Regulating Lawyers in a Global Arena

Southeastern Workshop on the EU/US Free Trade Agreement
State Bar of Georgia Headquarters
May 16, 2014

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Overview of Remarks

• The impact of globalization on your state’s citizens (and its lawyers)

• Understanding that legal services are part of global trade talks

• Why you should care about this and what you can do
Part 1:
Globalization Affects All US States

#1: Texas: $280 billion  N. Carolina: $29 billion
Florida: $60 billion  Oklahoma: $7 billion
Georgia: $32 billion  S. Carolina: $26 billion
Mississippi: $12 billion  Tennessee: $32 billion

That means a lot of lawyers domestic & foreign
Global Legal Work isn’t likely to Decrease

Globalization Affects Individuals

↑ 2010 Foreign-born US population

↑ NOTE… the states for which the 2010 data shows the largest immigration increase

Darker colors = higher percents
Changes in U.S. Foreign-Born Population

- Consider the impact of these changes on legal services.
- 2010: 27% of the 25+ year old foreign-born have a bachelor’s degree or higher & the median age is below the nat’tl median.
- See Terry, *The Legal World is Flat re* the impact.

Why Your Gov’t Cares about This

WORLD TRADE ORGANIZATION
Council for Trade in Services

Recent Trends in U.S. Services Trade
2013 Annual Report
Chapter 5: Legal Services

2011 US legal services trade surplus:$5.7 billion

The USTR:

LEGAL SERVICES
S/C/W/318
14 June 2010

Background Note by the Secretariat
Asia-Pacific, 9.40%
Europe, 36.50%
Americas, 54.10%

Chart 2: Global Legal Services Market Segmentation: 2008 Percentage share by value
More acronyms worth knowing:

- T-TIP = Transatlantic Trade and Investment Partnership (TTIP)
- TISA = Trade in Services Agreement (TISA) negotiations
- TPP = Trans-Pacific Partnership (TPP)
- APEC = Asia-Pacific Economic Cooperation
- WTO = World Trade Organization
- CCBE = Council of Bars and Law Societies of Europe

Your Job & Trade Agreements

Did you know…..

- Legal services are covered by trade agreements?
- Regulation issues are addressed in these agreements?
- The CCBE has formalized its position regarding the requests it wants the EU to present to the US in T-TIP
- The CCBE has said it is awaiting the US “requests”
- A high-level official USTR representative spoke at the recent CCJ Midyear Meeting
- The IBA recently completed a 800+ page “Report” that includes admissions issues & was sent to gov’ts
The IBA “Extract” Sent to TISA Gov’ts

International Trade in Legal Services

Ease of Trade

Show all

WTO/GATS commitments in legal services
Preferential arrangements to lawyers from certain other countries
Foreign lawyer or law firm licensing regime in place
Foreign lawyers able to

Regions

Show all

Africa
Americas
Asia
Europe
Middle East

Report for the Special Friends of Services Group - Trade in Legal Services

An Extract from the IBA Regulation and Trade in Legal Services Report 2014


What the ABA Received from the CCBE

Summary of EU-US Mutual Access in Legal Services

NOTE: This is an excerpt from a document the Council of Bars and Law Societies of Europe (CCBE) circulated to the ABA Task Force on International Trade in Legal Services to use in discussions about the U.S.-EU trade negotiations. During the January 2014 Conference of Chief Justices’ Midyear Meeting, CCBE Secretary General Jonathan Goldsmith announced that the CCBE would not be asking the EU negotiators to discuss “requalification” (full admission) or pro hac vice.

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<tr>
<th>State</th>
<th>Limited Licence (FLC)</th>
<th>Scope of practice for FLC international law</th>
<th>Partnership with local lawyer</th>
<th>Employment of local lawyer</th>
<th>FIFO</th>
<th>Pro hac vice</th>
<th>Nationality provision</th>
<th>Requalification recognition for bar exam?</th>
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U.S. Rules Regarding the Five Methods of Foreign Lawyer Practice
Prepared by Prof. Laurel Terry (LTerry@psu.edu), Jan. 6, 2014 based on data from the ABA Center for Professional Responsibility and the NCBE

Legend
- Yellow Shading = has a foreign legal consultant rule
- = rule permits foreign Pro Hac Vice
- = rule permits foreign in-house counsel
- = rule permits temporary practice by foreign lawyers, also known as FIFO or fly in/fly out
- = has had a foreign-educated applicant sit for a bar exam in the past 3 years (2010-2012)

What’s a Regulator to Do?

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

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

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

The Georgia “Toolkit” is here to help!

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CCJ Resolution #11 re the Toolkit

- Jan. 2014: The CCJ encourages states to consider the Toolkit for foreign lawyer admission issues
- The “Toolkit” identifies issues to consider
- My view: States need to be willing to consider not only client protection but also client needs

See my “Bandwagon” article.
If you don’t consider these issues, others might!

Consider Your Regulatory Goals

ABA Center for Professional Responsibility

Why Your Jurisdiction Should Consider Jumping on the Regulatory Objectives Bandwagon

INTRODUCTION
The thesis of this essay (and the 2012 Fordham law review article upon which it is based) is that it is extremely useful for a society to commit to writing the objectives of its system of lawyer regulation.

Note: Some of the government “takeovers” of lawyer regulation elsewhere in the world have happened, inter alia, because gov’ts did not believe lawyer regulators were sufficiently considering client needs, as well as client protection. Access to justice was a major theme.
Conclusion

– Globalization affects all U.S. jurisdictions

– Because legal services are infrastructure services, governments (ours & others) care about their regulation

– We recommend you create a committee to help you address these issues

– Be prepared to respond to USTR requests for input on trade negotiations (e.g. WTO & TTIP)

– Remember to consider the legal needs of your citizens as well as their need for protection
Conclusion #2: A Plug for the Toolkit

- Developed by the ABA ITILS based on GA’s model
- Recommends that each jurisdiction create a task force and develop policies on the following issues:
  - Temporary Practice by Foreign Lawyers (FIFO)
  - Foreign in-house counsel
  - Foreign Pro Hac Vice Admission
  - Foreign Legal Consultants [FLCs]
- In light of the CCBE, I recommend you also consider “association” (i.e., foreign lawyer partnership or employment)
- Your group can develop expertise and advise the Court how to respond to the USTR & other developments

To Read More About It...

- See Links in the Materials Submitted by Professor Laurel S. Terry at the Conference of Chief Justices Midyear Meeting,
- ABA ITILS Webpage, http://tinyurl.com/kjox74a
- ABA Commission on Ethics 20/20,
  - http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/initial_proposals.html
- APEC Legal Services Inventory, http://www.legalservices.apec.org/overview.htm