



The GATS and the Legal Profession

Alison Hook
Head of International
The Law Society



How is the World Trade Organisation involved in lawyer mobility?

- International trade in goods managed at a global level since 1947.
- Services only from 1994 through the General Agreement on Trade in Services (GATS) agreement under WTO umbrella.
- Uruguay Round agreement of 1994 included legal services in international trade talks for the first time.
- 48 countries made commitments to open their legal markets in legal services.

What is the GATS?

- 29 articles (3 main sections)
- Set of general principles governing all service sectors
- Specific commitments (what areas will country cover? How will it define what it is committing? What time frame?)
- Annexes negotiated on specific areas of services (telecommunications, financial services, maritime transport)



General Principles for Trade in Services

GATS agreement is aiming to produce in all service sectors:

- 'Most-favoured-nation' treatment (no less favourable than any other country)
- 'National treatment' (no less favourable than to your own)
- Regulations have to be objective and reasonable
- Commitments are negotiated and bound
- Transparency in regulation
- A ongoing process of liberalization: through further negotiations

How does the GATS work?

Do you make commitments in legal services?
(e.g. what do you commit? Advisory or representational? Home country, host country? Modes of service delivery)



Do you limit market access?
(e.g. limitations on number of firms, value of transactions, number of people, restrictions on legal entity, limit on foreign capital)



Do you restrict national treatment?
(e.g. must be a national to hold the local qualification)



What time frame?





Additional Points for Legal Services

- GATS disciplines on domestic regulation offer a framework for discussions on mobility.
- Framework for mutual recognition agreements on qualifications etc but must be open to all.
- Discussion underway (initiated by Australia) on classification of legal services i.e. what's included in discussions and what's not.
- Doha negotiations began in November 2001. Ongoing and unlikely to conclude quickly. Emphasis now shifting to bilateral agreements.



Why its worth thinking about market opening

- Why do foreign lawyers want to enter another market? – not to practise domestic law except in so far as they need it to serve their international clients.
- International clients use foreign law firms anyway if the market is closed – they just shift the work offshore.
- Foreign law firms bring jobs, training and technology (e.g. estimated 6,000 jobs from US law firms in Europe).
- Open markets in services different to goods – an open domestic market is a prerequisite for export capacity.
- An open legal market is essential if Nigerian lawyers want to export their services and if Nigeria wants to attract more inward investment.

Conclusions

- There is an international framework for cross border provision of legal services.
- It doesn't mean the end of the world as we know it for lawyers and the justice sector.
- It offers a peg on which to hang a discussion of mobility and visa arrangements.
- There is an opportunity for the legal sector to define the parameters of the debate.
- There is a gap in the market for an open legal market in Africa – Nigeria or South Africa the obvious candidates.

