

COMMUNICATION FROM THE UNITED STATES

Legal services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. The United States presents this proposal on legal services for consideration of all Members. It is intended to stimulate discussion and liberalization of this important sector in the world economy.

II. IMPORTANCE OF LEGAL SERVICES

2. With the acceleration of world economic integration, law firms have become increasingly involved in advising clients on international transactions covering a variety of business matters, including mergers and acquisitions with foreign companies and contractual arrangements for franchises, dealerships, and product sales. Increasingly businesses are requesting advice from law firms on transactions involving multiple jurisdictions. In many respects, lawyers and law firms pave the way for international trade and investment and are regarded as part of the infrastructure of commerce.

III. PURPOSE

3. The purpose of this proposal is to make it easier for lawyers and law firms to provide services to clients involved in international transactions, enabling those clients to conduct business successfully and in compliance with applicable laws and regulations, thereby contributing to economic and social progress in various countries.

4. Lawyers often encounter difficulties becoming licensed in other countries, or in providing advice to clients in foreign countries. A basic problem stems from the national character of each country's legal system and the need to demonstrate knowledge and competence in the law of that jurisdiction in order to become licensed there. In some cases, licensing is limited to citizens of the country.

IV. SECTOR COVERAGE

5. The WTO services classification list (W/120) does not specifically define legal services. The United States suggests that the classification should be understood to include the provision of legal

advice or legal representation in such capacities as counselling in business transactions, participation in the governance of business organizations, mediation, arbitration and similar non-judicial dispute resolution services, public advocacy, and lobbying.

V. PROPOSAL

6. An important goal for negotiations on legal services should be for WTO Members to examine liberalization opportunities with regard to market access and national treatment barriers as those terms are understood in the GATS. The specific focus of such liberalization would be most beneficial in the context of mode 3 (commercial presence, including citizenship and residency requirements for licensing, scope of practice, and association of foreign-qualified lawyers with local lawyers and association of foreign-partner law firms with local law firms). Discussions should include other relevant modes of supply, including mode 4 (movement of personnel).

PROPOSED REFERENCE PAPER

7. A reference paper could be drafted to address problems faced by lawyers and law firms in serving clients internationally. The United States looks forward to working with all Members to develop an appropriate reference paper, elaborating on these matters and expects to present a proposed text in the near future.
