

**ON THE OPENNESS AND
REGULATION OF LEGAL SERVICES
IN CHINA UNDER THE GATS**

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**On the Openness and Regulation of Legal
Services in China under the GATS**

GATS 框架下中國法律服務的開放和監管

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Abstract

Along with the trend of economic globalization in the world, the World Trade Organization (the WTO) was established to better serve the economic and commercial development of the international community. The GATS is Annex 1B to the Agreement Establishing the WTO, which was signed on 15 April 1994. Both the WTO and the GATS came into effect on 1 January 1995, and the GATS contained specific commitments and other relevant provisions of various categories of services, including legal services. In the *Report of the Working Party on the Accession of China* (WT/ACC/CHN/49), China has made specific commitments on legal services in 2001.

After joining the WTO, China opened its legal service market and has the obligations to adjust its regulations on legal service trade in order to be consistent with the GATS. However, due to various reasons, China is encountering challenges in regulating and supervising its legal service sector. Against this background, this research has been undertaken for the purpose of addressing those challenges and providing policy recommendations to relevant authorities.

This dissertation focuses on topics of openness, regulation and supervision of legal services in China under the GATS. The author applies a number of important methodologies in the research in order to achieve proper conclusions and to make reasonable suggestions. Those methods include literature review, comparative study, case study and empirical analysis. By using those methods, the author could further analyze and study on her important chapters dealing with regulation and supervision of legal profession in China.

The thesis can be divided into three parts and 11 chapters. At the outset of the research, the author reviews the research background and current research literatures on GATS at home and abroad, compares advantages and disadvantages of various research methods, and introduces the structure and main content of the research. Then, she

conducts an overall review of fundamental issues on legal services in Part One (Chapters 2-4), which sets up the foundation for her research. In this section, it also covers the definition of services and trade in services, as well as the legal services and trade in legal services, barriers on the liberalization of the trade in services, development trends of legal services, and comparative study of the openness, regulation and supervision of four key GATS members and what China can use for references in this area.

In Part Two (Chapters 5-7), the author discusses the openness of legal services, in which she reviews the current situation on the openness of legal services in China under the GATS, including the CEPA, identifies the problems of opening up its legal service market, and proposes the following strategies for further change and reform on legal services in China: (1) to continue to maintain reasonable restriction on the legal services, provide the essential protection for Chinese legal profession; (2) to take full advantage of the GATS and adopt the strategy of gradual liberalization and opening up of legal services; (3) to fully use the principle of regional economic integration to enhance the degree of liberalization in legal services and accumulate effective experiences in regulating and supervising overseas law firms and lawyers; (4) to improve the legal system of legal service trade and strengthen the management of overseas law firms and lawyers. Based on these four strategies, the author argues that China may take a dual-track system approach to members of the FTA and the GATS respectively. The existence and development of the dual-track system can be reflected in two aspects. First, there is an opening model under the FTA. On one hand, China shall further offer opening policies to legal professions from Hong Kong, Macao and Taiwan so as to maximize the liberalization of legal service trade in greater China. On the other hand, according to the opening need in economics, trade, investment and service, China can consider to progressively open its legal service sector to other free trade areas such as ASEAN member states with the same favored treatment and conditions accorded to Hong Kong, Macau and Taiwan with a view to satisfying the demand of legal services. Secondly there is an opening model under the GATS. Within the GATS framework, in the long run, the author thinks that China's legal services will

be opened in the following two aspects, i.e., China shall allow overseas law firms to employ Chinese lawyers as legal consultant to provide legal services in China, and China shall allow overseas lawyers to establish law firms in joint venture or partnership with Chinese lawyers.

Part Three of the thesis (Chapters 8-10) addresses the regulation and supervision of legal services in China. The first step is to review the regulatory and supervisory system of governing overseas law firms and lawyers in China under the GATS. The next step is to analyze the key problems of the current regulatory and supervisory measures in China from the perspectives of legislation, administration and law enforcement by referring to three important survey reports, interview findings and results of relevant case study. According to the author, the absence of the role of lawyers association in regulating overseas law firms and lawyers is a big problem in China. Based on the research findings and overseas experiences through comparative studies and literature review, the author puts forward a number of policy recommendations with a view to effectively regulate and supervise overseas law firms and lawyers in China. According to her view, China needs: (1) to subject legal services of overseas law firms and lawyers to the regulation and supervision of lawyers association in China; (2) to improve the legislation concerning regulation and supervision; and (3) to improve the system of combining the management of legal services by judicial administration of government and industrial management of the lawyers association.

In short, the author argues and concludes that only after reform and improvement can China develop a regulated and open legal service market in the future. This will meet the trend of the internationalization and liberalization of the trade in legal services and find a balance between protection of domestic market and fulfillment of its specific commitments under the GATS.

Key Words:

Legal Services; GATS; CEPA; FTA; Openness; Regulation

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