

**СОПРОВОДИТЕЛЬНЫЙ ДОКУМЕНТ РАБОЧЕЙ ГРУППЫ ПО ВТО
МЕЖДУНАРОДНОЙ АССОЦИАЦИИ ЮРИСТОВ К РЕЗОЛЮЦИИ СОВЕТА МАЮ
ПО ПОВОДУ ПЕРЕДАЧИ НАВЫКОВ И ЛИБЕРАЛИЗАЦИИ ТОРГОВЛИ
ЮРИДИЧЕСКИМИ УСЛУГАМИ**

To: IBA Council

From: WTO Working Group

Date: August 26, 2008

Re: Proposed Resolution on “Skills Transfer and Liberalization of Trade in Legal Services”

The attached resolution is submitted to the IBA Council for consideration at its meeting to be held in Buenos Aires on October 16th 2008.

The term “Skills Transfer” refers to the benefits that may be realized by the legal profession of a “Host Jurisdiction” through the participation by “Foreign Lawyers” permitted to practice in that Host Jurisdiction in activities designed to transfer substantive knowledge and practice skills to “Local Lawyers”, as all those terms are defined in the earlier resolution of the Council mentioned in the second preambular paragraph of the proposed resolution. The concept of the proposed resolution was first mooted at the WTO Working Group’s regular meeting with Bar Leaders at the IBA’s annual conference in Prague in October 2005. The resolution’s basic premise is that countries, particularly Developing Countries as that term is used in the General Agreement on Trade on Services (GATS), that have been reluctant to liberalize their licensing regimes to provide market access to Foreign Lawyers may wish to consider permitting such access subject to conditions requiring participation by such Foreign Lawyers in professional training programs for Local Lawyers.

At the Prague meeting, a number of Bar Leaders from such Developing Countries expressed the view that, if regimes currently closed to Foreign Lawyers were opened, then such Foreign Lawyers would be in a position to capture attractive work that would otherwise go to Local Lawyers, with no compensating benefits to the Local Lawyers. After discussion, it was suggested that a Skills Transfer requirement in connection with the opening of a Host Jurisdiction to Foreign Lawyers might constitute an acceptable means of ensuring that, in the long term, the benefit from the opening up of the Host Jurisdiction’s regime would inure to the benefit of Local Lawyers as well. It should be noted that the resolution does not recommend that Skills Transfer be mandated in connection with the opening of a Host Jurisdiction’s regime. Rather, it states that the imposition of Skills Transfer requirements as conditions to market access can be consistent with the overall objective of liberalization of trade in legal services provided that the requirements are reasonable, transparent and otherwise consistent with the principles of the GATS that are generally applicable to the domestic regulation of professional services by the WTO’s member governments.

In 2006, drafts of the Skill Transfer resolution were discussed at IBA meetings in London and Chicago. A further draft resolution prepared in 2007 and placed on the Council’s agenda for the meeting in Singapore attempted to respond to the concerns expressed at those meetings as well as those expressed by the membership of the WTO Working Group. However, as a result of further concerns that emerged very late in the process, that resolution was not put to a vote of the Council in Singapore and was returned to the WTO Working Group for further consideration. At a retreat held in connection with the IBA mid-year meeting in Amsterdam, the WTO Working Group adopted by full consensus the text of the resolution as now proposed.

We note that, in the discussions of the resolution within the Working Group, the view was widely shared that association of Foreign Lawyers and Local Lawyers in the same firm — owned by Local or

Foreign Lawyers — is probably the most effective method of enabling Skills Transfer. That consensus is reflected in the final two preambular paragraphs of the proposed resolution. Accordingly, the Working Group is now at work on a resolution addressing the issues relating to such association.

Respectfully,

The IBA's WTO Working Group