

COLLECTIVE REQUEST LEGAL SERVICES

Further to paragraphs 25 through 27 of the Hong Kong Ministerial Declaration, and in accordance with paragraphs 7 and 11 (b) of Annex C of the Hong Kong Ministerial Declaration, the Mission of Australia is pleased to present the delegation of [...] il with a collective request in legal services on behalf of the following interested Members: Australia, Canada, the EC, Japan, New Zealand, Norway and the USA.

This request identifies specific objectives for legal services liberalization, while recognizing the flexibilities provided for individual developing country Members in accordance with Article XIX.2 of the GATS. The aforementioned interested Members are also deemed to be recipients of this request and have undertaken to consider it in good faith with a view to improving the quality and coverage of their legal services commitments.

In accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, this collective request is intended to complement, and not supersede, the bilateral request-offer negotiations and the specificity of bilateral requests.

The Mission of Australia has the further pleasure to invite [...] to participate in a plurilateral discussion of this request, which will be organized in Geneva during the Services cluster taking place from 27 March to 7 April, 2006.

Please note that seventeen other Members have received this collective request in legal services from the aforementioned group of interested Members, and have also been invited to this plurilateral meeting.

The aforementioned interested Members reserve the right to modify the content of this request in the future. The list of interested Members is also subject to change.

Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, should be addressed to:

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1. Introduction

Legal services form an essential pillar of business infrastructure that supports and facilitates business transactions covering both goods and services. It is not possible to contemplate conducting business transactions, particularly of a transnational nature, in a legal vacuum. In addition to contributing to a business-friendly environment for investment, greater foreign investment is encouraged if host-country regulatory systems permit investors to have access to their own legal advisers.

The integral role of legal services in economies and the contribution of legal services in facilitating all trade cannot be overstated.

2. Objective

The primary objective is to liberalise international trade in legal services as a means to facilitate the supply of comprehensive legal services covering multiple (foreign, domestic and international) jurisdictions in the economies of both the requesting and requested Members through meaningful commitments on legal services.

3. Plurilateral Request

(a) Scope and Substance of Request

Please make new or improved commitments under Articles XVI, XVII and XVIII of the GATS that would allow foreign lawyers and law firms to provide legal services covering laws of multiple (foreign, domestic and international) jurisdictions by:

- making commitments covering all modes of service delivery, including in all Mode 4 categories¹ with a special emphasis on coverage for lawyers in the categories of contractual service suppliers and independent professionals;
- permitting foreign lawyers a right to provide legal services in foreign law and international law, subject to no significant impediments;
- permitting foreign lawyers/law firms to establish, with a view to providing legal services in domestic, foreign and international law, through:
 - partnership and other forms of commercial association between foreign and domestic lawyers/law firms, with freedom to negotiate fee and profit sharing arrangements; and
 - employment of domestic lawyers.
- permitting foreign lawyers to prepare and appear in legal arbitration and conciliation/mediation proceedings in foreign and international law; and
- permitting foreign law firms to use a firm name of their choice, respecting customs or usage of the host country. (This commitment is to be reflected in the Additional Commitments column).

¹ For this element, the United States is not a requesting Member, but shall be deemed a recipient.

Where Members are able to comply with the above elements they should also consider permitting foreign lawyers, subject to satisfying domestic licensing requirements, the right to provide legal services in domestic law.

Where Members grant a right for foreign lawyers to provide legal advisory services in foreign and international law (foreign legal consultants) on a temporary basis, without meeting normal accreditation requirements, we request that Members make commitments reflecting that right.

(b) Limitations to be removed

Please remove to the greatest extent possible the following limitations where they are currently scheduled in Members' market access and/or national treatment columns:

- Commercial presence and residency requirements for Modes 1 and 2, particularly for the practice of foreign law and international law;
- Limitations that restrict partnership or other forms of commercial association or collaboration between foreign lawyers/law firms and domestic lawyers/law firms;
- Limitations that restrict or prevent recruitment by foreign lawyers/law firms of lawyers admitted/licensed to practise domestic law;
- All forms of economic needs tests;
- Nationality and prior residency requirements, particularly for the practice of foreign law and international law;
- Foreign capital limitations;
- Prior experience requirements for the practice of foreign law and international law;
- Prohibitions or limitations on the establishment of foreign law firms, particularly for the practice of foreign law and international law, including limitations on establishing direct branches of foreign law firms and discriminatory limitations on the types of legal entity allowed for the commercial presence of foreign law firms (foreign firms should be able to establish in any form available to domestic suppliers);
- Quantitative restrictions on the number of offices that can be established, including numerical ceilings on foreign lawyers.

We further request that all Members give due consideration to ensuring clarity, certainty, comparability and coherence in the scheduling and classification of commitments through adherence to, inter alia, the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services dated 23 March 2001. In particular, we would encourage Members to remove any limitations such as qualifications requirements and procedures which have been incorrectly scheduled under either the market access or national treatment columns.

(c) MFN Exemptions

We also request that Members eliminate any current MFN exemptions covering legal services.

4. Model schedules, flexibility and guiding documents

Two possible model schedules are attached to provide guidance. Members have the flexibility to use the model schedule that best suit and reflect their domestic regulatory situation.

The attached “Joint Statement on Legal Services” (TN/S/W/37) provides further guidance, including terminology, on scheduling meaningful legal services commitments using either of the two model schedules that meet the requirements of individual Members.