

## Trade Law Memo

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### WTO Developments – A Heads-Up on Services

#### Doha Round Revitalized?

Remember the Doha Development Round? The trade negotiations going on this year at the WTO in Geneva have been out of media attention recently and largely off the radar screen of the business community. But watch out.

Last summer, governments agreed on a package for moving the negotiations forward and we predict momentum in Geneva will pick up quickly this spring, particularly if the U.S. and the E.U. hammer out a possible compromise on the thorny issue of agriculture subsidies.

#### Focus on Services

Agriculture is the critical issue in the Doha Round. If agriculture can be unblocked – and the signs are reasonably positive – it will be a shot of adrenaline for negotiations on services trade, leading to a major summit meeting in Hong Kong in December.

The objective here is to enlarge the scope and depth of the existing WTO General Agreement on Trade in Services (GATS), much of which was left unfinished at the end of the previous trade round in 1994.

Given the expansion in global services trade in the last decade, it is hoped that a “GATS-plus” will do for services what the WTO Agreement has done for manufactured goods – lead to increased trade, improved market access, greater regulatory transparency and elimination of discrimination in foreign markets.

### Adding to Scope of the GATS

The 1994 GATS is pretty narrow, binding governments to WTO rules only for services specifically listed in individual country schedules, a narrow slice of total global services trade. A large array of service sectors are thereby excluded from WTO disciplines.

The objective in the Doha Round is to seriously reduce those exclusions, to improve on WTO non-discrimination obligations, make market access more predictable, increase regulatory transparency and fairness and ensure open access to a fair and impartial legal process in case of disputes.

### Canada Stands to Gain

All of this is important to Canada and to Canadian business. Exports of Canadian services have grown in recent years, from \$43.8 billion in 1997 to almost \$60 billion in 2003, representing about 12 per cent of Canada’s total export trade.

At the same time, Canada’s service imports have grown, from \$52.6 billion in 1997 to almost \$71 billion in 2003. Improving the rules of international trade and increasing market access can help these numbers grow even more, while at the same time whittling down Canada’s considerable services trade deficit.

### But at a Price

While Canada maintains a fairly open services market compared with other OECD countries, there are sectors that have been protected from competition in one way or another. One example is financial services, where restrictions prevent foreign banking and other financial services from being

offered on the same footing as local suppliers. There are others, such as restrictions in the telecommunications and broadcasting sectors, and a host of provincial measures that still protect local suppliers from foreign competition.

So Canada's services market will inevitably be opened further as the price of increased access abroad. However, the WTO talks are not a zero-sum game and entail a balancing of rights and obligations. The federal government is expecting that gains for Canada from this increased access will far exceed the negotiating price Canada may have to pay.

### **Complex WTO Negotiating Process**

It is a bit tricky getting a handle on these talks, since they follow the request-offer-response format, conducted in a maze of bilateral negotiations.

For starters, requests for market access were tabled, directed at specific countries. These were followed by market access offers. Governments will now begin to haggle in a series of one-on-one, intertwined negotiations to settle their final commitments or "bindings."

The end result will be a comprehensive set of multilaterally-agreed commitments available on a most favoured nation basis to all WTO members, regardless of whether they negotiated market access commitments themselves.

### **Need for a Critical Mass of Quality Offers**

The problem so far is that governments are waiting to see what will happen on agriculture. As a result, there is a disappointingly small number of initial offers on the table, far less than the critical mass needed for a productive round of negotiations. As well, the quality of the offers so far is less than was hoped.

However, pressure is mounting on some countries to improve their positions. Some of the Asian and Latin American countries, for example, are being pressured to put far more on the table than they have so far. For Canada, our negotiators feel that the 2003 Canadian offer is highly respectable in terms of scope and quality and needs little improvement (see below).

### **Consultations with Canadians**

In developing the Canadian position, the Department of International Trade has consulted widely with the private and public sector, as well as with Canadian NGOs. The final report on those consultations, and a full summary of Canada's negotiating position, was tabled in December 2004 and is found at the International Trade website ([international.gc.ca](http://international.gc.ca)) under the heading Trade in Services. It is worth reading.

### **Targeted Sectors**

Canada's market access requests (tabled at the WTO back in 2002) covered 12 sectors: professional services; management consulting; computers; construction and engineering; research and development; environmental; financial; mining; oil and gas; telecommunications; transportation; travel and tourism.

Canada's own offer (tabled in 2003) proposed greater foreign access in eight sectors: business services; communications; construction; distribution; environmental; financial; tourism and travel; transportation.

The next phase – and the one of importance to the business community and Canadians in general – will be the negotiating round that will be starting this May, where Canada will seek to nail down commitments with its trading partners by the time of the December summit.

### **Health Care, Social Services and Public Education**

An area that has drawn attention is whether Canada's health care, education and social services will be opened up to foreign (i.e., private sector) competition. The government says decidedly no.

It has stated at the outset of the talks that Canada's position is to "maintain and preserve the ability of all levels of Government to regulate and set policy in areas of importance to Canadians, and that we will not negotiate our health, public education or social services."

Notwithstanding the strong position, we expect increased civil society and interest group opposition

to Canada's position in the services talks as they pick up speed this spring. It will be important for the business view to be heard, lest the impression gain ground that these Doha Round talks are detrimental to the broader Canadian interest.

### **International Trade Law Group**

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