




LEGAL SERVICES ROUNDTABLE

**US-UK Trade and Investment Working Group
Washington, D.C.
November 6, 2018**



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Introduction

- Overview *re* US & UK legal services trade
- US regulation of inbound UK lawyers & firms
 - “Active” practice by UK lawyers in US
 - Ability of UK law firms to practice in the US
- US-UK legal services interactions
 - T-TIP conversations
 - Other places where we interact
- My recommendations *re* a future agreement

To make sure we're on the same page

- US has a unified legal profession (cf. solicitors & barristers)
- US lawyers are licensed on a state not federal basis
 - US lawyers can be licensed in multiple jurisdictions
- The primary regulator is the state's highest court, (which I'll here call "Supreme Court")
 - Frontline regulators differ (a Court agency or "unified" bar)
 - We often have different frontline regulators for admissions compared to conduct & discipline regulators
 - Contact info in IBA Regulators Directory & NCBE/NOBC
- Our regulatory structure comes from our Constitution
 - 10th Amendment & Separation of Powers doctrine

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Legal Services Create Infrastructure

- Legal services facilitate other trade (*e.g. goods*)
- See WTO Collective Requests: Legal services (by Australia, Canada, the EC, Japan, New Zealand, Norway and the US)

1. Introduction

Legal services form an essential pillar of business infrastructure that supports and facilitates business transactions covering both goods and services. It is not possible to contemplate conducting business transactions, particularly of a transnational nature, in a legal vacuum. In addition to contributing to a business-friendly environment for investment, greater foreign investment is encouraged if host-country regulatory systems permit investors to have access to their own legal advisers.

The integral role of legal services in economies and the contribution of legal services in facilitating all trade cannot be overstated.

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US & US Int'l Legal Services Trade

- Our two jurisdictions have the most int'l trade



United States
International Trade Commission

Recent Trends in U.S. Services Trade:

2017 Annual Report

May 2017
Publication Number: 4682
Investigation Number: 332-345

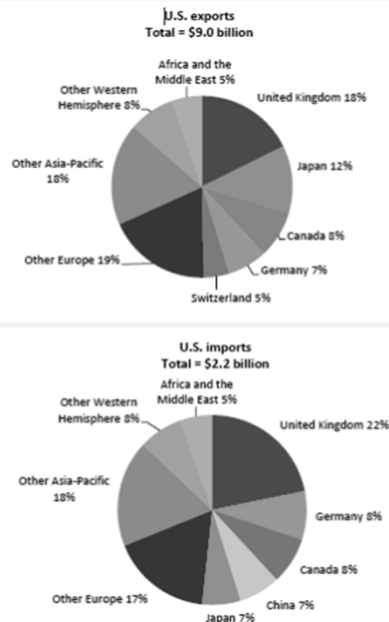
Table 5.1: Global and country/regional revenues in legal services

Country or region	2014 revenue (billion \$)	2015 revenue (billion \$)	Growth, 2015 (%)	Share of global revenue, 2015 (%)	Share of regional revenue, 2015 (%)
United States	278.6	289.8	4.0	48.8	*
Europe	156.0	161.2	3.4	27.2	*
United Kingdom	46.0	49.5	7.5	8.3	30.7
France	24.3	24.9	2.4	4.2	15.4
Germany	22.6	22.7	0.4	3.8	14.1
Italy	*	21.0	*	3.5	13.0
Spain	*	10.2	*	1.7	6.3
Rest of Europe	*	32.9	*	5.5	20.4
Asia-Pacific (A-P)	82.1	85.3	3.9	14.4	*
China	*	39.8	*	6.7	46.7
Australia	14.3	14.0	-2.0	2.4	16.4
India	*	8.8	*	1.5	10.3
South Korea	*	5.2	*	0.9	6.1
Japan	3.0	3.0	0.2	0.5	3.5
Rest of A-P	*	14.5	*	2.4	17.0
Middle East	*	6.2	*	1.0	*
Rest of the world	*	50.8	*	8.6	*
Total	572.0	593.4	3.7	100.0	*

This data is consistent with data in the 1998 & 2010 WTO Secretariat
Sectoral Reports on Legal Services: S/C/W/43 & S/C/W/318

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Figure 5.3: Legal services: The United Kingdom was the leading market for U.S. cross-border exports and imports of legal services in 2015



**The UK is the US'
Biggest Legal Services
Trading Partner**

#1 in US legal services
exports: The UK at 18%

#1 in US imports of legal
services: The UK at 22%

See p. 105 of the 2017 USITC
Recent Trends Report

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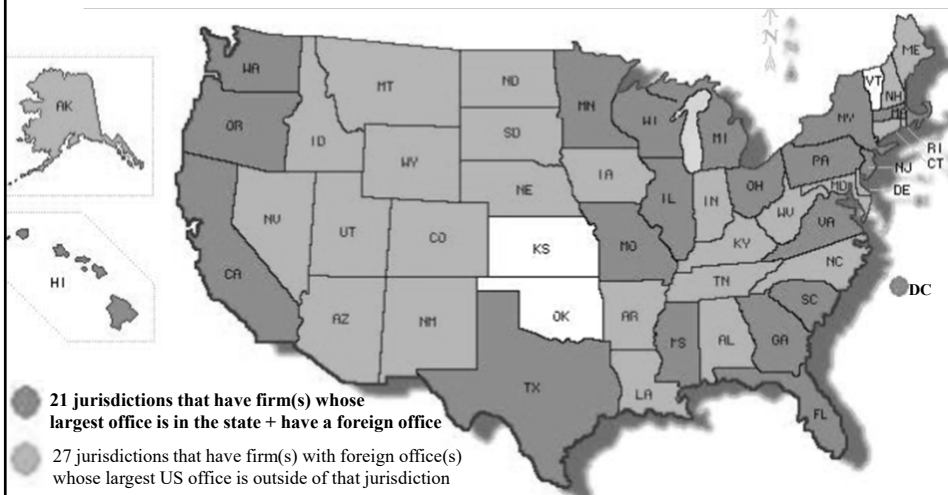
AmLaw's Oct. 2018 Global 100 List

US & UK firms are 14 of 20 largest law firms

Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
1	Dentons (verein)*	8,658	73	China	55%
2	Yingke	7,438	53	China	78%
3	Baker McKenzie (verein)*	4,723	47	United States	15%
4	DLA Piper (verein)*	3,609	32	United States	35%
5	CMS (EEIG)*	3,558	41	United Kingdom	35%
6	Allbright	3,400	2	China	99%
7	Norton Rose Fulbright (verein)*	3,339	32	United States	26%
8	King & Wood Mallesons (verein)*	2,762	11	China	55%
9	Hogan Lovells (verein)*	2,685	22	United States	36%
10	DeHeng Law Offices	2,531	7	China	99%
11	Jones Day	2,513	19	United States	63%
12	Latham & Watkins	2,436	14	United States	67%
13	Eversheds Sutherland	2,323	27	United Kingdom	48%
14	Linklaters	2,305	20	United Kingdom	42%
15	Allen & Overy	2,293	31	United Kingdom	39%
16	Clifford Chance	2,174	22	United Kingdom	30%
17	Herbert Smith Freehills	2,071	19	United Kingdom	31%
18	White & Case	2,039	29	United States	32%
19	Zhonglun W&D Law Firm	2,011	12	China	99%
20	Kirkland & Ellis	1,997	4	United States	84%

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US Law Firms With Foreign Offices



Data provided in 2015 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, a US jurisdiction has the firm's largest US office.

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Many Firms Have US and UK Lawyers

- Note the number of countries
- Note lawyer percentages in “home” countries

Global 100 Ranked by Head Count Oct. 2017

Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
1	Dentons	7,445	55	China	57%
2	Yingke	6,278	26	China	79%
3	Baker McKenzie	4,719	47	United States	15%
4	DLA Piper	3,616	30	United States	32%
5	Norton Rose Fulbright	3,505	27	United States	21%
6	CMS Legal Services	2,719	35	United Kingdom	25%
7	Hogan Lovells	2,609	22	United States	36%
8	Jones Day	2,523	18	United States	64%
9	Clifford Chance	2,466	23	United Kingdom	30%
10	King & Wood Mallesons	2,397	16	China	60%
11	Latham & Watkins	2,280	14	United States	68%

US Regulatory Body Organizations

- **Overarching: CCJ** (Conference of Chief Justices [of state Supreme Courts]; CCJ adopts resolutions, etc.)
 - **Beginning [Admissions] Stage: NCBE** (Nat'l Conf. of Bar Examiners; extensive education)
 - **Middle [Conduct] Stage: NOBC** (increasingly active)
 - **End [Discipline] Stage: NOBC** (Nat'l Organization of Bar Counsel; participant Jenny Mittleman is active in NOBC)
- ****
- **ABA** (develops influential model policies; also data)
 - **APRL** (Association of Professional Responsibility Lawyers; originally started as an NOBC counterpart)

US & UK Legal Services Regulation

- The US/UK are among the most open in world
- Neither has citizenship requirements
- **Temporary** transactional practice is widespread
- Both encourage international arbitration
- US/UK firms have many **established** [permanently practicing] lawyers from the other country
- Our openness comes in different ways

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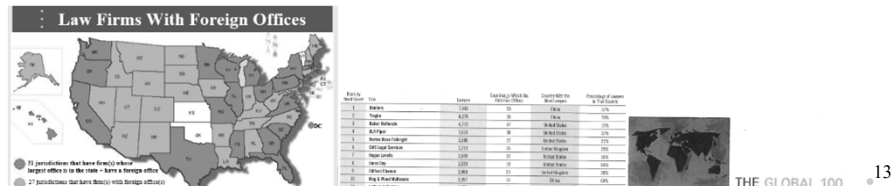
US Lawyer Regulation & Active Practice

- US has more reserved activities than the UK
- But US jurisdictions regulate lawyers, not firms
 - UK firms can open offices in the US so long as the offices are staffed by lawyers licensed in that state
 - UK firms can hire UK lawyers who obtain a full US license or a foreign legal consultant (FLC) license
 - July 2018: **3,232** foreign-educated NY bar exam applicants (1/3 of total); also in 25 US states + DC
 - Dec. 2014 Bosse article: In 2013, China had most NY bar exam applicants, but UK was #2

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“Association” is also Relevant

- 5 ways for UK lawyers to actively practice
- Inbound UK law firms can use association
- Under this type of “passive” practice:
 - UK firms hire “local” US lawyers in US
 - Called Mode 3 in WTO/GATS terminology
 - See earlier data: “association” is widespread



US-UK Interaction: T-TIP Dialogue

- In 2014, CCBE sent “requests” to the US:
 - CCBE request to the United States in the context of the Transatlantic Trade and Investment partnership (TTIP) negotiations
- In 2014, the ABA responded & cited its policies:
 - Existing ABA policies cover all CCBE requests except ADR neutrals (not a US lawyer reg. issue)
- 2015: The CCJ endorsed the ABA’s policies

William C. Hubbard
President

November 19, 2014

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

AMERICAN BAR ASSOCIATION

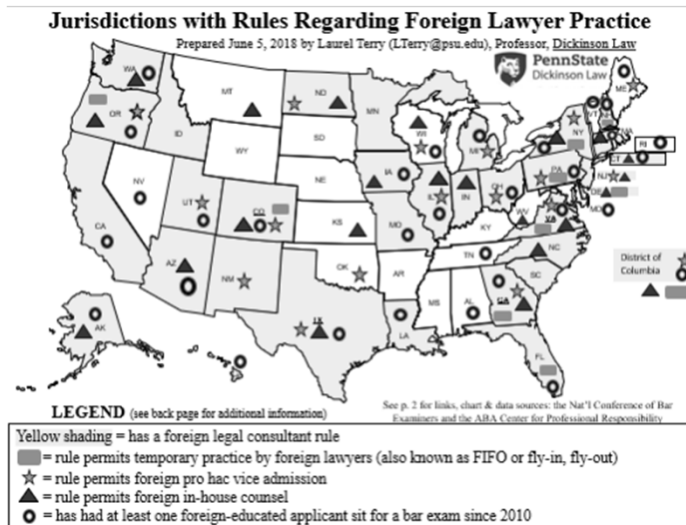
321 North Clark Street
Chicago, IL 60604-7998
(312) 988-5109

**Task Force on
International Trade in
Legal Services**

In sum, the ABA welcomes the opportunity to work closely with the CCBE to ensure that clients have the legal services access they need in both the U.S. and the EU. We welcome the CCBE's letter and believe that it provides a useful basis for ongoing discussions in the U.S. and in Europe. As our combined letters reveal, the ABA and the CCBE agree on a number of policy issues with respect to cross-border practice. We believe that our organizations can serve an effective role in gathering data about the barriers that lawyers face and working with a variety of stakeholders, including regulators, to help them understand the issues and remove any unnecessary barriers.

We look forward to working with the CCBE as the trade negotiations progress, as well as in other efforts to ensure that the interests of our respective lawyers are addressed.

Not All US States Have These Policies



BUT...

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Ongoing Dialogue re Active Practice

- Shortened process for **full licensing** exists in $> \frac{1}{2}$ of states
- FLC (**limited license**) available in $> \frac{1}{2}$ of states & covers jurisdictions w/ $> 80\%$ of US lawyers
- CCJ/ABA encourage suggestions *re* target states
- UK [& CCBE] representatives participate in a CCJ subcommittee devoted to this topic

CONFERENCE OF CHIEF JUSTICES
Task Force on Foreign Lawyers & the International Practice of Law
INTERNATIONAL CONFERENCE CALL SUMMARY
Began 8 a.m. / Ended 9:05 a.m. (NY EDT) on May 31, 2017

PERSONS PARTICIPATING

Judge Jonathan Lippman (Chair), Chief Justice Jerry VanderWalle (MD), Myron Steele (CCJ), Thomas Fine (Office of the USTR), Gordon Hughes (Law Council of Australia), Frederica Wilson (Federation of Law Societies of Canada), Alison Hook (UK), Jonathan Goldsmith (IBA), Peter McNamee (CCBE), Elyn Rosen (ABA), Judge Gregory E. Mize (NCSC)

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Places Where US & UK Interact

- **Regulatory bodies**
 - Int'l Conference of Legal Regulators
 - Domestic groups (e.g. CCJ calls; NCBE's annual invitation to a foreign rep; NOBC Global C'ees)
- **Semi-regulatory bodies**
 - IBA Bar Issues Commission (BIC Regulation & ITILS)
 - CCBE-ABA collaboration/cross-fertilization
- **Lawyer and representational groups**
 - Int'l Assoc. of Legal Ethics (IAOLE)
 - Within law firms & bar associations (e.g. ABA, IBA)
 - Nov. 8 APRL/Law Society of E&W Conference

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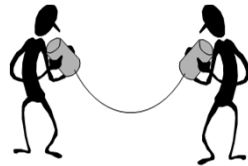
My Views on a US-UK Agreement

- Ensure that the current open system remains
- Create **a structure** for ongoing dialogue & a method to address any concerns
- Identify data sources (e.g. GA, NY)
- Ensure that the open system is also accessible by small & medium enterprises



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US-Australia FTA Annex as a Model?



- Require meetings
- Use a realistic schedule
- Utilize virtual meetings
- Consider setting forth discussion categories
- Possible agenda items: data sources + a US-UK Internat'l Regulatory Cooperation agreement

ANNEX 18-A PROFESSIONAL SERVICES

DEVELOPMENT OF PROFESSIONAL SERVICES

1. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition to the Joint Committee.
2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:
 - (a) education – accreditation of schools or academic programs;
 - (b) examinations – qualifying examinations for licensing, including alternative methods of assessment, such as oral examinations and interviews;
 - (c) experience – length and nature of experience required for licensing;
 - (d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
 - (e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;
 - (f) scope of practice – extent of, or limitations on, permissible activities;
 - (g) local knowledge – requirements for knowledge of such matters as local laws, regulations, geography, or climate; and
 - (h) consumer protection – alternatives to residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

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To Read More About It...



- ABA ITILS Webpage, <http://tinyurl.com/ABAITILS> (includes links to ABA & CCJ resolutions, T-TIP letters, 2017 Recent Trends reports, etc.)
- The “Map” of US Foreign Lawyer Rules with links to implementation rules and webpages, <http://tinyurl.com/LaurelTerrymap>
- Foreign Law Firm Map, <http://tinyurl.com/LaurelTerrymap2>
- NOBC Global Resources Page: <https://www.nobc.org/Global-Resources>
- ICLR page: <https://iclr.net/>
- IBA BIC Regulation & ITILS Committees & Resources: <https://tinyurl.com/IBA-BIC-regulation> and <https://tinyurl.com/IBA-ITILS>
- My articles about US-UK (& Global) legal services interactions:
 - *The Impact of Global Developments on U.S. Legal Ethics During the Past Thirty Years* (2017)
 - *Transnational Legal Practice* [2014] (with Carole Silver- discusses TLP-Nets)
 - *Trends in Global and Canadian Lawyer Regulation* (2013)
 - To find these articles, search https://works.bepress.com/laurel_terry/
 - See also my presentation slides <https://tinyurl.com/laurelterryslides>

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