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

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.
US & US Int'l Legal Services Trade

• Our two jurisdictions have the most int’l trade

Table 5.3: Global and country/regional revenues in legal services

<table>
<thead>
<tr>
<th>Country or Region</th>
<th>2014 Revenue (billion $)</th>
<th>2015 Revenue (billion $)</th>
<th>Share of Global Revenue, 2015 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>278.6</td>
<td>285.8</td>
<td>48.6</td>
</tr>
<tr>
<td>Europe</td>
<td>156.9</td>
<td>161.2</td>
<td>27.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>46.6</td>
<td>49.5</td>
<td>8.3</td>
</tr>
<tr>
<td>France</td>
<td>24.3</td>
<td>24.9</td>
<td>4.2</td>
</tr>
<tr>
<td>Germany</td>
<td>22.6</td>
<td>23.7</td>
<td>3.8</td>
</tr>
<tr>
<td>Italy</td>
<td>21.0</td>
<td>21.0</td>
<td>3.5</td>
</tr>
<tr>
<td>Japan</td>
<td>13.4</td>
<td>13.0</td>
<td>2.3</td>
</tr>
<tr>
<td>South Korea</td>
<td>11.2</td>
<td>11.2</td>
<td>2.0</td>
</tr>
<tr>
<td>India</td>
<td>8.0</td>
<td>8.8</td>
<td>1.5</td>
</tr>
<tr>
<td>Rest of Asia-Pac</td>
<td>8.7</td>
<td>8.6</td>
<td>1.5</td>
</tr>
<tr>
<td>Rest of the world</td>
<td>52.0</td>
<td>53.0</td>
<td>9.0</td>
</tr>
</tbody>
</table>

Total: 592.0 billion

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

Recent Trends in U.S. Services Trade: 2017 Annual Report

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

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
AmLaw’s Oct. 2018 Global 100 List

US & UK firms are 14 of 20 largest law firms

US Law Firms With Foreign Offices

21 jurisdictions that have firm(s) whose largest office is in the state + have a foreign office

27 jurisdictions that have firm(s) with foreign office(s) whose largest US office is outside of that jurisdiction

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.
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

<table>
<thead>
<tr>
<th>Rank</th>
<th>Firm</th>
<th>Lawyers</th>
<th>Countries in Which the Firm Has Offices</th>
<th>Country With the Most Lawyers</th>
<th>Percentage of Lawyers in That Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dentons</td>
<td>7,445</td>
<td>55</td>
<td>China</td>
<td>57%</td>
</tr>
<tr>
<td>2</td>
<td>Yiqihe</td>
<td>6,278</td>
<td>26</td>
<td>China</td>
<td>79%</td>
</tr>
<tr>
<td>3</td>
<td>Baker McKenzie</td>
<td>4,719</td>
<td>47</td>
<td>United States</td>
<td>15%</td>
</tr>
<tr>
<td>4</td>
<td>DLA Piper</td>
<td>3,616</td>
<td>30</td>
<td>United States</td>
<td>32%</td>
</tr>
<tr>
<td>5</td>
<td>Norton Rose Fulbright</td>
<td>3,505</td>
<td>27</td>
<td>United States</td>
<td>21%</td>
</tr>
<tr>
<td>6</td>
<td>CMS Legal Services</td>
<td>2,719</td>
<td>35</td>
<td>United Kingdom</td>
<td>25%</td>
</tr>
<tr>
<td>7</td>
<td>Hogan Lovells</td>
<td>2,609</td>
<td>22</td>
<td>United States</td>
<td>36%</td>
</tr>
<tr>
<td>8</td>
<td>Jones Day</td>
<td>2,553</td>
<td>18</td>
<td>United States</td>
<td>64%</td>
</tr>
<tr>
<td>9</td>
<td>Clifford Chance</td>
<td>2,486</td>
<td>23</td>
<td>United Kingdom</td>
<td>30%</td>
</tr>
<tr>
<td>10</td>
<td>King &amp; WoodMallesons</td>
<td>2,397</td>
<td>16</td>
<td>China</td>
<td>60%</td>
</tr>
<tr>
<td>11</td>
<td>Latham &amp; Watkins</td>
<td>2,380</td>
<td>14</td>
<td>United States</td>
<td>68%</td>
</tr>
</tbody>
</table>

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

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
“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


- 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

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…

Ongoing Dialogue re Active Practice

- **Shortened** process for **full licensing** exists in > ½ of states
- FLC (**limited license**) available in > ½ 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
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

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
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

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)
  – To find these articles, search https://works.bepress.com/laurel_terry/
  – See also my presentation slides https://tinyurl.com/laurelterryslides