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International Business Ventures: Opening Remarks

by C.L. Haslam*

Good morning. It is a pleasure to welcome you today to this conference on international business ventures. I think we have a good program that covers a wide range of important topics. Rather than attempt to survey superficially the material which will be discussed by later speakers, I would like to touch upon a few points not covered elsewhere in the program that I think ought to be part of any attorney's checklist.

First, the attorney should advise a client inexperienced in international trade to consider using an export trading company. These companies act as middlemen between the U.S. exporter and the foreign customers. Export trading companies provide a variety of services, ranging from merely acting as commission sales agents to taking a position in the products they sell and requiring a distributorship agreement. The advantages offered by export trading companies are that the U.S. exporter can avoid direct dealings with foreign distributors and need not establish a foreign marketing subsidiary or a joint venture with a foreign partner. In some circumstances and for some clients, export trading companies represent a low risk, low cost way of entering a foreign market.

On the subject of exporting, I would like to heartily recommend two new government studies. The first is the Report of the President on U.S. Export Performance and Competitiveness. The President submitted this study to Congress in September of 1980. It is, in my opinion, the best study ever done on U.S. export performance. This study examines the performance of hundreds of U.S. industries in foreign markets, notes trends, and makes conclusions. It is a first rate study. If you or your clients are interested in trade, and in being able to predict where future markets will be, I think this study is indispensible. The second study is the Department of Commerce's Report on Export Promotion, Functions, and Potential Export Disincentives. This report examines current government programs which promote exports. The report also has a point by point discussion of potential export disincentives, such as the Foreign Corrupt Practices Act, U.S. taxation of Americans abroad, and the U.S. foreign tax credit. It is an unusually good report and I commend it to you.

Second, if you advise a client interested in trading with a developing or communist country, you should familiarize yourself with the concepts of compensation trade and counter-trade. In a nutshell, these are arrangements where payment or remission of profits from a given venture will be made in kind instead of in cash. Specifically, a compensation trade arrangement provides your client who sells product X with payment in product Y. Counter-trade arrangements, on the other hand, provide payment to your client in the form of output from the facility itself. Compensation trade and counter-trade arrangements are a dangerous area, but increasingly your client's willingness to enter into such an arrangement will determine whether a deal can be struck.

A third area, which is rapidly changing, is that of international products liability. No longer is the United States the only major world market with a highly developed products liability scheme. The European Community recently adopted a directive which essentially would impose strict liability for injury in the products liability area, barring some fairly narrow areas of defense. The European Community directive does not adopt negligence as a basis for liability. Instead, the European products liability scheme is based on compensation or reparation for injury. My point here is that your client should consider insuring against its products liability exposure and, in some situations, may conclude that its exposure for a product is too great to justify entering the foreign market at all.

I address my next comments to attorneys with clients considering significant direct investment abroad. Many governments are currently offering attractive subsidies to foreign investors willing to establish new plants in their countries. These subsidies take the form of tax free holidays, local employment training programs, site preparation, and tax remissions. I believe that this intensive inter-country bidding for production facilities will not continue for much longer, probably no longer than five more years. The days when Canada offers Ford Motor Company forty-eight million dollars to build a new Canadian plant, or when Ireland bids against Puerto Rico for the De Lorien motor car plant, are numbered. This competition among countries for inbound investment is beginning to skew world markets, and will result in some kind of international agreement on investment in the next few years. Thus, my advice to a company which is able to make a significant investment abroad and has made the business judgment to do so is not to defer that investment: not only will inflation raise the cost of the investment but also the company stands to lose some highly desirable subsidies.

Finally, I urge you to consider the types of benefits your clients receive from their international business ventures. Of course, your clients receive profits on goods sold, royalty income, service income, or income as equity participants in direct investments or joint ventures. Just as importantly, however, your clients profit from an association with foreign
companies. Technology transfer is increasingly a two way street between the United States and foreign countries. Thus, a major benefit of getting into international trade is the discovery of foreign products and technology which might be marketed or introduced in this country.

In summary, international trade law is a vital and growing specialty. I think it is a splendid area in which to practice law. There is nothing that will liven up a practice as much as having a client who has business interests in Fiji. If you can stand the plane ride it is well worth the trip.

Thank you very much.