

Philippine Accountants and the Coming Liberalization of International Trade in Services

by
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Background

Countries are moving relentlessly towards trade liberalization in both goods and services. The World Trade Organization (WTO) oversees the process, guided by the principal objectives of creating a credible and reliable system of international trade rules, ensuring non-discrimination among participants, stimulating economic activity through policy commitments, and promoting trade and development through progressive liberalization. Ideally, world trade would be conducted under the general principles of: (a) reciprocity, whereby the parties make mutual concessions to each other, (b) most favored nation (“MFN”) treatment, whereby concessions given to one country are automatically given to all WTO member countries, and (c) nationals and foreigners are treated alike.

The General Agreement on Tariffs and Trade (GATT) was organized in 1947 and the Philippines joined in 1980. Negotiations were conducted from the beginning, initially on trade in goods. The eighth round of negotiations (known as the “Uruguay Round”) ended in 1994 and resulted in the “Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.” It was signed by 118 countries, including the Philippines. The “Final Act” includes, among other things, the Agreement on Agriculture, Agreement on Trade-Related Investment Measures, Agreement on Trade-Related Aspects of Intellectual Property Rights, and General Agreement in Trade in Services (GATS).

The Uruguay Round services commitments of the Philippines were in financial services, tourism, telecommunication, and transport. Financial services commitments, in particular, were made after extensive consultations with the authorities concerned and with the private banking system, even as the commitments made were within what were already allowed by law prevailing at the time. R.A. No. 7721 was subsequently passed, liberalizing the entry and scope of operations of foreign banks. This enabled the Philippines to revise its initial commitments in commercial banking, though not to the full extent allowed by R.A. No. 7721.

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Negotiations on Professional Services

The ongoing round of negotiations (known as the “Doha Round”) began in 2000. Greater attention is now being given to professional services, which includes legal services, accounting, auditing and bookkeeping services, taxation services, architectural services, engineering services, urban planning and landscape architectural services, and related scientific and technical consulting services.

“Professional services” in the WTO context is not the same as the 42 professions regulated by the Philippine Professional Regulation Commission (PRC). Much of the “professional services” of the WTO definition is not professional in character under Philippine terminology. At the same time, much of what we consider professional services appears not to be of significant interest to WTO members and therefore do not figure in negotiations.

There are pending proposals made by various countries, in a number of professional service categories, including legal services, engineering services, and related scientific and technical consulting services. Accountancy and architecture appear to be of particular interest, evidently because of their high trade potential, arising from new transmission technology, with the proposed opening of long-entrenched monopolies and the implementation of regulatory reforms.

The Philippines made no commitments in professional services during the Uruguay Round. At the present time, therefore, we are still under no obligation to provide market access or national treatment for professional services from nationals, whether natural or juridical, of other WTO Members. We are expected, however, to make our position known through offers in the current round of talks. The formulation of the Philippine position is being coordinated by the National Economic and Development Authority (NEDA), which has created a committee that includes the PRC. The Philippine Mission in Geneva plays the lead role in actual negotiations.

As part of the WTO’s mandate to ensure that member countries’ domestic regulations do not impair the liberalization commitments they undertook under the Uruguay Round, a document, “Disciplines on Domestic Regulation in the Accountancy Sector” was approved by WTO Members in December 1998. The “Disciplines” requires member countries to respect two fundamental elements when implementing domestic regulatory measures: (a) transparency and (b) measures should not be more burdensome than are necessary to achieve the policy objective being sought. These two elements must be present in the administration of licensing requirements, qualification requirements and procedures, and technical standards for the accountancy profession. Item (b) asks member countries to see to it that any regulatory changes they institute after 1998 are not any more trade-restrictive than are necessary to fulfill a legitimate objective, e.g., consumer protection; ensuring service quality; ensuring professional competence; and ensuring the integrity of the profession.

The Disciplines are not immediately binding and are applicable to WTO members with commitments for accountancy. However, the Disciplines contains a “standstill” provision under which WTO members agree, “to the fullest extent consistent with their existing legislation, not to take measures which would be inconsistent with the accountancy disciplines.” Some contend that this standstill provision applies to all WTO members regardless of whether or not they have scheduled specific commitments in the accountancy sector. However, member countries that have not scheduled specific commitments in the accountancy sector strongly refute this position.

Modes of Service Supply

Negotiations are conducted in the context of the following possible modes of service supply, it being understood that a particular mode of supply may not be technically feasible for a particular service:

- a. Cross-border supply, covering services flows from the territory of one country to another. This mode of supply would cover the outsourcing of foreign work to Philippine service suppliers, including data encoding, bookkeeping, banking, architectural design, call centers, computer graphics, CAD (computer aided architectural design) work, or other services done in the Philippines and transmitted (inward and/or outward) via e-mail or other means.
- b. Consumption abroad refers to situations where a service consumer travels to another country to obtain the desired service. Foreign patients being treated at a Philippine hospital, as well as Filipinos going to Thailand or Singapore (including cosmetic and other surgery), would be examples of this mode of supply.
- c. Commercial presence would mean that a service supplier establishes a place of business in another country to provide a service. The domestic subsidiary or branch of a foreign bank or insurance company, or engineering, accounting, accounting, or tax or management advisory firms would be examples of this mode of supply. In such cases, officers and employees could well be Filipino, although ownership would be foreign. In the same way, the foreign branch or subsidiary of a Philippine professional services firm would have a commercial presence abroad, whether with Filipino or foreign employees.
- d. Temporary presence of natural persons, where persons of one country enter another country to supply a service. Foreign accountants, doctors, nurses, teachers, or other people working in the Philippines or Filipino accountants, doctors, nurses, teachers, etc. working abroad would fall within this mode of supply. The GATS emphasizes, however, that liberalizing services under this mode of supply does not mean the automatic issuance of visas or working permits, or residency or citizenship.

Each country has the flexibility to make (or not to make) commitments in any sector or sub-sector and for one or more of the modes of supply pertaining to each. Negotiations determine commitments made and no country is really obliged to liberalize. Theoretically, a country can just sit back, wait for negotiations to end and then invoke the MFN provisions of the agreements. However, the reality is that it would be very difficult for a country to avoid making some commitments.

In making commitments, the country has to specify its position regarding limitations and conditions on market access and national treatment under which a commitment is being made. An entry of “none” in the commitments schedule means that the country imposes no limitations or conditions in the sector/sub-sector or mode concerned. At the other extreme, a country can declare a particular sector/sub-sector or mode as “unbound,” meaning that it reserves the right to change its existing laws and regulations, whether to make these more or less restrictive.

Parameters and Opportunities in Accountancy Liberalization

There is no definition of the coverage of “accounting services” for purposes of WTO negotiation. The WTO Council for Trade in Services adopted in March 2001, the revised “Guidelines for the Scheduling of Specific Commitments” which suggests that member countries base their classification of sectors and sub-sectors on the “Services Sectoral Classification List (MTN.GNS/W/120). The latter document is cross-referenced to the UN Provisional Central Product Classification. None of these documents, however, are legally binding and member countries are free to use whatever classification scheme suits their needs. Proposals can therefore cover not only the attest or external audit function, but also other work related in some way to accounting.

As in any negotiation, a country’s position is determined by what it seeks for maximum benefit to its citizens, what foreigners seek in their dealings with the country, and what each side would be willing to give up to obtain what it wants. The relevant provisions of the Philippine Constitution and R.A. No. 9298 (Philippine Accountancy Act of 2004) leave room for negotiation, although the latter seems to have been formulated in the context of the attest function:

Citizenship

The Philippine Constitution and certain laws limit the practice of the professions to Filipino citizens. R.A. No. 9298, the Philippine Accounting Act of 2004, limits applicants for the CPA licensure examination, and therefore the practice of accountancy, to Filipino citizens (Sec. 14).

Reciprocity

Sec. 34 on Foreign Reciprocity allows subjects or citizens of foreign countries to practice accountancy in the Philippines “... in accordance with existing laws, international treaty obligations including mutual recognition agreements ... A person who is not a citizen of the Philippines shall not be allowed to practice accountancy in the Philippines unless he can prove, ... that, by specific provision of law, the country of which he/she is a citizen, subject or national admits citizens of the Philippines to the practice of the same profession without restriction.”

Working Permits

Special/temporary permits may be issued under certain conditions to: (a) a foreign CPA called for some specific purpose essential for development and there is no Filipino CPA qualified for such specific purpose, (b) a foreign CPA engaged as professor, lecturer or critic in fields essential to accountancy education, and (c) a foreign internationally recognized CPA who is expert in a field essential for the advancement of accountancy.

A paper prepared by the WTO Secretariat (S/C/W/73) dated 4 December 1998 identifies a number of broad possibilities in the internationalization of accountancy. In visualizing possibilities, we obviously have to think not only of foreigners doing work in the Philippines, but also of Filipinos and Filipino companies doing work overseas.

- a. Providing services domestically to domestic clients on foreign issues, e.g., a Philippine company or a Filipino working locally, provides foreign taxation advice to a Philippine client; or, by the same token, a foreign company or an individual foreigner working abroad provides advice on Philippine taxes to its clients abroad who may have been doing or are thinking of doing business in the Philippines;
- b. Providing services abroad to domestic clients on foreign issues, e.g., a Philippine company does work abroad for a Philippine client interested in buying a foreign company or a foreign company does due diligence work in the Philippines preparatory to the possible acquisition of a Philippine company;
- c. Providing services abroad to foreign permanent establishments of domestic clients, e.g., a Philippine firm does work for the foreign branch of a Philippine company, or a foreign firm provides services in the Philippines to the local branch of a foreign company client;
- d. Undertaking for a foreign client, of services provided domestically to domestic clients, e.g., auditing the foreign subsidiary of a Philippine client for purposes of issuing a Philippine audit report on the consolidated financial statements of the Philippine parent company, or parallel services by a foreign firm for the Philippine subsidiary of a foreign parent company;
- e. Providing services abroad to foreign clients on domestic issues, e.g., a Philippine company works abroad to provide advice on Philippine taxation to its foreign clients, or a foreign company competes in the Philippines for local clients and provides advice on foreign taxes to its Philippine clients;
- f. Providing services domestically to domestic permanent establishments of foreign clients, a Philippine company provides services in the Philippines to the Philippine branch of a foreign parent company client, or a foreign company provides services abroad to the foreign branch of a Philippine parent company client;
- g. Undertaking for a domestic client, of services provided abroad to foreign clients, e.g., audit of a domestic subsidiary for the purpose of issuing a foreign audit report on the consolidated financial statement of a foreign parent company;
- h. Providing services abroad to foreign clients on foreign issues, e.g., a Philippine company acts as liquidator for an insolvent foreign company or a foreign company acts as liquidator for an insolvent Philippine company.

Services negotiations continue to proceed as scheduled (with clusters of meetings in October, December 2003 and April 2004), and three developments have been noted: (a) the marked slowdown in submission of initial offers; (b) the lack of quality in initial offers tabled thus far, particularly in the sectors and modes of supply of interest to developing countries; and (c) the lack of commensurate progress in the rules-based aspect of negotiations. The Philippine negotiating team has emphasized that the benefits accruing in favor of developing countries: (a) appear to be unbalanced *vis-à-vis* developed countries, (b) could be significantly increased if liberalization in Mode 4 were made by developed country trading partners; and (c) may be severely affected if the flourishing trade in Mode 1 in sectors and activities of interest to developing countries (e.g., business process outsourcing), were to be curtailed with trade restrictive measures imposed by major developed countries.

It is obvious that developing countries aiming to provide services through Mode 4 could be frustrated by host countries that have restrictive visa or work permit procedures. Such practices would fall within GATS negotiations only if they are considered as licensing procedures or qualification procedures, as opposed to strictly visa requirements, which are generally outside the scope of GATS.

Pending Proposals to Liberalize Accountancy

The European Community, Japan, Canada, Switzerland, and Chile have submitted proposals on professional services, centered on improving market access and national treatment commitments, MFN exemptions, the various modes of supply, nationality and residency requirements, consumer protection and service quality, use of firm names, domestic regulation, and transparency. In general, offers so far made would allow foreign professionals to practice on the same basis as nationals, accept professional licenses across borders, promote a system of minimum capitalization requirements and tax-less profit repatriation, eliminate or reduce restrictions grounded on citizenship, etc., without however making commitments that would make things easier for individual Mode 4 suppliers.

Specifically on accountancy, Australia and the United States have suggested that negotiations be conducted regarding, among others: (a) restrictions in establishing a commercial presence, including minimum capital investment, limitations on foreign equity ownership, the form of business establishment permitted, the use of firm names, and the treatment of foreign partners in joint ventures; (b) licensing requirements, including restrictions on citizenship, minimum residency, limited or non-recognition of qualifications, prerequisites for qualifying examinations, requirements for membership in a specified professional body, and treatment of professionals licensed abroad; (c) numerical ceilings on foreign or national accountants to be employed and on the number of new licenses to be issued; (d) onerous and/or non-transparent temporary visa procedures; (e) restrictions on the electronic transmission of reports and accounting documents; and (f) burdensome fees and/or taxes on profit repatriation

Formulating a Philippine Position

As already noted, the definition of “professional” is different in the WTO and in the Philippine contexts. We define as “professional” the 42 areas covered by the PRC. This is not the same as the “professional services” being negotiated under WTO. Accounting, auditing and bookkeeping are mentioned in the WTO classification of professional services (CPC 862). Countries are free to identify areas or categories/sub-categories of interest and the documentation and pending proposals under accountancy include references to bookkeeping, internal audit,

information risk management, advisory services related to taxation, insolvency and receivership services, merger audits, investment services, and management consulting. In Philippine discussions, many of these are not ordinarily considered part of accounting and thus have not featured in our thinking.

Domestic discussion on the liberalization of accountancy has so far focused on the attest function of Certified Public Accountants (CPAs), i.e., statutory audits under the Tax and Corporation Codes. WTO negotiations do not necessarily affect all CPAs. At the same time, they could affect jobs performed by non-CPAs. For example, the outcome of the negotiations would clearly affect CPAs in public practice and in commerce and industry, but not necessarily CPAs in education (who could be more concerned with the liberalization of education services), or CPAs in government (since government services are excluded from GATS). At the same time, non-CPAs who do accounting, bookkeeping, internal audit, and other related work are not within the PRC ambit but would be affected by WTO negotiations. Furthermore, some types of accountancy service work falling within the WTO definition are also done by lawyers, information technology people, lawyers, and other non-accountants.

It would be appropriate to broaden our area of attention and in due course formulate a Philippine position that covers a range of identified sub-categories, and that not only protects the interests of practicing CPAs, but also goes into professional services that can be performed for foreigners by Filipinos working whether here or abroad, and whether by CPAs or not.

Individually, many Filipino professionals can easily compete on even terms with international professionals, whether in the Philippines or abroad. Generally speaking, however, both firms and individuals from developed countries could have a competitive edge over professionals from developing countries. At the very least, the multinational company market could easily gravitate to the former and competition for domestic clients would assuredly intensify.

Other things equal, capital requirements to start a professional practice would tend to be lower in developing countries, and higher in the developed countries, a clear disadvantage to professionals from developing countries wishing to open a practice in a developed country. By the same token, Philippine professionals would probably find it relatively easy to compete in countries that are less developed, unless of course firms from developed countries also enter these less developed countries.

A thorough and more precise assessment would be necessary to establish the competitiveness of Philippine accounting, auditing and bookkeeping professionals in various fields of endeavor. In the meantime, I submit the following quick impression as a simple framework and basis for initial discussion of the likely competitive position of Filipino professionals working in the Philippines or abroad in alternative economic environments, for each of the four (4) modes of service supply. I would think it highly advisable and only prudent, in formulating a country position, to conduct a systematic and detailed consideration not only of the broad professional field and the attest function, but also of narrower sub-sectors that may be of current or future significance.

Competitive position of Filipino accounting professionals:	Mode 1 Cross Border Supply	Mode 2 Consumptio n Abroad	Mode 3 Commercia l Presence	Mode 4 Presence of Natural Persons
In the Philippines, against incoming foreign professionals	High	Limited business prospects	May be difficult to compete for multinational company work	High, except possibly for some multinational company work
In developed countries, against host country professionals	Limited business prospects	Limited business prospects	Difficult	High
In foreign countries similar to the Philippines, against host country professionals	Moderate	Limited business prospects	Moderate	High
In countries less developed than the Philippines, against host country professionals	Moderate	Limited business prospects	High	High

Foreign Professionals in the Domestic Professional Services Market

In terms of professional competence, Filipino accountants can easily match any entering foreigners. Filipino professionals would also have a competitive advantage with the high cost of expatriate services. The latter would ordinarily be compensated at home country levels, plus resettlement allowances, home leaves, and the like. However, with advances in communication and computer technology and with computerized accounting and audit systems, more and more external audit work could be performed overseas, if foreign professionals were able to perform the attest function.

Observers have noted that in some cases, architecture and external audit services are already being performed domestically by foreign professionals, with work being actually done abroad or here by foreign “consultants” or “advisers.” There are some policy gaps and monitoring is not always easy, but the unrestricted entry of foreigners under Modes 3 and 4, could mean relatively more professionals becoming employees of foreign services firms or being subcontractors for low level and low value work.

From a regulatory standpoint, compliance with professional standards would be high for reputable international firms. However, there is always a risk of fly-by-night foreigners. It would be more difficult to go after misbehaving expatriates, who can easily flee prosecution or damage claims.

In establishing a Philippine position for WTO negotiations, it would be appropriate to identify for each mode: (a) areas where Filipinos can benefit the most, pinpointing where Filipinos can effectively compete for foreign services work while staying in the Philippines and where we can do more work while actually abroad, and (b) areas where we would be relinquishing work to foreigners allowed to enter the Philippines. It should also be fruitful to look into other areas not emphasized in the offers of developed countries—e.g., medicine and nursing—where we might be able to obtain some enhancements or use as bargaining chips.

Once we identify the Philippine areas of interest, the appropriate position can then be defined, distinguishing where there could be maximum benefit and where we need to take an aggressive posture and areas that are of potentially maximum risk where a defensive stance would be appropriate.

Filipino Professionals in the Foreign Professional Services Market

Modes 1 and 4 offer significant opportunities to Filipino professionals. English proficiency, quality of education, literacy in Western culture, and low labor costs, among others, have made Filipinos internationally competitive in various service fields, notably in business process outsourcing. Nurses, doctors, accountants, engineers, and others are strong in Modes 2 and 4. However, warnings are being raised among developed countries over dangers of over-dependence on overseas service outsourcing. In negotiating with the Philippines, it is entirely possible for a foreign country to submit proposals that would pair the tightening of Modes 1 and 2 and concessions for the foreign country's professionals seeking entry to the Philippines under Modes 3 and 4.

The nature of accounting, auditing and bookkeeping work is such that business opportunities under Mode 2 are limited. It hardly seems likely that foreigners would visit the Philippines in person for professional accounting services.

Opportunities under Mode 3 could be problematic. Beginning in the 1960s, SyCip Gorres Velayo & Co. (SGV) succeeded in forming a large Asian network, although a major part of the network eventually joined the Arthur Andersen organization and later Ernst & Young. The competitive environment is now different. The largest Philippine firms are affiliated with international firms and in services trade probably will continue doing mainly referrals and joint work via Mode 1. It is also difficult to see even the largest independent Philippine accounting firms competing abroad, except possibly in less developed countries. Furthermore, an independent Filipino firm may not even be always able to get work from Philippine companies' overseas subsidiaries or affiliates, e.g., when circumstances make it necessary for external audits be performed by a large international professional services firm.

While the possibilities of Mode 4 are great, entry difficulties face aspirants, particularly in developed countries. Only when serious personnel shortages arise, as in the case of nurses at the present time, are visas and working permits relatively easy to obtain. Maximizing possibilities in this Mode would therefore require addressing issues such as the following:

- The scope and quality of professional education vary from school to school and country to country. Filipino professionals may not always be able easily pass licensure examinations. In addition to language difficulties, the nature of examinations and the prerequisites to qualify for the examinations could pose difficulties. Of course, it may also not be easy for foreigners to meet our requirements, e.g., students must complete courses in the Filipino language and on the life and works of Jose Rizal to earn a college degree.
- There could be citizenship, minimum residency, experience, professional association membership, and other requirements to qualify for a licensure examination or to doing professional services work, that Filipinos may not always be able to meet.
- The cost of taking licensure examinations and entry procedure could be prohibitive. For example, a Filipino doctor wishing to enter a hospital residency program—not even practice independently—in the United States would first have to obtain an entry visa so he can take the medical licensure examination (given in three parts, one of which is given only in one or two test centers in the United States). Assuming he can get a visa and that he passes the test, he will have to find a post. This requires numerous applications that may or may not result in invitations for an interview. An interview, too, may or may not result in an offer. The process normally takes months and extensive inland travel. Total cost would be in the neighborhood of half a million pesos. Certain states, like California, have further local licensing requirements.
- Visas and working permits in developed countries are often difficult to obtain or renew.
- Practice possibilities could be limited, as in places where professional practice authorization is given only for designated geographic areas or for specified types of specialization.

Long Term Competitiveness

The logical conclusion of liberalizing trade in professional services would be free competition among world professionals for work wherever available. This would allow the world population to obtain professional service at the lowest possible cost or, putting it in another way, enable professionals to render service to anyone willing to pay the cost.

Filipinos should be able compete with anyone, both domestically and abroad. This would require our professional competence and communication ability to be at least on par with anyone. This would suggest the need for appropriate changes in Philippine professional education, including foreign language—English in particular—training, and for suitable adjustments in our licensure examinations where needed. This would also suggest the need for the careful formulation of a Philippine WTO negotiating position so that we are able to maximize national benefit in the world trade in services.