



T-TIP: Implications & Opportunities for Firms

Large Law Firm General Counsel Roundtable
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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

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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.



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US Response to the CCBE

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

Task Force on
▶ International Trade in
Legal Services

About the Task Force

ABA Policy on
International Trade

Advocacy on International
Trade In Legal Services

News on International
Trade

William C. Hubbard
President

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November 19, 2014

Mr. Aldo Bulgarelli
President
Council of Bars and Law Societies of Europe

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“Outbound” Work Opportunities

- Does your firm face any EU barriers?
- Are there “work-arounds” you wish didn’t exist?



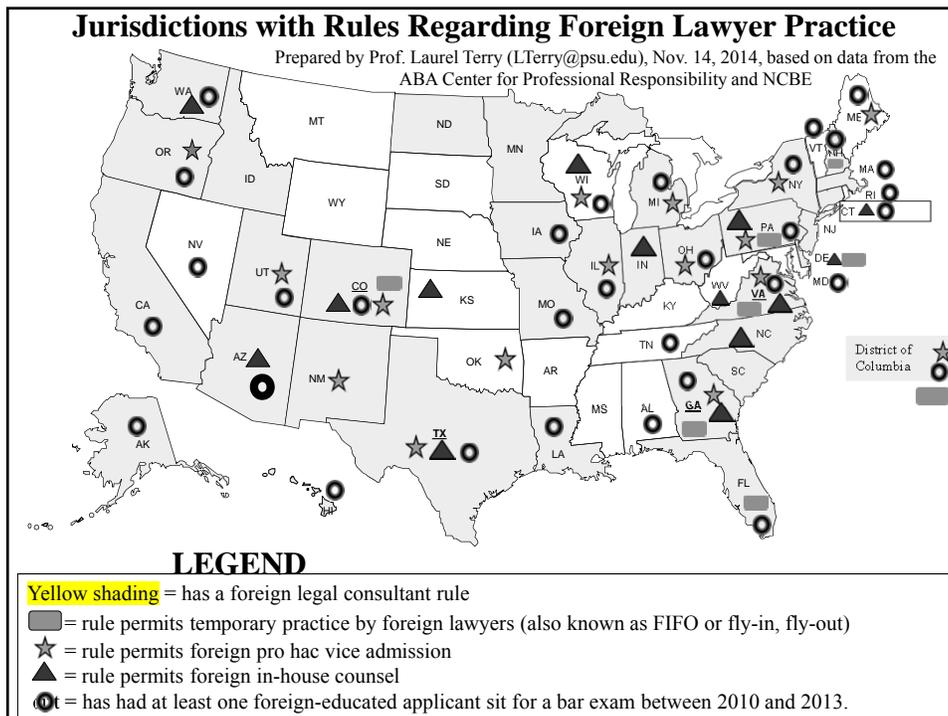
- The ABA ITILS can serve as an aggregator

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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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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

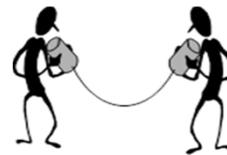
- Do you agree with what the CCBE has taken “off the table?”



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Potential T-TIP Implications: *Association*

“Association” seems to be widespread:



BUT....

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There is Now Increased Scrutiny

2013 CCBE Red-Green chart:

State	Association Partnership with local lawyer	Employment of local lawyer
Alabama	N	N
Alaska	Y	Y
Arizona	Y	Y
Arkansas	N	N
California	Y	Y
Colorado	N	N
Connecticut	Y	Y
Delaware	Y	Y
Dist. of Columbia	Y	Y
Florida	Y	Y
Georgia	Y	Y
Hawaii	Y	Y
Idaho	Y	Y
Illinois	Y	Y
Indiana	Y	Y
Iowa	Y	Y
Kansas	Y	Y
Kentucky	N	N
Louisiana	Y	Y
Maine	N	N
Maryland	N	N
Massachusetts	Y	Y
Michigan	Y	Y
Minnesota	Y	Y
Mississippi	N	N
Missouri	Y	Y
Montana	N	N
Nebraska	N	N
Nevada	N	N
New Hampshire	N	N
New Jersey	Y	Y
New Mexico	N	N
New York	Y	Y
North Carolina	N	N
North Dakota	Y	Y
Ohio	Y	Y
Oklahoma	N	N
Oregon	Y	Y
Pennsylvania	Y	Y
Rhode Island	N	N
South Carolina	Y	Y
South Dakota	N	N
Tennessee	N	N
Texas	Y	Y
Utah	N	N
Vermont	N	N
Virginia	Y	Y
Washington	Y	Y
West Virginia	N	N
Wisconsin	N	N
Wyoming	N	N

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

- Relied on the IBA’s preliminary data
- Indicated that 23 US states do NOT
- permit partnerships w-foreign attys.

←**Note:** The CCBE isn’t relying on the red-green chart anymore.

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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

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Advice about Changing the Rules

Task Force on International Trade in Legal Services
AMERICAN BAR ASSOCIATION
1050 Connecticut Avenue, NW, Suite 400
Washington, DC 20036



available at <http://tinyurl.com/GAtoolkit>.

International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience¹

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)*

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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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To Read More About It...

- USTR T-TIP Webpage, <http://www.ustr.gov/ttip>
- CCBE “Requests,”
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/European_Legal_Prof1_1415787235.pdf
- ABA ITILS Webpage & Toolkit, <http://tinyurl.com/ABAITILS> and
<http://tinyurl.com/statetoolkit>
- The “Map” of US Foreign Lawyer Rules & my webpage,
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_8_9_status_chart.authcheckdam.pdf and
<http://tinyurl.com/LaurelTerry> (*see* Dec. 2014 Bar Examiner article)
- IBA Global Regulation & Trade in Legal Services Report 2014,
http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Map.aspx and
<http://tinyurl.com/2014IBAReport>
- Laurel Terry’s “Regulatory Objectives” article,
http://www.personal.psu.edu/faculty/l/s/lst3/Terry_Regulatory_Objectives_Bandwagon_2013.pdf