

## **World Trade Organization — *General Agreement on Trade in Services (GATS)***

### **BACKGROUND**

- Canada has been involved in comprehensive multilateral negotiations through the World Trade Organization (WTO) regarding trade in services. Trade in services is covered by the General Agreement on Trade in Services (GATS). The purpose of GATS is to liberalize trade in service sectors, including professional services and, within that category, legal services. GATS provides a framework for negotiating rules in the individual sectors. The member states then decide how the general rules apply in specific countries, service sectors, industries and modes of supply of service.
- Countries can establish different trade rules for different types of practice: home country law (i.e. where the lawyer is from); host country law (i.e. where the lawyer is practising); and international law. Within each of these types of practice, different trade rules may be set out for advisory services and representation in court. Canada also has the choice as to what modes of trade in legal services and what types of domestic regulations will be allowed.
- WTO established the Working Party on Domestic Regulation to develop rules for the domestic regulation of professional services. Among the issues being considered were licensing requirements, nationality requirements, restrictions on the movement of professional personnel between jurisdictions and restrictions on the form of incorporation.
- The Working Party developed rules to govern the accounting profession and turned its attention to legal services. The accountancy rules require that licensing requirements, technical standards and qualification requirements not be adopted or applied so as to create unnecessary barriers to trade. This does not prevent regulation for legitimate objectives such as protection of consumers, quality of services, professional competence and integrity of the profession. CBA told the federal government that several core issues distinguish the legal profession, most particularly confidentiality of client communications, strict avoidance of conflicts of interest and adherence to unique ethical and professional standards. These core issues must be considered separately from discussions concerning other professions, whether or not other issues are considered together for all of the professions.
- Because this initiative deals with law society governance issues, the Federation of Law Societies is playing a prominent role. However, CBA has an interest in ensuring the interests of members of the legal profession are reflected in the negotiations.
- At a WTO meeting in Seattle in December 1999, trade ministers failed to agree on an agenda for further negotiations. Despite this, the GATS negotiations formally commenced in early 2000, as a result of the built-in schedule in the Agreement. Failure to reach agreement in Seattle did not technically affect the built-in schedule. However, it made GATS negotiations more difficult and lengthy, in part because the positions that countries take on the GATS may depend on trade-offs available in non-GATS sectors.

- CBA established a working group to monitor WTO negotiations, report on development, and recommend CBA positions. Working group members Simon Potter and Milos Barutciski represented CBA at the Seattle meeting. The group maintains contact with government officials to ensure that the interests of Canadian lawyers are protected.
- In August 2000, CBA wrote to the Departments of Industry and Foreign Affairs and International Trade, to address how the accountancy rules should be applied to the legal profession. It stated that any GATS rules for the legal profession should not be blindly adopted from those applying to other professions. Generally speaking, law societies should be given the widest possible scope to regulate in the public interest. Having said this, CBA supports the removal of obstacles to cross-border delivery of services that do not serve the public interest.
- In February 2001, the Federation of Law Societies of Canada wrote to the federal government on the accountancy rules.
- In April 2002, then Vice-President Simon Potter appeared before the House of Commons Subcommittee on International Trade, to present the CBA's views.
- In anticipation of the Doha Work Programme, CBA initiated informal discussions with International Trade Canada in May and July 2004 on:
  - Whether Canada can refine its initial requests made for legal services; and
  - Potential areas that Canada can improve on its initial GATS offers.
- In November 2004, a Trends (formerly [EPIIgram](#)) updated CBA members on WTO/GATS and called for input.
- Trade Ministers met in Hong Kong in December 2005, under pressure to conclude negotiations by Fall 2006, before U.S. fast-track approval process expired. Following the Hong Kong meeting, a plurilateral negotiation process was launched, whereby a group of like-minded states would make requests. This was to supplement the bilateral process, which had not resulted in quality offers. The Friends of Legal Services group, of which Canada was a member, pushed a plurilateral request on legal services. Most states focused on foreign legal services. International Trade Canada asked CBA for input for the plurilateral negotiations.
- The WTO suspended the Doha Round negotiations in July 2006 when negotiations met an impasse, mostly over agricultural issues.

## **CURRENT STATUS**

- In December 2009, DFAIT invited CBA to participate in consultations for the GATS for trade in legal services, in anticipation of a new phase in the Doha Round negotiations to commence in February 2010. CBA established a GATS consultation working group, and surveyed firms in March 2010. Results were reported to DFAIT in May 2010.
- Firms responding to the survey identified several barriers to practice in other jurisdictions. Most frequently cited were: burdensome visa or work permit processes; restrictions on the

scope of practice; and discriminatory or non-transparent domestic regulations (e.g. licensing and qualification requirements and procedures).

#### **NEXT STEPS**

- CBA working group continues to monitor ongoing GATS negotiations and respond as appropriate.
- The CBA will collaborate with the Federation of Law Societies in an effort to present complementary submissions to government in anticipation of international negotiations.