

# Michigan International Lawyer

INTERNATIONAL LAW SECTION

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## In This Issue

Letter from the Chair <i>Lois Elizabeth Bingham</i> .....	1
ILS Announces Student Essay Contest.....	3
2007 Customs Update: Legislative Changes for GSP, Tariff Classification, and Land Border Entries <i>Andrew P. Doornaert</i> .....	4
Section Events at a Glance .....	6
Perspectives on Establishing Manufacturing Operations in China, India, and Mexico <i>Richard G. Goetz</i> .....	7
ILS Co-Sponsors Citizenship Day .....	11
Proposed Changes to Immigration Regulations 8 C.F.R. §274a.1-2 <i>Joseph W. Uhl</i> .....	12
Section Presents: Careers in International Law & Business.....	14
A New Export Program for Mexico <i>Scott S. Sneckenberger</i> .....	15
United States Unveils Updated Model Tax Treaty <i>John D. Miller</i> .....	17
Treasurer's Reports: Fiscal Year End and First Quarter .....	19
USCIS Proposes to Raise Fees <i>MIL Staff</i> .....	20
Event Calendar .....	23
Leadership Roster .....	25

*Disclaimer:* The opinions expressed herein are solely those of the authors and do not necessarily reflect those of the International Law Section or the Editors.

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## Letter from the Chair

*Dear Members and Colleagues:*

What is our Purpose? Is the Section organized and managed in a way that enables it to successfully fulfill its Purpose? Does the Section provide repeatable value to its Members? Do Members actively support the Purpose and Section activities? These are the questions that ran through my mind in the summer of 2006 as I contemplated my upcoming election in September 2006 as Chair of the International Law Section.

While the International Law Section has grown and thrived over the years under the wonderful leadership of our past Chairs, this is the time for the Section to: (1) channel the talent and energy of its Members so that they actively support the Section and its activities; (2) create a strategic plan that will lay the foundation for success in the years to come; (3) re-dedicate itself to meeting the needs of its Members, the State Bar, and other persons interested in the field of international law; and (4) ensure that all Officers, Council Members, Committee Chairs and Co-Chairs not only understand the very important role they play in the success of the Section, but remain committed to satisfying the responsibilities of their office.

To this end, upon my election as Chair, I launched **Project NIA: "Fulfilling the Mission – Pathways to Success"** as the theme for this Bar Year. NIA means "purpose" in Swahili. With the collective support of my fellow Officers, Peter Swiecicki (Vice-Chair), Fred Frank (Secretary), and Nick Stasevich (Treasurer), the Council, Section Committee Chairs and Co-Chairs, the editorial staff of Michigan International Lawyer, and other Section volunteers including past Section Chairs, several programs and initiatives have already been launched in furtherance of Project NIA, some of which are described below. In addition, we are pleased to present an exciting and diverse array of programs for 2007.

**2006 Annual Meeting.** The new Bar Year for the Section began with the Annual Meeting of the Section held on September 14, 2006 in Ypsilanti, Michigan. In support of the "Going Global" theme of our past Chair, Bruce Birgbauer, the Section held an excellent program entitled "*Going Global: Manufacturing Options in Mexico and Other Key Latin American Countries.*" This program featured Richard Goetz of Dykema, Andrew Doornaert of Miller Canfield, John McLees of Baker McKenzie, Vernon Baker of ArvinMeritor, and Scott Sneckenberger of Plante & Moran.

**Reorganization of Section Committees.** After careful review of the existing Committees, the Council voted to reorganize the committee structure. Accordingly,



*Lois Elizabeth Bingham*

## Michigan International Lawyer Submission Guidelines

The Michigan International Lawyer, which is published three times per year by the International Law Section of the State Bar of Michigan, is Michigan's leading international law journal. Our mission is to enhance and contribute to the public's knowledge of world law and trade by publishing articles on contemporary international law topics and issues of general interest.

The Michigan International Lawyer invites unsolicited manuscripts in all areas of international interest. An author is encouraged to submit a brief bio and a photograph for publication. An article, including footnotes, should contain between 1000 and 3000 words. Footnotes should be limited in number, but the author should provide citations for relevant authority.

Articles can be submitted for consideration in hard copy or electronic format. Manuscripts and photographs cannot be returned unless accompanied by a \$5 check or money order made payable to Wayne State University Law School for shipping and handling.

The Michigan International Lawyer will consider articles by law-school students and may publish student articles as part of a regular column. A student should submit the article either through a law-school faculty member or with a law-school faculty member's recommendation.

Submissions Should Be Forwarded to the Faculty Editor:

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## Michigan International Lawyer Publication Deadline Dates

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Winter Issue  
Articles due November 15

Spring/Summer Issue  
Articles due March 15

the Section now sponsors the following Committees: International Business and Tax; International Employment Law and Immigration; International Human Rights; International Trade; and Emerging Nations. I would like to thank Jan McMillan, former Chair of the International Family Law Committee, Fred Frank and Carla Machnick, former Chairs of the Website Committee, and Randy Wright and Mary Bedekian, former Chairs of the International Dispute Resolution Committee, for their dedicated service to the Section.

**Committee Chair Responsibilities.** At past planning sessions of the Section, we have discussed at length the need to revitalize the Committees. We identified that the absence of defined roles and responsibilities of the Committees contributed to weakened participation. This area of concern has now been resolved. To provide guidance to our Section volunteers who serve or may be interested in serving as Chairs or Co-Chairs of the Section's Committees, the Council identified and adopted defined responsibilities for such persons and the committees they lead. Please review the Section's website for more information.

**Diversity in Section Leadership and Activities.** I believe that in order for the Section to remain a viable organization, it must maintain an active and diverse membership. In addition to the need for greater involvement from lawyers of color, women, and younger attorneys (age and/or years of practice), the Section must also maintain geographical and firm/employer diversity. I'm happy to report the great strides we have made in this area. We are sponsoring a seminar in Grand Rapids in May 2006. Cam DeLong of Warner Norcross is a new member to the Council. Pam Emenheiser of Varnum Riddering joins us as Chair of the International Business Law and Tax Committee, with Mike Domanski of Honigman serving as Co-Chair. Ken Duck of Foley Lardner is the new Chair of the Emerging Nations Committee, with Richard Goetz of Dykema serving as Co-Chair. Debra Auerbach Clephane of Vercruysse, Murray & Calzone is Chair of the International Employment and Immigration Law Committee. Andrew Doornaert of Miller Canfield is serving double duty as a new Council member and Chair of the International Trade Committee. Eve Lerman with the US Department of Commerce is new to the Council, and Professor Gregory Fox of Wayne Law School serves as Chair of the International Human Rights Committee. Finally Section member Onnie Barnes Jacque from the University of Michigan's Office of the General Counsel has taken a lead role in planning the upcoming Careers in International Law panel discussion for area law students. I would like to thank Christian Allen, Linda Armstrong, Ingrid Brey, James Serocki, Brian Sullivan, Don Wilson, Bruce Birgbauer, and Fred Smith for their service as past Committee Chairs and Co-Chairs.

**ILS Five-Year Strategic Plan.** In recognition of the excellent job Randy Wright did for past Chair Bruce Birgbauer in facilitating the Section Survey, I asked him to serve as Chair of an Ad-Hoc Strategic Planning Committee. This Committee, comprised of current Section Officers and past Section Chairs, will provide an initial report and assessment at the June 2007 Council Meeting.

**ILS Bylaws Review.** Vice Chair, Peter Swiecicki, has agreed to serve as Chair of an Ad-Hoc Committee created to review and propose changes to the Section's Bylaws. Proposed changes to the Bylaws will be presented to the entire Section Membership for approval after approval by the Council.

**Webinar.** In December, the Section held its inaugural telephone conference and webinar seminar which featured UK bankruptcy attorney, Rita Lowe of CMS Cameron McKenna. Survey results indicated that Section Members were interested in hearing from foreign counsel on matters of international law, as well as receiving information without having to leave the office. The Section intends to continue its efforts to bring the world to you, without you having to leave your desk.

### Upcoming Activities

**Law Student Initiatives.** The Section will once again sponsor its International Law Student Essay Contest. More information on the contest can be found in this issue

of MIL and on the Section's website. In addition, on February 22, 2007, from 4:00pm to 6:00pm, at the DoubleTree Dearborn, the Section will host a panel and round-table discussion on Career Opportunities in International Law and Business. If you are interested in talking about how you became an international law attorney or career opportunities in the field, please contact Onnie Barnes Jacque at [ojacque@umich.edu](mailto:ojacque@umich.edu).

**Pro Bono Initiative.** The Section will co-sponsor with AILA Michigan **Citizenship Day Metro-Detroit** on March 24, 2007, from 10 a.m. to 4 p.m., at the International Institute of Metropolitan Detroit. Citizenship Day is a day to help people complete their Naturalization applications. Volunteers (both attorney and non-attorney) are needed for either 9:00 a.m. to 1:00 p.m. or 1:00 p.m. to 5:00 p.m. Contact and other information about the event can be found in this edition of MIL.

**"Business and Legal Challenges for Automotive Suppliers in China and India."** After a successful premier at

the Section's 2005 Annual Meeting, this well-received seminar is headed west to the Amway Grand Plaza Hotel in Grand Rapids. This seminar will take place on May 22, 2007, from 2:00pm to 5:00pm. Further details will be posted on our website and sent to you via email. Join us on May 22 in Grand Rapids. Contact Bruce Birgbauer, Program Chair, or Pam Emenheiser, Committee Chair for more information.

**"Reasonable Care Standard for Importers in 2007."** On June 5, 2007, at Automation Alley, the Section will offer the local trade community and legal community an opportunity to hear from seasoned trade professionals from Ford, DaimlerChrysler, Volkswagen, and Borg Warner. Details of this seminar will be made available to you as they develop. This promises to be an informative and worthwhile event.

I invite each of you to become active participants in **Project: NIA**. A commitment of 10 hours to ILS, the equivalent of one average working day, is a great resolution for 2007. Join a Committee.

Write an article for Michigan International Lawyer. Attend Council Meetings and Section programs. Provide guidance to law students interested in international law. Share your knowledge. Assist the Section in establishing relationships with other organizations (legal or non-legal) with similar interests. Encourage others to join the Section. Suggest topics or speakers of interest. If you need help thinking of a way you can help advance the cause and interests of the Section, don't hesitate to contact me. Better yet, I'll be calling you.

It's been my privilege working for the Section and I look forward to the balance of my tenure as Chair. In closing, I wish to thank Bruce Birgbauer for his leadership and support.

See you at the next Section event! 🌍

Sincerely,

*Lois Elizabeth Bingham, Chair*

## Announcement

# 2007 International Law Student Essay Contest

The International Law Section of the State Bar of Michigan announces its 2007 International Law Student Essay Contest.

The contest is open to all law students currently enrolled at any Michigan Law School. A first prize of \$750.00 and a second prize of \$250.00 will be awarded to the students who, in the opinion of the judges, write the best original essays on "The United States and International Law." Essays may address either the way in which United States courts deal with international legal issues or legal issues arising from aspects of United States foreign policy.

To be considered, essays must be (i) an original work of art not previously published, (ii) submitted via email no later than April 1, 2007, (iii) typewritten and double-spaced, (iii) not in excess of 5,000 word, and (iv) fully footnoted in Blue Book style. All rights to publish the articles shall vest in the International Law Section.

In order to have these essays judged objectively, submissions should have all identifying information (name, contact information, and law school affiliation) on a separate cover page. The entries should then be emailed directly to Howard B. Hill, an international law practitioner ([howardbhill@comcast.net](mailto:howardbhill@comcast.net)), who will forward the essays without the identifying information to the two other judges. No entrants shall have any contact concerning this essay contest with any judge other than Mr. Hill.

The prizes will be awarded at the Annual Meeting of the International Law Section in the Fall of 2007 and the winning articles published in the Michigan International Lawyer.

The International Law Section of the State Bar of Michigan provides education, information, and analysis to enhance and advance the knowledge and understanding of international legal issues and encourages cordial association and exchange of ideas among those interested in international law related matters through meetings, seminars, public service programs, and the *Michigan International Lawyer*.

For further information on the contest, contact Howard B. Hill at [howardbhill@comcast.net](mailto:howardbhill@comcast.net). For further information on the Section, contact Lois Bingham, Chair, at [lois.bingham@us.yazaki.com](mailto:lois.bingham@us.yazaki.com).

# 2007 Customs Update: Legislative Changes for GSP, Tariff Classification, and Land Border Entries

Andrew P. Doornaert, Miller, Canfield, Paddock and Stone, P.L.C.



Andrew P. Doornaert

## Introduction

Companies who source goods from outside the United States need to be advised of recent legislative changes that impact importers in 2007. These changes affect certain trade programs that allow duty-free imports, the classification of goods, and the means of declaring goods entering the United States by truck.

## Generalized System of Preferences Renewed with Some Limitations

On December 20, 2006, President Bush signed legislation that extends the Generalized System of Preferences ("GSP") program for two years until December 31, 2008.<sup>1</sup>

GSP is a U.S. trade program that was implemented as part of the Trade Act of 1974 to provide duty-free treatment to certain products that originate in designated developing countries. The GSP program has provided duty-free treatment for 3,400 products from 133 designated countries.<sup>2</sup> In the past, controversy has surrounded the decision by Congress to renew the GSP program because some members of Congress have challenged whether certain beneficiary countries strictly enforce U.S. intellectual property rights or open their markets fairly to U.S. goods.

To be eligible for GSP, an article must be grown, produced, or manufactured in a beneficiary country, and the sum of the direct costs of processing in the beneficiary country and the value of materials produced in the beneficiary country must equal or exceed 35 percent of the appraised value of the article at the time of entry into the United States.<sup>3</sup> No article that has undergone only a simple

combining or packaging operation in a beneficiary country will qualify for GSP, even though the processing operation causes the article to meet the value requirement.<sup>4</sup> The article must also be shipped directly from the beneficiary country to the United States without passing through the territory of another country, or, if it passes through another country, it must not enter the commerce of that country before arriving in the United States.<sup>5</sup> For companies that claim GSP, it is important that the responsible company personnel properly interpret the application of the GSP rules and maintain records pursuant to the record-keeping requirements.

In addition to extending GSP benefits for two more years, the GSP legislation includes new statutory thresholds to identify certain products that have reached an import value level that will disqualify the beneficiary country from certain duty-free benefits for these products. The U.S. Trade Representative Susan Schwab issued a press release on December 20, 2006, stating: "The current GSP statute includes two 'competitive need limitations (CNLs)' on the eligibility of a product for benefits under GSP: (1) if the annual trade of a product from a specific country exceeds a monetary threshold (\$125 million in 2006); or (ii) if the annual trade of a product from a specific country exceeds 50% of total U.S. imports of that product. The statute also authorizes the President to grant a waiver to the limitation if the certain statutory conditions are met. The legislation signed today [12/20/06] amends the statute to provide that the President should revoke any existing CNL waiver that has been in effect for at least five years, if a GSP-eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150 percent of the annual

trade cap or comprises 75 percent of all U.S. imports of that product."<sup>6</sup> Several companies have secured waivers in the past to allow GSP treatment of their goods. Some of these goods could be disqualified from GSP under the new threshold criteria.

It should be noted that China is not a beneficiary country for GSP at this time. Some people view the extension of GSP to other countries as a theoretical means if not an effective step to prevent the further concentration of global manufacturing in China by providing lesser developed countries a tariff cost advantage in the U.S. market.

Besides GSP, the trade community should be aware of modifications or extensions to other trade programs affecting imports from Vietnam, Africa, and the four countries eligible under the Andean Trade Preference Act (ATPA)--Bolivia, Colombia, Ecuador, and Peru.

## Harmonized Tariff to Undergo Major Changes in 2007

On December 29, 2006, President Bush issued a Proclamation authorizing the modification of the Harmonized Tariff Schedule of the United States ("HTSUS")<sup>7</sup> to conform with the numerous changes made to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System").<sup>8</sup> The modifications became effective on February 3, 2007.<sup>9</sup>

As published in April 2006 by the U.S. International Trade Commission, the proposed modifications were to affect eighty three chapters and more than 240 headings.<sup>10</sup> Importers who are responsible for the classification of thousands of different parts and who maintain a part classification database will have a relatively short period of time to assign new classifications, although a limited

grace period has been provided until February 20, 2007.<sup>11</sup>

Although many current classification codes directly correspond with a proposed classification code, in some cases, decision-making will require additional information where one current classification code breaks down into several different proposed classification codes. Company personnel responsible for compliance may need support from within the company to collect the necessary specifications about the items or to update the company's classification database electronically.

### Trucks Entering the U.S. Will Be Required to Use E-Manifests in 2007

The Trade Act of 2002 required CBP to promulgate regulations to provide a means to receive electronic cargo information before cargo enters or departs the United States. "The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP."<sup>12</sup>

On October 27, 2006, CBP announced the implementation of a mandatory e-manifest policy at specific ports (all Ports in states of Washington and Arizona) on January 25, 2007. The dates for implementation of this policy at additional ports including the Ports in Michigan will be announced later.

An e-Manifest is the submission of trip conveyance, equipment, crew, passenger, and shipment details electronically through the Electronic Data Interchange ("EDI") or via the Internet by using the ACE Secure Data Portal.<sup>13</sup>

Generally, an e-manifest must be received at least one hour prior to the carrier reaching the first port of arrival in the United States, although truck carriers arriving with a shipment qualifying for FAST can transmit at least thirty minutes prior to arrival.<sup>14</sup> Companies relying on trucks to deliver goods should review their logistics procedures to ensure compliance. "Enforcement action will include a denial of permission to proceed

into the U.S. and/or monetary penalties of up to \$10,000 for violation of the Trade Act of 2002."<sup>15</sup>

### Conclusion

For more information about the legislative changes discussed above and other Customs issues, contact Andrew P. Doornaert, Esq. 

*Andrew P. Doornaert is a senior attorney in the Detroit office of the law firm of Miller, Canfield, Paddock and Stone P.L.C., where he provides expertise in the area of customs and international trade law. He reduces the costs and liability risks associated with import and export transactions. His experience includes tariff classification, rates of duty and valuation of imported merchandise, Free Trade Programs (NAFTA, GSP, AGOA, CAFTA), country-of-origin marking and labeling requirements, NAFTA verifications, customs compliance assessments, customs penalty cases, foreign trade zones, customs bonded warehouses, maquiladoras, value added taxes, and other customs considerations that arise in the shipment of goods between the United States and foreign markets. He also advises companies on export control regulations and assists companies in securing export licenses through the Department of Commerce, Department of State, and Department of Treasury. He can be reached at (313) 496-8431 or doornaert@millerandstone.com. For more information on Michigan-based Miller, Canfield, Paddock and Stone, P.L.C., visit <http://www.millerandstone.com>.*

### Endnotes

- 1 Press Release, The Office of the United States Trade Representative, Ambassador Schwab Announces Process to Respond to Congressional Changes to GSP Program (Dec. 20, 2006) [hereinafter GSP Press Release] available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2006/December/US\\_Trade\\_Representative\\_Schwab\\_Applauds\\_Trade\\_Bill\\_Signing.html](http://www.ustr.gov/Document_Library/Press_Releases/2006/December/US_Trade_Representative_Schwab_Applauds_Trade_Bill_Signing.html)
- 2 *Id.*

- 3 19 C.F.R. § 10.176(a) (2006).
- 4 *Id.*
- 5 19 CFR 10.175 (2006).
- 6 GSP Press Release, *supra* note 1.
- 7 HTSUS, issued by the United States International Trade Commission, prescribes the classification of merchandise by type of product, e.g., textiles, motors, parts of motor vehicles. Improper tariff classifications can result in the underpayment or overpayment of duties owed to Customs or the failure to satisfy import restrictions.
- 8 Proclamation to Modify the Harmonized Tariff Schedule of the United States, to Adjust Rules of Origin Under the United States-Australia Free Trade Agreement and for other Purposes, Office of the Press Secretary (Dec. 29, 2006), available at <http://www.whitehouse.gov/news/releases/2006/12/20061229-8.html>.
- 9 Clarification of the WCO HTS Implementation Grace Period, U.S. Customs and Border Protection (Jan. 12, 2007) [hereinafter CBP Clarification] available at [http://www.customs.ustreas.gov/xp/cgov/import/communications\\_to\\_trade/world\\_customs\\_org/clarification\\_grace\\_period.xml](http://www.customs.ustreas.gov/xp/cgov/import/communications_to_trade/world_customs_org/clarification_grace_period.xml)
- 10 Proposed Modifications to the Harmonized Tariff Schedule of the United States, U.S. International Trade Commission, p. 7 (Apr. 2006) available at <http://hotdocs.usitc.gov/docs/tata/hts/Pub3851.pdf>
- 11 CBP Clarification, *supra* note 9.
- 12 71 Fed. Reg. 62922-01 (Oct. 27, 2006)
- 13 Frequently Asked Questions on e-Manifest (Feb. 2007) available at [http://www.cbp.gov/linkhandler/cgov/toolbox/about/modernization/carrier\\_info/electronic\\_truck\\_manifest\\_info/emanifest\\_faq.ctt/emanifest\\_faq\\_2.pdf](http://www.cbp.gov/linkhandler/cgov/toolbox/about/modernization/carrier_info/electronic_truck_manifest_info/emanifest_faq.ctt/emanifest_faq_2.pdf)
- 14 *Id.*
- 15 *Id.*

## Section Events at a Glance ILS Calendar of Upcoming Events

*for regular updates, see ILS Website*

DATE	EVENT	TIME	LOCATION	SECTION CONTACT
February 13	<b>Regular Council Meeting</b> with featured speaker <i>Hon. Vicente Sánchez</i> Consul General of Mexico “US and Mexico Relations”	<b>4:30pm</b> (Speaker – 6:00 pm)	<b>Honigman Miller Schwartz and Cohn</b> 2290 First National Building 660 Woodward Avenue Detroit  Host: Fred Frank	RSVP with Fred Frank, Secretary
February 22	<b>“Career Opportunities in International Law and Business”</b> Panel & Round Table Discussion for Law Students	<b>4:00pm – 6:00 pm</b>	<b>DoubleTree Dearborn</b> 5801 Southfield Service Drive Detroit	Onnie Barnes Jacque Lois Bingham
March 24	<b>Citizenship Day in Metro Detroit</b> (pro-bono initiative)	Volunteers Needed <b>9:00 am – 1:00pm</b> <b>1:00pm – 5:00pm</b>	<b>International Institute of Metropolitan Detroit</b> 111 E Kirby Street Detroit	Debra Clephane
April 10	<b>Regular Council Meeting</b> with featured speaker <i>Mary Bedekian</i> Professor of Law and Director of Alternative Dispute Resolution Program at MSU “International Arbitration: The Need for Transparency” (tent. title)	<b>4:30pm</b> (Speaker – 6:00 pm)	<b>MSU College of Law</b> 368 Law College Building Castle Boardroom East Lansing  Host: Prof. John Reifenberg	RSVP with Fred Frank, Secretary
May 22	<b>“Business and Legal Challenges for Automotive Suppliers in China and India.”</b>	<b>2:00pm– 5:00pm</b> <b>Registration Fee</b> <b>TBD</b>	<b>Amway Grand Plaza Hotel</b> 187 Monroe Ave NW Grand Rapids	Bruce Birgbauer Pam Emenheiser
June 5	<b>“Reasonable Care Standard for Importers in 2007”</b>	<b>TBD</b>	<b>Automation Alley</b> 2675 Bellingham Dr Troy	Andy Doornaert
June 19	<b>Regular Council Meeting</b> <b>Strategic Planning Committee</b> <b>Presentation</b>	<b>4:00</b>	TBD	Randy Wright Lois Bingham RSVP with Fred Frank, Secretary

Please send us your news about past and upcoming events, developments, and accomplishments. Contact Senior Editor: Aziza N. Yuldasheva  
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Lansing, Michigan 48933  
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# Perspectives on Establishing Manufacturing Operations in China, India, and Mexico

*Richard G. Goetz, Dykema Gossett PLLC*



*Richard G. Goetz*

## Introduction

Increasingly, American companies of all types and sizes, many with no previous international experience, are exploring international manufacturing opportunities. Whether driven by a need to follow a customer into a new market or a desire or need to find new markets for their products, to locate near lower-cost suppliers of raw materials or parts, or to reduce costs to remain competitive, investment in foreign operations is being considered by companies that had not seriously considered it before. Often the choice is narrowed to the three countries that are currently among the most preferred emerging economies for new U.S. manufacturing investment: China, India, and Mexico. Although the rationale for investing in one of these three countries may lie purely in economic or market considerations or in the needs or demands of a major customer, there are legal considerations that need to be addressed as well, before a final decision is made.

By way of background, net foreign investment in China in 2004 was \$54.9 billion; in India, \$5.3 billion; and in Mexico, \$17.4 billion. While the level of investment in India was by far the lowest, it has been the fastest growing, having more than doubled in four years. In addition to the economic advantages each country may offer a new manufacturing investor, there are similarities and differences in the legal environment that merit special attention by both lawyers and the managers charged with establishing and managing the new international operation.

## Ethics and Compliance

A preliminary but overriding question for any U.S. company establishing an operation in a developing economy is whether the company can do business in the new legal environment and comply with its own ethical standards as well as with the laws of both the United States and the host country. This determination will be based in part on whether the client has the ability to maintain a compliant operation based on its internal controls, compliance programs, international experience, and employee understanding of the company's ethics and policies. Another factor in the determination is the integrity or transparency of the host country's legal, governmental, and business environment. How difficult is it to run a corruption-free operation? Is bribery the only way things get done? Are companies already doing business there able to comply with the legal requirements of the United States as well as those of the host country, where the rules, expectations, and ethics may be very different?

A good first step in considering the legal and governmental integrity and business ethics environment in a given country is the Transparency International (TI) Corruption Perception Index—to see how others familiar with the practices in a given country perceive the ethics and transparency of its government officials. The TI Corruption Perception Index ranked 163 countries last year, based on evaluations by groups of people familiar with doing business in the respective countries. A lower numerical ranking for a country indicates a lower perceived level of corruption. The 2006 Index ranked Finland, Iceland and New Zealand in a three-way tie for the number one, or least-corrupt, ranking. The United States was also in a three-way

tie, but for the number 20 ranking, with Belgium and Chile.

Interestingly, China, India, and Mexico were part of a nine-way tie for 70<sup>th</sup> place in the TI Corruption Perception Index ranking. This ranking places the three somewhere in the middle of the 1-to-163 index ranking. While admittedly an imprecise method of determining the actual level of corruption, the rankings are helpful in putting a potential investor on notice of the possible degree of risk; they also help demonstrate the need for further analysis through discussions with existing operations of other companies, counsel, accountants, and other service providers and for comparison with similarly ranked countries where the client may already have experience doing business. Such experience will help a potential investor assess its ability to comply in China, India, or Mexico and provide an indication of the cost required to put in place any additional compliance training and procedures.

Helping a client's management develop and maintain an anticorruption compliance program can be challenging, especially when the management is confronted by fellow countrymen who insist compliance with anticorruption laws is naïve and that corruption is the way things are done in a given country. It can be even more difficult if the client has good reason to suspect a competitor has obtained a significant advantage through corrupt means. A frank discussion with the client's management of these as well as other issues before it makes the investment decision is strongly recommended. It is possible but not always easy to operate in a relatively corrupt environment without becoming corrupted. Such virtue requires the will to enforce such a policy and the dedication of resources and time to ensure that all employees

know and understand the rules and the reasons for them.

### Ease of Doing Business

The World Bank annually compiles a ranking of the ease of doing business in most countries of the world. Like the TI Corruption Perception Index, the World Bank assigns the lowest numerical ranking to the country that is considered to be doing the best job, in this case being the easiest in which to do business. Thus, Singapore, New Zealand, and the United States are ranked 1, 2, and 3 as the easiest countries in which to do business. Unlike the TI Index, the rankings for China, India and Mexico did not result in a tie. Mexico, ranked 43<sup>rd</sup>, was clearly considered the easiest of the three in which to do business. China, ranked 93<sup>rd</sup>, was a distant second. Finally, India, 134<sup>th</sup>, was lowest among the three in the rankings. In determining the rankings, the evaluators consider ten elements from starting to closing a business and including several of the normal procedures involved in running a business, such as employing workers, getting credit, protecting investors, paying taxes, trading across borders, and enforcing contracts. The 2007 report indicates that Mexico made significant

improvements year over year, jumping from 75<sup>th</sup> to 43<sup>rd</sup> position based on its improvements in three areas.

This World Bank report is helpful in a variety of ways, from giving clients an idea about how long certain procedures will take to understanding whether certain matters of critical concern may be too difficult to protect or enforce. For example, the 173<sup>rd</sup> ranking of India for enforcement of contracts begs the question of how a prospective entrant into the Indian market will deal with the issue, if contract enforcement is a substantial issue for its business. It also helps a potential investor to begin considering compliance with other areas of local law and whether it can compete with other companies that are not complying, even if there is no corruption involved. This issue arises frequently in developing economies where legislation intended to achieve laudable goals, e.g., to protect workers and the environment or to promote or protect other social objectives, often exceeds compliance capabilities or desire by local and some foreign companies. These companies simply chose not to comply, risking a penalty if detected or counting on a government policy of selective enforcement or no enforcement to protect them. None of these are viable alternatives for a U.S. company.

### Treatment of Foreign Investment

In each of these three countries, China, India, and Mexico, foreign investment is welcomed and officially encouraged. In each, the legal and governmental infrastructure is very different, and each requires special consideration. A short analysis of the background of each of the three countries' foreign investment treatment will help understand how each arrived at its current framework and provide some indication of its future direction.

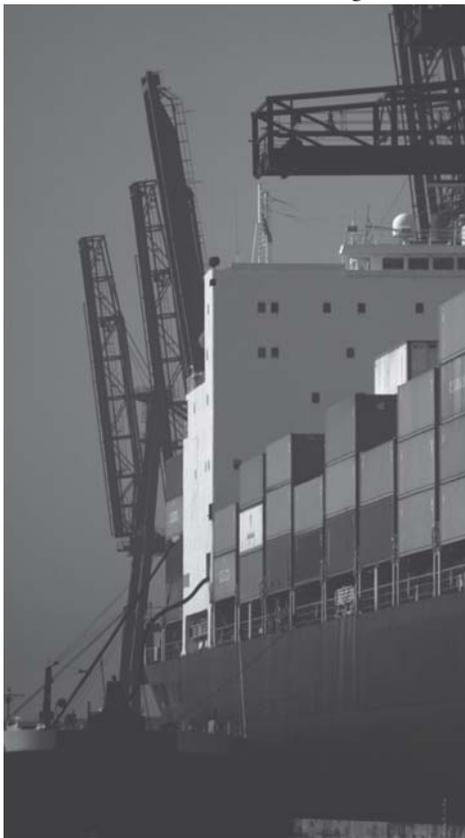
#### *China*

China's economic takeoff began with its decision to open itself to foreign investment in 1978. Its annual growth rate has consistently been in the 8–10 percent range, and the transition of the country to a manufacturing powerhouse has been

without equal. China recognized early in the transition of its economy that its existing legal structure was inadequate to provide foreign investors with the level of protection and transparency they would require before opting to invest in China. Rather than changing or adapting existing law to provide the protection foreign investors would require, the PRC government opted to create a separate legal regime governing foreign investment. The primary focus was on foreign investment to generate exports or to participate in joint ventures that would supply the local market while helping the Chinese partners become more competitive.

The special legal framework for foreign investment and the tax and other incentives provided, along with the potential access to a huge market and low manufacturing costs, were sufficient to attract an unprecedented level of foreign investment. So successful, in fact, that it created an outcry to "level the playing field," not from the usual source, i.e., foreign investors, but from Chinese state and privately owned companies complaining that the incentives available only to foreign invested enterprises constituted an unfair advantage. Foreign investors argued in response that whatever state companies did not receive as investment incentives was more than compensated for by their access to credit and financing from the state banking institutions. It has been asserted that Hong Kong's position as the largest foreign investor in China was in part due to investments by Chinese state-owned companies of funds that originated in the PRC and returned, with foreign investor incentives, to their places of origin.

China is now engaged in leveling the playing field, including compelling state-controlled banks to treat state-owned enterprises on an arm's length basis. Chinese authorities have also repeatedly indicated that the government will stop offering tax incentives for new foreign investments except in less-developed areas or in priority industries. Reportedly, the elimination of most tax incentives will be accompanied by a reduction in



company tax rates generally. Incentives already granted would, in all likelihood, be “grandfathered” until they expire, usually within five years. Other laws are being rewritten and given uniform application to domestic and foreign-invested enterprises alike.

The conversion and growth of the economy has placed enormous strain on China’s social and legal institutions, requiring constant changes and adjustments to adapt to changing economic and political realities. Many anticipated that China’s admission to the WTO would produce a gradual elimination of restrictions on foreign investment except in protected industries, including automotive assembly, that were not part of the agreement. There have been a few surprises for those who anticipated a straight-line elimination of restrictions. Past experience had been that local authorities were more receptive to foreign investment. Recent experience indicates that although the central authorities have delegated approval authority down to the local level, these authorities are now being more selective and requiring higher levels of equity and being more rather than less restrictive. The perception of many is that the process has been decentralized but not made easier, probably for a variety of reasons, including

- (i) a lack of understanding by local officials of the new rules at a time of significant change in the laws and regulations governing foreign investment;
- (ii) a desire to protect local industries from foreign competition; and
- (iii) a desire to become more selective about which industries and businesses should enter the local market, a quality-over-quantity judgment.

Another noteworthy if not surprising change occurring as China meets its WTO commitments to lower barriers for foreign investment has been the redirection of foreign investment to wholly foreign-owned enterprises, or WFOEs, and away from joint ventures, or JVs. Equity investments in JVs are now less

than one-third of the amount invested in WFOEs, even though certain industries, such as automotive manufacturing, are still required to be at least 50 percent Chinese-owned.

#### *India*

India is the relative latecomer in this group to welcome foreign investment. Prior to 1990, India had a very protective duty structure combined with restrictions on the percentage of foreign ownership for most industries and a history of nationalization of important foreign companies. With the reforms that began in 1991, increasingly higher percentages of foreign ownership in key industries were allowed and restrictions removed completely in others. Today most areas of the economy are open to foreign investment, whether as joint ventures or by wholly foreign-owned operations.

India’s common-law heritage, history of democracy, and use of English in legal and business matters would appear to make doing business in India easier for American companies than doing business in either China or Mexico. Appearances can be deceiving, as the World Bank’s index indicates. As the world’s largest democracy, decision making in India functions at a very deliberate pace to accommodate governing coalitions consisting of regions and parties, representing a diverse population with disparate political views. The red state–blue state division in U.S. politics constitutes a minor difference of opinion compared with the spectrum represented in India. India is a huge country with a multicultural population, which in a democratic process produces shifting alliances and a slower pace of decision making. Although India’s civil service provides continuity and stability by helping to keep government decision making on an even keel, it can also constitute a bureaucratic obstacle for projects that do not meet an official’s own interpretation of the rules and regulations.

Of the three countries being discussed, India has the most extensive regulatory system governing most aspects of doing business and particularly in the

more traditional economic activities, such as manufacturing. While the rules and regulations tend to be transparent, their quantity and the number of government officials charged with their enforcement can be overwhelming. In a large diverse country like India, the location, size, and nature of the foreign operation are additional factors that impact the cost burden of doing business in a highly regulated environment. Dealing with the regulatory environment in India should be regarded as another cost to be considered in determining whether to invest in the country. As indicated, the regulations are generally transparent and, when understood, compliance need not be overwhelming. The cost of employing people who understand, implement, and document regulatory compliance should be factored into the project as is any other cost of doing business.

In an effort to facilitate foreign investment, the Indian government has enacted legislation providing for Special Economic Zones (SEZs) to be established by and as private companies. The SEZs enable investors to avoid some of the risk, cost, and delay inherent in acquiring land, securing adequate infrastructure and utilities, and dealing with a host of officials and to gain access to “one-stop shopping” for the implementation of the project. Only a few SEZs are already in operation, but hundreds are in the planning or development stages throughout the country. The SEZs will also provide tax incentives and duty-free imports for goods that are processed and reexported. There is increasing controversy concerning SEZs, the ultimate resolution of which may change their availability and value for foreign investors.

#### *Mexico*

Mexico was the first of the three countries to actively pursue foreign investment in manufacturing in recent times. It allowed wholly foreign-owned manufacturing operations a century ago but went through a period in the 1970s and ’80s during which it required majority (51 percent) Mexican ownership of new operations. This requirement,

along with political uncertainty, currency devaluation, and restrictions on foreign land ownership within 100 kilometers of the U.S.–Mexico border, was an effective deterrent to new foreign investment.

In recognition of the economic need to attract investment and provide employment during this period of restrictions on foreign ownership, Mexico established the maquiladora regime for foreign manufacturers, which allowed them to establish export processing operations in Mexico without requiring local ownership. The maquiladora regime allowed foreign companies to consign machinery, equipment, components, and raw materials for use by the Mexican maquiladora plant without having to pay duties. All transactions could be denominated in U.S. dollars. Maquiladoras operated on a cost-plus basis, charging enough to meet their payrolls and related operating costs plus a nominal profit. Initially, maquiladoras were restricted from selling products inside Mexico, but over time such sales were allowed. The maquiladora regime was effective in generating employment and stimulating the economy along the border.

With the implementation of the North American Free Trade Agreement (NAFTA), leading to the free movement of goods among Canada, Mexico, and the United States and the greater political and economic stability of Mexico, it was anticipated that maquiladora and PITIEX—another program developed to facilitate foreign investment—programs would cease to be of interest to foreign investors and fade away. This has not happened for a variety of reasons, including the lower taxes and fewer transfer price issues that are available with maquiladoras as well as access to lower U.S. duty rates for raw materials and components from outside NAFTA.

While restrictions on foreign ownership of land near the border still exist, the law allows land to be owned by a trust, established with a Mexican bank, for which the foreign party is the beneficiary.

In the competition to attract foreign manufacturing investment, one of Mexico's primary advantages for Americans

is proximity. More than a hundred years have passed since the statement, often attributed to Mexico's President Porfirio Díaz, to the effect of "Poor Mexico, so far from God and so close to the United States" was made. In light of the intense competition for foreign manufacturing investment, the common border between the two countries is now viewed in a more positive light. Being in the same time zones, having access to shorter and more convenient flights, and paying lower shipping costs by rail and truck are now major attractions.

Although Mexico has government offices that actively enforce environmental, tax, health, safety, labor, and other laws and regulations, the administrative burden is not suffocating, but does require active management to ensure compliance and documentation of compliance.

### Other Considerations

#### *Trade Agreements*

Mexico has a unique advantage by virtue of its membership in NAFTA. The free trade agreement permits an increasingly easy flow of goods and services with the United States. Mexico also has free trade agreements with Mercosur, the E.U., Japan, and many other countries. China's entry into the WTO is having a profound effect in liberalizing investment rules for foreigners. As noted, some changes have increased obstacles, but the overall trend continues to be favorable to foreign investors.

#### *Exchange Controls*

India continues to make significant progress in removing exchange controls, but some restrictions remain. China has more than \$1 trillion in reserves but has been slow to remove exchange controls and continues to restrict the outflow of funds. Mexico has no significant exchange controls.

#### *Legal System*

China has a predominantly civil law system but has borrowed from common-law countries as it endeavors to build a socialist market economy and comply with its WTO and other trade

and investment commitments. Mexico's legal system is based on civil law. India, as already mentioned, has a common-law system.

#### *Investment Tax Shelters*

China and India have both negotiated tax treaties with Mauritius and other tax haven countries that provide important tax benefits. Many foreign investors chose to invest in China through dedicated companies organized in Mauritius, the British Virgin Islands, or other tax shelters, both for the tax advantages and to facilitate an eventual sale of the Chinese company through the sale of the dedicated tax shelter company. This will avoid the delays and approvals that would be required for the direct sale of a Chinese company. Mexico has a tax treaty with the United States to avoid double taxation.

### Conclusions

There are no absolute winners or losers when choosing among China, India and Mexico for a foreign investment manufacturing site. Personal experience, confirmed by the World Bank report mentioned earlier, would indicate that for an American company, Mexico is the easiest of the three countries in which to do business, for a variety of reasons. Running an operation that complies with the law as well as the ethics of the investor is possible in each country with the appropriate effort and with the commitment to bear the ongoing costs, including senior management time and attention, associated with maintaining an effective compliance program. Understanding the legal environment in each country is critical to understanding what will be required to establish an effective compliance program so that these resources can be included in the economic and business factors to be considered in making the decision. 🌐

**Mr. Goetz** is the leader of Dykema's *International Practice Group*. Prior to joining Dykema, Mr. Goetz had worked with Ford Motor Company for more than three decades. Over the last seven years, he had

primary responsibility for legal matters affecting Ford in Asia, Africa, Latin America, the Middle East, Russia, and Canada. He was a key participant in Ford's entry into China, Korea, and other Asian countries, as well as into Eastern Europe. He also served as the company's director of legal affairs in Venezuela for ten years. During his career with Ford, he represented the company on five continents, on a broad range of international legal matters, including joint ventures, acquisitions, dispositions, public offerings, litigation, corporate governance, distribution, licensing, international trade,

government negotiations, regulatory matters and compliance programs as well as providing strategic advice and counsel to senior company management. Before joining Ford, Mr. Goetz served in the Peace Corps in Ecuador and as a Teaching Fellow at the Universidad Catolica Andres Bello in Venezuela as part of the Latin American Teaching Fellowships program of the Fletcher School of Law and Diplomacy. Mr. Goetz is a former director of the Venezuelan American Chamber of Commerce, President of the Colegio Campo Alegre, and Director of the North American Associa-

tion, all in Caracas, Venezuela. Mr. Goetz is a former chairman of the Conference Board's Council of Senior International Attorneys and trustee of the U.S.-China Legal Cooperation Fund. He is a member of the Advisory Boards of the Institute of International and Comparative Law and the Detroit Regional Economic Partnership as well as a member of the Council of the International Law Section and Co-Chair of the Emerging Nations Committee.

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ILS Council Contact: Debra Clephane, Chair of the International Employment Law and Immigration Committee.

# Proposed Changes to Immigration Regulations 8 C.F.R. §274a.1-2

*Joseph W. Uhl, Miller, Canfield, Paddock and Stone, P.L.C.*



*Joseph W. Uhl*

## Introduction

With the passing of the latest election, discussions of immigration abound. As reported almost daily in the nation's top news sources, the issue of immigration is polarizing the nation like no other issue and has created two primary camps: the "get-tough-on-illegal-immigrants" camp ("Toughies") and the "we-need-to-make-it-easier-to-legalize-honest-and-hard-working-immigrants" camp ("Needies").<sup>1</sup> With contrasting philosophical worldviews, it is easy to identify supporters for either of the two groups.

On one hand, the Toughies are those quick to remind that there are roughly twelve million illegal immigrants in the United States and that American job security and hope at maintaining a job in the future is very low. As a way to combat such alarming statistics, Toughies usually push for a policy that would make it more difficult for immigrants to come to the United States and, if they are already living in the country, make it more difficult to stay. In essence, this group frequently espouses the belief that illegal immigrants are taking jobs from the U.S. workers and/or are constantly strategizing future terrorist attacks against the United States. Such suppositions leave one to infer that if she/he wants to maintain his/her standard of living and does not want future terrorist attacks, she/he must support getting tougher on

illegal immigration. In furtherance of this belief, Congress recently supported the construction of a 700-foot wall between Mexico and the United States.

On the other hand, the Needies usually point to the fact that if the United States were to remove the roughly twelve million illegal immigrants (if that were actually possible), the economy would crash to a halt. The Needies put forth the argument that, but for the twelve million illegal immigrants, most of the United States' key industries, such as agriculture and construction, would stop operating. In an interesting twist, the Needies also rely on the supposition that if one wants to maintain his/her standard of living, she/he must support legislation making it easier for immigrants to be deemed legal. In other words, this camp's conclusion is usually premised on the belief that the roughly twelve million illegal immigrants are doing the essential work no Americans want to do. Such rhetoric was the impetus behind President George Bush's call for a comprehensive immigration vision with a new program for guest-workers and retroactive mechanisms for declaring many of the twelve million currently illegal immigrant workers legal.

Although the debate on what America should do in the future is interesting, most people, outside elections, have very little say in what immigration policies this country adopts. Instead, the majority is stuck trying to navigate the obtuse and regulated laws encompassing the country's immigration policy. While the news media records our debates about the future, most people stumble about trying to figure out what they can and cannot do in the present. This dilemma is acutely felt by employers who increasingly find immigrants filling out job applications. Whereas twenty years ago most employers needed virtually little knowledge of

immigration law, today, most employers, even owners of small businesses, need some knowledge of the immigration laws. 8 CFR § 274a represents such a regulation employers should familiarize themselves with, the regulation defining an employer's requirements for hiring authorized aliens.

This past summer, the Department of Homeland Security and the U.S. Immigration and Customs Enforcement issued proposed changes to 8 CFR § 274a to make it easier for employers to verify employment eligibility and to reduce the employment of unauthorized or illegal aliens. On its face, 8 CFR § 274a mandates that employers are in breach of the Immigration Regulations, if she/he hires an illegal alien while having knowledge that she/he was hiring an illegal alien. Under the original regulations, however, many employers were left wondering: what constitutes "knowledge." If a farmer merely hires local day workers to help harvest a crop, does she/he have knowledge, if any of these workers were illegal? What if the farmer assumes that the workers were illegal? The proposed changes address this issue by outlining the situations in which employers will be deemed to have known that she/he hired an illegal alien.

The Department of Homeland Security offers the following circumstances as the gateway to understanding the meaning of "constructive knowledge." Employers are required to submit W-2 forms and I-9 forms, which require that the employer include the employee's name and either the employee's social security number, immigration status documentation, or employment authorization documents. As one could guess, many times the employee's name does not match the other vital information. Under this scenario, the SSA or ICE returns the forms to the employer along

with a no-match letter, stating that the name and information do not match the Department's records. The matching problem usually is nothing more than a clerical or typographical error which the employer merely needs to change and resubmit. Sometimes, however, the problem results because an employer submits information about an employee not authorized to work in the United States. The new proposed changes suggest that when an employer receives a no-match letter and the discrepancy is not due to a clerical error, she/he may be deemed to have constructive knowledge that she/he employed illegal immigrants.

#### Definitional Changes: "Knowing"

8 CFR § 274a provides that the term "knowing" includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer: (i) fails to complete or improperly completes the Employment Eligibility Verification Form, I-9; (ii) has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or (iii) act with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

In its recent proposed changes to 8 CFR § 274a, the Department of Homeland Security added the following two examples to explain under what circumstances an employer is deemed to have constructive knowledge that the alien is not authorized to work. The Additional examples included:

1. Written notice from the Social Security Administration (SSA) that the combination of name and Social Security Number (SSN) submitted for an employee does not match SSA records.

2. Written notice from the U.S. Immigration and Customs Enforcement (ICE) that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I-9 was either assigned to another person or there is no agency record that the document was assigned to anyone.

The proposed changes also states that if an employer fails to take *reasonable steps* after receiving such knowledge, and if the employee is an unauthorized alien, the employer may be found to have had constructive knowledge. The Department of Homeland Security states that to determine whether an employer took "reasonable steps" after receiving knowledge, a court shall look to the totality of relevant circumstances.

#### Reasonable Steps

In addition to providing the aforementioned standard of review, the proposed changes provide specific steps an employer may take after receiving a no-match letter:

- A. An employer should check records promptly after receiving a no-match letter to determine whether the problem resulted from a clerical or typographical error. If there is such a clerical or typographical error, a reasonable employer would correct the error and resubmit the documents, and make a final verification that the new information matches the agencies' information. A reasonable employer would make such changes within fourteen days of receiving the no-match letter.

- B. If an employer, upon checking his/her records, finds that the records are correct, then the employer must inform the employee to contact the appropriate agency and clarify the discrepancy. A reasonable employer is one who makes such steps within fourteen days of receiving the no-match letter.

- C. The discrepancy is resolved only after the employer verifies with either the SSA or ICE that the discrepancy is resolved.

#### Verification

- A. An employer has sixty three days after receiving the no-match letter to verify the accuracy of his/her records.

- B. An employer cannot use any document containing a Social Security Number or alien identification number which is subject to the no-match letter, to verify employment authorization.

- C. An employer can verify employment authorization only with a document containing a photograph.

#### Electronic Signature and Storage of I-9 Forms

This summer, the Department of Homeland Security issued interim rules, conforming to the regulations implemented in 2005, which allowed for the electronic storage of I-9 forms. The interim rules allow an employer to electronically store I-9 forms so long as they follow the implemented rules.

- A. To fulfill the requirements of electronic storage, an employer must provide:

1. reasonable control to ensure the integrity, accuracy, and reliability of the system;
2. reasonable control to prevent unauthorized or accidental alteration of the I-9 form;
3. an inspection and quality assurance program;
4. a retrieval system that permits searches by any data element; and
5. the ability to reproduce legible and readable hardcopies.

- B. Documents retained electronically must exhibit a high degree of legibility and readability when displayed on a video display monitor.

- C. The storage system must be accessible by any agency of the United States.

- D. Employers may use reasonable date compression or formatting technologies.

- E. If an agency requires inspection of an employer's documents,

1. the employer is required to retrieve and reproduce only the I-9 Forms requested;

2. the employer must provide the agency any hardware and software necessary to locate, retrieve, read and reproduce any I-9 forms;
  3. the employer must provide any reasonably available electronic summaries, such as spreadsheets, which contain information fields on all the electronically stored I-9 forms.
- F. If an employer intends to store his I-9 forms electronically, she/he must:
1. ensure that only authorized personnel have access to electronic records;
  2. provide for backup and recovery of records to protect against information loss;
  3. ensure that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and
  4. ensure that whenever the electronic record is created, accessed, viewed, updated, or corrected, a secure and permanent record is created that established the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

G. If an employer intends to electronically capture an employee's signature, she/he must:

1. affix the electronic signature at the time of the transaction;
2. create and preserve a record verifying the identity of the person producing the signature;
3. provide a printed confirmation of the transaction at the time of the transaction to the person providing the signature.

### Conclusion

Employers are caught in the cross fire of America's current immigration debate. As various ideologies fight for political supremacy, the brunt or responsibilities emerging from this political wrestling match is shouldered by the employers who, regardless of their political leanings, must stay cognizant and implement these rapidly changing and evolving laws. The changes recently proposed by the Department of Homeland Security's hopefully represent the government's acknowledgment that those left sorting out the obligations and responsibilities emerging from the intense political debates need help flushing out the practical from the political. Employers need direction on what exactly they can and cannot do. 🌐

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### Endnote

- 1 Author uses these terms as illustrative, not technical, definitions.



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# A New Export Program for Mexico

Scott S. Sneckenberger, Plante & Moran PLLC

On November 13, 2006, the Mexican government published a new export program decree entitled “Decree for the Promotion of the Manufacturing, Maquiladora, and Exportation Services Industry,” or IMMEX. The program combines the former Maquiladora and PITEX decrees, which were widely used by Michigan and Midwest U.S.-based manufacturers. As such, an understanding of the new program is important for counselors and other advisors of U.S.-based manufacturers and service providers.

The former Maquiladora and PITEX decrees provided for the establishment and administration of two separate customs programs, which entitled foreign and Mexico-based companies to bring goods into Mexico on a temporary basis. The key to both of these programs was that manufacturers could bring machinery and equipment, inventory, and other supplies into Mexico for transformation without paying duties or Mexico’s 15% valued-added tax on the value of the goods temporarily imported. So, many US manufacturers have used these programs for years to bring foreign-sourced materials into Mexico on a temporary importation basis for transformation using Mexican labor.

Maquiladoras (which was the structure most commonly selected by Michigan-based manufacturers) typically operated as a contract manufacturer—using foreign owned machinery and transforming foreign owned inventory. Thus, maquiladoras did not invoice their goods to the end customer in most cases (typically, the maquiladora’s one and only customer was its US parent). PITEX operations, on the other hand, typically invoiced their own customers and operated using Mexican–company-owned inventory and equipment. Certain Mexican tax benefits (specifically the 2003 Presidential Decree providing for

reducing taxation in Mexico) were only available to maquiladora operations.

As mentioned above, the IMMEX program combines these two programs and maintains most of the features that were available under the Maquiladora and PITEX programs. IMMEX also provides some additional benefits that will be discussed in more detail below related to expedited value-added tax refund options. Many unanswered questions remain, however, regarding the procedures necessary to apply for some of these new benefits and practical application of many of these rules.

The following are some highlights of the new program and some areas for future consideration:

- The writers of the new decree drafted the rules to ensure that the tax benefits provided to former Maquiladora program participants would be preserved. This includes the October 2003 Presidential Decree which effectively provides for a 3% markup under the safe harbor tax option.
- These same benefits will only be available to former PITEX companies that restructure their operations to more closely mimic the business and invoicing structure of former maquiladora operations. *This means that certain steps ARE necessary to allow former PITEX operations to take advantage of all of the benefits of the IMMEX program.* The changes are not automatic and require operational changes to minimize Mexican taxes on former PITEX operations.
- The new decree eliminates the 30% export requirement that applied to the former programs (which requirement was the target of significant scrutiny as Mexico agreed to eliminate such restriction under NAFTA). However, the new decree includes

a minimum export sales requirement of US \$500,000 or 10% of total sales. This requirement appears to be in violation of the NAFTA rules



Scott S. Sneckenberger

and will likely result in continued complaint from U.S. trade officials.

- The program preserves the Mexican permanent establishment (PE) and asset tax exemptions for foreign companies that have fixed assets and/or inventory in Mexico (provided that the Mexican entity meets certain transfer pricing, informational filing, and other requirements). It is important to note, however, that the asset tax exemption continues to apply only in proportion to the amount of sales that are exported.
- The new decree provides for a certification process that would enable approved IMMEX companies to receive VAT refunds within five working days from application. The decree also provides for VAT refunds within twenty working days for non-certified participants. The requirements and procedures for certification have not been defined to date, and it is unclear as to how the tax authorities will administer (or fund) this program.
- The decree also preserves service maquiladoras and sub-maquila operations. The operations of and between such companies will continue to be subject to a 0% VAT rate as such services are deemed exported.
- The new decree indicates that service maquiladoras may now use the preferential duty rates that were formerly

only available to manufacturing operations (PROSEC).

The new decree also provides for some changes in the application and approval process for IMMEX companies. Although one of the stated goals of the new decree was to provide additional certainty and simplicity to the program, some of these new rules have added administrative burdens and uncertainty. A few examples of the benefits and potential issues in this area are as follows:

- The new decree eliminates the requirement that the maquiladora contract (the required service agreement between the U.S. and Mexican entities) be notarized and apostilled. This will reduce filing costs and time.
- It appears the new decree provides for unlimited life for approved IMMEX operations provided that all informational filing, tax, and customs obligations are met.
- Program participants are now required to keep record of all temporarily imported fuels and lubricants used in the operation.
- The new decree appears to indicate that all companies that previously operated under one or more tempo-

rory importation programs (no matter whether PITEX or Maquiladora, or a combination of the two) will now operate under one single program. Hopefully, this will reduce the compliance and record keeping burdens imposed on these companies, but the practical application of this section leaves doubts and questions.

- The new decree indicates the harmonized tariff code will no longer be required for the temporary importation of machinery, equipment, and containers to be used in the operation. It appears this requirement will remain for all materials, subassemblies, and supplies that will be used in Mexico.
- The application processing time remains unchanged at fifteen business days.
- The new decree appears to require the longitudinal and latitudinal coordinates of the operation. This requirement will certainly add confusion and additional administrative burdens to applicants.
- All filings related to the program must now be made electronically. While this may seem more efficient, the lack of historical reliability and consistency in the Mexican government's websites leaves concerns regarding delays and other programs that may result.
- It appears that only annual statistical and customs reports will be required for participant companies. The actual requirements will be published sometime in the first quarter of 2007.
- The decree indicates that any governmental branch may now request statistical and other information from participant companies—and compliance will be required.
- The decree appears to indicate that customs brokers may now request any information they deem necessary to verify compliance with the company's foreign trade obligations. It is unclear exactly what information could be required or why

customs brokers have been given this additional authority to request information at their discretion.

- There already have been signs of the Mexican government's lack of communication with its satellite offices at work related to this new program. Plante & Moran has several clients with applications pending in various cities that have been delayed for no reason other than the authorities' inability to understand and administer this new export program decree.

In summary, the IMMEX Decree appears to be successful in maintaining the majority of the benefits available under the former Maquiladora and PITEX programs. Certain steps, however, are necessary to ensure that former PITEX operations are eligible to take full advantage of the tax benefits available under IMMEX. In addition, questions remain as to how some of the program's specific benefits will be administered. Please contact Scott Sneckenberger at [scott.sneckenberger@plantemorán.com](mailto:scott.sneckenberger@plantemorán.com) or +1(248)375-7348 if you have any questions or need assistance. 🌐

**Scott S. Sneckenberger, CPA**, is a Senior Manager and a Latin American Practice Group Leader at Plante & Moran PLLC. He leads Plante & Moran's Global Services consulting practice in Mexico and Latin America. He has extensive experience working with manufacturing companies in the automotive industry and spends the majority of his time assisting clients in making strategic business decisions in North and South America, Southeast Asia, and Western Europe. His experience includes consulting foreign clients regarding the purchases and/or sales of North American businesses. He assists clients with globalization and off-shoring strategies, foreign investments, mergers, joint ventures, market analysis, transfer pricing studies, and export market requirements. In addition, Scott is a frequent speaker on international business considerations to various groups including World Trade Week, Access Mexico, Van Andel Global Trade Center (Grand Valley State University), Executive Enterprise Institute, and others.



# United States Unveils Updated Model Tax Treaty

*John D. Miller, Fraser Trebilcock Davis & Dunlap, P.C.<sup>1</sup>*

When a company engages in international commerce or an investor seeks opportunities abroad, there is always a possibility for double taxation. Tax treaties<sup>2</sup> are an important part of avoiding this problem. The Organization for Economic Co-operation and Development (“OECD”) has drafted a model tax convention that can be used as a basic structural standard. The United States uses a variant of that OECD model. On November 15, 2006, the United States issued its newest version of tax convention.

First, some background on international taxation. In general, a country will assert taxation on the basis of taxpayer’s *residence* in that country and/or on the basis of income being *sourced* in that country. Most countries<sup>3</sup> use a source-based system for taxing income. This means that the country does not attempt to tax income that is earned outside of its territorial borders. The United States taxes income more globally, and, for example, taxes its “residents” on their gross income earned world-wide, no matter where the income is sourced. With respect to foreign taxpayers under the U.S. federal tax system, such taxpayers with “fixed, or determinable annual, or periodic” (FDAP) income sourced in the United States must pay a flat 30%.<sup>4</sup> If the countries involved in a particular international tax scenario are signatories to a treaty, double taxation can be reduced or avoided entirely.

Tax treaties are specifically designed to ameliorate certain issues. The most common situation occurs when one country attempts to assert taxation on the basis of residence, while the other country attempts to tax the same taxpayer based on the source of the income. Articles 6 through 21 of the treaty are designed to deal with this problem. If both countries attempt to tax the same taxpayer based on residence (when each of the two

countries considers the taxpayer to be its resident under its respective laws), Article 4 of the treaty will answer this question. A tax treaty does not address the situation when both countries tax the same income on the basis of source, that is, when each country claims that, under its respective laws, the taxpayer’s income was sourced within it.

The vast majority of tax treaties are reciprocal and bilateral.<sup>5</sup> Executed and ratified tax treaties have the same force and effect as U.S. domestic tax law.<sup>6</sup> There are two fundamental questions that must be asked when examining an international transaction. First, does the domestic tax law of either (or both) countries attempt to tax the income? This requires an examination of the tax base and sourcing rules of both jurisdictions. Second, if the answer is yes, then does the tax treaty restrict or modify the application of that domestic tax law? A tax treaty will generally limit the application of domestic tax law, but will not normally expand or otherwise impose taxation.

Structurally, the new model treaty is divided into 29 articles.<sup>7</sup> In general, the 2006 tax treaty is more streamlined, and the drafters have attempted to break down some of the longer sections into several smaller sections. It also incorporates some domestic law changes that have occurred since 1996.

Article 1 gives the scope of the treaty. As a preliminary matter, the treaty states that the “Convention shall only apply to persons who are residents of one or both of the contracting states.”<sup>8</sup> Since “resident” of a state means someone liable to that state based on residence or similar criteria, a tax treaty will not deal with a dispute where both countries are fighting purely over where income is sourced.<sup>9</sup> Further, a tax treaty will not normally affect how a country taxes its own residents, once it helps determine the country of residence.<sup>10</sup>

The 2006 tax treaty also takes the 1997 “check the box” regulations into account by allocating income from a “fiscally transparent” entity back to its owner.<sup>11</sup>

Article 2 specifies the types of taxes that are covered. As a general matter, tax treaties cover federal income taxes. Other types of taxes, including estate taxes and state and local taxes, are not covered by the OECD model treaty. The scope of the taxes covered is clearer under the 2006 treaty and now includes “all taxes imposed on total income, or on elements of income, including taxes from the alienation of property.”<sup>12</sup>

Article 4 specifies how residence of a person is determined. As noted above, this can be important if both contracting states are attempting to assert jurisdiction based on residence. This is a place where state and local law can be part of the analysis under a treaty. Typically, the place of a person’s domicile or the place of incorporation will be the place of residence. There are some tie-breaker rules in the treaty if both countries assert residence under their own law.

Article 5 defines permanent establishment. The concept of «permanent establishment» is one of the most important concepts under a tax treaty. From a policy perspective, it makes sense for a country to subject a person to at least a limited form of source-based taxation if the person establishes a fixed level of operation in that country. Interestingly, the explicit examples of what is not a «permanent establishment» under the 2006 treaty are now somewhat more limited.<sup>13</sup>

Article 6 deals with real property. Typically, income from real property is taxed in the country where the real prop-



*John D. Miller*

erty is located (state of source). Under the 2006 treaty, the definition of “real property” also includes some new specific examples.<sup>14</sup> Under the 1996 treaty, Article 6 was limited to “immovable property,” but it now covers items such as minerals, fixtures, and timber.

Article 7 gives the rules for business profits. Generally, the profits of a business are taxable in the state where the business is located (state of residence<sup>15</sup>). There is an exception to allow the other country to tax profits that are connected to a permanent establishment. This addresses situations where a business has operations in both countries. Under the 1996 treaty, there were allowed deductions from business profits of a permanent establishment for research and development expenses, interest, administrative expenses, and other expenses. Under the 2006 treaty, the list of examples only includes “executive and general administrative expenses so incurred.”<sup>16</sup>

Articles 10 and 11 deal with dividends and interest. As a general rule, dividends paid by a company that is a resident of one country (state of source) to a resident of the other country may be taxed by that other country (state of residence).<sup>17</sup> Among other provisions there is a limited right of the source country to also tax the recipient’s dividends—at 15%, with a preferential 5% rate applying if the company is paying the dividends to a recipient that owns 10% of the company. While there has recently been a push to reduce the rates to zero percent, the dividend provisions of 2006 treaty still contain the same right to source taxation as the prior 1996 treaty.<sup>18</sup> Similarly, interest paid by a company that is a resident of one country (state of source) to a resident of the other country (state of residence) may be taxed only by that other country (state of residence). The exception is when the recipient of such interest has a permanent establishment in the country of source and the payment is connected to that permanent establishment.

Articles 12 and 13 deal with royalties and gains from the sale of property. Roy-

alties arising in one country and owned by a resident of the other country may generally be taxed in the other country (state of residence). Once again, a permanent establishment of the recipient can change the treatment of the payment. Gains derived by a resident of a country that are attributable to the sale of real property in the other state may be taxed by the other state (state of source). Generally, gains from the sale of property that is not covered by a more specific rule are taxable in the country where the taxpayer is a resident (state of residence). There is an exception allowing the country where a permanent establishment is located to tax the sale involving moveable personal property that is part of a permanent establishment (based on source). The new 2006 treaty specifies the tax treatment for cargo containers; the related gains are taxed based on source.<sup>19</sup>

Articles 14 and 16 address income from employment and income of entertainers. With some exceptions, salaries paid to a resident of a country are taxable in that country (state of residence) unless the services are performed in the other country (state of source). Entertainers who perform at least \$20,000 worth of services in the other country may be taxed by that other country (state of source). Article 14 under 1996 treaty on “Independent Personal Services” has been removed from the 2006 tax treaty.<sup>20</sup> Also, the 2006 treaty removed some language from the 1996 treaty regarding deferred compensation from the article concerning entertainers.<sup>21</sup>

Articles 17 and 18 deal with pensions and related nuances. First, pension funds established in a country are now explicitly considered as “residents” of that country.<sup>22</sup> Second, pension funds have a special treatment upon the receipt of dividends.<sup>23</sup> Lastly, the 2006 treaty contains a new provision that specifically addresses pension funds.<sup>24</sup> Pension proceeds are typically taxed in the country where the person lives (state of residence) subject to some exceptions.

Article 21 is a catch-all provision for other types of income. Items of income

to a resident shall be taxable in the country of residence. If the income is from the activities of the resident of one country through a permanent establishment in another country, the country of permanent establishment would be able to tax the income.

Articles 22 and 23 contain provisions relating to limitation of benefits and foreign tax credits.<sup>25</sup> The limitation of benefits provision reduces the ability of a taxpayer to engage in “treaty shopping” to obtain benefits artificially. The limitation of benefits article underwent some significant changes in the 2006 treaty. The provision now contains the concept of a “qualified person.”<sup>26</sup>

In conclusion, tax treaties are an important part of the international tax system. They can be quite complex and fact-specific, so be sure to consult a tax specialist in each jurisdiction before engaging in international transactions. It is important to be aware of the provisions of the tax treaty between the United States and your target jurisdiction to take advantage of favorable planning opportunities. 🌐

*John D. Miller is an attorney in the business and tax department of Fraser Trebilcock Davis & Dunlap, P.C. He earned an LL.M. in Taxation from the New York University School of Law, a J.D. cum laude from the University of Toledo College of Law and a B.B.A. cum laude in finance from Eastern Michigan University. Mr. Miller’s areas of practice include federal taxation, state and local taxation, business planning, health and welfare benefits, insurance law, insurance captive pools, commercial litigation and tax controversy, domestic and international mergers and acquisitions, corporate law, and non-profit organizations. He also serves as an adjunct law professor at the Michigan State University College of Law. John Miller can be reached at (517) 377-0879. For more information about the author, visit [www.fraserlawfirm.com](http://www.fraserlawfirm.com).*

#### Endnotes

- 1 The author would like to thank Aziza N. Yuldasheva, J.D., for her editorial assistance and substantive input.

2 Throughout this Article, the terms “tax treaty” and “tax convention” will be used interchangeably. All references to the U.S. Model Income Tax Convention in this article will be to the new 2006 version unless otherwise indicated.

3 Throughout this Article, the terms “country” and “state” will be used interchangeably, unless the context clearly indicates otherwise.

4 I.R.C. § 871.

5 It should be noted that every country negotiates a slightly different treaty with the United States, so a tax practitioner must check the actual treaty in force to make sure that there is no deviation from the model convention on a particular point.

6 I.R.C. § 7852(d). *See also* I.R.C. § 894.

7 For the sake of brevity, this article focuses on the more substantive provisions of the 2006 treaty. There are several additional procedural and definitional sections which will not be discussed in detail. And there may be other more specialized provisions or rules that are not mentioned in this Article.

8 U.S. Model Income Tax Convention Article 1, § 1.

9 U.S. Model Income Tax Convention Article 1 and 4.

10 U.S. Model Income Tax Convention Article 1, § 4. There are a few narrow exceptions to this rule in Article 1, § 5.

11 U.S. Model Income Tax Convention Article 1, § 6. *Cf.* Treas. Reg. § 301.7701-1 to 301.7701-3.

12 U.S. Model Income Tax Convention Article 2, § 2. According to the Technical Explanation to the 2006 treaty, this is language from the OECD model.

13 U.S. Model Income Tax Convention Article 5, § 4(f) (“provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character”).

14 U.S. Model Income Tax Convention Article 6, § 2.

15 U.S. Model Income Tax Convention Article 3.

16 U.S. Model Income Tax Convention Article 7, § 3. According to the Technical Explanation to the 2006 treaty, this is language from the OECD model.

# Treasurer's Report



## International Law Section

Submitted by Nicholas Stasevich, Treasurer  
For the Twelve Months Ending September 30, 2006

Fiscal Year to Date  
September

### Income:

International Law Section Dues	12,340.00
International Stud/Affil Dues	60.00
Subscription to Newsletter	33.00
<b>Total Income</b>	<b>12,433.00</b>

### Expenses:

ListServ	300.00
Meetings	2,955.88
Annual Meeting Expenses	6,184.70
Travel Expenses	1,064.75
Copying	45.05
Newsletter	4,520.29
Postage	5.87
Miscellaneous	200.00
<b>Total Expenses</b>	<b>17,204.41</b>

<b>Net Income</b>	<b>(4771.41)</b>
Beginning Fund Balance:	30,312.96
Fund Bal-International Law Sec	

<b>Total Beginning Fund Balance</b>	<b>30,312.96</b>
<b>Ending Fund Balance</b>	<b>25,541.55</b>

17 A state can also tax dividends paid by a resident of another state if the recipient has permanent establishment in that first-mentioned state.

18 U.S. Model Income Tax Convention Article 10, § 2.

19 U.S. Model Income Tax Convention Article 13, § 5. The Technical Explanation to the 2006 treaty makes it clear that this rule applies even if the gain is attributable to a permanent establishment.

20 The 1996 treaty taxed income of independent contractors as a separate category, but this has been removed from the 2006 treaty.

21 U.S. Model Income Tax Convention Article 16, § 2.

22 U.S. Model Income Tax Convention Article 4, § 2(a).

23 U.S. Model Income Tax Convention Article 10, § 3.

24 U.S. Model Income Tax Convention Article 18.

25 A detailed discussion of these provisions would be voluminous enough to constitute a separate article, and, consequently, their analysis in this article will be limited.

26 U.S. Model Income Tax Convention Article 22, § 1.

## Treasurer's Report

International Law Section

Submitted by Nicholas Stasevich, Treasurer  
For the Three Months Ending December 31, 2006

Fiscal Year to Date  
December

### Income:

International Law Section Dues	12,360.00
International Stud/Affil Dues	90.00
<b>Total Income</b>	<b>12,450.00</b>

### Expenses:

ListServ	75.00
Telephone	90.51
Newsletter	132.85
<b>Total Expenses</b>	<b>298.36</b>

<b>Net Income</b>	<b>12,541.55</b>
Beginning Fund Balance:	25,541.55
Fund Bal-International Law Sec	
<b>Total Beginning Fund Balance</b>	<b>25,541.55</b>
<b>Ending Fund Balance</b>	<b>37,693.19</b>

## USCIS Proposes to Raise Fees

*MIL Staff*

Recently, the U.S. Department of Homeland Security has proposed new fees for immigration and naturalization benefit applications. For more information, see Press Release, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Building an Immigration Service for the 21st Century (Jan. 31, 2007),

available at <http://www.uscis.gov/files/presrelease/PRBuilding1.pdf>.

According to the Press Release, the proposal contemplates an average increase for application and petition fees of approximately 86 percent. The proposed fee structure will be available for public comment at [www.regulations.gov](http://www.regulations.gov) for a period of 60 days, which began on February 1, 2007.

The U.S. Citizenship and Immigration Services directs you to visit [www.uscis.gov/21stCenturyService](http://www.uscis.gov/21stCenturyService). Among other information, this site provides a link to the federal register containing the proposed rule.

# Minutes of Council Meetings



## Regular Council Meeting June 20, 2006

On Tuesday, June 20, 2006, the Council of the International Law Section of the State Bar of Michigan held a Regular Meeting at Detroit Athletic Club, Detroit, Michigan, pursuant to a notice duly circulated to all Section members.

**Call to Order.** The Chair, Bruce D. Birgbauer, called the meeting to order at 4:20 p.m.

**Introductions.** Section members in attendance introduced themselves and described their professional affiliations.

**Approval of Minutes.** The Minutes of the Regular Meeting of the Council of the International Law Section, held on April 26, 2005, were presented for review and approval. Upon motion duly made, seconded, and unanimously carried, the Minutes were approved by all members of the Section in attendance.

**Treasurer's Report.** The Treasurer presented the Treasurer's Report for the eight months ending May 31, 2006. The income was \$12,395.00 and expenses were \$7,214.19, for a net income of \$5,180.81. When added to the beginning fund balance of \$30,312.96, the Section had an ending fund balance of \$35,493.77. Upon motion duly made, seconded and unanimously carried, the Treasurer's report was accepted as presented.

**Chairman's Report:** The Chair reported as follows:

- *Leadership Conference.* He and Lois Bingham recently attended a leadership conference, which he described.
- *Section Directory.* Publication of a Section membership directory is under consideration. The cost would be \$1,100 if it is mailed to the members or \$600 if it is not mailed.
- *International Bar Association.* The

International Bar Association convention will be held in September in Chicago. Section members may wish to attend.

- *Practice-Resource Center.* The State Bar has developed a practice-resource center.
- *India/China Program in Western Michigan.* Section members on the west side of the state have expressed interest in a program on that side of the state covering doing business in China and India.

### **Michigan International Lawyer.**

It was reported that the next issue is on schedule.

**Report on Annual Meeting.** Lois Bingham reported that the Section's 2006 Annual Membership Meeting will be held in conjunction with the State Bar Meeting. The Section meeting will be at 2:00 p.m. on the afternoon of September 14 at the Ypsilanti Marriott in Ypsilanti.

### **Committee/Programs Report**

- *Business Law Committee.* Mr. Stasevich expressed interest in having the Committee do another "Doing Business [in designated country(ies)]" program.
- *Customs Committee.* Mr. Doornaert discussed doing a possible program on "reasonable care" and/or export controls.

**Survey of ILS Members.** Mr. Wright reported on the responses (53) that he had received to the survey. He would like to try to elicit more responses to try to ensure that they are representative of the overall membership.

**Old Business.** There was no other old business.

### **New Business—Brainstorming Session on Strategic Planning.**

Members made and discussed the following suggestion of actions that the

Section could take, which suggestions will be taken under advisement:

- *Committee Structure?* Consider revising? Set parameters? Combine or drop Committees? Add a public-service committee? Look for ways to increase membership participation.
- *Collaboration on joint programs and activities with other Sections?*
- *Public-Service Programs?* Judicial education on international matters? Student programs? Sponsor debates? Op Ed articles on international law?
- *Networking Receptions for Consular Officers?*
- *Greater use of technology for Section Meetings?*
- *Modify format of Council meetings?*

**Adjournment.** There being no further business, the meeting was adjourned.

Respectfully submitted,

*Scott T. Fenstermaker, Secretary  
International Law Section,  
State Bar of Michigan*

Annual Meeting  
September 14, 2006

On Thursday, September 14, 2006, the International Law Section of the State Bar of Michigan held its Annual Meeting at the Marriott Hotel, in Ypsilanti, Michigan pursuant to notice duly circulated to all Section members.

**Lawyers and Judges Assistance Program.** Prior to commencement of the meeting, a representative of the Lawyers and Judges Assistance Program gave a brief report on the Program, which provides confidential counseling and assistance to impaired attorneys and judges.

**Call to Order.** The meeting was called to order at 1:55 p.m. by the Chair, Bruce Birgbauer.

**Approval of 2005 Minutes.** The Minutes of the International Law Section Annual Meeting held on October 6, 2005 at the Sheraton Hotel, Novi, Michigan, were presented by the Secretary, Scott T. Fenstermaker. Upon a motion made, seconded, and unanimously carried, the minutes were approved.

**Treasurer's Report.** Next, Peter Swiericki, Treasurer of the Section, presented the Treasurer's Report for the 10 months ending July 31, 2006. The year-to-date income was \$12,400.00 and expenses were \$8,350.00, for a net income of \$4,049.70. When added to the beginning fund balance of \$30,312.96, it resulted in an ending fund balance of \$34,362.66 as of July 31, 2006. Upon a motion made, seconded, and unanimously carried, the Treasurer's Report was accepted.

**Chair's Report.** Mr. Birgbauer then summarized the Section's activities for the year and thanked the other Council Members and *Michigan International Lawyer* staff for their efforts.

**Distinguished Speaker Award.** Mr. Birgbauer presented the Distinguished Speaker Award to Professor Stephen

Ratner. Mr. Ratner gave a brief talk on the use of military tribunals to try alleged terrorists.

**Report of Nominations Committee.** Next, Lois Bingham presented the report of the Nominations Committee.

**Election of Officers and Council Members.** Upon a motion made, seconded, and unanimously carried, the following individuals were elected to the following positions, as recommended by the Nominations Committee.

*Officers:*

Lois Elizabeth Bingham – Chair  
Peter Swiericki – Chair-Elect  
Fred J. Frank – Secretary  
Nicholas J. Stasevich – Treasurer

*Council Member for the term ending in 2009:*

Andrew P. Doornaert  
Richard G. Goetz  
Cameron S. DeLong

*Council Member for the term ending in 2007:*

Eve C. Lerman

**New Chair.** Ms. Bingham then discussed her plans for the Section. She stressed greater member involvement, expanding Section activities to the rest of

the State, and broadening the Section's activities.

***Michigan International Lawyer.***

The Chair then asked for a report on the *Michigan International Lawyer*. Jack Mogk and Aziza Yuldasheva reported that the Fall Issue had just been published, that it was on time, and that copies were available at the meeting.

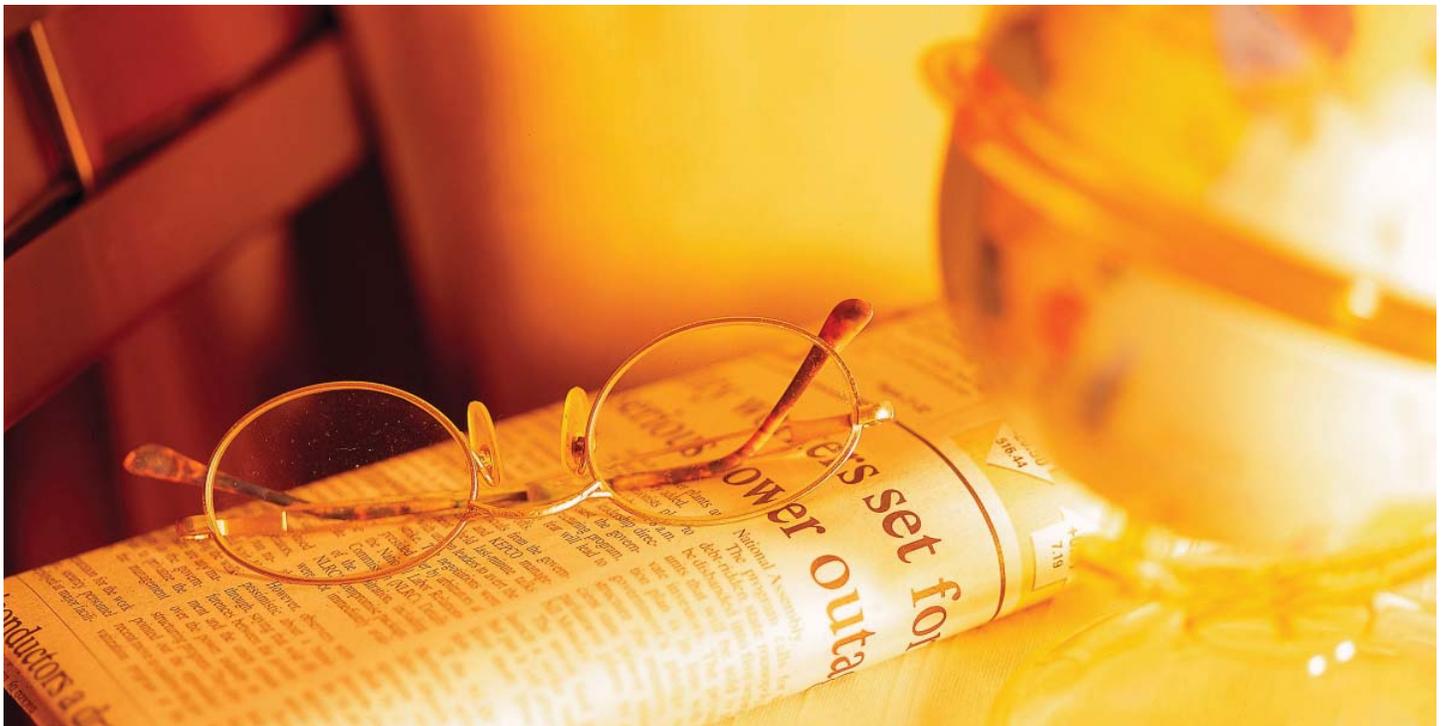
**Adjournment.** There being no further business, upon a motion made, seconded, and unanimously carried, the meeting was adjourned.

**Program.** Following adjournment, the following Program was presented: *Going Global: Manufacturing Operations in Mexico and Other Key Latin American Countries*. The presenters were:

- Scott Sneckenberger, Plante & Moran
- Andrew Doornaert, Miller, Canfield
- John McLees, Baker & McKenzie
- Richard Goetz, Dykema Gossett
- Vernon Baker, Arvin Meritor

Respectfully submitted,

*Scott T. Fenstermaker, Secretary  
International Law Section  
State Bar of Michigan  
September 14, 2006*



# Event Calendar: Meetings, Seminars, & Conferences of Interest



- February 13, 2007  
Advanced Topics in Citizenship and Naturalization  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- February 13, 2007  
ILS Council Meeting  
Detroit, MI  
<http://www.michbar.org/international/calendar.cfm>
- February 21-23, 2007  
6th Annual Corporate Counsel Conference  
London, England  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- February 22, 2007  
Careers In International Law: A Panel Discussion for Law Students  
Dearborn, MI  
<http://www.michbar.org/international/calendar.cfm>
- February 22-23, 2007  
Cap and Trade as a Tool for Climate Change Policy: Design and Implementation  
Berkeley, CA  
<http://www.asil.org/events/calendar.cfm>
- February 22, 2007  
Employment-Based Immigrant Visas for Newer Practitioners: A Broad Overview of Assessing, Preparing, and Filing an EB Case  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- February 26 - March 2, 2007  
Sixteenth International Congress of Maritime Arbitrators  
Singapore  
<http://www.asil.org/events/calendar.cfm>
- February 26 - March 2, 2007  
Investment Law Arbitration and Human Rights  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>
- March 2, 2007  
10th IBA International Arbitration Day  
Madrid, Spain  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- March 2, 2007  
The ETA-9089: Evolving Strategies  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 5-6, 2007  
12th Annual International Wealth Transfer Practice Conference  
London, England  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- March 6, 2007  
Family-based Immigrant Visas for Newer Practitioners  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 7-9, 2007  
European Commission Conference  
Brussels, Belgium  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- March 8, 2007  
How to Make Exceptional Clients Think You're Extraordinary: Avoiding Quota Pitfalls through Selection EB-1 & EB-2 Visa Categories  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 8-9, 2007  
Mergers and Acquisitions in Latin America Conference  
Sao Paulo, Brazil  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- March 11-13, 2007  
8th Annual Private Investment Funds Conference  
London, England  
[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)
- March 13, 2007  
AILA Spring CLE Conference  
Washington, DC  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 15-17, 2007  
The Pedagogy of Legal Writing for Legal Academics in Africa  
Nairobi, Kenya  
<http://www.asil.org/events/calendar.cfm>
- March 15-18, 2007  
The Future of Environmental Protection  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>
- March 15-18, 2007  
The New International Law  
Oslo, Norway  
<http://www.asil.org/events/calendar.cfm>
- March 15, 2007  
2007 Spring Board of Governors Meeting  
Washington, DC  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 16-17, 2007  
Employment Law for Immigration Lawyers  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 20, 2007  
Unlawful Presence for the Business Practitioner  
Audio/Web Seminar  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 21-22, 2007  
ABA/IBA Banking Law Conference  
Boston, MA
- March 22, 2007  
Investment Law Arbitration and Human Rights  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>
- March 23, 2007  
A Symposium on Guantanamo Bay  
New York, NY  
<http://www.asil.org/events/calendar.cfm>
- March 24, 2007  
ILS Section Event  
*See page 6*
- March 25-31, 2007  
2007 Philip C. Jessup International Law Moot Court Competition  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>
- March 26-27, 2007  
International Legal Studies Program's 25th Anniversary Celebration - American University Washington College of Law  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>
- March 27, 2007  
Spring Fundamentals Conference  
Atlanta, Georgia  
<http://www.aila.org/content/default.aspx?bc=1010>
- March 28-31, 2007  
101st ASIL Annual Meeting  
Washington, DC  
<http://www.asil.org/events/calendar.cfm>

March 29-30, 2007

AILA New England Chapter Annual Conference  
Boston, MA

<http://www.aila.org/content/default.aspx?bc=1010>

March 30, 2007

ABA's International Spring Meeting  
Washington, DC

<http://www.aila.org/content/default.aspx?bc=1010>

April 10, 2007

ILS Council Meeting  
Lansing, MI

<http://www.michbar.org/international/calendar.cfm>

April 17-18, 2007

SEERIL and Rocky Mountain Mineral Law Foundation Conference  
Buenos Aires, Argentina

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)



April 19-20, 2007

IBA/ABA Tax Planning Strategies  
Frankfurt, Germany

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

April 20-21, 2007

Legal Aspects of Water Sector Reforms  
Geneva, Switzerland

<http://www.asil.org/events/calendar.cfm>

April 26-27, 2007

6th Biennial Conference on Project Finance  
Washington, DC

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

April 26-27, 2007

International Arbitration and Maritime Conference  
Hamburg, Germany

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 1-5, 2007

ABA Section Spring Meeting  
Washington, DC

<http://www.abanet.org/intlaw/meet/home.html>

May 1-5, 2007

Examining the Implications of Hamdan v. Rumsfeld  
Washington, DC

[www.asil.org/events/calendar.cfm](http://www.asil.org/events/calendar.cfm)

May 3-4, 2007

North America and the Globalisation of Antitrust  
Toronto, Canada

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 3-4, 2007

Anti-Corruption Conference  
Paris, France

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 3-4, 2007

Tax Aspects of Cross Border Transactions in Emerging Markets Conference  
Sao Paulo, Brazil

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 8-9, 2007

IBA/IFA 39th Annual Legal Symposium  
Washington, DC

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 13-15, 2007

13th Annual Global Insolvency and Restructuring Conference  
Zurich, Switzerland

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 13-16, 2007

18th Annual Globalisation of Investment Funds Conference  
Bermuda

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 14-15, 2006

18th Annual Communications and Competition Law Conference  
Paris, France

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 16-17, 2007

2nd Annual IBA Bar Issues Commission Conference  
Zagreb, Croatia

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 22, 2007

ILS Event  
See page 6

May 24-25, 2007

Litigation Conference  
Rome, Italy

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 25-25, 2007

24th International Financial Law Conference  
Seville, Spain

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 31 - June 1, 2007

Art and Cultural Heritage: Challenges and Opportunities  
Milan, Italy

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

May 31-June 1, 2007

Closely Held and Growing Business Enterprises Regional Conference  
Montevideo, Uruguay

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

June 5, 2007

ILS Event  
See page 6

June 19, 2007

ILS Council Meeting  
Strategic Planning Committee Presentation  
See page 6

#### Other AILA events

<http://www.aila.org/content/default.aspx?bc=1010>

#### Other ABA Section of Int'l Law events

<http://www.abanet.org/intlaw/meet/home.html>

#### Other ASIL events

<http://www.asil.org/events/calendar.cfm>

#### Other IBA events

[http://www.ibanet.org/conferences/Conferences\\_home.cfm](http://www.ibanet.org/conferences/Conferences_home.cfm)

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