-favored nation provision. It requires a WTO Member State to accord all Member States the same treatment with respect to measures affecting trade in services that it affords to any Member State. In other words, as explained previously, it prohibits reciprocity agreements.

At the time the GATS was signed, however, a WTO Member State was entitled to place legal services on an MFN exemption list. If a country exercised this option, then it is not required to comply with the MFN requirement. No new MFN exemptions are permitted at this time since the MFN exemption list was an annex to the *Agreement Establishing the WTO*.

### Which Countries Have a MFN Exemption for Legal Services?

According to the WTO Secretariat paper on legal services, four Members have MFN exemptions in legal services, while four other Members have exemptions in professional services. The countries that have MFN exemptions for legal services are: Brunei Darussalam, Bulgaria, Dominican Republic and Singapore. The countries that have MFN exemptions for professional services are: Costa Rica, Honduras, Panama, and Turkey.

Three of the MFN exemptions for legal services cover all measures pertaining to the provision of legal services and apply to all countries on the basis of reciprocity. The fourth exemption extends full national treatment for Modes 3 and 4\* only to companies and citizens of countries with which preferential arrangements exist. All the professional services exemptions maintain reciprocity as a condition for authorizations to exercise professional activities, including legal services.

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\* Section VII of the Handbook explains what is meant by Modes 1, 2, 3 and 4.

### **When Does the MFN Exemption Expire?**

One of the unresolved issues in the GATS is the question of the duration of a country's MFN exemption. The WTO explained the issue as follows on its website:

All MFN exemptions are to be reviewed after five years by the Council for Trade in Services: after ten years they should in principle be terminated. Many countries have nevertheless indicated in their list of Article II exemptions that their intended duration was indefinite. The legal consequences of such an entry in the exemption list are unclear.

Most Member States (including the major players involved in the export and import of legal services) have not put legal services on their MFN exemption list and will not be permitted to have a reciprocity requirement for foreign lawyers without violating the GATS.

## VI. The *Schedules of Specific Commitments*

In addition to the generally-applicable provisions in the GATS and the MFN exemption lists, Member Bars should also know that there are certain provisions in the GATS that apply only if a country listed legal services on its *Schedule of Specific Commitments*.

### **How Was Each Country's *Schedule of Specific Commitments* Developed?**

Each country's *Schedule of Specific Commitments* was developed based on a request-offer system; countries exchanged information about their proposed *Schedules of Specific Commitments* during the Uruguay Round negotiations. This request-offer system of negotiations permitted a country to know, before it finalized its own *Schedule of Specific Commitments*, what it could expect from other countries. These *Schedules* were subject to fierce negotiations, with some countries saying *in essence* "I'll include this service on my *Schedule* with these conditions if you will include that service on your *Schedule*." At a certain specified deadline in December 1993, each country had to submit its final proposal, including its *Schedule of Specific Commitments*.

### **Where Can I Learn Whether a Particular Country Listed Legal Services on its *Schedule* and Whether it Exempted Any of its Current Regulations Affecting Foreign Lawyers?**

There are several different places where a Member Bar can see other countries' *Schedules*. The WTO website now contains the *Schedules* of WTO Member States. See WTO, *Schedules of Specific Commitments*, at [http://www.wto.org/wto/english/tratop\\_e/serv\\_e/22-specm\\_e.htm](http://www.wto.org/wto/english/tratop_e/serv_e/22-specm_e.htm) (Oct. 13, 2001). The WTO website also contains useful information on how to read the schedules, and what the GATS terminology contained in them means, under the title of "WTO Guide to Reading Schedules."

The *Schedules* are also available in other places. For example, the U.S. *Schedule* is available as a link from the U.S. Trade Representative's website to the U.S. International Trade Commission's website. See <ftp://ftp.usitc.gov/pub/reports/studies/GATS97.pdf> (visited July 16, 2001). The EU maintains the *Schedules* of all WTO Member States. See <http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=eee>.

### **Did Many Countries Include Legal Services on Their *Schedules of Specific Commitments*?**

Yes! Many countries listed legal services in their *Schedules* as a covered service. As a result, for many WTO Member States, legal services are subject to additional provisions in the GATS. According to paragraph 57 of the WTO Sectoral Analysis of Legal Services (S/C/W/43 6 July 1998):



In the Uruguay Round 45 Members (counting the then 12 Member States of the EC as one) made commitments in legal services. Two acceding Members also included legal services in their schedules. Of these 47 Members 22 made commitments in advisory host country law (19 in representation), 41 in advisory international law (20 in representation), 40 in advisory home country law (20 in representation), 4 in advisory third country law and 6 in other legal services (including legal documentation and certification services and other advisory and information services).

...

It appears that in some countries which have undertaken specific commitments the actual legal services regime is more liberal than the regime bound in the schedules and that some countries who have not scheduled specific commitments and have listed MFN exemptions maintain rather liberal legal services regimes.

A footnote to the sectoral analysis identified the following as countries that had made commitments in legal services:

Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Barbados, Canada, Chile, Colombia, Cuba, Czech Republic, Dominican Republic, Ecuador, El Salvador, European Communities, Finland, Gambia, Guyana, Hungary, Iceland, Israel, Jamaica, Japan, Lesotho, Liechtenstein, Malaysia, Netherlands Antilles, New Zealand, Norway, Papua New Guinea, Poland, Romania, Rwanda, Sierra Leone, Slovak Republic, Slovenia, Solomon Islands, South Africa, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, United States, Venezuela. The two acceding Members who had scheduled legal services were Bulgaria and Panama.

The Government of Canada Services 2000 Webpage contains another useful resource that explains the specific commitments undertaken by WTO Member States with respect to legal services. This resource is a document entitled "*Canadian Legal Services: A Consultation Paper in Preparation for the World Trade Organization (WTO) General Agreement on Trade in Services Negotiations*", available at <http://strategis.ic.gc.ca/SSG/sk00035e.html>. Annex B to this document is a summary of GATS commitments related to legal services. Annex B, which treats the European Union countries separately, states: "58 countries provided schedules for legal services but the level of commitment varies significantly by region and country. For reasons of presentation, the examination of sector-specific commitments is grouped by region and limited to Canada's major trading partners." Annex B continues by providing a useful summary of the horizontal and legal services commitments of many WTO Member States.

It is important to understand, however, that even though many countries included legal services on their *Schedules of Specific Commitments*, they often included SPECIFIC LIMITATIONS with respect to their "market access" and "national treatment" obligations. These "standstill provisions" as they often are referred to are discussed below.

## **What Additional Provisions of the GATS Apply Once a Country Has Listed Legal Services on its *Schedule of Specific Commitments*?**

If a country has listed legal services on its *Schedule of Specific Commitments*, then there are additional provisions that will apply to legal services and that are important to know. These additional obligations are: 1) market access; 2) national treatment; 3) additional commitments, if any, and 4) certain aspects of the domestic regulation provision.

### ***What is the “Market Access” Provision in the GATS?***

Article XVI is the “market access” provision in the GATS. If a country lists a particular sector, such as legal services, on its *Schedule of Specific Commitments*, then that country has agreed to provide “market access” with respect to that sector, subject to any limitations noted in its *Schedule of Specific Commitments*.

Except as otherwise noted in a country’s *Schedule of Specific Commitments*, the market access provision would forbid limitations on the number of service providers, for example by quotas, numerical limitations, or monopolies. The market access provision also requires that access to the legal services market not be provided in a manner less favorable than is set forth in the country’s *Schedule of Specific Commitments*. To state it differently, the market access provision focuses on what a WTO Member State may not do, employing a negative approach.

The market access provision could be important in countries that place a limit on the number of foreign lawyers who will be permitted to practice law in the country. The prohibition on “monopolies” might also be considered important.

### ***What is the “National Treatment” Provision in the GATS?***

Article XVII of the GATS is the national treatment provision. If a country lists a particular sector, such as legal services, on its *Schedule of Specific Commitments*, then that country has agreed to provide “national treatment” with respect to that sector, subject to any limitations noted in the *Schedule of Specific Commitments*.

Thus, the “national treatment” provision is important because it acts as an equal protection clause for foreign lawyers as compared to domestic lawyers. If a country has “scheduled” legal services, this article would prohibit regulators from providing foreign lawyers with treatment that is less favorable than the treatment it accords to domestic lawyers, except as specifically noted in the *Schedule*.

Article XVII states that countries may meet the “national treatment” requirement either by according formally identical treatment or formally different treatment. The article explains that formally identical or formally different treatment shall be considered less favorable if it modifies the conditions of competition in favor of domestic lawyers.

### ***What is Meant By the Term “Standstill” Provisions?***

As was explained above, by listing legal services in its *Schedule of Specific Commitments*, a country agrees to provide market access and national treatment for trade in legal services, **except as otherwise noted in the country’s Schedule**. To state it differently, if a rule about legal services is listed in the “market access” or “national treatment” columns of a country’s *Schedule*, this means that the country reserves the right to continue using that rule, notwithstanding the “market access” and “national treatment” obligations that apply with respect to that sector. The rules that a country lists in its *Schedule* sometimes are referred to as “standstill” provisions because the country has not promised to liberalize these provisions, but may not retreat from these provisions.

To summarize, if a country has listed legal services on its *Schedule*, then future laws and current laws not included in the *Schedule* governing legal services must comply with the market access and national treatment provisions in the GATS.

### ***What are the “Additional Commitments” that May Appear in a Schedule?***

Article XVIII of the GATS addresses the topic of “Additional Commitments.” As its name suggests, Article XVIII expressly authorizes WTO Member States to negotiate additional commitments for scheduled sectors. (Any such commitments would be “additional” to the market access, national treatment and domestic regulation commitments that a country assumes when it lists a particular service in its *Schedule*.)

“Reference papers” are one method that WTO Member States may use to indicate their additional commitments. A reference paper sets out the terms and conditions of liberalization (usually for a specified sector.) Once a reference paper is drafted, each WTO Member State may decide whether to accept those provisions. If Member States accept a reference paper, they will indicate this in the “additional commitments” column of their *Schedules*. A Member State may indicate that it accepts the Reference Paper minus certain provisions. One example of a reference paper is the Reference Paper on Telecommunications, which some WTO Member States included in the “additional commitments” column of their *Schedules*.

### ***What are the Remaining “Domestic Regulation” Provisions?***

As noted earlier, the Domestic Regulation provision of the GATS is found in Article VI. Four of its six paragraphs only apply to service sectors that are listed (or “scheduled”) in a country’s *Schedule of Specific Commitments*. The Domestic Regulation paragraphs that apply only to scheduled services are paragraphs 1, 3, 5 and 6, which state:

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the

competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
  - (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
  - (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.
- (b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations applied by that Member. (The term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.)
6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Thus, paragraphs 1, 3 and 6 of the Domestic Regulation provision apply, **without limitation** (*i.e.*, without the possibility of derogation) if a country has listed legal services on its *Schedule of Specific Commitments*. In this respect, paragraphs 1, 3 and 6 are different than the market access and national treatment obligations because a country may not create “standstill provisions” with respect to these domestic regulation obligations or otherwise exempt itself from these three paragraphs.

Since many WTO Member States have included legal services in their *Schedules*, many Members will be obligated to comply with paragraphs 1, 3 and 6, regardless of any particular limitations included in their *Schedules of Specific Commitments*. Therefore, many WTO Member States will have to: 1) ensure that their measures of general application are **administered** in a reasonable, objective and impartial manner; 2) inform a lawyer from another WTO Member State within a reasonable time of any decision concerning the application and respond to requests about the status of the application; and 3) provide adequate procedures to verify the competence of lawyers from other Member States.

Paragraph 5 of the Domestic Regulation provision is different, however. Paragraph 5 has limitations both with respect to the time period during which it applies and with respect to the extent to which a WTO Member State is bound by its obligations. Paragraph 5 applies **ONLY** during the time period in which disciplines for the particular services sector have not yet been developed. Because there are not yet disciplines applicable to legal services, paragraph 5 currently applies to legal services.

Moreover, unlike paragraphs 1, 3 and 6, the obligations owed under Paragraph 5 of Article VI may depend on the **MANNER** in which the WTO Member State scheduled legal services. This is because, on the one hand, Paragraph 5 prohibits WTO Member States from **applying** their domestic regulation provisions if it would “nullify or impair such specific commitments in a manner which does not comply with the criteria

outlined in subparagraphs 4(a), (b) or (c).” On the other hand, Paragraph 5 does not require the Member State to act in such a manner if it could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made. In determining what reasonably could have been expected, one presumably would examine the country’s specific commitments. As a result of this structure, Paragraph 5 might be viewed as creating the equivalent of a “standstill” provision. Paragraph 5(b), however, also specifies that “in determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations applied by that Member.”

In sum, paragraphs 1, 3 and 6 of article VI’s domestic regulation provision apply without limitation once a country includes legal services on its *Schedule of Specific Commitments*, as many countries did. Paragraph 5, however, effectively creates a “standstill” provision because its requirements do not apply if these requirements could not reasonably have been expected of Members at the time that specific commitments in those sectors were made.

(Section III of this Handbook addressed Paragraph 2 of the Domestic Regulation article; Section IV addressed Paragraph 4 of the Domestic Regulation article; and Section XI of this Handbook explains the work that the Council for Trade in Services has undertaken to implement paragraph 4 and develop necessary disciplines.)

### **A Summary of the Key Provisions in the GATS**

In sum, for Member Bars trying to master the key provisions in the GATS, it may be useful to remember that some of the GATS’ provisions are generally-applicable, some provisions apply only if a country placed legal services on its *Schedule of Specific Commitments* and some provisions are the basis for the ongoing work at the WTO that is relevant to legal services.

The chart below helps summarize this information. This four-part analysis can be represented as follows:

Step 1	Step 2	Step 3	Step 4
<p>Analyze the general commitments that a country assumes by signing the WTO Agreement, which includes the GATS:</p> <ul style="list-style-type: none"> <li>• Most Favored Nation (MFN) treatment (art. II)</li> <li>• Transparency (art. III)</li> <li>• Domestic Regulation Review procedures (art. VI, para. 2)</li> <li>• Recognition (art. VII)</li> </ul>	<p>Has the country exempted itself from the MFN requirement that is part of the general commitments?</p> <ul style="list-style-type: none"> <li>• Is the country one of the few that exempted legal services from its MFN obligations?</li> </ul>	<p>What does the country's <i>Schedule of Specific Commitments</i> promise with respect to legal services?</p> <ul style="list-style-type: none"> <li>• Are legal services "scheduled"?</li> <li>• If so, the WTO Member must comply with art VI, para. 1, 3 &amp; 6</li> <li>• If legal services are scheduled and there are no applicable disciplines yet, what does art. VI, para. 5 require with respect to domestic regulation provisions?</li> <li>• Are there any "additional commitments" regarding legal services? (art. XVIII)</li> <li>• If legal services are scheduled, what limitations are included with respect to: <ul style="list-style-type: none"> <li>– Market Access (art. XVI)</li> <li>– National Treatment (art. XVII)</li> </ul> </li> </ul>	<p>What ongoing developments does the GATS require?</p> <ul style="list-style-type: none"> <li>• Progressive Liberalization (art. XIX)</li> </ul> <p>[this is the basis for the GATS 2000 and Doha Round negotiations]</p> <ul style="list-style-type: none"> <li>• Art. VI, para. 4 requires the Council (or its delegate) to develop disciplines for domestic regulation [this work currently is ongoing in the Working Party on Domestic Regulation]</li> </ul>

## VII. Understanding the “Modes of Supply” Language that appears in a country’s *Schedule of Specific Commitments*

In addition to the terminology used in the GATS’ substantive provisions, there is additional terminology with which Member Bars should become familiar. When each WTO Member State filed its *Schedule of Specific Commitments*, there was a specific format that it was required to use. This format required a country’s *Schedule of Specific Commitments* to distinguish among four different modes by which legal services may be offered.

### **What are the Four “Modes of Supply” Referred to on a Country’s *Schedule of Commitments*?**

The four modes of supply are:

- Cross-border supply: the possibility for non-resident service suppliers to supply services cross-border into the Member’s territory.
- Consumption abroad: the freedom for the Member’s residents to purchase services in the territory of another Member.
- Commercial *presence*: the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member’s territory, such as a branch, agency, or wholly owned subsidiary.
- Presence of natural *persons*: the possibilities offered for the entry and temporary stay in the Member’s territory of foreign individuals in order to supply a service.

### **What Would “Mode 1” Look Like for Legal Services?**

In Mode 1, or Cross-Border Supply, the service itself crosses the border. Thus, Mode 1 is involved whenever foreign lawyers create a legal product or advice, which is then sent from outside the country to clients inside the country; this delivery may occur by means of mail, telephonically, or electronically. This is probably the most frequently used Mode, occurring numerous times daily across many of the world’s borders when lawyers offer advice to a client in a different country by phone, fax or e-mail. It does not usually give rise to complaints or problems, possibly because it is very difficult to restrict through regulation. If a WTO Member State has any foreign trade at all, there undoubtedly are domestic lawyers in the country who are engaged in Mode 1.

### **What Would “Mode 2” Look Like for Legal Services?**

Mode 2, or Consumption Abroad, involves the purchase abroad by a country’s citizens of the services of foreign lawyers. There are no statistics for the frequency of use of this Mode, but it is most likely to apply in the business sphere following investment abroad.

### **What Would “Mode 3” Look Like for Legal Services?**

Mode 3, or Commercial Presence, involves foreign lawyers who establish a permanent presence in a country, such as a branch office. This Mode is the one which is most frequently thought about when the GATS is discussed among lawyers. It will usually involve the establishment of an office in a foreign country by one of the large commercial firms. It is frequently politically contentious, and many countries have barriers against foreign law firms being able to set up offices within their borders.

### **What Would “Mode 4” Look Like for Legal Services?**

Mode 4, or the Presence of Natural Persons, addresses the situation in which the foreign lawyers themselves enter a country in order to offer legal services. This is frequently, but not necessarily, linked to Mode 3 since, if a law firm wishes to establish an office abroad, it will also often wish to staff the office with at least some lawyers from the home country. (The lawyers themselves would be an example of Mode 4.) It also applies if the foreign lawyer “flies in” temporarily and is physically present to provide services.

### **What is the Difference Between Mode 1 and Mode 4 for Legal Services?**

It is easy to confuse Mode 1 and Mode 4. The difference is that Mode 1 applies to the legal services PRODUCT and Mode 4 applies to the PERSON who delivers the legal services. The difference between Mode 1 and Mode 4, then, is that in Mode 1, it is the service that crosses the border for example, in a “virtual” fashion by mailing, emailing, or faxing an “opinion letter” whereas in Mode 4, it is the service provider or lawyer who crosses the border. It may be of interest for you to know that the tax laws in some countries may treat the Mode 1 delivery of legal services differently than the country treats the Mode 4 delivery of legal services.

### **What Does the Term “Unbound” Mean When Used in a *Schedule of Specific Commitments*?**

The term “unbound” frequently appears in the legal services section of Member States’ *Schedules of Specific Commitments*. For example, the term “unbound” often is used in the legal services section of a country’s *Schedule* in the “market access” or “national treatment” columns. When the term “unbound” appears, it means that the country has not agreed that legal services must comply with that particular GATS requirement. In other words, if the term “unbound” appears in the “market access” column of Mode 4, then the country has declined to provide market access for legal services. Similarly,



if the term “unbound” appears in the “national treatment” column, then the country has declined to provide national treatment in Mode 4.

The WTO states: “All commitments in a schedule are bound unless otherwise specified. In such a case, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment, the Member has entered in the appropriate space the term UNBOUND.” It is important to note that the term “unbound” refers to a country’s minimum GATS commitments; the country is free to, and often does, provide for a *better* level of treatment than is specified in its *Schedule of Specific Commitments*.

## VIII. Putting the “Modes of Supply” and “*Schedule of Specific Commitments*” Together

### What Would a *Schedule of Specific Commitments* Actually Look Like?

The WTO has posted on its website a document called “WTO Guide to Reading Schedules;” this document is found at [http://www.wto.org/english/tratop\\_e/serv\\_e/guide1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm). Among other things, this WTO guide to reading *Schedules* states:

The national schedules all conform to a standard format which is intended to facilitate comparative analysis. For each service sector or sub-sector that is offered, the schedule must indicate, with respect to each of the four modes of supply, any limitations on market access or national treatment which are to be maintained.

A commitment [for any particular sector or subsector] therefore consists of eight entries which indicate the presence or absence of market access or national treatment limitations with respect to each mode of supply. The first column in the standard format contains the sector or subsector which is the subject of the commitment; the second column contains limitations on market access; the third column contains limitations on national treatment. In the fourth column governments may enter any additional commitments which are not subject to scheduling under market access or national treatment.

In nearly all schedules, commitments are split into two sections: First, “horizontal” commitments which stipulate limitations that apply to all of the sectors included in the schedule; these often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. Any evaluation of sector-specific commitments must therefore take the horizontal entries into account. In the second section of the schedule, commitments which apply to trade in services in a particular sector or subsector are listed.

Reproduced below is an excerpt from that portion of the European Union *Schedule* that addresses legal services. (One would also want to remember to check the “horizontal commitments” portion of the European Union *Schedule*, particularly the portion concerning the movement of natural persons or Mode 4.)

## II. SECTOR-SPECIFIC COMMITMENTS

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>1. Business Services</p> <p>A. <u>Professional Services</u></p> <p>a) Legal advice home country law and public international law (excluding EC law)</p>	<p>1) F, P: Unbound for drafting of legal documents.</p> <p>2) None</p> <p>3) D: Access subject to acceptance into a Bar Association according to the "Federal Lawyers Act" which requires establishment which is restricted to sole proprietorship or partnership only.</p> <p>F: Provision through SEL (anonyme, à responsabilité limitée ou en commandite par actions) or SCP only.</p>	<p>1) F, P: Unbound for drafting or legal documents.</p> <p>DK: Marketing of legal advice activities is restricted to lawyers with a Danish licence to practise and law firms registered in Denmark.</p> <p>2) None</p> <p>2) DK: Marketing of legal advice activities is restricted to law firms registered in Denmark. Only lawyers with a Danish licence to practise and law firms registered in Denmark may own shares in a Danish law firm. Only lawyers with a Danish licence to practise may sit on the board or be part of the management of a Danish law firm.</p>	<p>F: Host country law and international law (including EC law) are opened to the Members of the regulated legal and judicial profession.</p>

Modes of supply: 1) Cross-border supply; 2) Consumption abroad; 3) Commercial presence; 4) Presence of natural persons

### **Should I Expect to Find Any Mistakes as I Look at Various *Schedules of Specific Commitments*?**

Yes! It is worth remembering that there are sometimes mistakes in the way in which countries have completed the legal services portion of their *Schedules of Specific Commitments*. There has been some confusion about which kinds of regulations should be scheduled as market access restrictions, which kind of regulations are national treatment limitations and which kinds of regulation are domestic regulation provisions. Therefore, one can expect to see mistakes in the *Schedules*.

### **Have I Learned Enough about the GATS to Understand How the GATS Might Affect the Regulation of Foreign Lawyers in My Country?**

In order to understand a country's obligations about legal services under the GATS, one must go through several steps of analysis. FIRST, one should recognize that some provisions- including a key provision with respect to domestic regulation - apply to all trade in services, whether or not scheduled. SECOND, one must consult the MFN exemption list; if a country has not placed itself on that list, then reciprocity requirements are improper with respect to foreign lawyers. THIRD, one must consult that country's *Schedule of Specific Commitments*. FOURTH, in order to understand the *Schedule*, one must be able to understand the distinctions in the modes of supply because a country's exceptions are listed as subsets of these four "modes of supply." FINALLY, one must understand that when the term "unbound" is used in a country's *Schedule* in the "market access" or "national treatment" columns, this means that the service in question need not comply with that particular GATS requirement with respect to the particular item that is listed as "unbound."

## **IX. Post-GATS Developments – the WTO Secretariat and its Working Papers**

### **Has Anything Happened Since the GATS Was Signed and Do IBA Member Bars Need to Know about These Developments?**

It is important for Member Bars to realize that much has happened since the GATS was first signed in April 1994. A Member Bar cannot fully understand the obligations imposed by the GATS until it examines these post-GATS developments.

In this respect, the GATS is somewhat similar to an administrative-law system in which a client cannot understand his rights or obligations simply by reading the statute, but must instead wait to find out what the administrative agency regulations say.

There are five key stages of post-GATS developments that it will be useful for Member Bars to know about. While many of these developments occurred simultaneously, it is useful to think about them separately. The five post-GATS developments of which Member Bars should be aware include:

- the Working Papers prepared by the WTO Secretariat and various Member States
- the *Guidelines for Mutual Recognition for the Accountancy Sector*
- the *Disciplines for the Accountancy Sector*
- the ongoing work of the Working Party on Domestic Regulation to develop disciplines that would apply to the legal profession
- the required GATS 2000 (now Doha Development Agenda) negotiations for progressive liberalization

Each of these five developments will be addressed below.

### **What is the WTO Secretariat and Where is it Located?**

As explained in the Executive Summary, the WTO Secretariat, which is based in Geneva, Switzerland, is the administrative body of the WTO. It is responsible for synthesizing the information collected from WTO Member States, preparing minutes of meetings, collecting statistics and preparing other analyses. Thus, any Member Bar interested in the GATS' regulation of legal services must consult the relevant Secretariat papers.

The WTO Secretariat has around 500 staff and is headed by a director general. It does not have branch offices outside Geneva. Since decisions are taken by the Members themselves, the Secretariat does not have the decision-making role that other international bureaucracies are given. The Secretariat's main duties are to supply technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, and to explain WTO affairs to the public and media. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO. The annual budget is roughly 117 million Swiss francs (approximately \$70 million).

## What do the Symbols on WTO Documents Mean?

Each WTO document that is publicly available has a unique set of numbers and letters assigned to it, which is its “name” or symbol. All documents related to the GATS begin with the letter “S.” The second letter designates the entity issuing the document: for example, “C” is used for the Council for Trade in Services; “WPPS” is used for the Working Party for Professional Services; and “WPDR” is used for the Working Party on Domestic Regulation. The third letter indicates the type of document: “M” designates minutes of meetings; “W” indicates a working paper submitted to the entity in question. If no letter is included, it means that the document is an “action” document, such as a *Decision* or *Report*. The fourth item listed is a number; these numbers are issued in chronological order so that S/C/M/24 indicates the twenty-fourth set of minutes issued by the Council for Trade in Services. Secretariat papers are listed as working paper or “W” documents, as are comments and drafts submitted by Member States. “W” documents are non-public, restricted documents unless the author indicates otherwise. Sometimes documents are “derestricted” at a time point after they were first issued. The symbol for each document appears in the upper right-hand corner of the first page of the document, together with the date on which the document was prepared. Reproduced below is the beginning of the Secretariat paper on legal services which includes the document symbol information.

**WORLD TRADE  
ORGANIZATION**

**RESTRICTED**

**S/C/W/43**  
6 July 1998  
(98-2691)

**Council for Trade in Services**

**LEGAL SERVICES**

**Background Note by the Secretariat**

In order to find a specific document or a category of documents, one can use the “document dissemination facility” on the WTO website, [www.wto.org](http://www.wto.org). One should select the “search” function rather than “browse.” In the first entry, which says “document symbol,” one should insert the symbol for the specific document desired, for example, S/C/M/24. Alternately, one can search for a group or category of documents. For example, if one inserted the term “S/C/M,” then one would retrieve all minutes of the Council for Trade in Services that are publicly available. If one inserted the term “S/C/,” then one would retrieve a list of all available Council documents. Alternately, one could use the last entry on the search function, which is called “full text search criteria,” to search for terms such as “legal services.” Once one has a list of documents, one can select the documents *and language* to be downloaded.

## **What Kinds of Analyses Has the WTO Secretariat Prepared that are Relevant to Legal Services?**

The WTO Secretariat has collected data and prepared many background reports to aid WTO Member States in their work. (The key Secretariat papers are maintained on the WTO website at [http://www.wto.org/english/tratop\\_e/serv\\_e/sanaly\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/sanaly_e.htm) (last visited June 25, 2001)).

### ***The Paper on Legal Services***

For legal services, the most relevant Secretariat paper is an analysis of legal services that was issued in July 1998. This paper is included in the appendix to this Handbook which is available to all IBA Member Bars; the title of this document is Council for Trade in Services, *Legal Services, Background Note by the Secretariat*, S/C/W/43 (July 6, 1998).

### ***The Two Papers about Domestic Regulation that Have Been the Basis for the “Horizontal Disciplines” Discussion***

In addition to the Secretariat’s Note on Legal Services, there are some other Secretariat papers that are relevant to the issue of legal services and disciplines for domestic regulation. In 1999, the WTO Secretariat prepared two papers that addressed “domestic regulation” and horizontal disciplines. These papers were issued one month before the new Working Party on Domestic Regulation was formed. As a result, much of the discussion about horizontal disciplines has focused on the issues contained in these two Secretariat’s papers. The Secretariat’s papers identified four key issues: (1) necessity; (2) transparency; (3) equivalence; and (4) international standards. (The citations for these two papers are: Council for Trade in Services, *Article VI:4 of the GATS: Disciplines on Domestic Regulation Applicable to All Services, Note by the Secretariat*, S/C/W/96 (Mar. 1, 1999); and Council for Trade in Services, *International Regulatory Initiatives in Services, Note by the Secretariat*, S/C/W/97 (Mar. 1, 1999)).

### ***Other Papers of Interest***

Other papers of interest include an analysis of the economic effects of services liberalization and an analysis of “Mode 4” involving the “Presence of Natural Persons”. The titles of these papers are: Council for Trade in Services, *Economic Effects of Services Liberalization*, Background Note by the Secretariat, S/C/W/26 (Oct. 7, 1997) and Council for Trade in Services, *Presence of Natural Persons, (Mode 4), Background Note by the Secretariat*, S/C/W/75 (Dec. 8, 1998)).

The Secretariat also prepared several papers that were used by the Working Party on Professional Services as it aided the work to develop *Guidelines* and *Disciplines for the Accountancy Sector*, which are described in the next two sections.

## **X. Post GATS Developments – the *Guidelines for Mutual Recognition for the Accountancy Sector***

On May 28, 1997, the Working Party on Professional Services [WPPS] issued its *Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector*. The Council for Trade in Services approved these *Guidelines* on May 29, 1997.

### **What Are the *Guidelines for Mutual Recognition in the Accountancy Sector*?**

The *Guidelines* were prepared in order to facilitate the “Recognition” provision in the GATS. The *Guidelines* are nonbinding; the purpose of the *Guidelines* is to provide suggestions to WTO Member States about how they might negotiate bilateral or multilateral “recognition” agreements. Among other things, these *Guidelines* suggest the types of information that should be included within a “Mutual Recognition Agreement” (MRA), and they request notification to the WTO of the opening of negotiations concerning an MRA and the result.

These *Guidelines* must be distinguished from disciplines, which address the domestic qualification and licensing requirements of what it takes to become an accountant *or lawyer* in a particular jurisdiction *the basic admission process* rather than recognition.



## **XI. Post GATS Developments – the *Disciplines for the Accountancy Sector***

### **What are the *Disciplines for the Accountancy Sector*?**

On December 4, 1998, approximately one and one half years after it issued the *Guidelines for the Accountancy Sector*, the WPPS approved the *Disciplines for the Accountancy Sector*. Ten days later, on December 14, 1998, the Council for Trade in Services approved the *Disciplines* that had been drafted by the WPPS.

### **Why Were the *Disciplines for the Accountancy Sector* Prepared?**

The obligation to create “disciplines” comes from Article VI of the GATS. Article VI grants the WTO Council on Trade in Services the authority to establish the necessary bodies to create “disciplines” regarding domestic regulation; these “disciplines” were to address qualification requirements, such as the bar admission requirements.

Article VI paragraph 4, states:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, *the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:*

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

The “Decision on Professional Services” which was adopted on April 15, 1994 at the same time that the GATS and other WTO agreements were signed, further explains how these “disciplines” should be developed. This “Decision” directed the Council on Trade in Services to create the Working Party on Professional Services and to begin its effort to develop disciplines by focusing on the accountancy sector. In accordance with this “Decision,” the Council on Trade in Services created the WPPS, which issued the *Disciplines* in December 1998. As noted above, the Council approved these *Disciplines* in December 1998.

## **When Do the *Disciplines for the Accountancy Sector* Become Effective?**

The *Disciplines for the Accountancy Sector* did not become effective immediately after they were adopted. The Decision provides that for those WTO Member States that included accountancy on their *Schedules of Specific Commitments*, the *Disciplines* are to be integrated into the GATS, together with any other new or revised disciplines which have been developed, before the end of the upcoming round of services negotiations. A “standstill” provision (*i.e.*, a promise not to adopt new measures in violation of the accountancy disciplines) does, however, have immediate effect for those WTO Members who included accountancy services on their *Schedules*.

## **What is the Relationship or Overlap Between the *Disciplines and the Schedule of Specific Commitments*?**

One of the difficult issues raised by the *Disciplines* is deciding which types of regulations are covered by the *Disciplines* and which types of regulation are covered by the *Schedules of Specific Commitment*. Because the WTO Member States recognized the potential confusion and overlap when they prepared the *Disciplines*, they decided that the *Disciplines* should include an informal note from the Chairman. See *Discussion of Matters Relating to Articles XVI and XVII of the GATS in Connection With the Disciplines on Domestic Regulation in the Accountancy Sector, Informal Note by the Chairman, S/WPPS/4*, at 9, Job No. 6496 (Nov. 25, 1998) (attached to S/WPPS/4).

The Chairman’s Informal Note has no legal force. Nevertheless, it summarizes the discussion that occurred about the differences between the *Disciplines* and the *Schedules*. As the note explains, the *Disciplines* apply to domestic regulation provisions. The *Schedules* apply to market access regulations. Unfortunately, this Informal Note is not attached to the copy of the *Disciplines* that is available on the WTO website as a hyperlink. However, this *Informal Note* is attached to a document entitled *Report To The Council For Trade In Services On The Development Of Disciplines On Domestic Regulation In The Accountancy Sector, S/WPPS/4* (10 December 1998), that can be downloaded from the WTO webpage.

In sum, there are a few key points to remember. First, one should understand that the *Disciplines* apply to Member States only if they included accountancy services in their *Schedules of Specific Commitment*. Second, one should understand that the *Disciplines* have not yet taken effect, although they have created “standstill” provisions. Third, one should understand that the *Disciplines* only apply to those laws of a Member State that constitute “domestic regulation” provisions. Fourth, one should understand that it is often exceedingly complex, even for the WTO negotiators, to determine whether a Member State’s law is a “domestic regulation” provision rather than a “market access” or “national treatment” provision. Finally, one should understand that if a Member State’s law is considered to be a “market access” or a “national treatment” provision, then the *Disciplines* do not apply to that law.

**Should the *Disciplines for the Accountancy Sector* be Applied to the Legal Profession?**

Currently, the *Disciplines for the Accountancy Sector* do NOT apply to the legal profession. There was a time period in which IBA leaders expected the Working Party on Professional Services to issue *Disciplines* that did apply exclusively and directly to the legal profession. For example, in 1996, IBA leaders were briefed by the WTO Secretariat and told that the WPPS intended to turn to legal services as soon as it finished its work with the accountancy sector. As late as November 1998, the CCBE *Paris Forum Discussion Paper* predicted that the WPPS would begin to develop disciplines for the legal profession in 1999. Within four months of issuing the *Disciplines for the Accountancy Sector*, however, the WPPS was disbanded without ever having considered disciplines for legal profession.

There is significant debate within the legal profession about whether the accountancy disciplines could or should be extended to apply to the legal profession. Different WTO Member States have submitted different positions papers on this issue. This topic is discussed in greater detail below in the section on the Working Party on Domestic Regulation and in the section about the GATS 2000/Doha Development Agenda negotiations (Handbook Sections XII and XIII).

## **XII. Post-GATS Developments – the Working Party on Domestic Regulation and its Efforts to Develop Horizontal Disciplines**

### **When Did the Working Party on Domestic Regulation Replace the Working Party on Professional Services?**

In April 1999, approximately four months after the WPPS had completed its work on the *Disciplines for the Accountancy Sector*, the WTO Council for Trade in Services issued a *Decision* that disbanded the WPPS and replaced it with a new entity, called the Working Party on Domestic Regulation. This *Decision* contains four paragraphs, but the main task assigned to the Working Party on Domestic Regulation (WPDR) was the obligation to develop the disciplines required by the “domestic regulation” provision of the GATS.

### **Why Did the WPDR Replace The Working Party on Professional Services with the Working Party on Domestic Regulation?**

One explanation for the change from the WPPS to the WPDR is found in the minutes of the last meeting of the WPPS; these minutes state:

There was also a widely-held view that all work on domestic regulation should ideally take place in a single forum. This should probably be the WPPS perhaps under a new name reflecting a wider remit. It was also the view of most speakers that work should proceed on a horizontal rather than a sectoral basis, and that the accountancy disciplines would provide a useful starting-point for such work.

### **The WPDR Has Been Working to Develop a “Horizontal Discipline.” What Does this Mean?**

Since it was created in April 1999, the WPDR has been working on whether and how to develop horizontal disciplines that would apply to more than one sector. In the *Decision* that created the WPDR, the GATS Council for Trade in Services expressly acknowledged the possibility that individual sectors, such as legal services, could be treated in disciplines specific to that service. The *Decision* delegated to the WPDR the judgment about whether to develop sector-specific disciplines.

## **What Issues Has the Working Party on Domestic Regulation Been Concerned About?**

At the beginning, most of the discussion within the WPDR addressed the scope and content of possible “horizontal” disciplines that would apply to multiple service sectors. In 1999, at the request of the WPPS, the WTO Secretariat prepared two papers that addressed “domestic regulation” and horizontal disciplines. Because these papers were issued one month before the WPDR was formed, much of the discussion in the WPDR about horizontal disciplines has focused on the issues contained in the Secretariat’s papers. The Secretariat’s papers identified four key issues: (1) necessity; (2) transparency; (3) equivalence; and (4) international standards. In addition to these issues, there has been some discussion in the WPDR about the desirability of having a separate discipline for the legal profession. Each of these discussions is summarized below.

### ***Necessity***

One of the issues that has concerned the WPDR is the meaning of the term “necessary.” GATS Article VI(4) requires the appropriate body, which is now the WPDR, to develop disciplines that aim to ensure that qualification and licensing requirements are “not more burdensome *than necessary* to ensure the quality of the service.” The “necessity” requirement thus modifies the “means” that a country uses to achieve objectives that the country itself has selected; a Member State is free to select its own objectives provided they are “legitimate.”

The meaning of the term “necessary” has been the subject of much discussion. One delegation recommended that the WPDR examine “necessity” from the perspective of the five areas addressed in the *Disciplines for the Accountancy Sector*: qualification requirements, qualification procedures, licensing requirements, licensing procedures, and technical standards. Some Members have expressed the view that the meaning of the term “necessary” was directly linked to the question of what constitutes legitimate objectives. Most Members indicated that it would not be practical to create an exhaustive list of legitimate objectives; some Members expressed the view that legitimate objectives might vary between Members.

### ***Transparency***

With respect to transparency, discussion has focused on the relationship between the transparency provision in Article III of the GATS and Article VI on Domestic Regulation. Some delegations expressed the view that the two provisions were not in conflict, whereas other delegations said the relationship needed to be further explored. The delegations also discussed the view expressed in Paragraph 31 of the Secretariat paper S/C/W/96 that some of the transparency measures from the *Disciplines for the Accountancy Sector* may not be applicable horizontally generally.

As was true for the issue of “necessity,” some delegations suggested that the WPDR examine “transparency” from the perspective of the five areas addressed in the *Disciplines for the Accountancy Sector*. They further indicated that similar provisions could be applied to at least some services sectors.

### *Equivalence*

Although the WPDR has indicated that the issues of necessity and transparency have been the focus of most of the discussions, the WPDR minutes also memorialize some discussion about “equivalency.” As the Secretariat explained, the “equivalency” doctrine is relevant to disciplines and domestic regulation because:

Regulators are often called upon to assess the equivalence of domestic and foreign qualifications. In many cases they may require foreign applicants for licences or other authority to provide a service to undergo tests or to fulfill conditions to demonstrate equivalence. Since such tests are imposed in order to ensure that a domestic standard is met, they may be regarded as domestic regulations.

The minutes show that some delegations believed that equivalency is less likely than transparency to be applicable horizontally to all different kinds of services. There also was some disagreement about whether equivalency primarily concerned Article VII of the GATS, related to recognition, rather than domestic regulation and disciplines. A number of members expressed the view that additional information was required on this point.

### *International Standards*

Although not the main focus of discussion, the WPDR has also discussed international standards, which was the fourth point in the Secretariat’s memo S/C/W/96. Article VII(5) of the GATS requires WTO Member States to “work in cooperation with relevant intergovernmental and non-governmental organizations toward the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.”

When discussing international standards, the WPDR delegations identified as issues for further discussion the issues of voluntary versus mandatory standards and technical versus performance standards. There was also some discussion among delegation members about the proper role of international professional organizations.

### *What Role Could the IBA Play With Respect to International Standards?*

As noted above, the GATS recognizes the important role of “relevant international organizations” in the development of standards and criteria for licensing and regulation of professional service providers. The term “relevant international organizations” is defined in a footnote to the GATS as referring to “international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.” The International Bar Association (“IBA”) is thus a “relevant international organization” within the meaning of the GATS. It is also a “non-governmental organization” or “NGO” with which, under Article V (2) of the Marrakech Agreement, the General Council of the WTO is directed to “make appropriate arrangements for consultation and cooperation.” Under guidelines for such arrangements duly promulgated by the General Council in July 1996, the WTO Secretariat is called upon to “play a more active role in its direct contacts with NGO’s which, as a valuable resource, can contribute to the accuracy and richness of the public debate.”

The IBA is in an ideal position to speak for the world's legal profession. Accordingly, the IBA Council has determined that it would like to be viewed as the global voice of the legal profession. The IBA has prepared a resolution on this issue and has submitted its views to the WTO Secretariat in Geneva. In general, the role and objectives of the IBA in connection with the evolution of the WTO rules are at least two-fold. First, as the Council on Trade in Services works to fulfill its mandate to develop the disciplines referred to in Article VI (4) of the GATS, it is of critical importance that, insofar as those disciplines relate to the practice of law, the Council be aware of and take into account the particular considerations applicable to the legal profession and the important role of a free, independent legal profession in upholding the rule of law, which is, in turn, critical to the operation of free markets and open trade in goods and services. The IBA, as the most fully representative international organization of the legal profession, has both the credibility and the expertise to work effectively with the Council, the Secretariat, and national delegations in this regard. Second, as a result of the decisions taken at the WTO ministerial meeting at Doha in November, a new round of negotiations toward further liberalization will now begin, and this will include negotiation of further commitments in the area of services, including professional services, and more particularly legal services. While the decisions in this process will be taken by individual governments, the IBA can play an important role in monitoring those negotiations, reporting to its member bar organizations on the issues that may arise in that context, and coordinating the approaches of those organizations to their respective governmental authorities.

To the extent that WTO Members have submitted proposals about legal services in the ongoing GATS negotiations, these proposals thus far have principally focused on regulatory barriers that prevent lawyers from one Member from practicing within the territory of another Member. In this connection, the debate has been framed primarily in economic and trade terms, such as "market access" and "trade barriers," including among the latter regulatory restrictions on cross-border practice. Relatively little attention has been given to the nature and scope of regulation of the legal profession that *would* be permissible under the GATS as "necessary to ensure the quality of the service" and to protect the public interest. As an organization whose Council consists of representatives of the national bars of most jurisdictions of the world, the IBA takes great interest in ensuring that the principles for the liberalization of international trade in legal services developed in the course of the GATS negotiations are consistent with generally-recognized standards and criteria of qualification and conduct that are unique to the legal profession but common to all lawyers. As trade in legal services is progressively liberalized under the GATS, these standards and criteria should be affirmatively articulated and steps taken to ensure their preservation.

The IBA expresses its views on these and other issues through resolutions of its Council and representations of its officers based on those resolutions. To date, the IBA's Council has communicated its views to the WTO on four key professional issues: the core values of the profession; regulation of cross-border establishment; regulation of multi-disciplinary practices; and standards and criteria for mutual recognition of professional qualifications. The IBA Council's views on these issues have been acknowledged by the WTO, and the relevant committees of the IBA and representatives

of its Council are in regular communication with the WTO Secretariat. With the new round of trade negotiations now underway, the IBA will maintain an active interest in developments and will work to ensure that its member bars are informed of these developments as they take place. It will also encourage its member bars to participate actively in the appropriate processes at the national level where, in the words of the General Council's Guidelines on Arrangements with NGO's, "lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making."

### ***Consultations with Domestic Organizations***

As a result of a suggestion from Hong Kong, the WPDR decided that Members should consult on a voluntary basis with their domestic professional associations concerning the potential applicability of the *Disciplines for the Accountancy Sector* to their professions. The WPDR set a deadline of December 31, 1999 to complete these domestic consultations with the relevant professional organizations and until March 31, 2000 to notify the WTO of the results of the consultations. During a series of meetings in July 2000, the WPDR heard from WTO Member States about these consultations:

Several Members informed the working party on their consultations with domestic professional organizations regarding the applicability of the accountancy disciplines to other professions. In general, these organizations think the disciplines are useful and relevant and could apply, with some changes for each profession, to them.

The Members went on to discuss concepts relating to the development of regulatory disciplines based on a draft Secretariat Check-list of issues currently under discussion, focusing primarily on the concepts of necessity and transparency. The WPDR's Annual Report for 2000 provided additional detail about these consultations:

Members reporting on their domestic consultations stated that the initial responses, although limited in number, were generally positive. Some professions requested additional disciplines to cover the specificities of their particular sector. A number of Members circulated formal and informal written reports of their consultations, including Australia; the European Communities; Hong Kong, China; Japan; Poland; the United States and Uruguay. The Secretariat was asked to compile a synthesis of Member responses to date. Regarding international professional services organizations, the Secretariat prepared and revised a listing of the organizations identified by Members. As of the October 2000 meeting, Members had not yet determined the procedures for Secretariat consultations.

### **What Is the Nature of the Debate about Whether the Legal Profession Should Be Covered by a "Horizontal Discipline"?**

One of the issues that has concerned WTO Member States is the question of whether the legal profession should be covered by its own discipline. Perhaps not surprisingly, many lawyers and bar leaders believe that the legal profession should be addressed in a separate discipline. Thus, in contexts outside of the WTO, bar associations have expressed the view that domestic regulation of the legal profession should be addressed



separately. Up until now, most of the public comments by world bar associations have expressed unease about applying the *Disciplines for the Accountancy Sector* to the legal profession or by including the legal profession within a horizontal discipline that is not specifically tailored to the legal profession.

The Japan Federation of Bar Associations, the CCBE, the Federation of Law Societies of Canada, the Canadian Bar Association and the American Bar Association Section of International Law and Practice are among the bar associations that have expressed reservations about extending the *Disciplines* to the legal profession.

The Canadian Bar Association and the Federation of Law Societies of Canada have been responsible for two of the most detailed papers about why they believe it would be inappropriate to apply the *Disciplines for the Accountancy Sector* to the legal profession. The Canadian Bar Association paper, which is entitled *Submission on The General Agreement on Trade in Services and the Legal Profession: The Accountancy Disciplines as a Model for the Legal Profession*, is found at Canadian Bar Association, *Submission on The General Agreement on Trade in Services and the Legal Profession: The Accountancy Disciplines as a Model for the Legal Profession 1* (Nov. 2000), available at <http://www.cba.org/EPIIgram/November2000/pdf/00-30-eng.pdf> (last visited June 15, 2001). The Federation of Law Societies of Canada paper is titled *Meeting Canada's Current Obligations for the Legal Profession under the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) (Adopted by the Law Societies on Feb. 24, 2001)* available at <http://www.flsc.ca/english/committees/wto/wto.htm> (visited March 13, 2002).

The Report of the Federation of Law Societies made the following observations about the *Disciplines*:

- The unique values and role of lawyers, as described in Section 1.4, would need to be included.
- The discussion of technical standards is unknown within the legal profession in Canada, and in our experience, within the legal profession worldwide. In the cultural context of the Canadian legal system (and, we think, the legal profession worldwide), these would be replaced by notions of professional competence, and, separately, of professional ethics.
- There needs to be some definition of 'law' and 'legal services'. The WTO Secretariat Briefing Note provides a good starting point for a definition.
- The Accountancy Disciplines appear to be predicated on a notion that accounting standards and practices are global and overarching. As noted at the beginning of this paper and in sections 1.3 and 1.4, that conceptualization is only applicable at the highest level of generalization about legal systems, and is not applicable to the professional work most lawyers perform for their clients. The Accountancy Disciplines need to include the notion that law is local (within member countries and within internal jurisdictions of those countries), and that understanding and being able to work within these systems of law is central to the task of defining what it means for a lawyer to be competent.

The Federation's Report concluded that it was possible to modify the architecture of the *Disciplines for the Accountancy Sector* to retain much of what is and should be universal to the regulation of professions, and at the same time to reflect the unique values of the legal profession.

In addition to these observations, the Report included Appendix A, which was entitled “Appendix A - Applying the Accountancy Disciplines to the Licensing of Foreign Legal Consultants in Canada.” This eight-page Appendix analyzed the issues that would be raised if one were to apply to the *Disciplines* to Canada’s currently scheduled commitments for permitting Foreign Legal Consultants to practice in Canada.

The Canadian Bar Association paper also identifies some concerns about applying the *Disciplines for the Accountancy Sector* to the legal profession. This paper requests that “law society rules concerning matters which relate to the public interest not be subject to review by a third party dispute settlement body” because, inter alia, issues of public protection should not be left to a panel of experts from other countries with little or no familiarity of Canada’s legal history and culture.” In its discussion, the CBA identified eight provisions in the Accountancy *Disciplines* “which . . . raised concerns.” These concerns included the following:

- 1) Art. I, para. 1, because of its prohibition on unnecessary barriers to trade, its requirement that measures not be more trade restrictive than necessary to a fulfill a legitimate objective and its non-exhaustive list of legitimate objectives;
- 2) Art. III, para. 2 regarding licensing requirements insofar as it requires member states to consider whether less restrictive means than residency requirements would suffice;
- 3) Art. III, para. 2 regarding licensing requirements insofar as it provides that if membership in a professional organization is required to fulfill a legitimate objective, members must ensure that the terms of membership are reasonable and do not include conditions unrelated to the fulfillment of the objective;
- 4) Art. III, para. 4, insofar as it provides that members ensure that the use of firm names is not restrictive unless in fulfillment of a legitimate objective
- 5) Art. III, para. 5 insofar as it covers indemnity insurance and requires regulators to take into account the applicant’s existing coverage insofar as it covers activities in the host member’s territory and is consistent with the legislation in the host state;
- 6) Art. V, para. 1 regarding qualification requirements insofar as it requires member states to ensure that their governing bodies take into account qualifications acquired in the territory of another member state;
- 7) Art. V, para. 2 regarding qualification requirements insofar as it requires that the scope of examinations and other qualifications requirement be limited to subjects relevant to the activities for which authorization is sought; and
- 8) Art. VII, para. 1 and 2, regarding technical standards insofar as they require member states to ensure that measures relating to technical standards only fulfill legitimate objectives and urges member states to take into account internationally recognized standards of relevant international organizations.

At this point in time, it is not clear where the work of the WPDR will lead, whether it will issue horizontal disciplines, and whether those disciplines will apply to legal services. It is clear, however, that both the WTO Secretariat and the Member State representatives have heard from many different professions (architects, engineers, lawyers, etc.) that their respective professions are “unique” and therefore should be treated with “specificity.” Because many professions claim to be “unique” and because of the length

of time it takes to draft separate disciplines for each profession, IBA Member Bars should realize that arguments about the “unique nature” of the legal profession and the need for specificity may be met with a certain amount of skepticism by WTO Member States. If the IBA Council ultimately were to decide to recommend that a separate discipline was desirable for the legal profession because the legal profession is “unique,” the IBA Council would need to think carefully about the rationale that it would present about why the legal profession’s request for “specificity” is justified and offer the best possible case that it can.

Thus, it is not clear what result the WPDR will produce or whether lawyers will be treated separately or with other service providers. While the WPDR is engaged in its work regarding horizontal disciplines, however, developments are also occurring in the GATS 2000/Doha Development Agenda negotiations, which are discussed below.

### **What are Some of the Key Provisions in the *Disciplines for the Accountancy Sector*?**

As the prior section shows, one of the key questions that IBA Member Bars may be asked by their trade representatives is whether it would be appropriate for that particular country to apply the *Disciplines for the Accountancy Sector* to its legal profession. The *Disciplines* can be found in the IBA Handbook Appendix and on the Internet at [http://www.wto.org/english/news\\_e/pres98\\_e/pr118\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr118_e.htm). The *Disciplines* contain twenty-six paragraphs and thus are too lengthy to summarize in this Handbook. However, some of the key provisions are summarized below.

Paragraph 2 of the *Disciplines* is one of the most important provisions. It explains that the domestic regulation requirement requires all WTO Member States who have Scheduled accountancy services to:

[E]nsure that [licensing requirements and procedures, technical standards and qualification requirements and procedures] are not more trade-restrictive than necessary to fulfill a legitimate objective. Legitimate objectives are, inter alia, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.

One of the concrete accomplishments of the *Disciplines* is that it provides a definition of what constitutes a “legitimate objective.” While some may disagree with this definition, the fact that a definition exists makes it more likely that countries will be using the same standards to explain their disagreements, even if they apply those standards differently.

Paragraph 5 of the *Disciplines* requires licensing procedures to be pre-established and requires prompt notification of the applicant. In addition, this paragraph specifies the manner in which substantive requirements shall be applied:

Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfill qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall be given

the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

Paragraph 6 of the *Disciplines* addresses the issue of how applicants from other jurisdictions should be treated. It states that:

A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.

## **XIII. Post-GATS Developments – the GATS 2000 and Doha Development Agenda Negotiations**

### **What Happened at Doha?**

As noted earlier, on November 14, 2001, at the Fourth WTO Ministerial held in Doha, Qatar, the WTO Member States agreed to a new Ministerial Declaration. (This is document WT/MIN(01)/DEC/1 (20 November 2001)). With respect to services, this Declaration indicated that the new comprehensive round of negotiations would build on the work undertaken in connection with GATS 2000:

The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons.

As this Doha Ministerial Declaration recognizes, the Doha Development Agenda negotiations, which were authorized in Doha, will build on the Services negotiations that began in early 2000. The prior negotiations, referred to as either the GATS 2000 or “built-in agenda” negotiations, were undertaken pursuant to Article XIX of the GATS, which requires “progressive liberalization” and required new negotiations to begin within five years of the signing of the GATS.

### **When Will the New Round of Negotiations about Legal Services End?**

According to the Ministerial Declaration, the Doha Development Agenda negotiations shall be concluded not later than 1 January 2005. In addition to this deadline, the Doha Ministerial Declaration specified three additional deadlines. First, the Ministerial Declaration stated that it:

reaffirm[ed] the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement.

Second, the Doha Ministerial Declaration directed participants to submit initial requests for specific commitments by 30 June 2002. Third, the Doha Ministerial Direction directs that initial offers be submitted by 31 March 2003.

## **Which Countries Have Submitted Negotiating Proposals Regarding Legal Services?**

As of August 2001, approximately nine countries, including the United States, had issued negotiating proposals that addressed *directly or indirectly* legal services. Some of these countries, such as the United States and Australia, issued proposals that focused exclusively on legal services. Other Member States, such as the European Union and Canada, issued proposals directed toward professional services, which included legal services. Some countries, such as Japan and India, issued proposals that addressed legal services or professional services, even though the scope of the proposal was not apparent from the title of the document. In addition to the proposals directed towards specific sectors, such as legal services, some countries, including Australia and Singapore, the Mercosur countries, Switzerland and Norway, submitted proposals about negotiating procedures.

## **How Can an IBA Member Bar Learn about New Legal Services Negotiating Proposals?**

The WTO currently maintains a very useful page on its website in which it lists the negotiating proposals submitted by WTO members and organizes these proposals according to subject matter. This web page is found at [http://www.wto.org/english/tratop\\_e/serv\\_e/s\\_propnewnegs\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm). (The proposals concerning legal services may be listed under the topic of “professional services” proposals, or “legal services” proposals, or “business services” proposals or “movement of natural persons” proposals.)

In addition to the WTO web page, several other websites have information of interest. The EU group entitled European Services Forum has a web page on which it posts all of the proposals. (Unlike the WTO webpage, the European Services Forum currently maintains the proposals as “hotlinks” so that one need not download and decompress the file, as is required on the WTO webpage.) See [http://www.esf.be/e\\_pages/GATS%20Negotiating%20Proposals.htm](http://www.esf.be/e_pages/GATS%20Negotiating%20Proposals.htm). The Canadian Government Services 2000 website has a page devoted to professional services, including legal services, that is quite useful and contains many links. See <http://strategis.ic.gc.ca/SSG/sk00052e.html>. The U.S.-based group called Coalition of Service Industries has posted an analysis of the proposals that address legal services. See [http://www.uscsi.org/publications/papers/CSI\\_Prof\\_Services\\_Summary.pdf](http://www.uscsi.org/publications/papers/CSI_Prof_Services_Summary.pdf).

## **How Are “Legal Services” Defined in the New Round of Negotiations?**

When a country submits its “request-offer” proposals during the GATS 2000/Doha negotiations, it generally is expected to do so using an agreed-upon classification system. To date, however, there is no agreement about the classification system that should be used for legal services.

As described in the earlier section on the definition of legal services, in the Uruguay Round negotiations before the GATS was signed in 1994, the WTO Member Countries had agreed on a “Services Sector Classification System” in which legal services was a single item. Under that classification system, the term “legal services” was not defined.

(That classification system was based on the U.N. classification system and is found at *Services Sectoral Classification List, Note by the Secretariat*, MTN.GNS/W/120 WTO (July 10, 1991) and at *The W120: Services Sectoral Classification List*, at <http://www.ita.doc.gov/td/sif/GATS/W120.htm> (last visited June 21, 2001)).

In the GATS 2000/Doha negotiations, however, some countries have suggested that sub-sectors for legal services should be created and that a revised classification system should be used during the negotiations to formulate the “offer-request” proposals. The United States, for example, has requested:

an improved classification scheme that better reflects the realities of trade in services to which all Members will adhere. The classification scheme that many Members use to schedule their commitments, contained in MTN.GNS/W/120, served a useful purpose in the Uruguay Round, allowing negotiators to move quickly into market access negotiations. Significant improvements can be accomplished with limited, specific changes to W/120 as it now stands. We intend to work with other Members to meet the agreed deadline of March 2001 to conclude classification work in the Committee on Specific Commitments, as this will provide a stronger basis for more meaningful market access negotiations. *The GATS classification system should better reflect the reality of the marketplace.*

Some of the GATS 2000 proposals submitted by Member States offer concrete suggestions as to the appropriate classification system for legal services. For example, India, has suggested in document S/CSS/W/12 (Nov. 24, 2000) that legal services be divided into subsectors that focus on the individual professionals. The United States suggested in document S/CSS/W/28 (Dec. 18, 2000) that “the classification should be understood to include the provision of legal advice or legal representation in such capacities as counseling in business transactions, participation in the governance of business organizations, mediation, arbitration and similar non-judicial dispute resolution services, public advocacy, and lobbying,” — which is a broader definition than some countries use. Canada suggested in document S/CSS/W/52 (March 14, 2001) that there be a sub-sector for “foreign legal consultancy services (advisory services on foreign and international public law.)”

Australia recently submitted a supplemental proposal that focused exclusively on the issue of the proper classification system for legal services. (This is document S/CSS/W/67/Supp.2 (11 March 2002)). The Australian proposal responded to two questions posed in the Secretariat’s sectoral analysis of legal services. First, Australia answered “yes” in response to the question of whether the WTO Services Sectoral Classification list (W/12) should be revised to take into the account the distinctions that appeared in the *Schedules* during the last round of negotiations. Australia also answered “yes” in response to the question of whether the distinction between host-country, international, home-country and third-country law is satisfactory.

In the “proposal” section of its document, Australia identified twelve categories that it believed should be considered subcategories of legal services. They included: 1) home-country law (advisory services); 2) home-country law (representation services); 3) third-country law (advisory services); 4) third-country law (representation services); 5) host country law (advisory services); 6) host-country law (representation services); 7) international law (advisory services); 8) international law (representation services);

9) international commercial arbitration services; 10) other alternative dispute resolution services; 11) preparation and certification of legal documents; and 12) other legal advisory or consultancy services.

### **What Has the IBA Had to Say about the Definition of Legal Services?**

The IBA has not formally adopted any resolutions that recommend the classifications system to be used when presenting legal services proposals in the upcoming round. Several IBA resolutions, however, use terminology that may be appropriate. The IBA *Statement of General Principles for the Establishment and Regulation of Lawyers* contrasts the concepts of “limited licensing” of foreign lawyers and “full licensing” of foreign lawyers. It also talks about home law, host law, third country law and international law. At least in part because of the IBA’s efforts, this terminology is now widely used by lawyers. The GATS 2000 Negotiating Proposal submitted by Australia (S/CSS/W/67/Supp.1/Rev.1) used the IBA terminology. The IBA may have a role to play in the current Doha negotiations in facilitating the use of more consistent terminology regarding legal services in the “requests” and “offers” submitted by WTO Member States.

The Canadian Bar Association has predicted that the WTO will ultimately adopt a classification system for legal services similar to the terminology used by the IBA. It stated:

It appears that the regulation of legal services will be considered in different categories: home country law (the law of the jurisdiction of the lawyer); host country law (the law of the jurisdiction where the lawyer is “practicing”) and international law. Each category has been subdivided into advice and representation in court. It is possible for a country to have different qualification and licensing rules for the different types of practice.

### **How Can a Member Bar Influence the Negotiating Proposals by its Country’s Representatives to the WTO?**

In order for an IBA Member Bar to participate in the development of negotiation proposals, it must learn at least two things. First, it must find out which entity submits proposals to the WTO on behalf of its country. The WTO web page includes a document that lists this contact information for all WTO Member States. See [http://www.wto.org/english/news\\_e/pres01\\_e/pr217\\_e.htm](http://www.wto.org/english/news_e/pres01_e/pr217_e.htm). Once an IBA Member Bar has this contact information, it must determine the best method to provide guidance and input to that entity. This is not always easy to determine.

### **What Does the Concept of “Decoupling” Mean in the Context of GATS Negotiations?**

One aspect of the Doha negotiations with which IBA Member Bars should be aware is the concept of “decoupling.” The term “decoupling” refers to the idea that a country might have, in a particular services sector such as legal services, asymmetrical “requests” and “offers.” In the past, it has been common for a country to “request” more liberalization in a particular sector (for example in legal services) than that country is



itself prepared to “offer” to other countries. Because of this past history, some governments have advised the bar associations and lawyer organizations to “decouple” their recommendations about the “requests” and “offers” for legal services and to consider “requesting” more than the bar would be prepared to “offer.”

The reason why a country might choose to “request” more liberalization in a particular sector than it is prepared to “offer” is because the negotiations are not simply bilateral negotiations about a single sector. Because countries negotiate their entire “package” of services, they sometimes choose to request more liberalization in areas in which there is strong interest in their country, while making “offers” or concessions in different sectors in which other countries have particularly strong interests. Thus, when formulating their recommendations, IBA Member Bars should be aware of the possibility of “decoupling” their recommendations. IBA Member Bars may want to consider the desirability of asking their governments to “request” liberalization of legal services, even though the Member Bar is not prepared to recommend that an “offer” be made on the same conditions. Although this may seem both dishonest and bad negotiating tactics (because it may be thought that it will rebound on the Bar concerned when the negotiations begin in earnest), the tradition of “decoupling” is well-established in trade-talks. The rationale in favor of decoupling is that the legal services sector will not be negotiated on its own, and so questions of honesty and tactics have to be decided not sector-by-sector, but in terms of the overall negotiations, of which only the country’s professional negotiators may have a clear view.

### **What Is the Meaning of the Term “Reference Paper” in the Context of GATS Negotiations?**

Some of the negotiating proposals about legal services refer to a “reference paper.” A reference paper sets out the terms and conditions of liberalization. Under a reference paper approach, each WTO Member State has the option to decide whether to accept those provisions. If Member States accept a reference paper, they will indicate this in the “additional commitments” portion of their *Schedule*, as permitted by GATS article XVIII.

### **Is there Any Common Ground in the Negotiating Proposals about Legal Services?**

The IBA Council has prepared a resolution about the GATS that attempts to distill the common ground among IBA Member Bars. This resolution states:

Having due regard to the public interest in deregulating the legal profession as presently undertaken by the WTO and the OECD with the aim of

- amending regulations no longer consistent with a globalized economy and
- securing the provision of legal services in an efficient manner and at competitive and affordable prices,

the Council of the International Bar Association, considering that the legal profession nevertheless fulfills a special function in society, distinguishing it from other service providers, in particular with regard to its role in facilitating the administration of

and guaranteeing access to, justice and upholding the rule of law,

- its duty to keep client matters confidential,
- its duty to avoid conflicts of interest,
- the upholding of general and specific ethical and professional standards,
- its duty, in the public interest, of securing its independence, politically and economically, from any influence affecting its service.

**resolves**

that the preservation of an independent legal profession is vital and indispensable for guaranteeing human rights, access to justice, the rule of law and a free and democratic society and that any steps taken with a view to regulating the legal profession should respect and observe the principles outlined above.

An analysis of the various GATS 2000 proposals regarding legal services is beyond the scope of this Handbook. Although the legal services proposals differ in many respects, it does not appear that any of the proposals are inconsistent with the IBA Resolution quoted above.

Although the proposals are consistent with this Resolution, there are several other observations about these proposals that might be made. One notable aspect of the proposals is the lack of concrete detail to date. Despite the lack of detail, one can often sense strong differences in the tone of the submissions concerning legal services. For example, the Australian submission seems to welcome liberalization, whereas the Japanese submission is clearly cautious about liberalization. For example, the Japanese proposal states:

As overseas business activities are expanding, there is an increasing need for professional knowledge to conduct business abroad smoothly. As a result, globalisation has become an important issue for professional services. However, each professional service is carried out by a professional with a specific qualification, such as a lawyer, an accountant, a patent attorney, an architect and an engineer. It should be noted that the scope for each profession varies from one country to another and each profession is subject to a specific discipline that is unique to each profession and country. Liberalisation in these sectors, therefore, needs to take into account the specific characteristics of the profession in question.

The Australian proposal states:

Australia has consistently argued within the WTO the importance of liberalising trade in legal services. Not only would such liberalisation improve opportunities for legal service providers, but it would also facilitate access by businesses, particularly those operating across different jurisdictions, to a comprehensive range of legal services by a common provider. The current market access barriers in legal services serve as a hindrance to trade in other services for example, when firms in other service areas are unable to gain access for their own legal advisers to foreign jurisdictions.

**Conclusion**

The purpose of this Handbook was to provide background information to IBA Member Bars about the GATS or General Agreement on Trade in Services and the ongoing negotiations about legal services. In particular, it was designed to assist Bars understand the history, process and the technical terms used in the context of the GATS. We hope you have found it useful.

### XIII. Glossary of Terms

Topic	Page Reference
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Transparency	8, 9, 15, 29, 34-35, 38
Unbound	22
Uruguay Round	6, 12, 15, 38, 42

## **XIV. Websites of Interest (in English):**

### **Webpage Locations of WTO Documents relevant to Legal Services**

1. WTO Homepage  
<http://www.wto.org/>
2. The GATS Agreement  
[http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.wpf](http://www.wto.org/english/docs_e/legal_e/26-gats.wpf)
3. WTO Guideline to Reading a Schedule of Specific Commitments  
[http://www.wto.org/english/tratop\\_e/serv\\_e/guide1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm)
4. WTO Webpage with Links to Countries' Schedules of Specific Commitments  
[http://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_commitments\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm)
5. WTO Page Listing MFN Exemptions  
[http://www.wto.org/english/tratop\\_e/serv\\_e/23-iiexm\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/23-iiexm_e.htm)
6. WTO Page with the Guidelines for Recognition of Qualifications in the Accountancy Sector  
[http://www.wto.org/english/news\\_e/pres97\\_e/pr73\\_e.htm](http://www.wto.org/english/news_e/pres97_e/pr73_e.htm)
7. WTO Page With the Disciplines for the Accountancy Sector  
[http://www.wto.org/english/news\\_e/pres98\\_e/pr118\\_e.htm](http://www.wto.org/english/news_e/pres98_e/pr118_e.htm)
8. WTO Page of the Doha Ministerial Declaration (with the Doha Development Agenda deadlines)  
[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)
9. WTO Webpage Listing Negotiating Proposals (requires downloaded and decompression):  
[http://www.wto.org/english/tratop\\_e/serv\\_e/s\\_propnewnegs\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm)

### **Webpages of Other Organizations about the WTO and the GATS**

10. Homepage of European Union about the new round of negotiations:  
[http://trade-info.cec.eu.int/europa/2001newround/index\\_en.php](http://trade-info.cec.eu.int/europa/2001newround/index_en.php)
11. European Services Forum Page with Unzipped Copies of the Current Negotiating Proposals  
[http://www.esf.be/e\\_pages/GATS%20Negotiating%20Proposals.htm](http://www.esf.be/e_pages/GATS%20Negotiating%20Proposals.htm)
12. Homepage of the European Services Forum  
[http://www.esf.be/f\\_e\\_link.htm](http://www.esf.be/f_e_link.htm)
13. Professional Services Page of Industry Canada Webpage  
<http://strategis.ic.gc.ca/SSG/sk00052e.html>
14. WTO Page of the Canadian Bar Association  
<http://www.cba.org/EPIIgram/February2000/>
15. WTO Page of the Federation of Law Societies of Canada  
<http://www.flsc.ca/english/committees/wto/wto.htm>

16. WTO and Services Homepages of the United States Trade Representative  
<http://www.ustr.gov/wto/wto.shtml>  
<http://www.ustr.gov/sectors/services/services.shtml>
17. Homepage of the US Coalition of Services Industries and CSI's Summary of GATS Proposals  
<http://www.uscsi.org/>  
[http://www.uscsi.org/publications/papers/CSI\\_Prof\\_Services\\_Summary.pdf](http://www.uscsi.org/publications/papers/CSI_Prof_Services_Summary.pdf)
18. WTO Page of the Transnational Legal Practice Committee of the American Bar Association  
<http://www.abanet.org/intlaw/divisions/comparative/gats2000.html>
19. WTO Page of the "Crossingthebar" Website  
<http://www.crossingthebar.com/GATSandNAFTA.htm>
20. WTO Webpage of the Australian Department of Foreign Affairs and Trade  
<http://www.dfat.gov.au/trade/negotiations/services/index.html>
21. CCBE Policy Statement on GATS 2000  
<http://www.ccbe.org/UK/uk.htm>