

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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**TRADE IN PROFESSIONAL SERVICES**

Note by the Secretariat

**I. Introduction**

1. The term professional services covers a wide range of activities including the accredited or licensed professions of which accounting, law, architecture, and medicine are prominent examples as well as less regulated business services such as advertising, economic and management consulting and market research. While references will be made to a wider range of traded professional services, this background note will focus mainly on four internationally tradeable professional service activities: accountancy, legal services, management consulting and advertising. By concentrating on a sample of major professional service categories, the objective will be to identify some of the core issues which might be of relevance in examining the implications of applying concepts, principles and rules in the sector.<sup>1</sup>

2. Although professional services may differ in various respects, their provision generally depends upon the expertise of the supplier (proven experience, know-how and skills) being used to meet a client's needs; the supplier may operate in an independent capacity and often according to a code of ethics and for a fee agreed in advance. Personal contact between producer and client and the perceived quality of the service tend to be all-important aspects of what is generally a specialized, highly knowledge-intensive activity. Furthermore, in most countries the accredited professions (e.g. lawyers, accountants, architects, engineers, doctors) are regulated at national or sub-national level by governments and/or professional associations generally with the stated objective of consumer protection. In particular, such regulation applies to professional qualifications and practice. Other professional services such as consulting or advertising are generally subject to fewer controls apart from those applying to the normal functioning of businesses.

3. Broadly defined, international trade in professional services may occur via the sale of professional services by practitioners of one country to residents of other countries. This may be by individuals or specialized

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<sup>1</sup>For a fuller listing of professional services, see the secretariat note Reference List of Sectors (MTN.GNS/W/50), pp.4-5.

international firms operating from their home base and/or from the territory of the foreign client. Trade in professional services depends to a critical extent on the movement of persons, on data flows and access to communication networks, as well as on the ability to provide the service by having an appropriate commercial presence close to the client.

4. The large professional service firms - in accountancy, management consulting and advertising - have a clearly international character. Many are established throughout the world with their foreign earnings accounting for a substantial part of their revenues. The growing internationalization of these providers of core business services is directly linked to the postwar rise of the multinational corporation. As large domestic manufacturing companies widened their international operations, accountants, consultants and other professional services followed to serve their clients worldwide. There are exceptions to this general rule, however, as legal service firms, for example, have tended to locate in the vicinity of major banking and financial centres (London and Paris in the 1960s and 1970s, Hong Kong and Singapore later). In the case of legal services, the preparation of financial documents is a major source of revenue for many business law firms; financial institutions are an important source of referrals to large law firms. The rate of internationalization of the professional services sector has been increased by advances in information technology which have helped to establish global information networks and thereby accelerate the tradeability of services.

5. Another significant characteristic of some international professional service firms relates to their organizational structure which balances local expertise and international coordination. Accounting and auditing, dominated by a small number of international companies, constitutes a prominent example. The industry's international operations are organized as loose collections of largely autonomous, locally-owned partnerships which are linked to an international organization that has coordinating and other responsibilities. Effective operations in a multitude of national markets, where client relations are crucial, require not only an intimate knowledge of the language, regulations and business customs of each local market but also the advantages offered by centralized activities such as the setting of operating standards, training programmes, client referrals and the provision of a common data service infrastructure. Accounting firms vary principally according to the extent to which they integrate and control the management of their global operations.

6. As the professional service sectors rapidly evolve and diversify, there is a considerable overlap between market boundaries. Large accounting firms have long followed a strategy of cross-fertilization with management consultancy, and a large portion of their gross receipts is now generated by management advisory services. Similarly, a number of large advertising firms are involved in public relations and market opinion survey work and other activities also carried out by consulting firms. Many advertising groups are now capable of providing their clients with an integrated package of business services. Large law firms which traditionally concentrated on business law are increasingly involved in areas of tax, trust and estates as are accounting firms. Mergers are a convenient vehicle for a relatively

small number of international firms, particularly in the accounting and advertising fields, to diversify and increase their scope and scale of operations, and maximise the potential of information systems in order to improve their competitiveness around the world.

7. Accurate measures of the world market for professional services or of international trade in these services are difficult to obtain (see the Annex for an overview of available statistics). In general terms, the industrialized countries have a large supply of professional and business expertise and a long experience in marketing these services overseas. The large international professional service firms based in these countries have increasingly attempted to build practices in developing countries to expand beyond their traditional markets. This has contributed to the considerable concentration of market shares. It has been estimated in accountancy, for example, that the world's largest fifteen firms control over one-third of the world's accountancy business. Similarly in advertising, it is estimated that 20 per cent of world advertising billing is controlled by the eight largest advertising firms, with concentration more pronounced in developing than in developed country markets. Management consulting is also becoming a concentrated industry with American-based firms employing worldwide some 60,000 management consultants and generating US\$7 billion a year in revenue. This has been estimated to represent 60 per cent of consultants and 70 per cent of revenue on a global basis. Concerning the provision of professional services by developing country individuals and firms, the situation varies between those countries that have a shortage of professional services and others that have a large pool of qualified personnel sufficient not only to satisfy local demand but also to sell services abroad. Generally, the participation of developing countries in international trade is likely to be relatively greater at the level of the individual practitioner than at the level of the firm.

## **II. Activities comprising professional services**

8. In most countries, accountancy and legal services (as well as medical and veterinary services, architects, engineers, real estate brokers, taxation services, etc.) are subject to strict licensing regulations. This is not the case for advertising and management consulting services (which are illustrative of the large group of business services embracing the work of, inter alia, market researchers, systems analysts, software engineers, marketing and public relations experts, executive and personnel recruitment firms etc.). This note will concentrate on services provided by private economic entities to business enterprises and government agencies rather than those supplied to private individuals (e.g. public health and education services). Activities of the main professional service sectors, including the four to be analysed in greater depth, may be summarized as follows:

- (a) Accounting services fall into three basic categories related to financial management: first, audit and accounting services, still at the core of the work carried out by accountants, seek to improve the quality of financial information reported by clients

and to improve the clients' record-keeping and financial control systems; tax services, the second traditional line of business, focus on tax planning and on solving various tax-related problems particularly in the face of the growing complexities inherent in taxing organizations that operate across national borders; third, management consulting services such as the design and installation of computer systems and corporate strategic planning, the latter category constituting the fastest growing market segment for international accounting firms.

- (b) The demand for international legal services has increased significantly over the past thirty years as the volume of international business transactions has grown. Law firms operate offices in foreign countries generally to provide host country clients with advice on laws and regulations concerning the law firms' home country. They also oversee legal matters of home country clients involved in business transactions in the host country, often in association with a local law firm. International lawyers handle a wide range of work including: international tax advice, company flotation and related advice, insurance, commodities, arbitration, shipping and air disputes, trade advice, international anti-trust strategy, privatization, energy law, employment law, environmental law, and intellectual property law. Although professional service firms may compete in the same markets internationally, country-specific institutional and professional arrangements can be very different. In this respect, legal services probably represent the most complex situation regarding the scope of professional activity reserved exclusively for qualified local lawyers and local rules governing association between local and foreign lawyers. In the United States, for example, lawyers are organized in a single profession and locally licensed professionals are typically members of a state bar. In the United Kingdom, business lawyers are typically "solicitors" to be distinguished from "barristers" who have a monopoly over court work. In most of Europe, the legal profession is typically split into three where in France, for instance, "avocats" handle most litigation work, "notaires" handle transactions typical of real estate brokers and investment bankers in the United States, whereas the area of work of "conseils juridiques" approximates that of business lawyers in the United States. Whatever the local rules may be, however, foreign lawyers generally do not engage in litigation practice; they rather limit themselves to legal consultation and advice including the negotiation and preparation of legal documents.
- (c) The main providers of management and other consulting services include specialized consulting firms and independent consultants, accounting firms, consultants who work within non-service organizations, and academics and other experts engaged in consulting on a part-time basis. Like other service providers, many consulting firms expanded their operations to follow domestic

clients abroad; foreign companies, governments and international development agencies, however, are now major sources of foreign contracts. In the international market, consulting and accounting firms are dominant with large firms carrying out much of the international activity. The type of consulting service sold internationally varies greatly depending on client needs. Management consultants offer business clients expertise in the development of managerial systems relating to information, personnel remuneration, manufacturing, marketing, market research and distribution, strategic planning, and development of human resources. Consulting firms also supply a variety of services required for public projects financed by governments and/or international development agencies, particularly in developing countries. Such services may range from general financial and economic planning or rural development to sectoral specializations such as energy planning, agro-industrial planning and transportation planning.

- (d) International advertising services comprise a number of activities which go beyond the production of television and radio commercials and of newspaper and magazine advertisements. Advertising agencies also provide foreign clients with additional services including the design and launch of advertising campaigns, the securing of media time and space, distribution of advertising material and the verification of advertisements once printed or broadcast.
- (e) A sub-sector with both a professional licence and a business consulting element relates to the international provision of health care services. This concerns on the one hand the international movement and ability to practice of doctors, nurses, dentists and related professionals, and also the activities of hospital managers, consultants and other professionals involved in the export of health care services including the planning, design, development and/or operation of facilities which provide health care services in a foreign country.
- (f) Architects and engineers comprise a further significant professional sub-sector. The activities of architects relate to construction methods, restoration projects, upkeep of built-up areas, interior decoration and environmental preservation. Engineering activities represent important inputs from the conception to the conclusion of construction projects, including operations and maintenance. Trade in architectural and engineering services can take place essentially (a) on a small scale, i.e. an individual professional based in either the home or the foreign country can sell services to a foreign client and (b) in the form of the international design and construction business. (As the latter activity has been described in the secretariat note Construction and Engineering Services (MTN.GNS/W/53), it will not be analysed in greater detail here,

although general remarks on the nature of regulations affecting architects are found in paragraph 19 of this background note.)

- (g) Prominent among business service markets with international growth potential are software and software services. An essential aspect of commercial transactions involving software is the service linked to its supply, installation, maintenance and utilization. Particularly in the case of customer-specific software, these services (e.g. consultation and training) cannot be separated from the product itself, which is frequently delivered as a hardware component or as part of a complete system. There are several different types of suppliers to this market including hardware suppliers, computer centres, systems houses, software consultants, and independent software suppliers (whose main share of revenue comes from the sale of standard software and customer-specific adaptation of that software). Companies from both industrialized and developing countries sell customized packages abroad. Trade in software services may take place when qualified personnel are sent abroad to service clients such as banks, hotels and travel agencies which require development of, and modifications to, software packages on site.

### **III. Forms of trade in professional services**

9. Professional services essentially involve the provision of expertise by skilled individuals to meet clients' needs; remuneration for services rendered generally takes the form of fee earning. International trade in professional services involves the sale of knowledge and expertise by a resident of one country to residents of another country. Trade takes place both through the sale of professional services by individual practitioners and by international firms which specialize in particular areas of activity, and also as part of the internal operations of multinational enterprises. Trade may not be strictly bilateral since a service may be produced in several countries. Broadly speaking, professional services may be transferred from the exporting to the importing country in the following ways:

- (a) Cross-border or transient trade: this may occur electronically from computer terminal to computer terminal, or via international post. In some cases, the consumer of the service may travel to the supplier (as when a patient undergoes specialized surgery in a foreign country). However, such trade mainly involves the short- or medium-term travel of an expert across an international border as when a medical or legal specialist consults on a specific case or a foreign consultant travels abroad to bid against a local firm on a specific project. The supplier may be an individual providing the service in the place of consumption or an expert working for a firm which remains the supplier of the service in question. Such services are likely to be traded as discrete units and generally involve a direct international payment.

- (b) The sale of professional services to a foreign client may be via a local commercial presence. This refers to work carried out by partners or associates with international representation or partnerships, establishment of offices, agencies, branches and subsidiaries, or joint ventures in foreign countries. This type of multinational trade is mainly carried out by the global accounting, legal and management consulting firms. In contrast to the cross-border trade, there may be a medium or long-term establishment in the host country. The service firm, which is located in the host country retains a tie with its home office, and can itself be regarded as a multinational. Typically, the firm consists of national professional practices, usually privately owned partnerships, staffed mainly by local nationals who have completed their professional training in their own country and have satisfied the professional standards set by local accreditation authorities.

10. Firms or professionals who wish to carry out business activities on a regular basis in a foreign country with local clients may require for statutory or business reasons some form of commercial presence in the country in question. However, the importance of such requirements vary depending on the professional activity involved.

- (a) Accounting: In order to serve multinational corporations, the largest accounting firms maintain extensive international operations consisting of largely autonomous partnerships. This reflects the fact that regulations, standard practices and tax laws differ from country to country. Generally there is relatively little cross-border trade as the local accounting partnership hires employees in the host country and bills the multinational client's local subsidiary. A cross-border variation occurs when employees from the head office or from a third country undertake temporary specialized work for the foreign partnership, entailing intra-firm billing for salaries and related expenses.
- (b) Legal services: Trade takes place when lawyers and legal service firms provide services directly in foreign markets or when foreign clients purchase them in the domestic market of the service provider. As noted above, given the regulatory structures typical of the legal profession, lawyers and legal service firms operating abroad generally provide legal consultation or negotiating advice rather than practice in courts of law.
- (c) Management and other consulting involves personal service whether face to face or from a distance, and often involves temporary travel of individual professionals. Concerning commercial presence, consulting firms carry out their foreign operations in various ways, including through foreign affiliates, branches (the most common form for large firms), subsidiaries, joint ventures and franchise operations.

- (d) Advertising services cover advertising agencies, advertising representatives and firms involved in related businesses. International advertising services are normally provided by professionals located in the client's market through a permanent presence. The foreign affiliates of international advertising firms, mostly branch partnerships, tend to operate autonomously in terms of production and billing. As in accounting, cross-border trade may follow from the temporary assignment of skilled practitioners (e.g. artists, copywriters, media planners and buyers) to affiliated firms to train and supervise nationals. Campaign concepts may also be exported in the sense that some large firms design marketing and advertising plans centrally which then have to be shaped to fit the local market; services produced in one country (such as advertisements, television or radio commercials) may be exported to another to be broadcast or printed, or sold directly to a foreign affiliate or another foreign client.

#### **IV. Motivation and objectives for rules and regulations**

11. There are various reasons why the regulation of many professional services is stringent and widely prevalent in developed and developing countries alike. Among the principal broad concerns which motivate regulations and policies affecting professional services are consumer protection, promotion of domestic business and local employment, the need to manage foreign exchange and the preservation of cultural identity.

12. A number of professional services are regulated to assure an acceptable degree of quality in the service provided to clients. Trade in professional services in areas such as the law, medicine and architecture, essentially involves the sale of a service by a licensed professional from one country to residents of another country where the professional was not originally licensed to practice. Traditionally, most countries have imposed strict regulations on the organization of the professions, professional qualifications and access to and exercise of professional activities. The regulatory authorities, which often comprise both government and professional organizations, designate who is and who is not licensed to offer the service in order to protect the consumer by controlling the competence and integrity of the service provider, and also by keeping high standard professionals safe from unfair competition and by preserving their independence.

13. Considering some of the main sub-sectors, in the accounting profession, qualifications are entrenched in national systems of accounting and company law and it is generally accepted by the profession that possession of the local qualification, which broadly means membership of a professional body or some official authorization, is required to practice in the country. In nearly all countries of the world, such regulations are in force. The rationale for regulations in legal services are similar to those in accounting. The many different national legal systems and codes governing



practitioners not only affect qualifications to practice but also what may be defined as the appropriate scope of a lawyer's activities. Though countries do not regulate most consultants through particular licensing or educational requirements, in many countries associations of consultants themselves have developed standards of professional and ethical conduct to which members must adhere.

14. The promotion of indigenous service industries is a further significant motivation for a range of government regulations and other measures which may affect foreign service providers. In several professional service sectors, linkages to other sectors may further encourage infant industry type policies. For instance, support for local advertising activities may be based on important linkages to market research and the television/media sector. In this regard at least three sets of practices are relevant. First, many governments take the view that public funds should be used to promote domestic businesses by means of "buy national policies" where government procurement practices may discriminate against internationally affiliated firms either by denying them access to the procurement process or by giving special preference to local unaffiliated firms. "Buy national" attitudes may also reflect deeply embedded social and cultural traditions. Second, in order to protect local employment in certain occupations, governments may operate national immigration and employment policies which seek to control the number of foreign entrants by stipulating requirements and procedures for obtaining visas and work permits for foreign nationals. Third, governments may impose impediments to technology and information transfer in order to keep at home the economic value-added of data processing, and to promote indigenous technologies and related industries. As the international activity of professional service providers becomes increasingly dependent on access to data bases and telecommunications networks, restrictions on transborder data flows, on access to private leased line capacity and on the use of computer facilities in foreign countries may increase in importance as barriers to the effective transmission of professional services.

15. Government practices which may impede the transfer of fees and other international payments are mainly motivated by the need to manage capital flows and foreign exchange. In accountancy firms, for example, payments between the national practice entities and the international organization, as well as among the national practice entities, are essential for the functioning of international professional service organizations. One example is the imposition of lengthy authorization procedures before foreign exchange can be obtained and international payments can be commenced, which may result in foreign exchange losses and increased administrative costs.

16. Reasons of preservation of cultural identity are advanced particularly in developing countries in favour of limiting foreign presence in areas such as educational services, advertising and the performing arts. Regulations requiring local ownership, and domestic content provisions such as the filming of advertisements in the country of origin are the norm in several countries.

**V. Regulations and measures affecting trade in professional services**

17. The regulation of professional services occurs at two levels: that of the individual professional and that of the firm or partnership. At the individual level, for example, admission to the appropriate professional associations is a precondition for the practicing of the activity and such admission is often linked to citizenship and/or residency requirements. At firm level, foreign service providers are sometimes not allowed to associate with local partners whereas in other countries they are required to do so.

18. The issue of barriers to trade in professional services concerns, for instance, the question of whether or not certain types of regulation are necessary to protect consumers or whether and to what extent such regulations unnecessarily discriminate against foreigners. This section provides a brief but in no sense definitive overview of the main types of regulation which exist and in which restrictions to trade in professional services are often embedded. The most commonly found types of regulations and government involvement in the professions generally may be categorized as dealing with professional qualifications and licensing issues, matters relating to the exercise of a profession, the repatriation of income, and, more in terms of potential restrictions, access to telecommunications services. Some regulations or measures with restrictive effects, such as tax discrimination of foreign providers of accounting, consulting or legal services, or the granting of subsidies in the competitive bidding process in support of, for instance, national health care firms are of a general nature and will not be discussed in detail in this section.

19. Before turning to the various types of regulation under examination which affect professional service providers, a general comment, drawing specifically on architectural services, may be helpful. There are a number of regulations which may restrict the export of architectural services affecting both independent operators and larger firms. In common with several other professions, the degree to which the provision of architectural services is regulated varies from country to country, as does the extent to which there are provisions relating specifically to foreign service providers. For example, licensing regulations can take several forms, including a total prohibition on the licensing of foreigners; and requirements that some or all of the applicant's professional education take place in the licensing country. Furthermore, a country may require that the foreign professional associate with a local practitioner and even where no such law exists, problems in obtaining local licenses combined with laws forbidding unlicensed practitioners from engaging in certain activities create de facto requirements of association. Other regulations and measures with adverse trade effects include requirements that the professional establish a permanent local presence in order to practice, difficulties in obtaining the proper work permit or visa, and taxes and custom delays on required materials, such as drawings, plans and special equipment.

**(a) Measures relating to qualifications**

20. Professional qualifications appear to be a key area of difficulty in the provision of professional services internationally, as perceived by

service providers themselves. Qualifications are usually accorded by a national authority, whether the government itself or some organization separate from the government, such as a professional body. In some professions, it is generally regarded as acceptable that as long as differences remain in national regulatory regimes, professionals should be locally qualified as their advice requires an intimate and thorough knowledge of local market conditions. Still, in many instances, qualification and licensing provisions can affect, either directly or indirectly, the ability of professional service providers to gain access to foreign markets. Qualification requirements can be either discriminatory or non-discriminatory in nature. On the non-discriminatory side are regulations, such as the need to be locally qualified and/or accredited, which apply to all professionals regardless of their nationality. When limited to nationals, however, such requirements become overtly discriminatory.

21. Regarding legal services, admission to the local professional body is generally required to practice in court and in some countries, citizenship is a pre-condition for entry i.e. a foreigner cannot practice as a matter of principle. In other countries, a foreign professional is allowed to qualify although the need to requalify can in practice be a substantial disincentive to practice. Thus de facto or de jure, all countries limit considerably, if they do not actually prohibit, access by foreigners to the local bar. That limitation does not necessarily represent an insuperable impediment to the provision of all services, as legal services involve non-litigation related legal work. Disputes may then arise as to who may carry out such work and on which laws such individuals may advise - local law, home country law or international law.

22. Concerning the accountancy profession, most countries regulate the rights to practice accounting and to sign audited financial statements both through laws directly governing the profession and through regulations stipulated by professional accounting societies. Auditing is the main line of business for both internationally affiliated and purely local firms alike. Compared to the legal profession, it seems that most countries are relatively liberal in granting foreign auditors the right to practice, permission being based on partial or total equivalency for diplomas and work experience acquired abroad. However, some countries do impose significant restrictions on international firms by using the professional certification process to limit the ability of foreign accountants to practice within their jurisdictions (e.g. by requiring that practising accountants be citizens or residents for prescribed periods of time, or by giving preferences to citizens of certain countries).

23. Countries generally do not regulate consultants or advertising professionals through education requirements. However, in a number of countries consultants' professional associations have themselves developed standards of professional conduct in order to maintain high standards of integrity and competence and to which members must subscribe. A number of international advertising companies issue guidelines to their subsidiaries overseas to conduct advertising in accordance with the International Code of Advertising Practice.

(b) Measures relating to the exercise of a profession

24. Regulations and government measures can limit the scope of professional services which can be performed in certain countries. Some professions are limited indirectly by the procurement practices of governments e.g. consulting engineers may find that they can only win contracts for large and highly technical projects which are not within the capability of local firms, rather than being able to compete freely for all types of contract.

25. In accountancy and legal services, restrictions are of a more direct, regulatory kind and sometimes prohibit the combination of different services which firms are able to provide in their home country and elsewhere. Lawyers may be limited to providing advice on the law of their home country which limits them to a correspondent role in the country concerned. Regarding accountancy, in some countries foreign firms may find it difficult to attain "audit corporation status". Where such status is attained, they may be disqualified from providing non-audit services such as tax advice and management consultancy. Some countries operate ceilings on the number of audits which a foreign firm may perform; such firms may be excluded from certain types of audit which the government or professional accounting body assigns to specific accounting organizations. While some governments and professional societies limit the scope of practice of accounting firms (apparently to protect the integrity of the audit function), such firms have generally been able to overcome scope of practice limitations by establishing separate partnerships in each area. Scope of activity is seen as an important issue in mature markets where accountants view diversification as the primary means to expand their businesses.

26. Regarding establishment and local ownership matters, the situation varies for advertising and management consulting firms on the one hand and accounting and law firms on the other. Generally speaking, the former expand by opening their own branches and subsidiaries or by buying local firms where they may face local ownership requirements such that a minimum proportion of equity, normally a majority holding, be in the hands of nationals. Furthermore, in several countries advertising firms must be licensed, something that has proved to be an impediment to business. On the whole, advertising firms have been more affected by such measures than management consulting firms. Concerning the establishing of accounting businesses in foreign countries, some countries have regulations on the nationality of partners, or sometimes on the proportion of partners who must be local nationals, (which is comparable to rules limiting equity participation by non-nationals in local commercial entities), or on the maximum number of partners regardless of nationality. Some countries prohibit partnerships formed between foreign and national firms, whereas others may insist upon such a formation as the only means of entry for foreign firms. Countries may choose to enforce this kind of regulation as a way of fostering the provision of indigenous services and the development of local expertise. For legal firms interested in forming a partnership abroad, attention may have to be paid to rules requiring a majority of partners to be nationals and where foreign lawyers may be in a subordinate role.

27. A third set of measures relates to mobility of personnel: governmental restrictions on the mobility of non-nationals take the form of requirements and procedures for obtaining visas for both short-term travel and long-term residency and work permits for non-nationals. Foreign nationals may be denied entry outright or may be required to go through lengthy and complex approval processes. Although visa restrictions are not unique to professional services, service firms are disproportionately affected because countries may often link the right to practice, even on a transient basis, to citizenship and/or local licensing requirements. Such restrictions are sometimes difficult to deal with as expertise in international business law requires a degree of familiarity with the law of several countries which can be acquired only through practice. For programmers offering software services abroad, where much of the work is done on site, immigration restrictions can be a serious obstacle to working on site to develop customized packages. Restrictions in accounting and consulting tend to be less problematical because most services can be provided by nationals. More generally, restrictions on the movement of personnel as carriers of expertise is sometimes used as a means of restricting technology transfers should such transfer be seen as frustrating the development of indigenous technological capabilities.

28. Regarding the issue of national procurement, some countries restrict the access of foreign professional service firms to the business of public sector agencies, public authorities and firms in the nationalized sector. Such policies are often not embedded in government regulations but stem from local business tradition, and informal administrative preferences. In advertising, government procurement policies are significant as the advertising expenditure of public agencies and nationalized industries tends to be large, and in many countries the public sector represents an important part of the economy.

29. In the provision of accounting, consulting and legal services, restrictions on the use of a world-wide name are encountered in many countries, even where practices have local partner majorities. This type of restriction may limit the benefits of international recognition and create administrative burdens.

(c) Measures restricting international payments

30. Measures restricting the repatriation of fees, royalties and profits can affect the operations of professional service firms and software companies operate. In order to control capital flow and foreign exchange, some countries place restrictions on international transfer payments which may limit the ability of foreign professional service firms to enter new markets. Such payments are significant because first, they are required for the purpose of intra-firm billing of costs incurred by one branch office when working on a project handled and billed directly by another; and, second, international payments are needed so that the costs of personnel training and jointly developed services may be shared. Restrictions on international payments may be applied in several ways. For example, the repatriation of fees, royalties and profits to home countries is sometimes

linked to a company's local capital assets, which can be restrictive for services, particularly where inputs exclusively take the form of professional expertise; countries may tax international transfers directly or may limit them indirectly by not permitting intra-firm costs (i.e. national practice entity/international firm) to be tax deductible; some countries impose lengthy authorization procedures before foreign exchange can be obtained and international payments can be made, possibly leading to increased administrative costs and foreign exchange losses.

(d) Measures affecting technology and information transfer

31. Restrictions on accounting, consulting and advertising "technology" which is human-capital intensive may take the form of restrictions on the international movement of personnel. Furthermore, some countries impede the transfer of professional services technology and know-how by placing high tariffs on the import of software or on technical and training publications. In advertising, although most countries place few limitations on the import and local use of printed advertising copy material, many countries prohibit the local use of advertising videos made elsewhere, as some countries see the production of videos as a means to promote the development of their domestic film and television industries and to create local employment for those associated with the industry. For many professional service firms the use of transborder data flows is not of particular importance, but as professional services become increasingly reliant on access to data bases and information networks, restrictions on transferring data in or out of a country and on access to private leased line capacity may become significant impediments to the tradeability of professional services.

VI. Considerations relating to the application of certain concepts and principles

(a) Transparency

32. Considerations concerning transparency could arise in the context of the need to clarify norms and regulations which may restrict foreign competition, be they de jure or, more importantly, de facto. In addition to regulations on professional qualifications and entry, transparency could apply to the role and powers of national and/or regional professional associations which may be empowered to regulate the use of titles, effective practice, de facto market entry, conditions of market competition, and government procurement and aids.

(b) Progressive liberalization

33. As set out in MTN.TNC/11 progressive liberalization, which would take due account of the level of development of individual countries, would involve reducing the adverse effects of all laws, regulations and administrative guidelines. Relevant considerations for professional services could involve such matters as the liberalization of restrictive national regulations regarding nationality requirements or entry restrictions, and the liberalization of bidding for certain public sector contracts.

(c) National treatment

34. The application of national or equivalent treatment to many professional services concerns a number of operational problems encountered by foreign professionals and professional firms including the recognition of professional qualifications earned abroad, the accreditation of qualified foreign professionals, the right of foreign professional firms to establish commercial linkages with local professionals including partnership arrangements, taxation, and access to particular market segments (e.g. government contracts). As with other concepts, national treatment could potentially apply to regulations and administrative practices which discriminate between national and foreign service providers in terms of (a) trading situations with a temporary or intermittent local presence and (b) requirements regarding local establishment where this is necessary for effective market access. The application of national treatment might also involve some degree of harmonization and/or of mutual recognition of educational standards and degrees as well as of rules of professional bodies.

(d) Most-favoured-nation treatment/non-discrimination

35. The principle of m.f.n./non-discrimination could provide that any market access or other commitment granted to any one signatory of a given agreement is granted to all countries adhering to the same agreement. The awarding of concessions regarding particular professional service activities could potentially be linked to considerations of recognition of professional qualifications and equivalence of other entry requirements. In this regard, reciprocity or bilateral arrangements at governmental or professional level on, say, the recognition of diplomas and qualifications might have relevant implications.

(e) Market access

36. As set out in MTN.TNC/11 the market access concept may involve foreign services being provided according to the preferred mode of delivery which, for professional services, might cover transborder trade, the movement of individuals and professionals, and the establishment of a commercial presence, where the latter two alternatives are deemed essential for the provision of the service. Apart from cases of outright discrimination (nationality conditions for suppliers, ban on foreign service imports), market access could be considered to depend on the right of foreign service providers to enter a market and to sell services under conditions of reasonable business competition in that market, taking both professional as well as government regulations into account. Among the various considerations involved in applying the market access concept, those that may be of relevance include: the opportunity to supply a service that does not put the supplier in a markedly disadvantageous competitive position; the opportunity to use the internationally recognized name of a foreign firm; the non-discriminatory application of local qualifications and licensing procedures; and the opportunity to recruit and train local staff.

(f) Increasing participation of developing countries

37. As set out in MTN.TNC/11 the multilateral framework should provide for the increasing participation of developing countries in world trade and for the expansion of their service exports through, *inter alia*, the strengthening of their domestic services capacity and through provisions to facilitate effective market access. In exporting professional services, considerations relate to the activities of both individual practitioners and firms. First, developing countries could benefit from the availability of highly educated and competitively priced practitioners (notably lawyers, doctors, consultants, and software programmers), and familiarity with the particular concerns of developing country consumers of professional services. An important consideration in respect of the ability of developing country professionals to gain access to developed country markets relates to qualification requirements and the recognition of educational and/or professional competence. Regarding export growth, one important consideration relates to wider recognition that the temporary movement of practitioners is essential for performing the service in question. Second, at the enterprise level, some developing country advertising agencies are seeking affiliations with multinational advertising firms to gain access to the professional expertise and name awareness that is required to win the global clients doing business or investing in their countries.

38. With regard to the strengthening of domestic professional services capacity, relevant considerations could relate to the fostering of local expertise and employment as illustrated by the operating practice of international accounting firms. As new practices are established, the resulting affiliated national firms gain management responsibility and skills transfer through access, *inter alia*, to worldwide training and technical information provided by the international organization.

(g) Safeguards and exceptions

39. National security considerations may be relevant to restricting certain professional activities to national firms (e.g. audit of sensitive public sector agencies, contract for designing computer systems for the military). Balance-of-payments measures (e.g. exchange controls, restrictions on personal travel, surcharges) could be relevant to control foreign exchange expenditure for a limited period, *inter alia*, on imports of all or some professional services.

(h) Regulatory situation

40. Important regulations both by governments and professional bodies from a domestic viewpoint are those dealing with the organization of the professions including law, accountancy, medicine and architecture, professional qualifications, and access to and exercise of activities. The respective roles of the government and the profession may vary from country to country, ranging from the professional body primarily determining qualification standards and scope of practice, to situations where governments closely regulate the full spectrum of activities in a



sub-sector. One aspect of the regulatory situation thus concerns the balance between the governments' regulatory powers and those of the professional associations and the extent to which, and method whereby, professional associations may be subject to an eventual process of liberalization. Relatively unregulated services such as consultancy, like other services, are subject to general economic, social and immigration regulations, exchange controls, national company law, regulations on professional responsibility, etc. which can have a substantial impact on international trade conditions. Another regulatory concern which might emerge in the context of the progressive liberalization of trade in professional services relates to the need to bring different qualification and licensing requirements into line through the harmonization and/or (where possible) mutual recognition of training requirements and of rules governing the exercise of various professions.

## ANNEX

### Overview of available statistics on trade in professional services

As explained more fully in the secretariat note Balance of Payments Statistics on Services (MTN.GNS/W/58), statistics on trade in services, and thus on international transactions in professional services, exhibit several weaknesses.

Professional services such as legal advice and financial intermediation may in part be subsumed under the value of the goods to which they are related, or they may be misclassified, over- or underreported, or not reported at all. Over-reporting may occur for categories such as advertising, as some countries include establishment and operating costs of agencies. Misclassification may occur as a result of reporting payments for trade in services as payments for goods or factors, or vice versa. Data for services that require the movement of consumers, such as medical and educational services, are often not reported in the balance of payments, even though they may at times be substantial. Trade in many professional services (such as management, data processing, and accounting) may not be registered at all, as there may not be a flow of foreign exchange. While separate statistics on transactions between affiliated firms exist for a small number of countries, most countries do not collect such data. Sales by foreign affiliates are not recorded at all in the balance of payments, because the factors that move in these cases do so for a substantial period of time (longer than one year), and thus are considered to change their residency status. The consequence is that the associated sales are not regarded as trade.

Regarding the available data, several professional services are recorded in an aggregated manner under the heading "other private services" in IMF balance-of-payments statistics. These intermediate professional and business services have come to play a key role in international transfers, and as shown in Table 1, trade in these services has been one of the most dynamic components of trade in invisibles for many countries. "Other private services" have increased their share in total private service exports from under one-quarter in 1970 to over one-third in 1987. Table 2 demonstrates that countries in Africa and North and Latin America experienced a reduction in their share of world exports of these services, while those in Western Europe and Asia increased their share. On a more aggregate level, however, little has changed since 1970, with industrialized countries having broadly maintained their relative share.

**TABLE 1**  
**World exports of private services by category, 1970-87**

Percentage based on value data

Service categories	Share in exports of private services			Average annual change in exports	
	1970	1980	1987	1970-80	1980-87
Other private services <sup>a</sup>	23	30	34	20	6
Passenger transport	5	5	6	17	6½
Shipment	21	16	13	14	1
Other transport	12	16	11	20	0
Travel	29	27	29	16	5½
Property and labour income	10	6	7	12	6
Private services	100	100	100	17	4½

Note:

<sup>a</sup>Other private services includes non-merchandise insurance, communication services, advertising, brokerage and management services, leasing, and other professional and technical services.

Source: IMF, Balance of Payments Statistics

TABLE 2

Shares in world exports of other private services  
by region and leading exporters, 1970 AND 1987

Region/Country	1970	1987
Developed	86.9	86.1
Developing	11.3	12.1
Eastern trading area	1.6	1.7
Western Europe	68.2	70.0
North America	13.1	8.9
Middle East	2.3	3.0
Asia	7.8	13.0
Africa	2.4	1.2
Latin America	4.5	3.1
Selected East European	1.6	1.1
Leading exporters:		
France	11.1	14.1
United Kingdom	15.7	12.2
Germany, Fed. Rep.	6.7	10.4
Japan	4.3	6.7
Belgium and Luxembourg	7.7	6.2
United States	8.7	5.9
Italy	6.5	5.5
Netherlands	4.6	5.2
Switzerland	5.1	3.9
Canada	4.4	2.9
Austria	1.6	2.9
Korea, Rep.	0.4	1.8
Sweden	2.2	1.7
Saudi Arabia	n.a.	1.6
Denmark	1.6	1.6

Source: IMF Balance of Payments Statistics

Note: Country composition of regions are those used in International Trade. "Eastern trading area" includes only Poland, Hungary, Romania and China. "Selected East European" comprises Poland, Hungary and Romania.