

Issues Related to the Legal Profession

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**Representing the
International Bar Association**

U.N. TSG Meeting Oct. 18, 2004

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**On behalf of the
International Bar
Association,
thank you
for inviting me
to participate today**

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Summary of Remarks

- **Introduction and My Role(s)**
- **Legal Services Classification in the GATS**
 - **In the Uruguay Round**
 - **In the current Doha Round**
- **Issues that Have Been Raised & Proposals**
- **The IBA Terminology Resolution**
- **Other legal services classification systems**
- **Information about the Legal Profession**

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Introduction to the IBA and My Role

- **The IBA is one of two general purpose international bar associations (*cf.* UIA)**
- **The IBA represents over 190 bars and 16,000 individuals**
- **The IBA adopts policy through its Council**
- **The IBA has a WTO Working Group**
- **I will present the IBA's official position – but I may put on my personal hat at times**

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Legal Services Classification in the GATS – Uruguay Round

- **WTO GNS/W/120 was the GATS
*Services Sectoral Classification List***
- **W/120 listed:**
 1. **BUSINESS SERVICES**
 - A. **Professional Services**
 - a. **Legal Services** (with no further subcategories)
- **W/120 cited to Prov. CPC 861 (Tab 1)**
- **These classifications weren't mandatory**

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Legal Services Classification in the GATS – Doha Round

- **GATS §XIX required additional negotiations**
- **GATS 2000 became part of the Doha Round**
- **S/L/92 (2001) set Doha Guidelines (see Tab 2)**
- **¶23 recommended using W/120 and cited the
U.N. *Provisional CPC***
- **Once again, these classifications are
recommended but not required (¶ 25)**

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The WTO Secretariat Legal Services Background Note

- In 1998, the Secretariat issued a Legal Services Background Note (S/C/W/43, Tab 3)
- §C addressed classification. It said:
“It appears that the UN CPC [class] distinction... was not as relevant to members scheduling commitments as [the distinction between advice and representation in home, host and international law]”
- [See Tabs 3 & 4 for charts; Tab 7 for the commitments]

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The Secretariat Questioned the CPC

- **The Secretariat asked:** (Tab 3, p. 5)
 - *Should the revision of the UN CPC take account of the Uruguay Round scheduling distinctions in legal services in re-defining classification in the sector?*
 - *Is the distinction between host country, international, home country and third country law satisfactory?*

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The Importance of These Questions

- In June 2004, the OECD issued a legal services paper (Tab 4)
- §IV(1) reviews classification, concluding:

“The classification system used in the Doha Round will have a significant influence on the evolution of the international market for legal services. It is crucial that the terminology employed in the negotiations be clear and consistent with the reality of modern trade in legal services.”

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What Happened Next?

- Several WTO Members responded with legal services classification proposals
- The proposals cited most often are those from Australia and the EU (Tabs 5 and 6)
- Australia recommends expanding W/120's definitions to include 12 new categories [advice/representation in home, host, 3rd country or Int'l law &ADR]
- The EU recommends using only a 3 digit CPC code in the first column of one's *Schedule* [¶ 16]

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The IBA GATS Forum

- **The IBA GATS Forum was held in Brussels in May 2003**
- **It was a day-long event and addressed two issues: 1) classification; and 2) extending the WTO Accountancy Disciplines to lawyers**
- **Papers were circulated in March, comments received, revised drafts prepared**
- **The “products” of the IBA GATS Forum went to the IBA Council in 9/03 for approval**

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The IBA Terminology Resolution

- **Based on the IBA GATS Forum, our group prepared a draft “classification” resolution for approval at the 9/03 IBA Council meeting**
- **The IBA Classification draft was similar to the Australian classification proposal**
- **In San Francisco in September 03, objections to this draft emerged**
- **The final result was a “Terminology Resolution” approved by the IBA Council (Tab 8)**

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Contents of the IBA Resolution

■ Resolved:

- To recommend a system of terminology with 9 categories;
- That its terminology should be understood in accordance with the definitions provided; and
- To invite all WTO Members “to adopt this terminology for the purposes of negotiations on trade in legal services”
(See Tab 8)

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Useful Principles

- The IBA Resolution says that ideal terminology:
 - *is consistent with the core values of the legal profession;*
 - *provides a solid, neutral foundation for negotiations so that ambiguity and uncertainty are minimised;*
 - *facilitates those negotiations without pre-determining the negotiated outcome; and*
 - *assists in minimising disputes over what has actually been agreed through negotiation*
- In my view (LT hat), these same principles should underlie the WTO classification system

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The Way Forward for the IBA

- **The IBA meets next week in New Zealand**
- **The IBA WTO Working Group will consider a Discussion Paper on Classification (Tab 10)**
- **The IBA will try to identify and build consensus on classification issues**
- **But the IBA Council can't act on this by 10/04**
- **The IBA would like to assist the TSG as it revises the CPC**

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Some Technical Information

- **I have 5 slides that show how legal services have been treated in various classification systems**
 - (IBA v.Australia; IBA v. CPC 1.1; Prov. CPC, CPC 1.0, CPC 1.1, ISIC 3.1, COICOP, etc.)
- **Would these slides be helpful to the TSG? If they're too basic, I'll skip to the next section.**

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IBA v. Australia Categories

- **Note: Australia has a classification proposal; the IBA only has a Terminology Resolution**
- **The IBA had one “ADR”* category where Australia had 2 ADR categories (cf. Tabs 5&8)**
- **The IBA doesn’t have an equivalent to:**
 - **Australia’s catchall category (l); or**
 - **its document certification category (k)**
- **Some of the definitions differed**

*ADR=alternative dispute resolution, such as mediation and arbitration

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IBA v. CPC, Ver. 1.1 Categories

- **Tab 13 has a table with CPC 1.1 (821) categories**
- **The IBA has 1 category for acting as a lawyer or neutral in ADR* proceedings**
 - **CPC separates ADR lawyers/neutrals (82120/82191)**
- **The IBA only refers to “representation”**
 - **CPC distinguishes between judicial and quasi-judicial proceedings (82119 and 82120)**
- **IBA doesn’t highlight criminal law (cf. 82111)**
- **IBA doesn’t cover notaries; (does CPC 82130?)**

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Comparing Prov. CPC and CPC 1.0

- **Tabs 11-13 have tables with CPC contents**
- **Main Changes found in CPC 1.0 (821):**
 - **8211: criminal law explanation changed**
 - **86119/86120- format change, no substance change**
 - **86130: 4 new ¶s; final ¶ had mostly format change**
 - **86191: New category added for ADR assistance**
 - **86199: title changed, general catch-all language in explanation was removed**

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Comparing CPC 1.0 and CPC 1.1

- **The WTO asked questions about the changes in CPC 1.0 to 82130, 82190 and 82199**
- **Main Changes found in CPC 1.1 (821) :**
 - **86119: removed prosecutor/defender references**
 - **86120- language changes; now refers to quasi-judicial tribunals, rather than a statutory body**
 - **86130: 3 intellectual property ¶s became one IP¶**

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Legal Services in Other Systems

- **ISIC, Rev. 3.1, Class 7411:** (Tab 14)
 - no subclasses
 - Includes representation, advice, notaries
- **COICOP, Class 12.7.0:** (Tab 15)
 - no subclasses
 - “Fees for legal services, employment agencies, etc.”
- **EBOPS, 9.3.1.1 (275):** (Tab 16)
- **Joint Classification, 9.3.1.1:** (Tab 16)
- **2002 NAICS & Draft NAPCS:** (Tabs 18 & 19)

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Where to Find Info about Legal Services

- **WTO Legal Services Paper is useful**
(see Tab 3, also available on website cited in Tab 23)
- **The IBA Council resolutions include:**
 - **Core Values Resolution (98)**
 - **Establishment of Foreign Lawyers (98)**
 - **Recognition principles (2001)**
 - **Extension of WTO Accountancy Disciplines (2003)**
- **These resolutions are in Tab 9**

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Wearing My Personal Hat . . .

- **Two possible classification choices are:**
 - 1) **To have classifications track the existing regulatory structures**
 - 2) **To have classifications track the existing reality of practice**
- **Trade commitments may favor using #1 to maximize commitments**
- **Data collection may favor using #2 if ## 1 and 2 don't overlap perfectly**
- **CPC 1.1 may not match either well**

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Common Regulatory Issues for Trade in Legal Services

- **Tab 22 has a chart that shows my views about common regulatory issues***
- **Key issues are:**
 - 1) **Forms of association: (partnership/employment)**
 - 2) **Scope of practice: (host/home/int'l/ 3rd country)**
 - 3) **Ethics & Discipline:**
 - 4) **Other admissions issues: (registration, etc.)**

* See also OECD Paper, annex 1, Tab 4 & my Disciplines article

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Discovering the Nature of International Trade in Legal Services

- **WTO , OECD & Julia Nielson papers are helpful (Tab 22c for Nielson)**
- **Lawyers’ “product” often is task-oriented, involving multiple laws & fields**
- **“Hypotheticals” in Tab 21 illustrate this**
- **IBA stands willing to help**

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Still Wearing My Personal Hat . . .

- **The IBA and others want to participate in consultations, but need more info**
- **Tab 20 contains my suggestions for improving consultations with lawyers**
 - **Lawyers need to understand how the CPC, NAPCS, etc. will be used BY lawyers**
 - **Lawyers need to be motivated to respond**

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Resources about Legal Services

(Tab 23)

1. **IBA GATS Handbook, see**
<http://www.ibanet.org/pdf/gats.pdf>
2. **ABA GATS Webpage, see**
http://www.abanet.org/cpr/gats/gats_home.html
3. **Classification Page of ABA GATS Webpage, see**
http://www.abanet.org/cpr/gats/track_one_class.html

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Conclusion

- **In the GATS context, the CPC classes & subclasses weren't particularly useful**
- **Many believe the CPC categories don't reflect the reality of trade in legal services**
- **The IBA Terminology Resolution has broad international support**
- **The IBA is ready to work with the TSG**

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