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International Business Ventures: An Overview of Information Sources for the Practitioner

The articles which follow in this conference proceedings issue have been prepared for the businessman and attorney with little experience in international trade. Written by practitioners, the articles present a survey of the major alternatives available to U.S. businesses interested in entering a foreign market: exporting, licensing, and participating in a joint venture. Information is also provided for the American attorney retained by a foreign business that is interested in making a direct investment in the U.S. Finally, two articles examine other aspects of international business transactions, including tax considerations and dispute settlement options.

Because of space constraints, each author could highlight only the important points that the attorney should consider when advising a company interested in entering an international business transaction. Thus, a gap exists between understanding the general principles discussed by each author and applying those principles when advising a businessman preparing to enter a specific foreign market with a specific product. This overview will attempt to bridge that gap, by identifying potential sources of information which may be used by businessmen in general and attorneys in particular.¹

An excellent initial source of information is the U.S. International Trade Administration (ITA). A division of the Commerce Department, the ITA acts as a clearinghouse of information available from many governmental and non-governmental sources.² The ITA has branches at Commerce Department field offices in forty-seven U.S. cities.³ Each field office maintains a small library of governmental and commercial publications dealing with international trade.

The ITA employs trade specialists at each Commerce Department

¹ The reader desiring additional marketing information should consult a Small Business Administration publication, EXPORT MARKETING FOR SMALLER FIRMS, which provides a valuable collection of sources of marketing and business information. SMALL BUSINESS ADMINISTRATION, EXPORT MARKETING FOR SMALLER FIRMS (3rd ed. 1971). See also, U.S. DEP'T OF COMMERCE, A BASIC GUIDE TO EXPORTING (1979).

² Interview with John H. Schmonsees, Jr., ITA Trade Specialist, U.S. Department of Commerce, in Greensboro, N.C. (February 20, 1981) [hereinafter cited as Schmonsees Interview].

³ U.S. DEP'T OF COMMERCE, BUSINESS AMERICA 61 (Feb. 9, 1981). The reader should consult the local telephone directory for additional address and telephone information for Commerce Department district offices in the following cities:

field office. These employees work closely with U.S. companies interested in entering a foreign market. Although the specialists do provide assistance to large companies with extensive foreign trade experience, they place much emphasis on identifying and assisting smaller companies unfamiliar with foreign markets. Because these smaller companies tend to export domestic products initially, rather than enter licensing or joint venture agreements, the trade specialists are also export-oriented.

The trade specialist provides basic background market research to a company interested in exporting a product. The specialist begins this research by helping the exporter decide whether the product can be marketed outside the United States. To determine whether exporting the product is feasible, the specialist first assigns the product a seven digit number from *Schedule B*, a Census Bureau publication.⁴ *Schedule B* groups all similar export products into one of several thousand numbered categories. Using the monthly Census Bureau reports which break down all U.S. exports by *Schedule B* number and country of destination,⁵ the specialist can quickly determine which countries are currently purchasing the most goods similar to the proposed export. Next, the specialist can develop historical market growth and stability data on the largest foreign purchasers by reviewing Census Bureau annual reports of export activity for recent years. After identifying favorable trends in market growth, the specialist narrows the exporter's prospective foreign market to a group of three to five countries.⁶

To gain more detailed information on each of the handful of promising foreign markets, the trade specialist then reviews the issue of *Overseas Business Reports (OBR)* which covers the relevant country's market.⁷

Albuquerque	Detroit	New York
Anchorage	Greensboro, N.C.	Newark
Atlanta	Hartford	Omaha
Baltimore	Honolulu	Philadelphia
Birmingham	Houston	Phoenix
Boston	Indianapolis	Pittsburgh
Buffalo	Jackson, Miss.	Portland, Ore.
Charleston, W. Va.	Kansas City	Reno, Nev.
Cheyenne	Little Rock	Richmond
Chicago	Los Angeles	St. Louis
Cincinnati	Louisville	Salt Lake City
Cleveland	Memphis	San Francisco
Columbia, S.C.	Miami	San Juan, P.R.
Dallas	Milwaukee	Savannah
Denver	Minneapolis	Seattle
Des Moines	New Orleans	

⁴ BUREAU OF THE CENSUS, SCHEDULE B, STATISTICAL CLASSIFICATION OF DOMESTIC AND FOREIGN COMMODITIES EXPORTED FROM THE UNITED STATES. The exporter can purchase his own copy from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Department of Commerce district offices.

⁵ BUREAU OF THE CENSUS, FT 410 (U.S. EXPORTS). FT 410 reports are published monthly with cumulative summaries.

⁶ Schmonsees Interview, *supra* note 2.

⁷ U.S. DEP'T OF COMMERCE, OVERSEAS BUSINESS REPORTS. Approximately sixty reports are issued per year by the Commerce Department. Subscriptions are available from the

Each *OBR* studies a single country and includes a number of topics of marketing interest to the exporter: foreign trade outlook, industry trends, growth sectors of the economy, distribution and sales channels, advertising and research, transportation, communications, utilities, and credit. The *OBR* for a country also includes topics of special interest to the attorney, such as trade and investment regulation, and tax information. The trade specialist updates the *OBR* by contacting the appropriate "country desk" in Washington, which is responsible for monitoring recent developments in its assigned country.⁸

For several industries, including communications equipment, computers, and machine tools, the trade specialist may also refer to two other Commerce Department studies. The Commerce Department publishes *Global Market Surveys* which examine the export market for approximately sixteen target industries.⁹ Each survey examines as many as eight country markets for each of these targeted industries.¹⁰ A second series of Commerce Department studies is the *Country Market Surveys (CMS)* series.¹¹ Each *CMS* examines export opportunities for U.S. textile and apparel manufacturers in a specific country. These surveys discuss the market profile, domestic industry, other importers, the structure of the import market, and methods of entering the market.

After assembling this information on several promising foreign markets, the specialist meets again with the U.S. company interested in exporting. The specialist presents his report recommending several foreign markets and encourages the company to begin the next step of identifying specific customers or distributors who would be interested in purchasing the company's product.¹²

The Commerce Department's Trade Opportunities Program (TOP) is one way of identifying foreign customers. Each day, personnel sta-

U.S. Government Printing Office (for the current year) with prior years' reports available from Publications Sales Branch, Room 1617, U.S. Department of Commerce, Washington, D.C. 20230.

⁸ Schmonsees Interview, *supra* note 2. A Commerce Department pamphlet, *Publications for Business from ITA*, includes a geographical (country) index of U.S. government publications.

⁹ U.S. DEP'T OF COMMERCE, GLOBAL MARKET SURVEYS. These Surveys are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for the following markets: Air and Water Purification and Pollution Control Equipment (1976); Apparel (1980); Avionics and Aviation Support Equipment (1975); Business Equipment and Systems (1976); Building Products and Construction Equipment (1977); Communications Equipment and Systems (1977); Computer and Peripheral Equipment (1977); Electrical Energy Systems (1977); Electronic Components (1978); Electronic Components Production Equipment (1979); Food Processing and Packaging Equipment (1975); Graphic Industries Equipment (1977); Medical Equipment (1977); Metalworking and Finishing Equipment (1975); Materials Handling Equipment (1974); Micrographics (1973); Process Control Instrumentation (1975); Textiles (1979).

¹⁰ For example, see U.S. DEP'T OF COMMERCE, GLOBAL MARKET SURVEY, ASIAN AND AUSTRALIAN MARKETS, APPAREL (1980).

¹¹ U.S. DEP'T OF COMMERCE, COUNTRY MARKET SURVEYS. These surveys are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

¹² Schmonsees Interview, *supra* note 2.

tioned at U.S. embassies and missions cable information on export opportunities to TOP for inclusion in a weekly *TOP Bulletin*.¹³ This *Bulletin* provides the names of foreign companies or governments interested in purchasing specific products from U.S. suppliers. Each notice appearing in the *Bulletin* includes a brief description of the desired product or service, the name of a contact person, and a complete mailing and cable address. TOP also has a Notice Service which provides U.S. firms with a mail notification listing foreign buyers who are currently interested in purchasing the the type of product sold by the subscribing company.¹⁴

In addition to the TOP program, which is designed to inform U.S. companies of a foreign buyer's interest in the immediate purchase of U.S. products, the ITA also has a program called Export Contact List Services.¹⁵ This program provides data on more than 140,000 foreign firms which have indicated an interest, at some point in the past, in importing U.S. products or in serving as agents or distributors for U.S. manufacturers.¹⁶ Companies in the United States have several options when obtaining data on these foreign firms, including the purchase of inexpensive Trade Lists covering selected developing countries and industries, the purchase of computer tapes storing some or all of the entire data file, or the purchase of mailing labels targeted to specific markets or product categories.

As an alternative to selling directly to the foreign customer, the U.S. company should consider finding an agent or distributor already established in the foreign market. ITA's Agent/Distributor Service (ADS) provides the names and addresses of prospective foreign representatives.¹⁷ To use this Service, the U.S. exporter must supply information including a description of the product, the type of agency arrangement desired, the price of the product, and a general background on the U.S. company. Next, officials assigned to the U.S. embassy in the specified country will personally contact local businesses to determine their willingness to serve as agents or distributors for the U.S. company. Finally, the U.S. exporter will receive an ADS report which lists several foreign companies interested in pursuing further negotiations.

Once the U.S. company has found several interested overseas buyers or distributors for its product, it can obtain further background information on each buyer through the ITA's World Traders Data Report (WTDR) program.¹⁸ The WTDR is a profile report which typically includes background information, years in business, number of employees, sales area, type of operation and products handled, general trade and

¹³ U.S. DEP'T OF COMMERCE, A BASIC GUIDE TO EXPORTING 48 (1979).

¹⁴ *Id.*

¹⁵ U.S. DEP'T OF COMMERCE, EXPORT CONTACT LIST SERVICES (rev. ed. 1980).

¹⁶ *Id.* at 1.

¹⁷ U.S. DEP'T OF COMMERCE, THE AGENT/DISTRIBUTOR SERVICE (rev. ed. 1980).

¹⁸ U.S. DEP'T OF COMMERCE, DO YOU KNOW YOUR EXPORT CUSTOMER? WTDR (1980).

credit reputation, and names of other foreign firms the company represents.

In May 1980, the International Trade Administration began the process of implementing a new international marketing system entitled the Worldwide Information and Trade System (WITS).¹⁹ This system incorporates TOP, the Export List program, ADS, and WTDR into a single computerized data service. When fully operational, the ITA claims the system will provide U.S. exporters with sales leads, product and market statistics, trade fair information and dates, and information on thousands of foreign companies and products. In addition, WITS should permit U.S. exporters to list their products for review by prospective foreign purchasers.

The WITS system will receive much of its foreign market intelligence from a new agency of the Commerce Department, the Foreign Commercial Service (FCS). Organized as part of the 1979 Trade Reorganization Plan, the FCS has three functions: encouraging trade and investment, assembling market and commercial information, and advocating U.S. business interests abroad. FCS officers will be stationed in approximately sixty-five countries with the greatest commercial activity.²⁰ It is too early to tell whether the FCS will resolve long-standing complaints by U.S. companies engaged in licensing or foreign direct investment that they often received little or no assistance from U.S. embassies.²¹

Although the U.S. Commerce Department is an excellent source of marketing information on foreign countries and provides basic coverage of foreign trade and investment regulations, attorneys should also be aware of the vast number of non-governmental sources of legal information. One such source is the international department of a large U.S. bank. There are over 250 U.S. banks with qualified international banking departments.²² These U.S. banks often maintain correspondent relationships with foreign banks and, as a result, obtain up-to-date information on the foreign market, legal environment, and specific foreign importers and distributors. Like the Commerce Department, international banking departments are especially knowledgeable about exporting arrangements and thus are a prime resource for the small exporter.

Some foreign commercial banks also publish periodicals or pamphlets which provide useful background information about a specific foreign country. Barclays Bank, Banco National de Mexico, Banco Exterior de Espana, The Hong Kong Bank, and Amsterdamsche Bank are exam-

¹⁹ U.S. DEP'T OF COMMERCE, WORLDWIDE INFORMATION & TRADE SYSTEM (1980).

²⁰ U.S. DEP'T OF COMMERCE, BUSINESS AMERICA 3-6 (Oct. 6, 1980).

²¹ J. BEHRMAN, J. BODDEWYN, A. KAPOOR, INTERNATIONAL BUSINESS-GOVERNMENT COMMUNICATIONS 51 (1975).

²² U.S. DEP'T OF COMMERCE, A GUIDE TO FINANCING EXPORTS 3 (1978).

ples of foreign banks publishing materials on the domestic market in the English language.²³

Publications by CPA firms and commercial publishers represent two other sources of information of use to the attorney. The best known CPA series is Price Waterhouse's *Information Guides for Doing Business in (country)*. Each *Guide* focuses on the tax and legal aspects of doing business in a single country. Two very useful reference services are published commercially. *The Exporter's Encyclopedia*, published annually by Dun & Bradstreet, provides information on export regulations on a country by country basis. For the attorney involved in a licensing or joint venture arrangement, more detailed information can be obtained from a multi-volume looseleaf service entitled, *Investing, Licensing & Trading Conditions Abroad*. Published by Business International, this service is regarded as the definitive work on foreign licensing agreements.²⁴

The U.S. attorney's need to consult these commercial publications, as well as the other sources of information previously discussed, will depend on the nature of his client company's trade transaction. Often, an attorney will not be involved in a small export sale. Instead, the exporting company may consult an ITA specialist for help in identifying foreign markets and prospective customers. The exporter can then contract with a domestic freight forwarder or shipper for the transportation of the goods to the foreign customer. The exporter will often rely on the international department of a U.S. bank to arrange financing, payment terms, and compliance with foreign trade and currency regulations. Thus, the exporter may not consult an attorney unless a dispute arises between the exporter and foreign purchaser.

Naturally, the likelihood of a U.S. attorney's participation in export arrangements increases as the dollar value of the sale increases. Moreover, the attorney will often be called upon to draft agreements governing a continuing relationship, such as an agency or distributorship arrangement. Due to the complex nature of licensing and joint venture agreements, companies will usually rely on an attorney to draft these documents.

When providing legal advice in these more complex transactions, the attorney should regard the ITA, commercial publications, and international departments of banks as providing a low cost mechanism for helping the company select a few promising foreign markets from a universe of more than one hundred countries. Although these sources of information survey foreign trade and investment regulations, the U.S. attorney should not consider them as a replacement for the services of a competent foreign lawyer, specifically one who is actively engaged in the practice of law in the foreign market. The necessity of retaining a practicing attorney is especially important in civil code countries because

²³ EXPORT MARKETING FOR SMALLER FIRMS, *supra* note 1, at 118-119.

²⁴ *Id.* at 131.

many people in those countries acquire legal educations without ever intending to practice law.²⁵ The U.S. attorney should consult a foreign lawyer for many of the same reasons which motivate consultation or association with local counsel in other U.S. states when the U.S. attorney is involved in a legal matter in an unfamiliar forum. A foreign language, unfamiliar legal system, and uncertainty as to the actual administration of local regulations are compelling reasons for obtaining the advice of local counsel in a foreign country.

Once the U.S. attorney decides to consult local counsel, the selection of the foreign attorney is largely a matter of personal contacts. American companies already present in the foreign market and trade associations might be willing to provide recommendations. American Chambers of Commerce in the foreign country often have attorneys as officers or directors and thus may be able to furnish appraisals of local lawyers. The Commerce Department, through the Foreign Commercial Service officers stationed in the foreign country, has recently appeared more willing to evaluate and suggest local attorneys, a departure from the past practice of providing merely a long, unselective list of almost the entire local bar. However selected, competent local counsel is critical to the long term success of the complex relationship between the U.S. company and its foreign distributor, licensee, or joint venturer.

The country-specific information gained from both local counsel and available publications should enhance the advice provided in the practitioners' articles which follow. Although necessarily concise, these articles examine the major features of exporting, licensing, and joint venture arrangements, and discuss related tax and dispute settlement factors. Thus, it is hoped, this proceedings issue will accomplish its purpose of providing a basic guide to the structuring of international business transactions.

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²⁵ Gorove, *Advising Clients in International Business and Investment: The Lawyer's Role*, in LEGAL ASPECTS OF INTERNATIONAL INVESTMENT 4 (S. Gorove ed. 1977).

