My Goals for this Talk

- to educate you about the GATS
- to motivate you to follow the GATS’ developments
- to do all of this without making your eyes glaze over
Why Should You Care About This?

- GATS will happen with or without the legal profession
- It’s better to provide input now than complain later
- We live in a global world and foreign lawyers are a fact of life

Why Clients May Want Foreign Lawyers

<table>
<thead>
<tr>
<th></th>
<th>1992</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports</td>
<td>$617 billion</td>
<td>$1.02 trillion</td>
</tr>
<tr>
<td>Imports</td>
<td>$656 billion</td>
<td>$1.5 trillion</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>2004 Merchandise Exports &amp; Rank</th>
<th>2002 Property-type U.S. Investment by Foreign Co.’s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>$117 billion (1st)</td>
<td>$102 billion</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$404 million (50th)</td>
<td>$8.2 billion</td>
</tr>
</tbody>
</table>
Reasons for Foreign Lawyers: #2

2000 U.S. Census - Foreign Born Residents

<table>
<thead>
<tr>
<th>State and Rank</th>
<th>Number of FB Residents</th>
<th>% increase since 1990</th>
<th>State Rank in % increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>California (1st)</td>
<td>8.9 Million</td>
<td>37.2%</td>
<td>37th</td>
</tr>
<tr>
<td>Missouri (27th)</td>
<td>151,000</td>
<td>80.8%</td>
<td>26th</td>
</tr>
<tr>
<td>Wyoming (51st)</td>
<td>11,205</td>
<td>46.5%</td>
<td>35th</td>
</tr>
<tr>
<td>Entire U.S.</td>
<td>31.1 million</td>
<td>57.4%</td>
<td>---</td>
</tr>
</tbody>
</table>

Selected ABA MJP Recommendations

- In 2002, the ABA MJP Commission adopted 9 recommendations
- MJP Rec. #2 was Rule 5.5 (temporary practice & corporate counsel provision)
- MJP Rec. #9 is a model rule for temporary practice for foreign lawyers
- MDP Rec. #8 recommends adoption of the ABA Foreign Legal Consultant Rule
- Status report re adoption of Recs. 8 & 9
The GATS....What’s That?

- The GATS is a multilateral trading agreement
- The GATS was the first world trade agreement to cover trade in services
- The GATS applies to legal services
- It’s part of the 1994 Agreement Establishing the World Trade Organization (the WTO)

What is the WTO?

- The WTO has 148 Member States
- Agreements include the GATS, GATT, TRIPS, & Dispute Resolution Agreement
- Headquartered in Geneva, ≈500 staff
- The WTO Secretariat makes no policy decisions, but writes minutes, analyses
- All decisions are made by the WTO Members themselves, including the US
### What’s the 4 Part Structure of GATS?

<table>
<thead>
<tr>
<th>1. Basic commitments</th>
<th>2. MFN exemptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Transparency</td>
<td>• permits reciprocity &amp; non-MFN treatment</td>
</tr>
<tr>
<td>• MFN treatment (no reciprocity)</td>
<td>only 8 countries adopted</td>
</tr>
<tr>
<td>• Doesn’t give access to foreign L’s</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. “Schedules of Specific Commitments”</th>
<th>4. Ongoing Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• in 1994, countries chose which sectors to list</td>
<td>TRACK 1:</td>
</tr>
<tr>
<td>• listing means additional requirements</td>
<td>• Art. XIX – requires further liberalization &amp; negotiations in 5 years;</td>
</tr>
<tr>
<td>• the US listed legal services</td>
<td>TRACK 2:</td>
</tr>
<tr>
<td>• can have any rules if disclosed</td>
<td>• Art. VI (4) requires creation of necessary disciplines</td>
</tr>
</tbody>
</table>

### To Understand the US Schedule

- **You will need to master its terminology:**
  - Legal services are delivered in Modes 1-4
  - Commitments are made according to Modes
  - Market Access (GATS art. 16)
  - National Treatment (GATS art. 17)
  - “Disciplines” apply to certain kinds of domestic regulation measures (GATS art. VI)

- **Help is available in the IBA GATS Handbook**
GATS Enforcement Mechanisms

- The GATS is enforced through retaliatory trade sanctions by governments, after a decision by the WTO appellate body.
- The USTR Fact Sheet says the GATS does not override the states’ ability to regulate.
- The GATS does not create a private cause of action.

More Enforcement Information

- Most GATS obligations stem from what is listed on the U.S. Schedule.
- Legal services are on the US Schedule.
- States can “discriminate” against foreign lawyers if disclosed.
- Countries can withdraw from WTO upon notice, etc.
What’s Happening in the WTO?

TRACK 1:
Doha Development Agenda (DDA) Negotiations

TRACK 2:
Working Party on Domestic Regulation: Should the “Disciplines for the Accountancy Sector” apply to lawyers & others?

More About Track 1 and Doha

- GATS requires “progressive liberalization”
- The 11/01 Doha Declaration originally set a deadline of Jan. 1, 2005 to end negotiations
- Negotiations stopped in Sept. 03, revived in Aug. 04, with 5/05 the new target for “offers”
- It’s not clear when the Doha negotiations will end – some hope for December 2006
More About Track 2 - Disciplines

• GATS §6(4) required creation of “any necessary disciplines” – perhaps none are

• In 1998, a WTO body issued *Disciplines for the Accountancy Sector*

• A WTO body is now considering whether to apply the *Disciplines* “horizontally”

More About Track 2 - Disciplines

• WTO Members agreed to conduct “domestic consultations” on using the *Disciplines*

• Many countries have not sought input on applying the *Disciplines* to lawyers

• In Dec. 2002, the WTO sought NGO input about applying the *Disciplines* to others

• The IBA held a day-long *Forum*, then adopted a resolution suggesting changes

• The UIA also submitted comments
Meanwhile… in the US…

TRACK 1 – the Doha Negotiations:

- US outbound “requests” track the ABA Model Foreign Legal Consultant Rule
- US 3/03 legal services “offer” repeated the 1994 U.S. Schedule – which is out of date
- US wants to update its offer by May 2005
- There’s a debate about whether the US can or should automatically list existing lawyer rules
- There may be issues about whether the current Schedule is accurate and what to do if it is not

Meanwhile… in the US…

TRACK 2 – the Disciplines:

- Neither the ABA nor the U.S. has taken an official public position on applying the WTO Accountancy Disciplines to lawyers
- The U.S. circulated a Transparency paper in Feb. 2005
  - Offer a prior comment period for new regulations
  - Set up inquiry points for questions about regulations
A Possible “To Do” List

• Offer comments to your state Supreme Courts re MJP Rec’s 8 & 9 (in my view, adopt them if you want regulated foreign lawyers rather than unregulated)

• Offer comments to the USTR and state courts about GATS Tracks 1 and 2

• Think about other issues to address
  (Should states have rules for foreign L’s who want to take the bar? Foreign FLCs?)

Summary

• The GATS is here and its mandate is directly relevant to lawyers

• There is no easy model to follow for trade negotiations in a federal system

• We can’t change the global world, so let’s figure out how to adapt to GATS

• States should consider international MJP issues separate from the GATS
To Read More About It….

- See the ABA Center for Professional Responsibility GATS Webpage, [http://www.abanet.org/cpr/gats/gats_home.html](http://www.abanet.org/cpr/gats/gats_home.html)

- Multiple Bar Examiner articles are available on the “articles” page of the ABA GATS webpage

- Read the IBA GATS Handbook, (available on the ABA GATS webpage)

- Contact LTerry@psu.edu for URLs to statistics