T-TIP: Implications & Opportunities for Firms

Large Law Firm General Counsel Roundtable
Atlanta, Jan. 16, 2015

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Overview of Remarks

- T-TIP background plus 3 recent developments
- 2014 “Requests” from the CCBE to the U.S.
- ABA response to the CCBE
- “Outbound” issues for US firms
- “Inbound” issues for US firms
The T-TIP Negotiations

- Ongoing US-EU trade negotiations
- Endorse profession-to-profession discussions
- Possible impact of the IBA Global Regulation & Trade in Services Report 2014

CCBE “Requests” to the US

CCBE request to the United States in the context of the Transatlantic Trade and Investment partnership (TTIP) negotiations

Background
The CCBE has developed its position regarding the discussions with the United States in the framework of the current Transatlantic Trade and Investment partnership (TTIP) negotiations. The CCBE has adopted the following position on February 27, 2014.
US Response to the CCBE

• The role of the USTR & ABA ITILS
  (Task Force on International Trade in Legal Services)

“Outbound” Work Opportunities

• Does your firm face any EU barriers?

• Are there “work-arounds” you wish didn’t exist?

• The ABA ITILS can serve as an aggregator
Opportunities re “Inbound”

- **Timing**
  - ABA inbound foreign lawyer resolutions
  - CCJ - CCBE interactions
  - 2014 CCJ “Globalization” program
  - CCJ leadership (& 2014 resolution)
  - Dec. 2014 Bar Examiner article

- State courts need input from “their” lawyers

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### Jurisdictions with Rules Regarding Foreign Lawyer Practice

Prepared by Prof. Laurel Terry (LTerry@psu.edu), Nov. 14, 2014, based on data from the ABA Center for Professional Responsibility and NCBE

#### LEGEND

- Yellow shading = has a foreign legal consultant rule
- □ = rule permits temporary practice by foreign lawyers (also known as FIFO or fly-in, fly-out)
- ✭ = rule permits foreign pro hac vice admission
- ▲ = rule permits foreign in-house counsel
- ◆ = has had at least one foreign-educated applicant sit for a bar exam between 2010 and 2013.
What were the CCBE Requests?

- Establishment (i.e. with local presence) under home title to provide services in home law, EU law, int’l law & 3rd country law in which they are qualified;
  - ABA policy is consistent – FLC rule – ABA MJP #8
- Temporary provision of services under home title in home law, EU law, int’l law, and third country law in which they are qualified, without a local presence and
- Representing clients in int’l arbitration & mediation
  - ABA policy is consistent with both– see ABA MJP #9-FIFO
- Serving as a “neutral” - ABA policy is silent – not UPL
- Association rights (partnership & employment of local lawyers by foreign lawyers and firms) ABA policy is consistent.

“Off the Table” per the CCBE Requests

1. Full license (requalification; cf. NY & 28 US states)
2. In-house lawyers (Akzo Nobel - Case C-550/07 P)
3. Access to the EU free movement directives
   - Services 77/249/EEC & Establishment 98/5/EC
   - Both are limited to EU citizens; cf. Griffiths (1973)
4. Alternative business structures
Revisiting US “Outbound” Issues

- Do you agree with what the CCBE has taken “off the table?”

Potential T-TIP Implications: Association

“Association” seems to be widespread:

BUT....
There is Now Increased Scrutiny

2013 CCBE Red-Green chart:

- Relied on the IBA’s preliminary data
- Indicated that 23 US states do NOT permit partnerships w-foreign attys.
- 21 states responded “not applicable” to the “partnership-association” question
- 22 states responded “not applicable” to the “employment-association” question

The Final Report:

IBA Global Regulation and Trade in Legal Services Report 2014

- 21 states responded “not applicable” to the “partnership-association” question
- 22 states responded “not applicable” to the “employment-association” questions

Potential Tasks for Firms

- **Outbound**: Consider opportunities in the EU
- **Inbound**: talk to your courts re the “map”
- Help collect data about the current status quo
- Clarify the “association” rules in all states in which your firm has an office
  - Recap: The CCBE has requested MJP 8 & 9 (FLC & FIFO), international ADR, & “association” rights
Advice about Changing the Rules

Based on advice from a former regulator
See CCJ Resolution #11 (Jan. 2014)


International Trade in Legal Services and Professional Regulation:
A Framework for State Bars Based on the Georgia Experience\(^1\)

American Bar Association Task Force on International Trade in Legal Services
February 4, 2012 (Updated January 8, 2014)

"From Main Street to Wall Street, lawyers of every practice area, every size of firm, and every jurisdiction are affected by globalization. It may involve a dispute

- Based on advice from a former regulator
- See CCJ Resolution #11 (Jan. 2014)

CONCLUSION

- T-TIP implications and opportunities
- Remember your audience:
  - Focus on the degree to which state residents and economies are hurt by current policies
  - State regulatory objectives should address client needs as well as client protection
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