



Australian Government



INTERNATIONAL LEGAL SERVICES ADVISORY COUNCIL

SUBMISSION TO THE PRODUCTIVITY COMMISSION

REVIEW OF BILATERAL AND REGIONAL TRADE AGREEMENTS

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Introduction

The International Legal Services Advisory Council (ILSAC) is the peak public-private forum for Australia's international legal and related services sector. ILSAC members are drawn from the private sector, academia, and government (Members: **Attachment A**). Since its inception in 1990, ILSAC has played a pivotal role in enhancing the international presence and improving the international performance of Australian legal services.

The Council operates as a high level consultative forum for the legal sector and government to coordinate, support and promote the development internationally of Australia's legal and related services. In this context, the latest version of the Council's export strategy *AUSTRALIAN LEGAL SERVICES: Strategic Global Engagement 2009-2012*¹ provides an overarching guide for the legal sector and policy makers in enhancing Australia's exports in legal and related services internationally.

The Council has a strong record of providing input to enable the Government to take a leading role promoting the liberalisation of trade in legal services internationally. It provides ongoing advice and support to the Australian Government, particularly on market access and behind the border domestic regulatory barriers impacting on trade in legal services, in relation to international trade negotiations (both World Trade Organisation (WTO) and free trade agreements (FTAs)).

ILSAC is pleased to contribute to the Productivity Commission Review into Bilateral and Regional Trade Agreements.

Executive Summary

1. The international legal services sector is complex and dynamic. Country-specific considerations and differences in the systems of law, as well as the overlapping role of government and the profession in regulation, have shaped ILSAC's and Australia's approach to expanding international trade in legal services informed by both a country-specific and a generic level of market access.
2. Australia has adopted a strategic and multifaceted approach to increasing market access for legal services, in which bilateral and regional trade agreements perform an essential role, along with the WTO process and direct negotiation with and between professional bodies. Close collaboration between the Australian Government, ILSAC, law firms with an international interest, and the peak professional bodies like the Law Council of Australia (LCA), is essential in order for this multifaceted approach to work effectively.

¹ *AUSTRALIAN LEGAL SERVICES: Strategic Global Engagement 2009-2012* is available at www.ilsac.gov.au

3. Bilateral and regional trade agreements have made a significant contribution to reducing barriers for Australia's legal and related services sector, in particular by:
 - i. reducing restrictions in priority markets specifically identified by the Australian legal services sector (including by going beyond existing commitments under the General Agreement on Trade in Services (GATS))
 - ii. ensuring trade barriers are not introduced or reintroduced, including by codifying existing arrangements, thus providing legal certainty that underpins decisions to invest/establish overseas
 - iii. providing a 'level playing field' where competitors have concluded FTAs with trading partners, and
 - iv. providing a framework and impetus for direct negotiation by, and with, professional bodies to focus on reducing 'behind the border' barriers.
4. Although it is difficult to quantify the economic impact of FTAs, ILSAC considers that bilateral and regional trade agreements have produced positive results for Australia's legal services sector by:
 - i. generating new business for Australia's law firms, universities and arbitrators and mediators
 - ii. increasing overall trade for Australian businesses, and
 - iii. providing a catalyst for domestic reforms to improve the international competitiveness of the Australian legal profession.
5. Bilateral and regional trade agreements have built-on, and complemented, Australia's work to promote greater liberalisation of trade in legal services through the WTO:
 - i. there has been a positive two-way 'exchange' of regulatory models and information between the multilateral and FTA trade negotiations that has improved the level of knowledge and, importantly, increased the confidence, of regulators and officials on the possibility and benefits of adopting more open regulatory regimes
 - ii. FTAs address situations where no WTO commitment has been made, and where there are commitments, provide a mechanism to go beyond the WTO level of liberalisation, and
 - iii. FTAs have increased the pace of trade liberalisation, further promoted the possibility of progressive liberalisation, and will provide an impetus, in the longer-term, to 'multilateralise' the liberalisation gains achieved through FTAs.
6. ILSAC submits that Australia should continue to actively seek to enter into bilateral and regional trade agreements. However, this should be undertaken on a strategic basis through the identification of priority markets that have medium to long term growth potential, including key markets where competitors have concluded FTAs and eroded an Australian advantage or a 'level playing field'.

1. *International trade in legal services*

With rapid developments in information technology, and international commerce, international legal services emerged as a significant global market in the late 1980s. Over subsequent decades the capacity to provide legal services covering the laws of multiple jurisdictions has attained critical importance in facilitating efficient transnational trade in services and encouraging investment, including foreign direct investment. Indeed, legal services, particularly commercial legal services, as an enabling service, form part of the essential infrastructure that underpins a robust economy. Hence, increased opening of legal services markets through trade agreements will have a multiplier effect on the outcome of those agreements by enabling more efficient trade across all goods and services traded under the terms of the agreement.

2. *Australia's approach to legal services trade*

Faced with the challenges of an increasingly global legal services market, Australia has adopted an innovative and strategic approach to international legal services trade. This strategy has ensured the continued international competitiveness and profitability of Australian legal services providers (legal services exports estimated to be worth AUD538m for 2008-09 by the Department of Foreign Affairs and Trade (DFAT)²).

Due to the interplay of the General Agreement on Trade in Services (GATS), FTAs, and government, judicial and professional regulation at the national level, the governance of international legal services has been described as 'complex and fluid'.³ In that context, Australia has taken an overarching approach to legal services market access that incorporates the WTO framework, bilateral and regional trade agreements and direct negotiation at the profession to profession level. This involves cooperation between DFAT, the Attorney-General's Department (AGD), ILSAC, and the LCA, as well as other bodies including the Council of Australian Law Deans (CALD) and the Australian Centre for International Commercial Arbitration (ACICA).

The foundation for Australia's market access requests in trade negotiations, are six guiding principles for achieving liberalisation in trade in legal services (**Attachment B**) developed by ILSAC in 1998. The six principles outline the interests of Australian lawyers in practising as foreign lawyers, establishing a commercial presence, obtaining admission to practise local law (after appropriate supplementary qualification), and appearing in international arbitration.

It is important to note that the level and scope of access for lawyers engaged in providing business/commercial legal services internationally does not have to extend to becoming a local lawyer with all the rights that full admission provides a local lawyer. The country-specific nature of legal practice means it is unrealistic to expect total recognition of a right to practise. Corporations, financial institutions and other clients involved in cross-border commercial transactions seek legal *advisory* services covering the laws of jurisdictions in which the transaction spans. Australia, therefore, does not seek market access for Australian lawyers to provide *consumer* legal services, such as those relating to family law, wills and personal injury. Nor is a right to represent clients in local courts sought, other than a right to appear in international commercial arbitration.

In the WTO Doha Round, Australia has taken a leading role on promoting the liberalisation of trade in legal services, as a founding member and Chair of the 'Friends of Legal Services' group. In that

² Department of Foreign Affairs and Trade, *Trade in Services Australia 2008-09* (2010) 29.

³ C. Arup, 'Legal services and professional regulation internationally? Australia abroad' (2009) 37(3) *Federal Law Review* 418.

regard, Australia was instrumental in establishing definitive minimum legal services requirements as a basis for accession to the WTO. It is suggested that this work in the Friends group had a positive impact on gaining meaningful WTO accession legal services commitments from China,⁴ as well as those of other important markets, such as Cambodia,⁵ and Vietnam.⁶

This work has been complemented by the incorporation of meaningful legal services commitments into subsequent free trade agreements, such as those with Chile, and the Association of South East Asian Nations. Australia also embarks on direct profession to profession negotiations with support from the Government, particularly where legal services regulation falls outside the ambit of national governments (such as the US). Government to government FTA negotiations continue to be a catalyst that gives impetus and, sometimes a framework, for these profession to profession negotiations. ILSAC is currently supporting the Australian Government in its ambitious program of negotiations, including in priority markets such as the People's Republic of China, Japan and the Republic of Korea.

3. *Impacts on trade and investment barriers*

3.1 *The effectiveness of FTAs in reducing barriers*

ILSAC's experience is that FTAs have made a meaningful contribution to reducing barriers to trade in the legal services sector. In some cases FTAs have directly resulted in the alleviation of trade restrictions. In others they have provided a platform for the legal profession to address barriers through direct negotiation with overseas counterparts. Indeed, trade negotiations have at times led to increased engagement with the broader market access issues and facilitated increased liberalisation even though this may not have been formalised in a trade agreement.

The following case studies are specific instances where trade agreement provisions have reduced barriers to legal services trade and investment.

Case Study: Joint Ventures under SAFTA

The Singapore Australia FTA (SAFTA) resulted in better conditions for Australian lawyers and law firms, as well as improved export opportunities for Australian universities.

Under SAFTA, conditions on the establishment of joint ventures and formal alliances in Singapore involving Australian law firms have been eased. These conditions include requirements with respect to the minimum number of foreign lawyers of the foreign law firm who must be resident in Singapore and a minimum number of years of experience those lawyers were required to have. Easing of these requirements provides Australian law firms with the capacity to better compete with the larger US and UK transnational law firms.

Australian law firms have taken advantage of the relaxation of Singapore's joint law venture conditions. For example, in April 2007, Australian law firm Arthur Allens Robinson and Singapore based law firm TSMP announced a joint law venture (JLV) in Singapore. While there are other

⁴ *The People's Republic of China – Schedule of Specific Commitments*, GATS/SC/135 (2002) (trade in legal services commitments).

⁵ *The Kingdom of Cambodia – Schedule of Specific Commitments*, GATS/SC/140 (2005) (trade in legal services commitments).

⁶ *Viet Nam – Schedule of Specific Commitments*, GATS/SC/142 (2007) (trade in legal services commitments).

non-JLV Australian firms in Singapore, the JLV facilitates a higher level of access that is prized by Australian firms as it provides for close association with local lawyers and a solid base to service clients in Singapore and the region (a majority of the work of the JLV is in the region using Singapore as a base).⁷

Case Study: ANZCERTA

The Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) has also yielded commercial benefits for Australian law firms. For example, Minter Ellison has opened offices in Auckland and Wellington to provide legal services to the New Zealand market. Another significant benefit of ANZCERTA has been its role in enabling a high level of exchange of legal talent between Australia and New Zealand.

3.2 The role of FTAs in ensuring trade barriers are not introduced and reintroduced

ILSAC also notes the valuable role of bilateral and regional trade agreements in ensuring that existing legal services trade is not eroded, including by codifying existing conditions. In that context, FTAs have provided additional security for Australian legal services providers considering international trade with FTA partners.

Case Study: AANZFTA

The FTA between Australia, New Zealand and the Association of Southeast Asian Nations (ASEAN) supplements Australia's existing bilateral FTAs with Singapore and Thailand (and the proposed FTA with Malaysia) in strengthening Australia's trade within the region.

The legal services provisions of AANZFTA are of significant commercial value to Australian law firms, particularly in relation to Australia's market interests in Indonesia and Vietnam. Vietnam has made commitments permitting Australian law firms to employ local lawyers and local law firms to employ Australian lawyers. Indonesia has also included its existing foreign lawyer regulatory regime, which provides for Australian lawyers to work as employees or consultants in Indonesian law firms.

ILSAC is aware of previous instances where nations have, in the absence of binding WTO or FTA commitments, increased restrictions on legal services trade. Vietnam, for example, introduced significant foreign lawyer restrictions in 1995,⁸ and issued a decree to shut down foreign representative offices in 1996⁹. The AANZFTA ensures that the existing international trade in legal services will be safeguarded from the introduction of trade barriers of this kind.

⁷ Allens Arthur Robinson, *Allens Arthur Robinson and TSMP form Singapore Joint Law Venture* (2007) Allens Arthur Robinson Media Releases <<http://www.aar.com.au/med/pressreleases/pr24apr07.htm>> at 24 April 2007.

⁸ P. Gauntlett, 'Tough going in Vietnam' (1996) 31(6) *Australian Lawyer* 14-15.

⁹ R. Tomasic, 'Globalisation and the Transformation of Commercial and Legal Practice in the Asia Pacific: Opportunities and Challenges for Australian Commercial Lawyers and their Clients' (Paper presented at the Finlaysons Commercial Law Lecture, Adelaide, 1996) 27.

3.3 *The role of FTAs in ensuring a ‘level playing field’ for Australia*

One of the many justifications for entering into an FTA is to ensure that Australia does not become disadvantaged in key markets due to FTAs entered into by competitors and trade partners.¹⁰ An associated issue is the ‘first-mover advantage’ obtained by early entrants to a market.¹¹ Australia’s major legal services competitors have vigorously pursued increased market access through bilateral and regional trade agreements. For example, the United States of America has FTAs in force with 17 countries, and a further three signed but yet to be ratified by Congress.¹² The European Union has entered into numerous FTAs, and Singapore has concluded 18 FTAs and signed two more.¹³

Case Study: KORUS and the EU-Korea FTA

The (yet to be ratified) Republic of Korea-United States Free Trade Agreement (KORUS) signed on 30 June 2007, and European Union-Korea Free Trade Agreement (EU-Korea FTA), initialled on 15 October 2009, deliver significant market access advantages to the US and EU compared to Australian legal services providers. Under the two FTAs, Korea commits to liberalising its legal services trade with the US and EU in relation to foreign legal consultants, specific cooperative agreements, joint venture agreements,¹⁴ and, in the case of the EU, international commercial arbitration.¹⁵

ILSAC is currently providing advice and support to AGD and DFAT in negotiations for the proposed Korea-Australia Free Trade Agreement (KAFTA). Securing an outcome where Australian legal services providers receive similar concessions to those obtained by the EU and US will be of great importance in ensuring a ‘level playing field’ for Australian law firms to compete successfully in the Korean legal services market.

3.4 *Behind the border barriers: the complementary role of FTAs and direct negotiation*

In some countries, where the profession has responsibility for the regulation of the legal services sector, rather than the Government, direct profession to profession engagement is particularly useful in gaining market access, including through the reduction of ‘behind the border’ domestic regulatory barriers. However, as direct profession to profession negotiations yield only non-binding commitments, they remain susceptible to change in policy or government regulation.

ILSAC submits that complementary use of FTAs, through which at least a minimum viable level of binding commitments are gained, and profession to profession negotiations to address additional ‘behind the border’ domestic regulatory barriers is a process that often has the real potential to provide meaningful levels of market access for the legal and related services sector.

¹⁰ B. Mercurio, ‘Should Australia continue negotiating bilateral trade agreements? A practical analysis’ (2004) 27(3) *University of New South Wales Law Journal* 687-693.

¹¹ P. Lamy, ‘Multilateral and bilateral trade agreements: friends or foes?’ (Speech delivered at the Annual Memorial Silver Lecture, New York, 31 October 2006).

¹² Office of the United States Trade Representative, *Free Trade Agreements* (2009) <www.ustr.gov/trade-agreements/free-trade-agreements> at 10 May 2010.

¹³ Singapore FTA Network, *Free Trade Agreements* (2008) <www.fta.gov.sg/fta_general.asp?hl=19> at 10 May 2010.

¹⁴ *Republic of Korea-United States of America Free Trade Agreement*, signed 30 June 2007, Annex-I-Korea, 25 and Annex-II-Korea, 44-45.

¹⁵ *European Union-Korea Free Trade Agreement*, initialled 15 October 2009, Annex 7 A-4 Korea, Schedule of Specific Commitments in Conformity with Articles 7.7, 7.13, 7.18 and 7.19, 1.A.a.

Case Study: AUSFTA

The Working Group on Professional Services (WGPS) established under the Australia-United States of America Free Trade Agreement (AUSFTA) has provided a useful framework and impetus to engage with the US legal profession to obtain better market access for Australian lawyers. In particular, the WGPS became the platform for the Australian legal profession, led by the Law Council of Australia and supported by AGD, DFAT and ILSAC to successfully obtain liberal and commercially meaningful access for Australian lawyers to work as foreign legal consultants in Delaware, an important corporate law centre in the US. That process also provided a good framework to gain the support of the US Conference of Chief Justices in passing resolutions promoting the recognition of Australian qualified lawyers and law degrees for admission to practise in the US.

Case Study: JAFTA Negotiations

The current trade negotiations with Japan for the proposed Japan Australia Free Trade Agreement (JAFTA) have led to increased engagement with the broader market access issues and facilitated increased liberalisation. In particular, the negotiations have been supplemented by the Strengthening Australia Japan Legal Infrastructure project jointly undertaken by ILSAC and the LCA. As part of this process, Australia made representations to Japan about behind the border barriers, including providing detailed information required by the Japanese Ministry of Justice relevant to the licensing of foreign law firms in Japan. That process and information had a direct impact in achieving a positive result as it successfully facilitated issuing of a licence for the opening of an office by the Australian law firm Blake Dawson in Tokyo in 2009.¹⁶

4. The economic impact of FTAs

Although ILSAC has not attempted to definitively quantify the economic impact of FTAs on the export of legal services, ILSAC considers that there is strong anecdotal evidence that they deliver significant commercial benefits to Australia. While different FTAs that apply to different countries can add to the administrative costs and the complexity of regulation¹⁷ for those law firms that seek to operate across many of those countries, this is offset by the effect they have on legal services providers in providing them with additional opportunities, their clients, and as a driver for domestic innovation.

4.1 FTAs generate business for the legal and related services sector

As an enabling service, legal services are essential to underpin Australian businesses exporting overseas, as well as foreign companies looking to invest in Australia. Statistics published by ILSAC and DFAT indicate strong and continued growth in the legal services sector. ILSAC conducted legal services export surveys in 2004-05, revealing exports of AUD543.2m,¹⁸ and in

¹⁶ A. Boxsell, 'Blake Dawson first to open Japan office', *Australian Financial Review* (Sydney), 23 October 2009, 20.

¹⁷ F. Abbott, 'A New Dominant Trade Species Emerges: Is Bilateralism a Threat?' (2007) 10 *Journal of International Economic Law* 587.

¹⁸ ILSAC, *First International Legal Services Statistics Survey* (2004-05)

<www.ilsac.gov.au/www/ilsac/ilsac.nsf/Page/GlobalLegalServicesandMarketAccess_ILSACStatisticsSurvey_ILSACsFirstSurvey> at 21 May 2010.

2006-07, revealing exports and international activity generating AUD675m.¹⁹ Increases were also identified by DFAT.²⁰

In addition to increased activity as an enabling service resulting from increased trade in other sectors, specific studies are yet to be undertaken to provide definitive answers on the direct impact of FTAs on the export of legal services. However, ILSAC considers that the legal certainty of specific levels of market access that FTAs provide play a positive and significant role in decisions by law firms to invest in establishing branch offices overseas and in including export activity as a component of business strategy.

4.2 FTAs are a catalyst for domestic reforms to improve the competitiveness of the Australian legal services sector

ILSAC submits that the increased internationalisation of the Australian legal services sector, of which FTAs are a driving factor, has prompted beneficial changes in the regulation of the legal profession in Australia. This has also encouraged initiatives to improve services quality by Australia's law firms, arbitrators and mediators and universities. Trade agreements have also generated pressure to improve the domestic regulation of lawyers in Australia, including addressing barriers to foreign lawyers.

Case Study: Uniform and hospitable system for the regulation of foreign lawyers in Australia

As early as 1991, ILSAC called for a single Australian market to enhance the 'efficiency, flexibility and competitiveness' of the legal services sector.²¹ Subsequent multilateral trade negotiations under the Uruguay and Doha Rounds, and the numerous FTA negotiations over the past two decades, have continued to maintain pressure for the development of an open and hospitable foreign lawyer regulatory regime across Australia.

ILSAC has had a continued involvement in this process and is acutely aware that a key driver of this process has been a gradual, but increasing, recognition by the many stakeholders across the States and Territories of the need to liberalise at home to take advantage of opportunities overseas that trade agreements had the potential to provide. The Mutual Recognition initiatives across Australia in the early 1990s to the Trans-Tasman Mutual Recognition Agreement of 1997, and the Standing Committee of Attorneys-General (SCAG) decision in May 1996 that 'at the very least, there should be no statutory bar on the practice of foreign law in Australia' gave rise to the adoption of hospitable foreign lawyer licensing regimes across Australia to the National Legal Profession Reform²² initiative currently progressing under the Council of Australian Governments (COAG) were all influenced to varying degrees by the parallel trade liberalisation negotiations at both the multilateral and bilateral levels.

This process has, to date, delivered a very high level of reform and liberalisation in the regulation of the practice of foreign law by foreign lawyers in Australia. Further changes to the registration and full admission of overseas qualified lawyers have been included in the consultation draft of the

¹⁹ ILSAC, *Second International Legal Services Statistics Survey* (2006-07) < www.ilsac.gov.au/www/ilsac/ilsac.nsf/Page/GlobalLegalServicesandMarketAccess_ILSACStatisticsSurvey_ILSACsSecondSurvey> at 21 May 2010.

²⁰ Department of Foreign Affairs and Trade, *Trade in Services Australia 2008-09* (2010) 29.

²¹ ILSAC, *The Importance of a Single Australian Market in the Export of Legal Services* (1991).

²² AGD, *National Legal Profession Reform Project – Consultation Regulation Impact Statement* (May 2010) 11.

proposed Legal Profession National Law.²³ ILSAC is cognisant of the fact that potential trade negotiations with India, which are likely to include legal services market access as an area of key interest for Australia, would put pressure on the need to implement the proposed Legal Profession National Law.

5. The way forward - FTA or WTO?

ILSAC considers that FTAs and the WTO both play an important and complementary role in achieving increased levels of liberalisation of trade in legal services internationally. The main cause for the stalling of the Doha round is not the existence of, or a surge in, FTAs. FTAs may have some effect on the availability of resources to achieve results in WTO negotiations, but the real cause of the Doha impasse is more complex and can be seen as more to do with the sheer number of parties involved (over 150 WTO members) and the varying degrees of political will to achieve a meaningful outcome.

5.1 The complementary role of FTAs and the WTO process

FTAs have provided an efficient forum for securing commitments where no WTO commitments previously existed, and for going beyond existing WTO commitments. Similarly, although a conclusion to the Doha Round appears elusive, negotiations in this forum still have exercised a positive influence on Free Trade Agreements.

In the context of legal services, the Doha Round discussions, particularly under the Legal Services Friends group, which canvassed many market access and regulatory issues, have informed the trade negotiators of WTO member countries of the impact and potential benefits of undertaking meaningful market access commitments in legal services. Importantly, that process has identified for trade negotiators the essential elements of a minimum viable commitment on legal services. This information has had a positive impact on FTA negotiations. An example is the proposed commitment by Korea on legal services in their yet to be ratified FTAs with the US and the EU. This proposed commitment has been modified from their offer in the Doha Round, but modified to be consistent with the legal services commitments identified as suitable during the Legal Services Friends Group discussions.

5.2 The role of the WTO and FTAs in progressive liberalisation

FTAs provide stimulus for the progressive liberalisation of economies. It is obvious that FTAs, with fewer parties and more focused interests than the WTO process, can be concluded in a far shorter period of time. They also allow liberalisation of international trade in areas where, for any number of reasons, it is not possible to secure a consensus in the WTO. Both these factors increase the pace of trade liberalisation in partner economies.

In that context, FTAs encourage trade partners to go beyond their base WTO commitment, which in turn fosters increased adaptation to free trade, including through domestic reform. This economic development encourages further unilateral, bilateral and regional liberalisation. It appears that there is an emerging trend from bilateral trade agreements towards regional or similar agreements (such as AANZFTA, and the proposed for the Trans-Pacific Partnership Agreement and Pacific Agreement on Closer Economic Relations (PACER) Plus Agreement). ILSAC considers that the presence of multiple bilateral and regional trade agreements will provide an impetus, in the longer-

²³ AGD, *Legal Profession National Law – Consultation Draft* (May 2010).

term, to ‘multilateralise’ the liberalisation gains achieved through bilateral and regional or similar trade agreements. This has the potential to provide a greater jump in the level liberalisation that may not have been able to be achieved through a purely multilateral liberalisation process.

6. Consultation

ILSAC has worked extensively with the legal community to ensure widespread consultation on FTAs and has a strong history coordinating the development of Australia’s interests in legal services internationally in close consultation with the legal sector. However, we note that, at times, legal stakeholders are not fully cognisant of the benefits that an FTA can provide. This has required a process of information exchange and education. Alternatively, there are also stakeholders, who have established an international presence and have developed innovative ways to engage in providing services overseas, that may be disinclined to fully support the FTA process as they consider that the establishment of an FTA has the potential to upset their hard won arrangements and even negate the advantages that they have gained through direct negotiation. This is an aspect ILSAC is sensitive to, but continues to focus on developing approaches that are beneficial to the wider legal sector interested in engaging in the export of legal services.

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(Sixth Term 2007-2010)**

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- Attorney-General's Department
- Department of Foreign Affairs and Trade
- Australian Trade Commission (Austrade)
- Australian Agency for International Development (AusAID)
- The then Department of Education, Employment and Workplace Relations; Australian Education International (AEI)

ILSAC SIX GUIDING PRINCIPLES FOR THE LIBERALISATION OF TRADE IN LEGAL SERVICES

Bearing in mind the general principles set out in the General Agreement on Trade in Services (GATS) of MFN (non-discrimination between countries), national treatment (non-discrimination between domestic and foreign entities), and transparency, as well as the other matters provided for, and the four modes of delivery for a services described in the Agreement, the following guiding principles appear particularly relevant to achieving liberalisation of trade in legal services:

1. Formal recognition, on reasonable terms, of the right to practise home-country law, international law, and where qualified, third-country law, without the imposition of additional or different practice limitations by the host country (eg, a minimum number of three years of professional experience or a refusal to recognise concurrent practice rights where the foreign lawyer's home country is a federal jurisdiction).
2. Formal recognition, on reasonable terms, of the right of foreign law firms to establish a commercial presence in a country or economy without quota or other limitations concerning professional and other staff, location, number and forms of commercial presence, and the name of the firm.
3. Formal recognition, on reasonable terms, of the right of foreign law firms and lawyers to enter freely into fee-sharing arrangements or other forms of professional or commercial association, including partnership with international and local law firms and lawyers.
4. The right to practise local law to be granted on the basis of knowledge, ability and professional fitness only, and this to be determined objectively and fairly through transparent process.
5. Formal recognition of the right, on reasonable terms, of a foreign law firm to employ local lawyers and other staff.
6. Formal recognition of the right to prepare and appear in an international commercial arbitration.