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COMMUNICATION FROM AUSTRALIA, CANADA, CHILE, THE EUROPEAN COMMUNITIES, JAPAN, KOREA, NEW ZEALAND, SINGAPORE, SWITZERLAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU AND THE UNITED STATES

Joint Statement on Legal Services

The following communication, dated 22 February 2005, from the delegations of Australia, Canada, Chile, the European Communities, Japan, Korea, New Zealand, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States is being circulated to the Members of the Council for Trade in Services.

1. We, the co-sponsors, wish to convey to the wider membership points of convergence on issues discussed in the informal Friends group on legal services. It is noted that Members participated in discussions in the group without prejudice to the position of their respective governments on the use of the Central Product Classification or the question of whether and how they intend to liberalise trade in legal services in the Doha Round.

2. Taking into consideration that WTO Members have used a number of different approaches to schedule specific commitments on legal services, we believe that:

- (a) The use of different approaches is linked to the fact that the disaggregation of provisional UN CPC 861 codes, to which the W/120 refers, into lower-digit levels fails to accommodate the practical nature of international trade in legal services.
- (b) Provided that the nature and scope of Members' commitments are made clear by the use of well-defined and understood terminology, the lack of uniformity in approaches to scheduling commitments should not, in and of itself, undermine the value of GATS commitments on legal services.
- (c) Two resolutions of the International Bar Association (IBA), on *General Principles for the Establishment and Regulation of Foreign Lawyers* (June 1998) and the resolution in *Support of a System of Terminology for Legal Services for the Purposes of International Trade Negotiations* (September 2003) provide useful reference points on:

- the regulation of foreign lawyers through the adoption of either a *Full Licensing* approach or a *Limited Licensing* approach or an appropriate combination of both, and
 - *terminology* commonly used and understood in the context of international trade in legal services.
- (d) Members undertaking commitments for legal services maintain the right to require that suppliers of a specific legal service fulfil qualification and/or licensing requirements to provide that specific legal service.
- (e) Noting the principle of progressive liberalisation, we recognise the right of Members to make full use of the flexibility provided by the GATS to schedule commitments on legal services in a manner that appropriately reflects their domestic situation.
- (f) The practice of domestic law (host country law) and the practice of international and foreign law, in addition to being often subject to different regulatory requirements such as either a Full Licence or a Limited Licence regime in terms of qualification and licensing requirements, also tend to be subject to different levels of liberalisation in terms of market access and national treatment limitations.
- (g) Where a Limited Licence regime is applied, transparency can be enhanced by a clear indication in the schedules of the scope of the services that are allowed for holders of a Limited Licence.
- (h) Where possible, the capacity for foreign lawyers or law firms to either employ or form commercial association with host country lawyers or law firms should be considered so as to facilitate the provision of legal services sought by clients covering multiple (domestic, foreign and international) jurisdictions.

3. To provide maximum flexibility to Members in scheduling commitments on legal services, we suggest that:

A. WTO Members use the following terminology to identify specific legal services:

- (i) *Legal advisory services*: includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services.
- (ii) *Legal representational services*: includes preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and

interpretation of the specified body of law.¹ Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services.

- (iii) *Legal arbitration and conciliation/mediation services*: preparation of documents to be submitted to, preparation for and appearance before, arbitrators, or mediators in any dispute involving the application and interpretation of law. Does not include arbitration and conciliation/mediation services in disputes for which law has not a bearing which fall under services incidental to management consulting. As a sub-category, *International legal arbitration and conciliation/mediation services* refers to the same services when the dispute involves parties from two or more countries.
- (iv) *Legal services*: includes "legal advisory services" as defined in (i), "legal representational services" as defined in (ii), "arbitration and conciliation/mediation services" as defined in (iii) and legal advisory and legal documentation and certification services performed by service suppliers entrusted with public functions, such as notary services.

B. Members retaining different levels of liberalisation for the practice of domestic law (host country law) and for the practice of international and/or foreign law use the following terminology to qualify the scope of their commitments in the sectoral coverage column of their schedules and/or to list specific limitations in the market access and/or national treatment columns:

- (i) *Domestic law (host country law)*: in the context of a WTO Member scheduling commitments, the law of the territory of the specific Member scheduling those commitments.
- (ii) *Foreign law*: in the context of a WTO Member scheduling commitments, the law of the territories of WTO Members and other countries other than the law of the territory of the specific Member scheduling those commitments.
- (iii) *International law*: includes law established by international treaties and conventions, as well as customary law.

¹ The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.