



TTIP & Free Mobility of Lawyers

ABA Section of International Law
New York City, April 13, 2016



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I'll Build on the Prior Remarks



- ABA's response to the CCBE's requests
- The impact of the CCJ's Resolution
- Other US reactions to TTIP
- My observations on "practical" mobility issues for inbound foreign lawyers

The ABA's Response to the CCBE

- The ABA's Nov. 2014 letter cited its policies

Task Force on
International Trade in
Legal Services



About the Task Force

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ABA Policy on
International Trade

November 19, 2014

Advocacy on International
Trade In Legal Services

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

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

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Cf. ABA Policies & 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
- Lawyers as ADR “neutrals” - ABA policy is silent; not UPL
- Association rights (partnership & employment of local lawyers by foreign lawyers and firms) ABA policy is consistent.

ABA Efforts: ITILS State Toolkit

ITILS = Task Force on International Trade in Legal Services

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)

- *Based on advice from a former regulator*
- *Helps states consider ABA policy*
- *See CCJ Resolution #11 (Jan. 2014)*

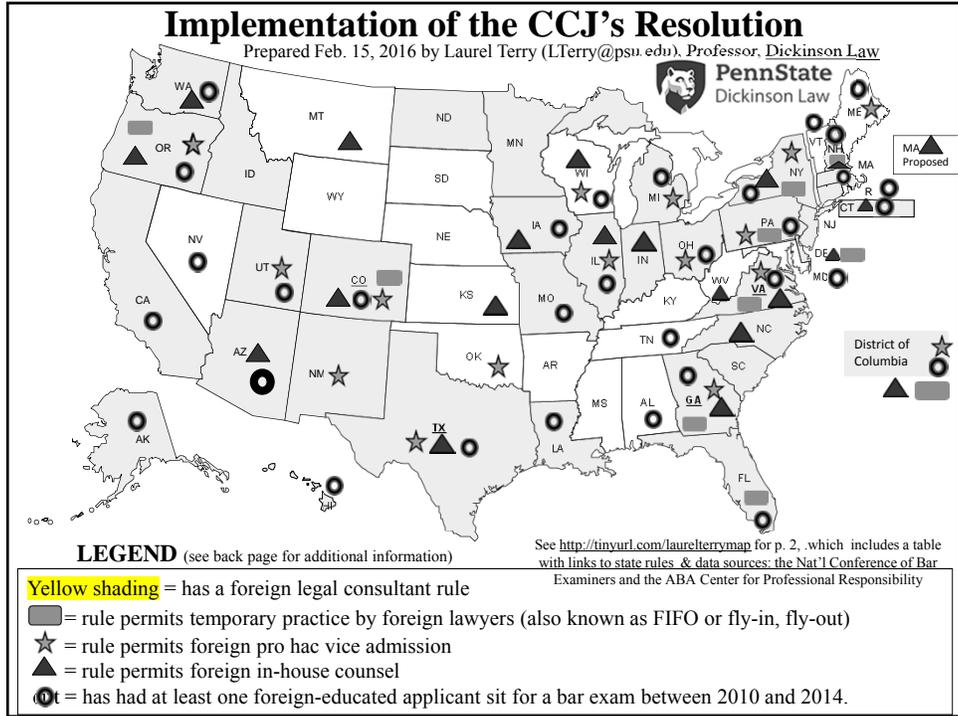
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Impact of CCJ Resolution #2 (2015)

“[The CCJ] strongly encourages its members to **adopt explicit policies** that permit the following qualified activities by foreign lawyers as a means to increase available legal services and to facilitate movement of goods and services between the United States and foreign nations:

[association + inbound foreign lawyer policies]

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- ## US Support of Int'l Dialogue
- See ABA Resolution on Regulatory Cooperation
 - The ABA tracks & publicizes implementation status
 - See CCJ Resolutions supporting regulatory cooperation
 - See CCJ-sponsored international conf. calls
 - See CCJ/NOBC/NCBE/ABA support of International Conference of Legal Regulators
 - See NOBC's Global Resources webpage
 - See NCBE's annual meeting "int'l slot"
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US Requests to the CCBE re TTIP

1. The ABA has not (and perhaps will not) adopt “new” policy for TTIP
2. The ABA’s “old” policy seeks treatment for US lawyers similar to the ABA policy
 - FLC, temporary practice, association rights, etc.
 - See Nov. 2014 letter to the CCBE
3. Some in US object to the “off the table” issues

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The Most Controversial Issue



- Trade agreements tend to disfavor treatment that depends on the “color of one’s passport”
- The EU’s lawyers’ directives don’t apply to EU lawyers who hold a blue (US) passport
- ***Start with temporary practice & EU Dir. 77/249?***

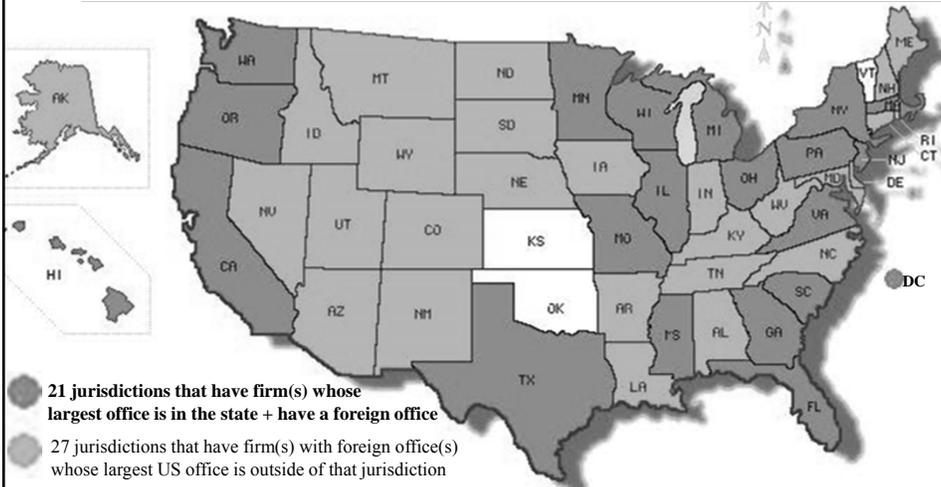
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Mobility Exists Regardless of TTIP

- Client activities around the world are large and growing larger
- As a result, cross border legal activity is large & growing larger
- Even in the absence of policies, lawyers & clients are involved in global activity
- Policy-makers need input from those “on the ground”

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Law Firms With Foreign Offices



Data provided by [General Counsel Metrics, LLC](#) based on the websites of law firms with ≥ 37 lawyers. For 21 of the 48 US jurisdictions that have firms in their jurisdiction that also have foreign offices, that US jurisdiction has the firm's largest US office. 12

Concluding Thoughts *re* Practical Issues

- My View: I sense a willingness to address practical mobility issues
 - *See* implementation of the CCJ Resolutions
- Those with experience need to share information about problematic issues
- The ABA ITILS can serve as a conduit
- Policy implementation requires voices from the “ground up” as well as “top down”

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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> (includes links to CCJ resolutions)
- The “Map” of US Foreign Lawyer Rules with links to implementation rules and webpages, 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 Presentations webpage, <http://tinyurl.com/laurelterryslides>

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Penn State's Dickinson Law
(one of two Penn State law schools)

NOTE: Penn State now has TWO ABA-accredited law schools.
I am located at the older of the two schools, which is Penn State's DICKINSON LAW in Carlisle, Pennsylvania.
For more information, see <https://dickinsonlaw.psu.edu/news/revitalized-approach>

DICKINSON LAW | PRACTICE GREATNESS



Selected Presentations

> **Global Developments in general** (See 1-14; 1-13, 1-11, 9-09 and 11-08) (See also 2008 *Service Providers* article, "The Legal World is Flat", 2012 "Trends in Global Lawyer Regulation" article and other "Global Legal Practice" articles on my [publications webpage](#))

*To read my law review articles (or testimony) on the topics listed below,
please visit my "Publications By Topic" section of my webpage*

> **Alternative Business Structure (ABS)** developments (including the UK's Legal Services Act 2007, Australia's publicly traded law firms, EU, and OECD developments) (See 4-08, 5-08, 10-08, 5-09, and 10-13)

> **Antitrust initiatives** directed towards the legal profession, including the EU's Professional Services Competition Initiative (See 5-08, 4-09)

> **the APEC Legal Services Initiative** (See 10-09)

> **Australian Legal Profession Developments** (See 8-08, 5-09)

<http://tinyurl.com/Laurel-Terry-slides>

[select FATF from the list of topics]

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Volume 83 | Number 4 | December 2014

A publication of the National Conference of Bar Examiners

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