



Michigan International Lawyer

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VOLUME XV, No. 1, WINTER 2003

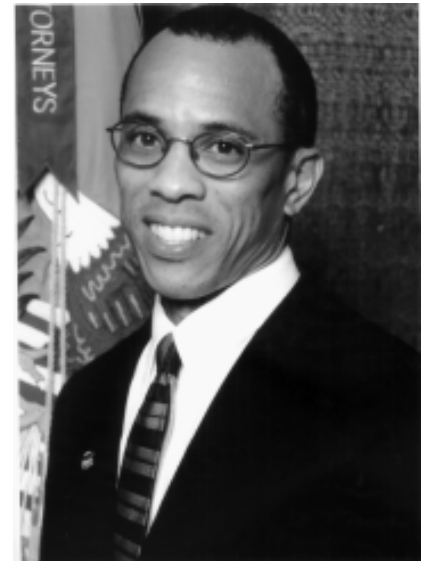
Remarks made at the State Bar Annual Meeting in Grand Rapids on November 27, 2002

Jeffrey G. Collins, United States Attorney, Eastern District of Michigan

Thank you for the invitation to address the International Law Section of the State Bar. Earlier this year I had the honor of speaking to you at a section meeting held at Wayne State Law School. It's good to see you again.

The topic for today is "Protecting the Homeland while Safeguarding Civil Liberties". While I was reviewing the materials you sent me, I remember a document that said the most important job of the President is to protect and defend the American People. I could not agree more with this statement and this is the premise from which I begin my remarks.

The first and overriding priority of the Department of Justice is to protect the homeland against terrorist attacks. Shortly after 9-11, I stood outside the damaged wall of the Pentagon with other U. S. Attorneys' from across the country. In the midst of the rumble, Attorney General John Ashcroft reminded us that the preservation of American lives and liberty is our top goal. The tragic events of 9-11 represented a massive assault on the freedoms of our country. Our office does not seek to usurp civil liberties but instead is working tirelessly to guarantee that our liberties and freedoms continue to exist in the future.



Jeffrey G. Collins

To best protect the homeland, our office has made the conscious decision to play offense and not defense. Some of our proactive measures include the formation of an Anti-Terrorism Task Force (ATTF) and a Detroit-Windsor Integrated Border Enforcement Team (IBET). Our office has also created a Counter-Terrorism Unit. I am also a proponent of community policing where the community is an ally of law enforcement. The last thing we wish to do is to alienate any commu-

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Annual Meeting

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nity that could be an asset to law enforcement. Therefore, a great deal of our efforts include extensive community outreach to the Arab American and Muslim-American communities.

The law enforcement community is united in its proactive approach to preventing terrorism. The ATTF meets monthly and communicates daily. The ATTF integrates communications of local, state, and federal law enforcement. We have learned that the sharing of information and intelligence is the best friend of prevention.

The spirit of cooperation and open communication has extended to our law enforcement partners across the border. The Detroit-Windsor IBET, which consist of 11 core Canadian and U. S. law enforcement agencies, has been operational for about 10 months. Detroit-Windsor IBET is dedicated to securing the integrity of the border by sharing information and technology in an attempt to minimize duplication of effort and maximize law enforcement effectiveness. The fine work of the Detroit-Windsor IBET has already lead to multiple alien smuggling convictions in our district.

The proactive approach to combating terrorism was also seen during the interview project. The Attorney General directed all U. S. Attorneys to conduct voluntary interviews of certain non-citizens. Our district, which had among the



International Law Section State Bar of Michigan Annual Meeting 2002 Attendees

highest number of interviews to be conducted in the nation, tried something unique. Instead of showing up at people homes unannounced we mailed letters to everyone on our list. The Justice Department astutely recognized that "one size does not fit all" and approved this procedure.

The letter explained the process was voluntary. Furthermore, the recipient of the letter could pick the location of the interview. We also shared the letter with the media. Community fears surrounding the interview project were lessen. There were no criminal arrests or INS violations

issued under the project. I am proud to report that only 8 people declined to be interviewed, which was among the lowest percentage in the country. The interviews yielded useful information and helped to generate goodwill between our office and vulnerable communities.

I want to publicly thank your other speaker today, Nassar Beydon, for his help with the interview project. Mr. Beydon and many



Howard B. Hill, Immediate Past-Chairperson, Jeffrey G. Collins, U.S. Attorney, Eastern District of Michigan, Reginald M. Turner, Jr., President, State Bar of Michigan, Clara DeMatteis Mager, Chair, Nasser Beydoun, Executive Director, American Arab Chamber of Commerce

other Arab American community leaders encouraged people to cooperate with the authorities. The regular meetings between myself and Arab American community leaders along with the numerous community forums our office participates in has helped to build a bridge of trust. I want our district to be a national model for positive police-community relations.

The creation of the United States Attorneys' Office Counter-Terrorism Unit is another significant measure aimed at preventing future terrorist attacks. The unit is comprised of 5 attorneys plus an intelligence analyst. The chief of the unit, AUSA Bob Cares, is doing an excellent job. I have advised the unit to take full advantage of every legal weapon in our arsenal that could cripple, disrupt, and dismantle terrorist activity and organizations. It is well recognized that it is the duty of the federal prosecutor to strike hard blows, just not foul ones. To protect the homeland, this unit will fully utilize the investigative tools provided for in the USA Patriot Act.

The counter-terrorism unit will not

only drive material support of terrorism investigations, it will also focus on cases which on their face may appear to have no terrorism connections. For example, the successful prosecution of a tax case or a perjury case or a money laundering case or an identity theft case or an immigration case can have a long-term impact of disrupting terrorism.

Finally, I want to stress that a critical part of our mission is to protect vulnerable communities from any discriminatory backlash. A little over a year ago, there was a case outside of Flint, where a man of Middle Eastern descent received a very disturbing and threatening message on his home answering machine. He relayed the message to the FBI and an arrest was made. Our office aggressively prosecuted the case and the judge imposed the maximum period of incarceration.

In addition, this summer, during the execution of a search warrant at a home of an individual who was arrested at Metropolitan Airport with \$12 million in counterfeit cashier checks, a secret service agent wrote derogatory words on an Islamic Prayer calendar. Even though the agent came forward and ac-

knowledgeed his wrongdoing, he was still suspended without pay for 6 months which resulted in over \$40,000 in lost wages. Plus, he was permanently banished from working in our district. However, the story within the story is how the Michigan Regional Director of the American Arab Anti-Discrimination Committee, Imad Hamed, came forward and applauded the swift and decisive actions of law enforcement. I do not think Mr. Hamad would have come forward if we had not taken the time to construct the bridge of trust.

In closing, it is the responsibility of law enforcement to fiercely protect the entire homeland. The victims, rescue workers and survivors of 9-11 came from all walks of life. They were from all racial, ethnic and religious backgrounds. We will continue to do our best to strike the right balance between protecting national security and safeguarding civil liberties. Thank you for your attention and I look forward to answering your questions.

*Jeffrey G. Collins
United States Attorney
Eastern District of Michigan*



Annual Meeting 2002
International Law Section Speakers
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District of Michigan, Nasser Beydoun,
Executive Director—American Arab
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Helping Your Clients Thrive In International Markets - U.S. Embassies In 83 Countries Are At Your Service

By Eve C. Lerman

Do the words "U.S. Commercial Service" mean anything to you? If they don't and you work with companies doing international business, as in-house or outside counsel, you need to learn more. Your clients will thank you for introducing them to a world of opportunities available through the U.S. Commercial Service, the agency that staffs U.S. Embassy commercial sections around the world.

U.S. Embassies typically have a political wing headed by the State Department and a "commercial section" staffed by the U.S. Commercial Service. The U.S. Commercial Service, headquartered in Washington D.C., is part of the U.S. Department of Commerce, and has 151 international offices around the world in 83 countries - representing more than 96% of the world market for exports. In addition to international offices located in U.S. Embassies, consulates, and stand-alone sites, the U.S. Commercial Service has domestic offices in 48 states, staffed by "international trade specialists."

Four of these offices, called "U.S. Export Assistance Centers" are located in Michigan - in Pontiac, Detroit, Ypsilanti and Grand Rapids.

Important foreign markets often have multiple U.S. Commercial Service offices to support commercial efforts within specific regions of a country. There are five U.S. Commercial Service offices in China, five in Japan, six in Germany, eight in France, six in Canada, and four in Mexico.

U.S. Commercial Service foreign offices are staffed by a combination of U.S. nationals who are career foreign service officers ("commercial officers") and local employees ("foreign service nationals") who speak the local language and develop networks of local business contacts in specialized industry areas, often over a period of decades. The principle office in each country is lead by a "senior com-

mercial officer" who reports to the U.S. Ambassador heading up the Embassy.

International trade specialists staffing the domestic offices are in regular contact with U.S. Commercial Service staff around the world, via e-mail, telephone, fax and videoconference, to arrange for assistance to U.S. companies and help answer specific business questions.

The goal of the U.S. Commercial Service is to promote the export of goods and services from the United States and protect U.S. business interests abroad.

How do we work with companies? Typically, an international trade specialist on the domestic side will sit down with the company president, the vice-president of sales and marketing, or another appropriate staff person, and review the company's business activities and goals in international markets. Through that discussion, specific international objectives are defined. The international trade specialist acts as the contact point between the company and foreign offices of the U.S. Commercial Service to assist in moving the company's international business plans forward, and serves as a source of advice and referrals on a multitude of related questions.

1. Services Available to U.S. Businesses
Through the U.S. Commercial Service

Gold Key Service

The "Gold Key Service", which helps U.S. companies find new business partners in foreign markets, is often viewed as the "premier" service offered by the U.S. Commercial Service. It helps U.S. businesses expand their overseas activities by locating new partners, including sales representatives, distributors, joint venture partners, licensees, franchisees, and end-users in targeted markets.

The Gold Key Service is initiated when a U.S. company contacts a domestic U.S.

Export Assistance Center and requests the service. After review and approval of the request by our foreign staff, to help ensure the project's viability in the targeted market, the company's marketing materials and introductory letters are distributed to prospective business partners. These partners are identified through research and networking by overseas U.S. Commercial Service staff with local industry contacts. The U.S. Commercial Service staff evaluates responses, identifies the "best prospects", and schedules 1-2 days of in-country meetings between a representative of the U.S. company and the prospective business partners. The staff can also locate interpreters, book hotels and arrange local transportation.

Gold Keys can be scheduled to coincide with overseas trade shows to maximize a company's market exposure. If a company is interested in neighboring countries in a region, multiple Gold Keys can be set up over a period of several days to maximize efficiency by decreasing travel time to and from the U.S.

Video Gold Key/International Partner Search

If a company is looking to save costs and travel time the Gold Key Service can, in some cases, be set up via videoconference. The Michigan company will send a representative to their local Export Assistance Center for several hours of "virtual" meetings with potential foreign business partners. Alternatively, a written report called an "International Partner Search" can be ordered from a foreign post, profiling and ranking potential partners that have been researched and contacted by our foreign staff. The written report is quite detailed, describing companies that were contacted, evaluating them, and ranking them in terms of partnership potential.

Reverse Gold Key

A Reverse Gold Key works like a Gold Key, but in reverse. The service is initiated when a foreign company approaches an overseas U.S. Commercial Service office and requests assistance in finding a U.S. business partner. If the foreign company's objectives fit within our goal of promoting U.S. business interests overseas, we will consider a "Reverse Gold Key". Domestic "U.S. Export Assistance Centers" research potential partners, and set up one-on-one meetings in the U.S. for a visiting foreign company representative.

A reverse Gold Key handled recently by the Pontiac U.S. Export Assistance Center involved the search for a joint venture partner with expertise in specialty vehicle manufacture. The goal is to set up a production facility in a European Union member state. The parties are currently negotiating, after holding meetings with potential partners in the mid-west. U.S. companies that have worked with domestic offices of the U.S. Commercial Service may be at a bit of an advantage when Reverse Gold Key requests come across our desks. It is natural to think of companies that are "on our radar screen" as we search for potential partners.

Trade Missions

Trade Missions are an excellent way to gauge market opportunity, locate business partners, and line up potential customers. Trade Missions are organized on a regular basis by the U.S. Department of Commerce and other organizations we work with, such as Oakland County's "Automation Alley". Typically a group of 10 – 15 companies, often in a specific industrial sector, will travel to a high potential market for a series of networking events, market briefings, and matchmaking meetings. Some trade missions include participation in overseas trade shows. The U.S. Commercial Service staff in the target country will research potential business partners, and set up matchmaking meetings, much like the Gold Key Service (see above).

The Pontiac U.S. Export Assistance Center has worked closely with Automation Alley to support 4 trade missions funded by a \$400,000 grant from the U.S. Department of Commerce - to China, Germany and Mexico. We counsel mission participants, communicate with overseas posts to ensure high quality matchmaking, and follow up with companies after the mission on matters such as project finance and due diligence.

Automation Alley has two missions scheduled for 2003, to: (1) "CEBIT", a major IT show in Germany (March 12-19), and (2) "PAACE", an automotive aftermarket show in Mexico (July 13-20).

Two U.S. Department of Commerce automotive trade missions are scheduled for spring 2003, targeting central and eastern Europe: (1) an automotive parts and services trade mission to Hungary, Poland and Slovakia (March 17-21), and (2) an automotive parts and components trade mission to Russia (April 6-12).

International Company Profile

Once a potential foreign business partner has been identified, we recommend that U.S. companies conduct a thorough background check. In many cases this can be accomplished, in part, by ordering an "International Company Profile" report, prepared by our foreign offices. An International Company Profile provides detailed information on a foreign company's financial condition, business reputation, and the relative strength of the firm in its market. This can be useful in determining a potential business partner's reliability. An International Company Profile can usually be prepared within 2 weeks of a request. In markets where the International Company Profile is not available, our staff can recommend alternate sources of information, such as Dunn & Bradstreet reports.

Market Research – "Customized" and Off-The-Shelf

Many companies are surprised to discover the vast treasure trove of market research that has been assembled by U.S.

Commercial Service staff around the world. This research is available to U.S. businesses at no charge on our website, at www.usatrade.gov. Click on the "market research" button. Searches can be conducted by country or by industry, or using a combination of criteria. New research is constantly in progress.

Comprehensive "Country Commercial Guides" are produced each year by the Embassy staff in each country where we operate. These guides include information on (1) political and economic trends, (2) marketing recommendations for U.S. products, (3) leading sectors for U.S. exports and investment, and (4) local trade regulations and standards. Guides for each country are written in a standard format, making them easier to review after becoming familiar with the structure of the reports. Country Commercial Guides are typically about 100 pages long.

Special reports called "Industry Sector Analysis" and "International Market Insights" are also available. The first type of report analyzes an industrial sector in a specific market; for example, an ISA was just issued on the automotive repair - maintenance sector in Spain. The second report type provides detailed information on specific recent developments, such as upcoming infrastructure projects or newly adopted foreign regulations relevant to exports.

Customized market research is also available through our network of overseas U.S. Commercial Service offices. Domestic offices will forward requests for customized research to our overseas posts to determine whether a request can be fulfilled, together with an idea of price and timing.

A recent request we received for customized research came from a large Michigan company considering a new manufacturing facility in a foreign location. They wanted detailed information on demand for their products in that country to evaluate the new market's potential before making a final decision.

Payment Problems

If a payment problem is preventing a U.S. Company from receiving funds owed by an overseas customer, we want to hear about it. If the parties have already engaged legal counsel, we are not permitted to intervene. However, if legal counsel has not been engaged, we can assist in finding a solution to the problem.

A recent project we handled involved an Oakland County company that had not been paid for product shipped to Brazil. Our staff in Brazil determined that the payment was being held up by Brazilian Central Bank requirements for additional paperwork. Clarification was obtained and after intervention by our staff in Brazil, a payment of nearly \$30,000 was received, all without charge to the Michigan company.

In another case, a long-time distributor experiencing financial difficulties in Venezuela offered title to a warehouse in Venezuela in payment of a debt owed to a Michigan manufacturer. The international trade specialist in our Michigan office counseled the manufacturer, pointing out that land value and exchange rate fluctuations could result in uncertainty as to the property's value in the future when the land is resold. Possible tax, personal liability, and other consequences were also pointed out. At our request, the U.S. Commercial Service office in Caracas put together a list of Venezuelan lawyers able to review the transaction. The Country Commercial Guide for Venezuela provided important information on Venezuelan rules governing ownership of real property by foreigners.

Visa Problems

The Pontiac U.S. Export Assistance Center was contacted recently by a Michigan company that built \$250,000 worth of customized equipment for a customer in China, and had not been paid. Shipment and payment had not taken place because the contract called for a trip to the U.S. by the Chinese customer; the U.S. Embassy in China failed to issue visas to the buyer.

Our offices in Beijing were able to provide a detailed status report on the Chinese customer's visa applications. The senior commercial officer, head of the U.S. Commercial Service in China, responded personally to our inquiry, pointing out that he has seen 12 cases over the past year where Chinese companies have wiggled out of paying U.S. companies for goods by signing contracts that provided for a trip to the U.S. by the purchaser. The Chinese buyers can intentionally "flunk" the visa test by mentioning plans to stay in the U.S. indefinitely. When the trip fails due to non-issuance of the visa, the Chinese company avoids paying on the contract. Our Senior Commercial Officer at the U.S. Embassy in Beijing urged us to warn U.S. companies against similar contract provisions, since American sellers cannot control the visa process. This kind of business intelligence can make the difference between a profitable sale, and a costly error.

In another visa situation, a Korean distributor informed a Michigan supplier that a new hire would be assigned to sales of its products. The Michigan company planned to train the new hire in the technology it sells at its Michigan headquarters. However, the Korean trainee was turned down when he applied for a visa. The U.S. Commercial Service in Korea was able to provide advice on how to facilitate granting of the visa.

General Counseling

International trade specialists in U.S. Commercial Service domestic offices can meet with company officers at the nearest U.S. Export Assistance Center, or travel to the company's premises for an on-site visit. Visits to company facilities give us a clear picture of a company's business activities and products, allowing us to communicate this information to foreign staff when needed.

Telephone conferences can often be arranged in countries where we operate to provide one-on-one counseling to U.S. companies on matters that cannot easily be addressed via e-mail. There is typically no charge for such consultations.

Innovative Programs

We are always looking for innovative ways to help U.S. companies enter and increase sales in foreign markets.

One example of a newly introduced service, "Breakfast With China", is putting our staff in China in direct contact with local companies. For a nominal fee, the U.S. Commercial Service, Beijing is offering live videoconference consultations with U.S. companies to provide: (1) informal briefings on current business-economic conditions in China, or (2) individualized counseling sessions with appropriate staff members in China.

We frequently plan specialized programs in Michigan with visiting speakers who address a variety of international trade topics relevant to local businesses. November 12, 2002 brought Ms. Noreen Doyle, First Vice President of the "European Bank for Reconstruction and Development" to Michigan to discuss business opportunities available through the bank in emerging markets. Attendees learned that the European Bank for Reconstruction and Development is not a European Union institution. It was created by 60 countries during the 1990s to provide financial investment as a tool to nurture new market economies. The single largest shareholder is the United States.

On December 5, 2002 the senior commercial officers of 3 central European countries - Hungary, Slovakia and the Czech Republic - visited Michigan to present market briefings to the business community and hold one-on-one meetings with companies. They pointed out that these countries will soon be members of the European Union, and provided background on the automotive parts and services trade mission to 3 central European countries - Hungary, Poland and Slovakia - scheduled for March 17-21, 2003. Companies from as far as Grand Rapids and Saginaw traveled to Oakland County for this program.

Upcoming events include a planned visit to Michigan by Mr. John McCaslin, Deputy Senior Commercial Officer of the U.S. Commercial Service - Russia. He will speak on opportunities for U.S. automo-

tive suppliers in Russia, and the automotive parts and components trade mission to Russia scheduled by the U.S. Department of Commerce for April 6-12, 2003.

Announcements of all our upcoming events are distributed via e-mail. Interested parties can contact us to request that they be added to the distribution list.

Referrals

We maintain contacts with many agencies that can help U.S. companies working on international business projects. These include the Export-Import Bank, the Small Business Administration, the U.S. Customs Service, the Bureau of Industry and Security (for licensing questions), the State Department, US AID (the U.S. Agency for International Development), and other relevant agencies.

We can also put companies in contact with the Michigan District Export Council, industry associations, local and overseas Chambers of Commerce, and other relevant organizations.

2. Who Can Utilize U.S. Commercial Service Programs?

U.S. Commercial Service programs are available to large, medium and small companies in virtually all industry areas, so long as 51% of the "product" is U.S. content. Companies selling "services" as well as "tangible" goods are eligible. Therefore, assistance is available to management consultants, engineering firms, financial service providers, law firms, and even universities looking for overseas students or partners to develop satellite campuses.

Assistance is available in many cases at no cost or for a minimal fee.

3. What Do We Ask From Our Clients?

We ask that companies share their successes with us so that we can track our progress, and monitor the results of tax dollars spent to bring these programs to the public. The most important measure of our performance is something we call "export successes". These are defined as specific circumstances where our assistance has resulted in tangible results for

a company, including: (1) an actual export of goods/services, (2) locating new business partners, or (3) resolution of a business dispute resulting in receipt of payment for goods/services from an overseas customer. By sharing information on "export successes" companies help insure that our services will be available in the future.

Export success information is kept confidential unless a company chooses to allow us to share this with the public. Our website highlights stories of companies that have utilized U.S. Commercial Service programs to succeed in international markets.

4. What Do Our Clients Say?

It is satisfying to know that assistance provided has made a difference. One participant in Automation Alley's recent trade mission to China, who benefited from the Gold Key Service provided by the U.S. Commercial Service offices in Beijing and Shanghai, garnered over a million dollars in contracts for his company with several million more in the works.

The company president observed that before he knew about the U.S. Commercial Service, he set about entering the market in South Korea on his own. For the \$5,000 cost of the China trade mission, he said he accomplished what cost him \$150,000 to achieve by himself in South Korea. He now plans to utilize the Gold Key Service in other markets.

When U.S. Secretary of Commerce Donald Evans spoke at an October 31, 2002 automotive suppliers "economic roundtable" organized by the Pontiac U.S. Export Assistance Center, this same company president spoke about his positive experiences with the U.S. Commercial Service. Secretary Evans observed that the best way to inform other businesses about the value of the U.S. Commercial Service is for satisfied "customers" to tell their friends.

Conclusions

The U.S. Commercial Service offers an unparalleled global network of international and domestic offices that stand ready to help U.S. companies succeed in

foreign markets. When representatives of the commercial section at a U.S. Embassy contact foreign business partners - doors open that might otherwise remain closed.

Why is this service important to you as lawyers and members of the Michigan Bar? Because as you spread the word about the U.S. Commercial Service you help Michigan business thrive, drive up demand for our products, increase exports to foreign markets, and create jobs at home. Ultimately, demand for legal services needed to support international projects increases as well, as you provide the expertise needed to draft agency and distributor agreements, hammer out joint-venture arrangements, structure licensing agreements, draft franchising contracts, and ensure that intellectual property is protected. By the way, the U.S. Commercial Service provides a wide array of international business services, but we do not provide legal advice! We leave that to you. Please tell your clients about us. We are more than happy to put tax dollars to work, and keep the economy moving ... across national borders.

About the Author

Eve Lerman is an International Trade Specialist with the U.S. Department of Commerce - U.S. Commercial Service and a member of the Automotive Team. She is assigned to the U.S. Export Assistance Center in Pontiac, Michigan. Ms. Lerman graduated from the University of Michigan Law School in 1986 and completed an LL.M. in comparative, European and international Law at the European University Institute in Florence, Italy. She practiced law in Brussels, Belgium with Forrester Norall & Sutton, which has since merged with White & Case, from 1990-1994. Ms. Lerman is a member of the State Bar of Michigan, and the International Law Section. The U.S. Commercial Service website is: www.usatrade.gov. Ms. Lerman can be contacted at 248/975-9605 or eve.lerman@mail.doc.gov.

U.S. Customs: Focused Assessments and Internal Controls

By Andrew P. Doornaert

In 2001, the United States Customs Service announced the use of Focused Assessments as the new program by which U.S. Customs would evaluate the compliance of importers with U.S. Customs laws and regulations. Since the passage of the Customs Modernization Act in 1993, the importer is assigned the responsibility of accurately declaring the value, classification and rate of duty applicable to imported merchandise.

Although U.S. Customs has the right to verify the data of each individual Customs Entry filed for imported merchandise, the Focused Assessment (FA) program allows U.S. Customs to review and evaluate the internal controls and procedures implemented by a company to ensure accurate data is routinely submitted to U.S. Customs.¹

America's largest importers by dollar value are unlikely to be selected for FA's because many of these companies have already met with U.S. Customs auditors in the past 6 years. Instead, medium size companies that import more than \$10 million worth of goods a year may be selected.

Background

The Focused Assessment program replaced the Compliance Assessment Methodology (CAM) reviews. The Customs auditors involved with a CAM review would select a random sample of entries called the "common check," typically 100 entries. The importer would be required to provide records to support the classification, value, quantity and record-keeping requirements for **each** entry. In addition to the common check, the CAM team could also draw a sample of entries where other trade preferences or privileges were claimed such as NAFTA, GSP, US Goods returned, US parts assembled abroad so the total number of samples could exceed 500 entries. In many instances, the importer would need to as-

semble documents that were two years old to recreate a file for each entry.

In evaluating the importer's level of compliance during a CAM, the auditors would typically overlook improvements that had been implemented after the sample period. The FA program will consider the internal controls that exist at the time the FA auditors make an initial visit. This approach is intended to improve resources utilization by Customs and the participating company. **This approach also focuses on areas of risk where revenue to Customs could be lost (e.g. duty unpaid).**

PAS and ACT

The FA program consists of two phases, the Pre-Assessment Survey (PAS) and the Assessment Compliance Testing (ACT). During the PAS phase, Customs identifies areas of risk by evaluating the adequacy of the importer's internal control system. "In ACT, Customs identifies the extent of compliance and/or computes the loss of revenue for areas of risk."²

Soon after being contacted by the Focused Assessment Audit Team, the importer will receive an Internal Control Questionnaire that is designed to give the audit team a general understanding of the company's import operations and internal control structure. The results of the questionnaire, interviews with company officials and Customs personnel, a survey of company procedures, and limited testing will be used by the PAS auditors to determine the effectiveness of the company's internal control system.³

For each trade area, such as, classification and valuation, Customs will consider if there is "low risk" of non-compliance. If an area has been identified as "high risk", the extent of compliance will be determined by transactional testing during the ACT process. Guidelines have been provided to determine an acceptable level of compliance. For example, "compliance

in value is not acceptable if the overall value discrepancy amount is greater than \$10,000,000 or greater than 1 percent of entered value, whichever is less."⁴

Effective Internal Controls

Regardless of whether or not an importer has been selected as a candidate for a Focused Assessment, effective internal controls can improve compliance with Customs laws and regulations, provide predictability to the costs of imports, and may reduce duty liability. The following are some considerations and suggestions as to how an importer can evaluate the effectiveness of its internal controls⁵:

Control Environment

"A company should maintain an environment that supports Customs compliance, maintains competent personnel, and maintains an organizational structure that supports compliance."⁶ Training should be provided to company personnel to recognize the importance of the Customs compliance function. The Customs Manager⁷ needs sufficient authority to receive cooperation from other departments (e.g. purchasing, information technology, etc.).

Risk Assessment

A company should identify risks to the goal of Customs compliance, analyze them for possible effects, and design controls to reduce risk.⁸ Risk could include the failure to declare assists (e.g. tooling sent overseas to foreign vendors free of charge) that could result in underreporting the value of merchandise to U.S. Customs. Also when machinery is being imported for the first time, there is a risk that the Customs Broker has insufficient information to accurately classify it. Once identified, the company will need to take steps to minimize the risks.

Control Procedures

A company should implement policies, procedures and techniques to ensure complete and accurate reporting to Customs.⁹ A Customs Manager should routinely review payments to foreign vendors to determine if the value of imported merchandise from that foreign vendor needs to be adjusted. An HTS classification database should be created for all imported parts that includes specific information from engineers who are knowledgeable about the function, properties, and specifications of the part.

Information and Communication

"The importer should establish and maintain processes to ensure reliable information pertaining to Customs is recorded and communicated to the Customs Manager and U.S. Customs."¹⁰ The Customs Manager should be informed of transactions that could impact the Customs value. Value that may not be included on a Customs invoice but needs to be communicated to the Customs manager includes: tooling, proceeds of the sale, research and development costs, deposits for design work, etc. This information needs to be communicated from designated personnel within the company.

Monitoring

A company must monitor its Customs activities to assess the quality of performance over time and ensure that issues and deficiencies are promptly resolved.¹¹ Periodically, a company should review the range of HTS classifications that have been assigned to parts to determine if they are consistent with the type of materials purchased. The Customs Manager can compare payments to foreign vendors to the entered value of imported merchandise that was declared to U.S. Customs.

Prior Disclosure

In reviewing entry data, the Customs Manager may determine that value was underdeclared or that the wrong HTS classification code was used on an entry that

caused an underpayment of Customs duty. The company has the option to file a prior disclosure that serves as an admission by the importer that inaccurate information was submitted to Customs. Filing a prior disclosure can reduce penalties and save the importer money.

Conclusion

Companies without internal controls are likely to have an unpleasant experience if selected for a Focus Assessment. Once implemented, internal controls can ensure future compliance and predictability of costs associated with imports. Importers should consider the "best practices" promoted by U.S. Customs and the importing community.

About the Author

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 assists companies reduce the cost and risk associated with international trade. His experience includes tariff classification, rates of duty and valuation of imported merchandise, NAFTA, country of origin marking and labeling requirements, customs compliance assessments, customs penalty cases, foreign trade zones, and other considerations that arise from importing or exporting goods. He is also a licensed U.S. Customs Broker.

Research Materials

- I. *Importer Self-Assessment Program Handbook*, U.S. Customs Service Office of Strategic Trade Regulatory Audit Division, Page 27, <http://www.customs.ustreas.gov/imp-exp1/comply/isacover.htm> (last updated October 2002).
- II. *Importer Self-Assessment Program Handbook*, U.S. Customs Service; Office of Strategic Trade Regulatory Audit Division; (last updated October 2002)

- III. *Focused Assessment Program, Pre-Assessment Survey Audit Program*, U.S. Customs Service <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002).
- IV. *Internal Control Questionnaire for Focused Assessments*, U.S. Customs Service <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002).
- V. Risk Opinion under Focused Assessments, U.S. Customs Service <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002).

Endnotes

- 1 Under 19 U.S.C. 1509, Customs may examine records to ascertain the correctness and determine the liability for duty, fees and taxes due the U.S.
- 2 *Focused Assessment Program, Pre-Assessment Survey Audit Program*, U.S. Customs Service <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002)
- 3 *Internal Control Questionnaire for Focused Assessments*, U.S. Customs Service pg. 1, <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002)
- 4 *Risk Opinion under Focused Assessments*, U.S. Customs Service pg. 4, <http://www.customs.ustreas.gov/imp-exp1/comply/fapdocs.htm> (last updated October 2002)
- 5 This is not designed to be an exhaustive list of all internal controls that should be implemented.
- 6 *Importer Self-Assessment Program Handbook*, U.S. Customs Service Office of Strategic Trade Regulatory Audit Division, Page 27, <http://www.customs.ustreas.gov/imp-exp1/comply/isacover.htm> (last updated October 2002)
- 7 Due to publication limitations on the length of this article, I will make reference to a person who is responsible for coordinating Customs compliance as the Customs Manager although for some companies this could be the task of a Customs Department or is the responsibility of an individual whose primary company duties involve logistics, tax or other company function.
- 8 *Importer Self-Assessment Program Handbook*, U.S. Customs Service pg. 27
- 9 *Importer Self-Assessment Handbook*, U.S. Customs Service pg. 27
- 10 *Ibid.* pg. 28
- 11 *Ibid.* pg. 28

Handling conflict in a diverse and multi-cultural workforce

By Noel Kreicker

Completing tasks and building relationships are often at odds in the competitive, fast-paced, resourceful business culture of the United States. We work hard to meet tight deadlines and accomplish ambitious goals for the benefit of ourselves and the organization. Afterwards we celebrate and relax with friends and colleagues. "Let's get the job done first; we'll spend time getting to know each other later."

The United States is a task-focused culture whereas most other countries in the world are relationship-focused. Relationship cultures meet deadlines and accomplish goals differently. Achieving designated tasks is the result of time-honored, well-oiled relationships. Thus the quickest and best way to "get the job done" with business partners from other countries is to surrender the urgency of task to the establishment of long-term relationships. This is not an easy task for Americans!

In the United States when we are introduced to someone new, the first thing we want to know about them is what they do, what their accomplishments are as an individual. Our identity is tied strongly to our jobs (our "tasks".) Thus it is understandable in dual-career relationships where one person gives up their job to follow the other, that the furloughed partner will experience an identity crisis. Being "jobless" is a potent negative definition of self. Also, we relish the stories of the "self-made-man," of "rags to riches." We live in a meritocracy that celebrates the accomplishments of individuals.

When introductions are made in relationship cultures, the people's first inter-

est is to learn about the newcomer's connections and affiliations, how they fit into society. What is the family's name and history, who are they related to, what is their circle of influence, where did they attend school, how long have they belonged to various organizations? A person's identity is through their links to others. Relationship cultures tend to be group-oriented and consider the good of society or the collective over that of the individual. Australians have a saying, "cut the tall poppy," indicating that assertion of superiority by the individual is detrimental to the whole.

The following stories illustrate the collision of task and relationship cultures:

1. An HR Manager from the USA and an HR Manager from Latin America interviewed applicants for a leadership position in Mexico. The USA Manager was ready to hire an outstanding candidate with superior skills and a great track record. To his frustration, the Latin American HR manager insisted on hiring a "less qualified" person with impressive familial and political connections. Why? It was because the person with the strongest personal ties would be able to achieve the company's goals more quickly and easily in Mexico where "who you know" is more important than "what you know."
2. A delegation of Koreans came to the Midwest for a four-day visit. Their American hosts arranged for a car to pick them up at the airport and take them to their hotel. An itinerary of scheduled meetings was awaiting them, along with a list of good restaurants in the vicinity. In spite of the

Americans' good intentions, the Koreans did not feel respected or well-cared for. When the Americans had been in Korea a few months earlier, the Koreans accompanied them relentlessly, ensuring that all their needs were met. The Americans' response to this "proper hosting" was annoyance. They felt smothered, unable to enjoy any time by themselves. Consequently, when the Koreans arrived in the USA, the Americans made the mistake of assuming that they would welcome the unscheduled time to be on their own.

3. A new assembly plant was built by an American company in a town in Eastern Europe. The company's intention to be "fair and generous," by offering their new laborers four times the usual hourly wages, suddenly disrupted the social network of the town. The villagers were anxious about who among them would benefit from the lucrative new jobs. Realizing their mistake, the company decided to hire one person from each family unit, whenever possible, to equalize the distribution of monetary gain throughout the town and help keep harmony among the local population. In relationship cultures, "fair and generous" rewards are expected to be distributed equitably among the group.

There are important distinctions between task and relationship cultures which affect many aspects of business. The chart below lists several examples of business functions along with generalities about how they manifest differently in the two types of cultures.

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.

| Business Function | Task Cultures | Relationship Cultures |
|-------------------|--|---|
| Communication | Direct explicit style; "say it like it is" | Indirect, implicit style; face-saving protocols |
| Negotiations | Linear, paper-driven; contracts are the ultimate authority | Circuitous, relationship driven; contracts are a mere formality |
| Meetings | Decisions made in meetings | Decisions made before or after meetings |
| Employee Rewards | Merit-based pay and advancement; individual recognition | Needs taken care of by employer; team recognition |
| Problem-Solving | Individual initiative | Team initiative |

What are the liabilities when relationships are minimized or disregarded by task-driven companies? People from other cultures become wary of us and our motives. We are perceived as insincere and exploitive, interested only in the bottom-line. They may say "yes" to us or appear to be in agreement, when in fact they are only appeasing us and have no intention of supporting the plans we have proposed. We become blindsided by our assumptions, thinking that both sides are in accord. Consequently, when the deal gets bogged-down or takes a surprising turn, we feel offended and conclude that we have been deceived or manipulated. Had relationship-building been our first order of business, the conversations over time with our potential business partners would have been easier and far more productive. We would have been able to pick up critical nuances and signals earlier in the negotiations, saving us time, money, and frustration.

Every culture has its unique business protocol and means of establishing mutually beneficial relationships. The ways of attaining trust, respect and comfort are culturally relative and essential to know in advance of all interactions. The best advice is to learn as much as possible from credible sources prior to engaging in overseas business ventures. The savvy international business person will invest in

cultivating long term relationships as the most effective way to accomplishing the desired tasks.

Tips for Taking Your Relationships to Task:

- Meet in person. There are no substitutes for face-to-face introductions and interactions. It is worth the extra time and money
- Choose your team according to those who are adept at building good relationships and who will be the closest match to their counterparts. The best team members are not necessarily those who are the most accomplished in their USA environment
- Interact in an ongoing, face-to-face basis to accelerate the relationship building process
- Send the same team each time; demonstrate you want to engage in a long-term relationship
- Learn what "proper hosting" is expected from overseas visitors; understand what is expected of you as their guest
- Use the telephone, rather than email, if you cannot meet in person. Summarize your conversation in an email
- Compose email messages in a conversational manner, rather than using only bullet points
- Spend time on the preliminaries of doing business; take time to gain

knowledge about business practices in the new culture from credible sources

- Avoid rushing into discussions about the product, delivery speed, quality measures, etc.
- Build a realistic timetable for meeting the company's goals. Next, multiply this realistic timetable by a factor of two or three for greater accuracy
- Be aware that the way business is practiced in the United States may impede success in other countries.

About the Author

Noel Kreicker is President and Founder of IOR Global Services. She enjoys collaborating with the teams working in each of IOR's offices: Bloomfield Hills, MI, Northbrook IL, and London, England. IOR delivers cultural training for expatriates and international managers, destination services, and language programs to multinational companies around the world. Noel served in the Peace Corps in the Philippines in the late 1960s, and was an expatriate in Bogota, Colombia in the late 1970s prior to founding IOR in the early 1980s. Noel is an active member of SHRM, SIETAR, ERC, and is on the Midwest Advisory Board for IIE. Website: www.iorworld.com; Email: noel@iorworld.com.

Legal and Political Issues Facing Kashmir

By Narinder J. S. Kathuria

The former Law Minister of India and the Chairman of the Kashmir Committee, Mr. Ram Jethmalani was the guest speaker at the International Lawyer Section Meeting held on November 5, 2002. Mr. Jethmalani, who is a distinguished criminal defense and a constitutional lawyer of India, is also a member of the upper house of the Parliament of India. At age 80, he continues to have a strong voice on many of the burning domestic and international political issues facing India. Mr. Jethmalani is no stranger to the Detroit area. He taught comparative constitutional law at the Wayne State University Law School in the mid 1970s.

Mr. Jethmalani spoke on the legal and political issues facing Kashmir. "It is amazing how you were able to cover the complex history of Kashmir with such precision and clarity in a short time" said one of the members of our committee after Mr. Jethmalani's presentation.

Kashmir is an area on the northern borders of India and Pakistan. Officially, it is known Jammu and Kashmir." It has often been referred as the "The Switzerland of the East" due to its natural beauty. How-

ever, during the past few years, due to increased cross-boarder infiltration and terrorism, it has seen a lot of unrest and chaos.

Speaking on the legal position of India on Kashmir, Mr. Jethmalani said that the matter was clearly settled soon after India's independence from the British rule in 1947. The ruler of Jammu and Kashmir signed an Instrument of Accession in which he acceded to the Dominion of India. There were about five hundred rulers of various provinces of India at that time and each one of them was asked whether he wanted his province to be a part of India. The ruler of Jammu and Kashmir, Maharajadhiraj Shri Hari Singhji, was a Hindu whose ancestors bought Jammu and Kashmir from the British rulers. Mr. Jethmalani said that India was not prepared to accept the offer of Maharajadhiraj Shri Hari Singhji since the main population of Kashmir was Muslim. India forced Maharajadhiraj Shri Hari Singhji to release the Muslim leader from prison. After his release, the Muslim leader, representing the Muslim population of Kashmir, also freely consented to the accession. Mr. Jethmalani said that it is only after the consent of the ruler and the Muslim leader that India agreed to accept Kashmir as an integral part of India.

He said that during the same time, Pakistan had invaded India and occupied certain territories of Kashmir. The Pakistan held Kashmir is known as Azad Kashmir. The Kashmir issue was taken to the United Nations and on December 31, 1947 the United Nations passed a resolution that required holding a plebiscite in Kashmir under certain conditions. Pakistan never complied with those conditions, which included withdrawal of its troops from Kashmir. Mr. Jethmalani said that since that time there have been two wars between India and Pakistan and the two countries have also signed other agreements in an at-

tempt to amicably resolve the Kashmir issue. In discussing these agreements, Mr. Jethmalani said that Pakistan has refused to comply with the provisions and spirit of those agreements and has attempted to misinterpret them, ignoring the context and history preceding them.

On the political side, Mr. Jethmalani said that India has recently held free elections in Jammu and Kashmir which have been viewed by independent observers from the United States and other countries. The reports of independent observers clearly prove that free elections were held. He said that he wished that the Hurriyat Party, which is supported by Pakistan, had not boycotted those elections. He said that as the Chairman of the Kashmir Committee, which is an independent body and is not affiliated with the government in any way, he had met with the leaders of the Hurriyat Party and had encouraged them to participate in the elections. He said that he hopes that the leaders of this party will change their views in the future. Mr. Jethmalani said that, in his opinion, even if a plebiscite was held in Kashmir, he does not believe that there is any chance that the Kashmiri people will vote for becoming a part of Pakistan. But, why should India allow a plebiscite when it is no longer a viable political issue?



Ram Jethmalani, Member of Parliament of Rajya Sabha and Senior Advocate Supreme Court of India, and Narinder J. S. Kathuria, Council Member



Ram Jethmalani, Member of Parliament of Rajya Sabha, and Senior Advocate Supreme Court of India, and Clara DeMatteis Mager, Chairperson

Stuart Deming Honored by Section at Annual Meeting

Stuart Deming was selected by the International Law Section to receive the second annual Outstanding Contribution Award in recognition of his contributions and longstanding service to the Section.

Stuart has held numerous positions in the Section including Council Member, Secretary, Treasurer, Chair-Elect and Chairperson. His tireless efforts as Chairperson to maintain communication with the Council and Section members, by telephone, fax and email, are legendary. On September 26, 2002, at the Section's Annual Meeting in Grand Rapids, Chairperson Howard Hill presented Stuart with the Award represented by a Tiffany crystal globe and framed certificate. Stuart graciously accepted the honor, expressed his appreciation, and pledged to continue his involvement in the Section.

Stuart Deming is a graduate of the University of Michigan Law School and Graduate School of Business Administration. After clerking for the Honorable

Wendell A. Miles, Chief U.S. District Judge for the Western District of Michigan, he served as an Assistant U.S. Attorney for the Western District of Michigan, as an attorney with the Enforcement Di-

vision of the U.S. Securities and Exchange Commission, and as a trial attorney with the Tax Division of the U.S. Justice Department in Washington, D.C. He practiced with Steptoe & Johnson of Washington, D.C. before becoming involved with the 1990 Summit of Industrialized Nations with the Bush Administration where he served as a Special Assistant to the Assistant Secretary of the Army for Financial Management. Stuart later served as a Special Prosecutor with the Special Counsel to the U.S. Attorney General and investigated the banking facility at the U.S. House of Representatives. He has served as a foreign technical advisor for the U.S. Department of Commerce and the American Bar Association (ABA). He has chaired numerous other national, state and local bar committees involving international legal issues.

Stuart is a partner with Inman Deming LLP, resident in its Michigan and Washington, D.C. offices. He represents corporations and individuals in a wide range of foreign business

and investigatory matters. Stuart provides advice on international transactions, develops and assists in the implementation of compliance programs, conducts internal investigations, and represents clients before federal and state agencies.



Howard B. Hill, Immediate Past-Chairperson, Stuart H. Deming, Recipient of Outstanding Contribution Award, Jeffrey G. Collins, U.S. Attorney, Eastern District of Michigan, Clara DeMatteis Mager, Chair

Submissions 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 premiere 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. Manuscripts should be available in hard copy and electronic format. Manuscripts submitted for consideration cannot be returned unless accompanied by a \$5 check or money

order made payable to **Wayne State University Law School** for shipping and handling.

All submissions may be forwarded to the editor at the following address:

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INTERNATIONAL LAW SECTION
State Bar of Michigan
Minutes of the Annual Meeting – September 26th, 2002

On Wednesday, September 26th 2002, the International Law Section of the State Bar of Michigan held its regularly scheduled Annual Meeting in conjunction with the Annual Meeting of the State Bar of Michigan in Grand Rapids, Michigan.

The meeting was called to order at 1:30 p.m. by the Section's Chairperson, Howard B. Hill, Esq.

The minutes from the International Law Section Annual Meeting 2001 were presented by the Secretary, Jan Rewers McMillan, and approved.

The Treasurer's report was presented by Randolph M. Wright, reflecting a balance of \$21,166.88 in the Section's account as of August 31st, 2002. There was discussion about the projected expenses for the year-end September 30th, 2002, including those associated with the Annual Meeting. Thereafter, the Treasurer's report was approved.

The Chairperson-Elect, Clara DeMatteis Mager, as the Chairperson of the Nominations Committee, was asked to report on the nominations to fill vacant Council positions. Ms. Mager reported the Committee's recommendations as follows:

Chair—Clara DeMatteis Mager
 Chair-Elect—Jan Rewers McMillan
 Secretary—Randolph M. Wright
 Treasurer—Bruce D. Birgbauer

Council Members for the 3 year term ending at the Annual Meeting 2005:

Narinder J.S. Kathuria
 Andrew Segovia
 Marc C. McGuire
 James S. Serocki
 Lois Elizabeth Bingham

Council Member to fill a vacancy in a term expiring at the Annual Meeting 2004:
 William H. Dance

The elections were held and the above individuals were elected to the designated positions.

The Chairperson, Howard B. Hill, then presented the Outstanding Contribution Award to Stuart Deming for his long service to the Section.

Jack Mogk reported on the successful transition of Michigan International Lawyers from print to electronic publication.

Francine Cullari reported strong interest by Section members to publish articles in the State Bar of Michigan Journal. She asked that the articles not exceed 2,500 words, and that an outline be submitted to her on or before January 2, 2002.

The Chairperson, Howard B. Hill, reported on the activities of the Section in 2001-2002, which are outlined in detail in the Fall edition Michigan International Lawyer. Thereafter, he passed the gavel to the new Chair, Clara DeMatteis Mager.

The Chairperson gave an overview of what the Section intends to accomplish during 2002-2003, and outlined the schedule of Council Meetings:

January 21, 2003
 At Butzel Long, Bloomfield Hills
 February—TBD
 During SAE Week
 April 29, 2003
 At University of Michigan Law School
 May—TBD
 During World Trade Week
 June 10, 2003
 Planning Session/Outing—TBD
 September—TBD
 Annual Meeting—Cobo Hall, Detroit
 November 4, 2003
 At Berry Moorman PC, Birmingham

Clara DeMatteis Mager introduced the two speakers, Jeffrey G. Collins, Esq., United States Attorney for the Eastern District of Michigan, and Nasser M. Beydoun, Executive Director of the American Arab Chamber of Commerce of Dearborn, Michigan, who would address "Protecting the Homeland While Safeguarding Civil Rights" after the conclusion of the business meeting.

There being no further business, the Council Meeting was concluded at 2:00 p.m.

Respectfully submitted,
Randolph M. Wright
Secretary
International Law Section
State Bar of Michigan
September 26, 2002

The Netherlands: European Gateway for Michigan Businesses

By Todd A. Smith

The Netherlands (or “Holland”¹) lies nestled between Belgium and Germany on Europe’s North Sea. Small compared to Michigan, the Netherlands is downright diminutive compared to the United States.² Nevertheless, it plays an important role for US businesses entering Europe that belies its modest size.

The Netherlands rests on the estuaries of three major European rivers that traverse the heart of continental Europe.³ Its strategic location makes the Netherlands a natural conduit for European commerce. The Netherlands combines its fortuitous location with a sophisticated infrastructure, which includes the world’s largest port at the Rotterdam Europort Complex. With the advantages of its location and infrastructure – and with access to almost one-half the European Union (160 million people) within a 300-mile radius of Rotterdam – this small country provides the “gateway to Europe” for many US businesses.

This article offers an introduction to the Netherlands for Michigan businesses considering locating operations in Europe.⁴ It first provides an overview of the Netherlands’ business environment and its current economic relationship with the United States, and then briefly discusses issues related to establishing and operating a Dutch B.V. and assigning US citizens to work in the Netherlands.

Business Environment

The Netherlands is known for water management techniques developed in its centuries-long struggle with encroaching rivers and seas.⁵ Since the thirteenth century, the Dutch have engaged in a systematic process of wresting land from marsh and sea through dikes and dams

and the use of windmills to pump water from the land. This land reclamation has produced large polder areas,⁶ representing more than 25 percent of the current Dutch landscape. One of the largest polder areas is Flevoland, a farming and residential area fifteen kilometers northeast of Amsterdam. Less than 50 years ago, Flevoland was part of an inland lake called the IJsselmeer.⁷ The Dutch progressively drained and developed 1,421 square kilometers from the southeastern corner of the IJsselmeer, creating Flevoland, the newest Dutch province.⁸ Today, more than 340,000 people live in Flevoland.

Creation of polders, like Flevoland, requires a strong governing authority with a strong disposition toward cooperation, consultation and consensus-building.⁹ It is precisely these attributes that define the “polder model,” the popular name for Dutch policymaking by consensus between government, employers and trade unions.¹⁰ The underlying political arrangements of the polder model developed in the 1980s in an effort to curb an excessively generous social welfare system.¹¹ Enjoying great success in its first two decades, the polder model was hailed as a compromise between the US policymaking approach and more socialistic approach of other northern European countries. Although the luster of the polder model has dimmed recently in the face of criticism and a softening world economy, it continues to reflect Dutch policymaking. Recognizing the basic approach of the polder model (along with, generally, the importance of consensus in Dutch society) permits a better grasp of the Dutch political and business environment.

Although affected by the economic slowdown in the US and Germany, the

Netherlands’ economy is stable.¹² It is an open economy with no significant exchange controls and with policies encouraging foreign investment. The Netherlands is also politically stable. The Dutch government is a constitutional monarchy (led by Queen Beatrix) organized under a parliamentary system (led by Prime Minister Jan Peter Balkenende, with new elections scheduled for early 2003). The Dutch capital is in Amsterdam, with the seat of government for historical reasons in The Hague. The country is divided administratively into twelve provinces.¹³ The Dutch Parliament allows for proportional representation without a minimum threshold required before parties gain seats. Consequently, there are numerous political parties, requiring Dutch governments to consist of coalitions.

The Netherlands has a civil law system. The judiciary consists of 61 cantonal courts, 19 district courts, five courts of appeal, and a Supreme Court (*Hoge Raad der Nederlanden*). A division of the Amsterdam court of appeals, the Enterprise Chamber (*Ondernemingskamer*), has an important role in resolving certain disputes involving business enterprises (handling cases of both first instance and appeals) and is therefore a court whose activity Dutch business follows closely. The Enterprise Chamber has exclusive jurisdiction over disputes concerning the form and content of annual accounts, appeals by works councils against certain proposed actions of management, and the composition of the supervisory board of “large” companies.¹⁴ It can further order corrective actions in cases of mismanagement. The Enterprise Chamber is composed of five judges with expertise in corporate affairs, including three judges with

legal training and two lay judges who are experts in business, socio-economic, accounting and tax matters.

Although facing increasing competition from other European countries introducing comparable tax rules, the Netherlands continues to be regarded as a favorable tax regime. The Netherlands has an extensive tax treaty network providing for low withholding taxes on dividends, interest, and royalties.¹⁵ In the past, an attractive feature of the Dutch tax regime has also been the ability of taxpayers to acquire advance tax rulings.¹⁶ Dutch advance rulings have been criticized by some EU institutions and the OECD, who claim the rulings provide the Netherlands with unfair advantages. It is not clear whether this remains an attractive feature due to new policies increasing the difficulty in obtaining advance rulings, although the Dutch tax authorities are reportedly attempting to accelerate the ruling process. Michigan businesses should discuss the availability of advance tax rulings with their Dutch tax advisors.

Michigan businesses can also benefit from the country's sophisticated infrastructure. In addition to the Rotterdam Europort Complex, the world's largest port measured by cargo tonnage per year, the port of Amsterdam is the fourth largest port in Europe by that same measure. According to the Dutch government, 37 percent of all sea-borne goods entering Europe pass through the Rotterdam and Amsterdam ports, and 60 percent of U.S. goods entering Europe pass through Rotterdam.¹⁷ Another key distribution link in the Dutch infrastructure is Amsterdam Schiphol International Airport, the fourth largest airport in Europe measured by cargo tonnage per year. The Netherlands also will complete a railway freight line, the Betuwe Line, by 2005 that travels from Rotterdam to the German border to further link the major European hubs and better reach distribution links to Eastern Europe.

Historically international traders,¹⁸ the Dutch have an international orientation that is reflected in their economy, with more than 60 percent of Dutch gross domestic

product related to international trade, logistics and international financial services. With their international orientation, the Dutch are culturally receptive to foreign businesses locating and operating in the Netherlands. Additionally, Dutch foreign language abilities are well-developed, particularly in English, which further facilitates the entrance of foreign business into the Dutch economy.¹⁹

The Dutch international orientation ensured their full participation in the European Union (the "EU") as a founding member.²⁰ The Netherlands and its fellow EU member states have created a common market, abolishing all customs barriers between them.²¹ The Netherlands also participates in the European Monetary System (EMS) and publicly launched the Euro – along with participating EU member states Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal and Spain – into circulation to replace its national currency (the *guilder*) on January 1, 2002.

Economic Relations with United States

The economic relationship between the United States and the Netherlands represents the oldest continuing commercial relationship of the United States and dates back to the American Revolution.²² This relationship flourishes still today.

The Netherlands is the ninth largest trading US partner and one of the few countries with which the US runs a trade surplus. It is the third largest foreign investor in the U.S., behind only the United Kingdom and Japan. Approximately 800 Dutch companies operate in the US, employing over 350,000 people.

The US is the largest foreign investor in the Netherlands, and the Netherlands is the third largest recipient of US direct investment. Approximately 1,600 US companies operate in the Netherlands, employing over 150,000 people.

The US Department of Commerce (the "DOC") estimates that almost 60 percent of all foreign headquarters of US companies established in Europe are located in the Netherlands. Further, the DOC

estimates that 42 percent of U. S. multinational companies have established European distribution centers in the Netherlands.²³ Clearly, numerous US companies have selected the Netherlands as their "gateway to Europe."

Establishing and Operating a B.V.

With a favorable business environment and strong economic relationship with the United States, the Netherlands is potentially an attractive location for Michigan businesses. Upon deciding to operate in the Netherlands, a Michigan business must determine its organization for such operation, including whether to establish a legal entity. The selection and establishment of a legal entity involves numerous considerations relating to tax planning, limitation of liability, and the nature of the business to be conducted. Selection of the appropriate entity (whether a corporate subsidiary, branch office, or other) must be made in close consultation with qualified legal and tax advisors. This article will forego discussion of the analysis related to selection of the legal entity and focus briefly on issues related to establishing and operating a commonly used Dutch legal entity, the B.V.

Dutch law recognizes two corporate entities: the *Naamloze Vennootschap* (the "N.V."), a corporation with shares that may be freely transferred, and the *Besloten Vennootschap met beperkte aansprakelijkheid* (the "B.V."), a privately held corporation with shares having limited transferability. As a privately held corporation, the B.V. is the corporate entity of choice for many US multinationals establishing subsidiaries in the Netherlands.

The B.V. is subject to a number of formalities that can be relatively time-consuming.²⁴ Prior to incorporation, the Dutch Ministry of Justice must provide an approval, known as a certificate of no objection. Before issuing the certificate, the Ministry investigates the criminal, bankruptcy or other records of the corporate founders to determine if there is reason to fear abuse of the corporate form. The B.V. must be incorporated by notarial deed

and executed in the Dutch language before a Dutch civil-law notary.²⁵ The name of the B.V. must include the abbreviation "B.V.," indicating its corporate form. A filing with the commercial register (*handelsregister*) must be made within eight days of incorporation.

The B.V. is managed by a board of directors consisting of one or more directors (*bestuurders*). The directors are generally appointed and removed by the shareholders. The directors are responsible for day-to-day management, must keep the books, publish annual accounts, and hold at least one shareholders' meeting each year. The directors need not be Dutch nationals or residents or hold shares in the company.

There is no requirement that nationals or residents of the Netherlands hold any shares in the B.V. The shares of a B.V. may be held entirely by one shareholder, and shareholders may include individuals, partnerships, or corporations. As mentioned above, the transfer of shares is restricted and, where permitted, transfer must be made by notarial deed. The registered office of the B.V. must hold the shareholders' register.

Dutch law requires a two-tier management structure when a B.V. qualifies as a "large" company. A B.V. meets the definition of a "large" company upon registering for a third consecutive year with the chamber of commerce (*kamer van koophandel*) that it meets the following three thresholds: (i) equity in excess of 13 million Euro, (ii) a works council (described below) imposed by law, and (iii) 100 or more employees in the Netherlands. Having met these thresholds for three consecutive years, the B.V. is subject to regulations known as the "*structuur* regime," which require the establishment of a supervisory board (*raad van commissarissen*) with powers to appoint the directors of the company, adopt financial statements, and provide approval for certain important management decisions.

A supervisory board supervises the policy of the management board and the

general course of corporate affairs but does not exercise executive functions.²⁶ A supervisory board fills its own vacancies, although shareholders and the works council can make recommendations and veto appointments under certain conditions. A supervisory board is not subordinate to the shareholders and need not accept instructions from shareholders' meetings. The sole concerns of a supervisory board are the "interests of the corporation" and the business enterprise.²⁷ A supervisory board can include Dutch or foreign and resident or non-resident directors, but may not include employees of the B.V. or other corporations wherein the B.V. holds 50 percent or more of the issued capital. The intention behind the two-tier management structure created by the *structuur* regime is to reduce the power of the shareholders and increase the power of the employee-based works council.²⁸

A partial exemption from the *structuur* regime is available for Dutch holding companies of an international group. This partial exemption allows the power to appoint the management board and adopt the annual accounts to remain with the shareholders. A B.V. is considered a Dutch holding company of an international group if at least 50 percent of the issued shares of the B.V. is held by a corporation that has a majority of its employees located outside the Netherlands.

A full exemption from the *structuur* regime is available for multinational holding companies that restrict activities exclusively or almost exclusively to the management and financing of group companies, provided that the majority of the employees employed by the group work outside the Netherlands.

The works council (*ondernemingsraad*) is discussed above in relation to the *structuur* regime and is required in business enterprises with 50 or more employees in the Netherlands. The purpose of the works council is to ensure greater involvement of employees in the running of a business. It has a legal function as a consultative body with different requirements depending on the

number of employees in the company. The works council must be consulted with respect to major financial and organizational changes, including acquisitions of new enterprises, transfers of parts of enterprises, relocations, and major investments and loans. The statutory powers of the works council permit it to have at least some influence on management decisions regarding mergers, acquisitions, takeovers, joint ventures, investments, split ups and divestitures.²⁹ If, after consultation, management determines not to follow the works council's recommendations, the works council may appeal to the Enterprise Chamber within one month of management's notification of its decision. The Enterprise Chamber will investigate whether or not the decision is "obviously unreasonable." Management's decision may not be implemented during this appeal process. Nevertheless, there are only a limited number of issues that require prior approval of the works council, which concern conditions of employment, such as holidays, social care, safety, profit sharing, pensions, training, and performance reviews.

Assigning Employees to the Netherlands

Upon establishing an appropriate legal entity, a Michigan business may desire to assign one or more US managers to work at the new entity in the Netherlands. To assign US employees to the Netherlands requires, among other things, work and residency permits for such employees.

The new legal entity will need to sponsor the US employee's assignment in the Netherlands and will need to apply for the employee's work permit. Work permits are issued by the Ministry of Social Affairs in The Hague through the district employment office and are granted only for specialized work. An application for a work permit must be made by the sponsoring employer at least 30 days before the commencement of employment. However, it may take two to three months to obtain a work permit, so it is important to begin the application process early. The work permit is issued for a fixed period

of time and is connected to an identified position at the Dutch employer applying for the permit. In principle, a work permit will be refused if the available "labor supply" related to the work to be performed is sufficient or is reasonably anticipated to be sufficient. Another ground for refusal is failure to report vacancy for the position in question to the district employment office at least five weeks prior to applying for the work permit, thereby giving it opportunity to scan the Dutch labor market for workers who have priority. Nonetheless, senior management and skilled workers generally have no difficulty in obtaining work permits, assuming all requirements are met.

Assigned employees with US citizenship need no visa to enter the Netherlands. The employees need have only a valid US passport. If an employee's assignment in the Netherlands is intended for more than three months, the employee must obtain a residence permit (*verblijfsvergunning*). Within eight days after arriving in the Netherlands, the employee must apply for a residence permit in person at the local foreign police (*vreemdelingenpolitie*) in the municipality or region in which she is residing.³⁰ To complete the application for a residency permit, the employee will need to provide a certified copy of her birth certificate with an apostille.³¹ Before issuing a residence permit to the employee, the local foreign police will require the employee to provide a copy of a valid work permit. The residence permit will not be granted until the employee has obtained her work permit. A residence permit is typically issued for a one-year period but, if granted in reliance on a work permit, the residence permit will expire when the work permit expires if earlier than one year. The foreign police will notify the US employee by letter to collect her new residence permit once it is granted. To collect a newly issued residence permit, the assigned employee will need to bring her passport and notification letter to the local foreign police.

An assigned employee must register with the citizen's registry

(*bevolkingsregister*) in the city wherein she lives. It is also advisable that assigned employees with US citizenship register with the U.S. Consulate General in Amsterdam. Registration can allow contact of the employee through the Consulate General in the case of emergency and facilitate replacement of a lost or stolen US passport.

Assigned employees intending to stay in the Netherlands for more than 185 days must obtain a Dutch driver's license. If the employee has received a 30 percent tax ruling (described below), the employee can exchange her US driver's license for a Dutch driver's license at the city hall (*gemeentehuis*) in which she resides.³²

Employees temporarily assigned to the Netherlands may benefit from a grant by the Dutch tax authorities of a special tax benefit, known as the "30 percent tax ruling." Under the 30 percent tax ruling, the employee may receive thirty percent of her salary as tax-free compensation for costs. Additionally, with the 30 percent tax ruling, the employee may elect treatment as a deemed non-resident taxpayer and, consequently, not be taxed in the Netherlands on passive income. To receive the 30 percent tax ruling, the employee must have specific expertise. The employer must also demonstrate that the employee's expertise is scarce or unavailable on the Dutch labor market. The 30 percent tax ruling is granted for a maximum period of ten years, divided into two terms of five years. Generally, top-level managers and employees with specialized skills who have more than 2.5 years of experience will be considered to comply with this requirement.

Conclusion

Whether the Netherlands is appropriate as a "gateway to Europe" for your Michigan business will depend upon your specific business needs and the comprehensive tax and legal analysis completed by your qualified advisors. Engaging skilled Dutch counsel will be critical to assisting you in this process and reviewing available investment incentives.³³ Many US law firms and consulting firms have

affiliations with international networks that can provide references for qualified Dutch counsel. Word-of-mouth recommendations from personal networks can also be invaluable.

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Mr. Smith is Associate European Corporate Counsel for Imation Europe B.V. in the Netherlands. He is a member of the Michigan State Bar and a graduate of Alma College (B.A.) and The Ohio State University College of Law (J.D.). He has lived and worked in The Netherlands since 1997. The views expressed in this article are Mr. Smith's and do not reflect those of Imation Europe B.V.

Endnotes

- 1 The country's official name is the Kingdom of the Netherlands (*Koninkrijk der Nederlanden*). "Holland" refers only to the two coastal provinces of North and South Holland.
- 2 The Netherlands has a land area (excluding water) of 33,883 square kilometers with a population of 16 million. Michigan has 147,121 square kilometers with a population of almost 10 million. At 472 people per square kilometer, the Netherlands is Europe's most densely populated country.
- 3 These rivers are the Rhine, the Maas, and the Schelde. Europe's major waterway is the Rhine, which runs 1,000 km from Switzerland to the North Sea at Rotterdam. The Rhine and its navigable tributaries and connecting canals run through Germany, France and Belgium. Austria, the Slovak Republic, Hungary, the former Yugoslavia, Romania and the Ukraine can be reached via the Rhine-Main-Danube canal. Poland and the Czech Republic can be reached via the Mittelland canal and the river Elbe.
- 4 Although the author intends to provide information relevant to such considerations, any business decision regarding placement and operation of a business in, or assignment of employees to, the Netherlands, or elsewhere, should rely only on informed, comprehensive guidance from qualified counsel.
- 5 Americans are often first introduced to the Dutch struggle with water by the 1865 novel, *HANS BRINKER, OR THE SILVER SKATES*, by American author Mary Mapes Dodge. In Dodge's novel, the (likely apochryphal) legend is recounted of a boy who heroically places his finger into a leaking dike to prevent it from bursting, saving the city of Haarlem. A statue was commissioned in 1950 in Spaarndam commemorating this legend of fiction with the inscription: "Dedicated to our youth, to

- honor the boy who symbolizes the perpetual struggle of Holland against the water."
- 6 A "polder" is land enclosed by dikes, which must be drained by pumps to avoid flooding. In the past, the Dutch relied on windmills to power the draining of the polders, but today polders are drained by diesel- or electric-powered pumps. To build and maintain dikes and dams necessary to create polders, the thirteenth century saw local polder boards arise, called *heemraadschappen*, which were committees including representatives of villages, towns, and local nobles that provided a mechanism for cooperation between these groups. JONATHAN I. ISRAEL, *THE DUTCH REPUBLIC: ITS RISE, GREATNESS, AND FALL 1477-1806* 10 (1995).
 - 7 The IJsselmeer was previously part of an inland sea, called the Zuider Zee. The Dutch dammed the mouth of the Zuider Zee in 1932, which converted thereafter to a freshwater lake that was renamed the IJsselmeer.
 - 8 Not surprisingly, a popular, tongue-in-cheek boast among the Dutch is: "God made the world, but the Dutch made the Netherlands."
 - 9 *Survey: Netherlands, Model Makers*, THE ECONOMIST, May 2, 2002.
 - 10 *Id.*
 - 11 Specifically, the current political arrangements began with the Wassenaar Agreement of 1982, wherein the Dutch government, employers, and trade unions agreed on wage restraints to strengthen the position of Dutch exports. This and subsequent agreements provided broad guidelines for wages at the national level, although actual wage negotiations are carried out at the sectoral level.
 - 12 Throughout the late 1990s, Dutch economic growth averaged 4 percent with inflation around 2 percent per year. Growth fell to 1.1 percent in 2001, and estimates are around 0.25 percent growth for 2002. In 2001, inflation was 4.5 percent and is estimated at approximately 3.3 to 3.5 percent for 2002.
 - 13 The twelve Dutch provinces are: Groningen, Friesland, Drenthe, Overijssel, Gelderland, Utrecht, North Holland, South Holland, Zeeland, North Brabant, Limburg, and Flevoland. The influence of Dutch expatriates in Michigan's Ottawa and Allegan counties is apparent, where villages include Vriesland, Drenthe, Overisel, Holland, New Holland, Zeeland, and Graatschap.
 - 14 STEVEN R. SCHUIT ET AL., *CORPORATE LAW AND PRACTICE OF THE NETHERLANDS* 153 (2d ed. 2002).
 - 15 See HANS GALAVAZI AND EELCO VAN DER STOK, *Tax in The Netherlands: Looking Good after all these Years*, GLOBAL COUNSEL 39 (September 2000).
 - 16 In these advance rulings, Dutch tax authorities set forth their interpretation of legislation, case law and official pronouncements and the relevant tax consequences deriving from their interpretation. Rulings are in general binding on the tax authorities as long as the facts are fully and completely disclosed (including a statement that the facts are not represented to the tax authorities of another country in a different way) and law remains the same. HANS GALAVAZI AND EELCO VAN DER STOK, *Tax in The Netherlands: Looking Good after all these Years*, GLOBAL COUNSEL 39 (September 2000).
 - 17 See Netherlands Foreign Investment Agency website at <http://www.nfia.com/html/location/transportation.html> and <http://www.nfia.com/html/location/rotterdam.html>.
 - 18 In the 17th century during the Dutch "Golden Age," the Netherlands was a cultural and economic super-power. The Dutch economy benefited particularly from its travel to, and trade with, distant lands – such as East Indies, Bengal, Ceylon and Malacca, for spices, pepper, silks and cottons. Amsterdam was the world's leading port and commercial center during the Dutch Golden Age.
 - 19 A Dutch government ministry reports that 77 percent of the Dutch population speak English, 59 percent speak German, and 15 percent speak French. Netherlands Foreign Investment Agency website at <http://www.nfia.com/html/location/facts.html> (providing figures from 1999).
 - 20 The process of European integration was launched in 1950, with six countries (Belgium, Germany, France, Italy, Luxembourg and the Netherlands). There followed four waves of accessions (1973: Denmark, Ireland and the United Kingdom; 1981: Greece; 1986: Spain and Portugal; 1995: Austria, Finland and Sweden) giving the EU 15 member states, which number is scheduled to increase with the accession of 13 eastern and southern European countries.
 - 21 Imports entering the EU common market via the Netherlands are liable for payment of customs duties, value-added tax ("VAT"), and any other applicable charges at the time of clearing the goods through Dutch customs. Goods temporarily imported (i.e., goods that will be re-exported from the Netherlands) are not subject to Dutch custom duties and VAT, but require a bond for the amount of customs duty and taxes as a security or use of a bonded warehouse until the goods are re-exported out of the country. The goods will be subject to custom duties and VAT imposed at the country of destination.
 - 22 The strong historical connection between the United States and the Netherlands extends to the colonial period in North America. The Pilgrims first lived in Leiden (1606-1620) after fleeing England and before landing at Plymouth Rock. New York City was first a Dutch colony named *Nieuwe Amsterdam*. After the Dutch lost the colony to the English, the colony was renamed New York. The Dutch heritage of New York continues in names such as Manhattan, Staten Island, Yonkers, the Bowery (from *bouwerij*, the 17th century Dutch word for farm), Brooklyn (*Breukelen*), Harlem (*Haarlem*), Flushing (*Vlissingen*) and Cramercy (derives from colloquial 17th century Dutch *krom-marisje*, or crooked marsh). Coney Island (derives from the 17th century Dutch *Conyne Eylandt*, or rabbit island), and Wall Street (*Walstraat*, occupied centuries ago by Dutch merchants). See The Netherlands Embassy website at http://www.netherlands-embassy.org/c_story.html for a more detailed history of the US-Netherlands relationship.
 - 23 See US Department of Commerce website at <http://www.usatrade.gov/website/CCGnsf/CCGurl/CCG-NETHERLANDS2002-CH-1-005D01B2>.
 - 24 STEVEN R. SCHUIT ET AL., *CORPORATE LAW AND PRACTICE OF THE NETHERLANDS* 36 (2d ed. 2002).
 - 25 The B.V.'s articles of association are attached to the notarial deed but are generally less detailed than the typical by-laws of US companies. See *Id.* at 34.
 - 26 *Id.* at 133.
 - 27 *Id.*
 - 28 *Id.* at 113.
 - 29 *Id.* at 2.
 - 30 The foreign police are generally located at police headquarters in the larger cities. However, the foreign police for Amsterdam are located at Johan Huizingalaan 757, 1066 VH Amsterdam (tel: +31 20 559 6300).
 - 31 An apostille can be obtained at Michigan's Office of the Great Seal, located in Suite 100, Capitol Tower Building, 110 W. Michigan Avenue, Lansing, Michigan (tel: 517 373 2531, fax: 517 373 3706).
 - 32 She will also need to submit: (i) a copy of a statement issued by the Dutch tax office in Heerlen regarding the employee's 30 percent tax ruling, (ii) the original, valid foreign driver's license, (iii) a birth certificate with apostille or certificate of residence from the municipality, (iv) a statement of capability, and (v) two identical, recent passport photographs.
 - 33 The Dutch government and the European Union grant incentives to encourage investment in new business activities, expansion of existing activities, research and development in new technologies and investment in regions with weaker economies. While available incentives may not be dispositive in your decision process, proper planning should include efforts to fully capitalize on those available. Available incentives should generally be arranged and applied for before any official commitment related to investment in the Netherlands is made, so the investigation should begin early. Michigan businesses can also contact the Chicago offices of the Netherlands Foreign Investment Agency (NFIA), a division of the Dutch Ministry of Economic Affairs, for more information about direct investments in the Netherlands.

State Bar of Michigan International Law Section

Treasurer's Report

Based on the information provided by the State Bar of Michigan for the ten months ending August 31, 2002, the Treasurer can report the following with respect to the financial status of the International Law Section for the fiscal year ending September 30, 2002.

| | |
|------------------------|-------------|
| INCOME | |
| Dues | \$13,410.00 |
| Student/Affiliate Dues | 205.00 |
| Seminar Income | -0- |
| Total Income: | \$13,615.00 |

| | |
|-------------------------|-------------|
| EXPENSES | |
| Seminars | \$ 772.94 |
| Section Meetings | 1,694.95 |
| Newsletter | 4,991.76 |
| Printing | 116.00 |
| Annual Meeting Expenses | 257.30 |
| Total Expenses: | \$ 7,832.95 |

| | |
|----------------------|-------------|
| NET INCOME: | \$ 5,782.05 |
| BALANCE FORWARD: | 15,384.83 |
| NET SECTION BALANCE: | \$21,166.88 |

A small number of expenses are expected to be posted after August 31, 2002, including approximately \$1,000 expenses associated with the Annual Meeting.

During the period from October 1, 2001 to September 30, 2002, the following policies were implemented:

The Michigan International Lawyer has been published as an electronic edition. Eventually, the print edition will be phased out, which will save the Section substantial printing costs in the future.

No seminars are underwritten by the Section which have not been approved by the Executive Council in advance, both as to content and budget. The International Law Section sponsored seminars are minimally subsidized by the Council because we were able to implement a policy where the seminar organizers arranged for seminar sponsors and participating member law firms to underwrite the events.

In order to encourage increased participation by members in Section activities, the Council hosted a number of post-meeting dinners open to all members of the Section. This has noticeably increased participation by members of the Executive Council as well as the Section.

Respectfully submitted,
Randolph M. Wright
Treasurer

Calendar of Meetings

Dates & Locations of Council Meetings

2003

| | |
|-----------------------------|------------------------------|
| January 21 | Butzel Long—Bloomfield Hills |
| March 3-6 | SAE—Cobo Hall, Detroit |
| April 29 | U of M Law School—Ann Arbor |
| 3 rd week of May | World Trade Week |
| June 10 | Planning/Section Outing |
| September | Annual Meeting—Lansing |
| November 4 | Berry Moorman—Birmingham |

2004

| | |
|------------|---------------------------------|
| January 20 | Butzel Long—Detroit |
| April 20 | U of D Mercy Law School—Detroit |
| June 15 | Planning/Section Outing |
| September | Annual Meeting |
| November 9 | Miller Canfield—Troy |

Publication Deadline Dates *Michigan International Lawyer*

| | |
|--------------|-------------------------|
| Spring Issue | Articles due April 1 |
| Fall issue | Articles due August 1 |
| Winter Issue | Articles due December 1 |

If you know of any upcoming event, please let us know.
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Letter from the Chair



Clara DeMatteis Mager

In preparing to write this letter, I reviewed several past issues of the *Michigan International Lawyer*. I also found myself reading "Letters from the Chairs" of other organizations. I started to see a pattern. The letter needed to be upbeat, informative, a recitation of past as well as future events, congratulatory comments to members who have worked diligently and given of their time, commentary on the times we live in, the season of the year, and world events. This presented a pretty tall order and I wasn't sure that I wanted to take the same approach. I decided to write how I feel about the Section—right from the heart.

First of all, I want to thank the members of the Section for giving me this opportunity to be their Chairperson. I sincerely believe it is an honor and a privilege to serve this Section. I welcome the opportunity to follow the leadership of Howard Hill and my many talented predecessors. The Officers and Council Members for 2003 are an outstanding group of lawyers. They are from small and large law firms as well as from Fortune 500 Companies. I look forward to working with the Officers, Council Members, Liaisons and, of course, our members.

I have been involved in the Section since its formation in 1988. I have met and continue to meet wonderful people, with insightful ideas, willing to give of their precious time to move this Section forward. I still recall those beginning Council meetings in Ann Arbor, in a small room in the building adjacent to the law library where we followed a maze through the U of M Law Library to find our small, special room. And then there were the dinners that followed at Bella Ciao on Liberty Street. Believe me, every year has its memories.

When I was elected Chairperson, family members and colleagues extended good wishes. I also received two special congratulatory notes, one from Roman Rewald and the other from Tim Stock. Roman is currently with Weil, Gotshal & Manges in Warsaw, Poland and Tim is in Arlington, Virginia. Although I have not

seen either in several years I feel there is still a connection—a connection formed by my involvement in the Section. In responding to Roman's email, I took the opportunity to ask Roman to write an article for the *Michigan International Lawyer*. He graciously accepted.

I urge our members to get involved. There are numerous opportunities to do so, including four Section meetings and programs during SAE Week in March and World Trade Week in May. I encourage our Committees to meet and plan an event such as a luncheon, breakfast or a meeting with a speaker on a topic of interest to the Committee members. Since my area of practice is Immigration Law, I am certain the Immigration Committee will have a program sometime in February 2003!

* * *

The weather is cold and often dreary this time of the year, the economy is still sluggish, world events haven't improved, we have a Department of Homeland Security, random checks and the war on terrorism—the world has changed since we started our Section. We are all busy. But, I hope you will take the time to get involved, to meet wonderful people, and share your talents to continue to move the Section forward. The Section needs you.

I wish you a joyful season. Let us all pray for peace, health and prosperity in the coming year.



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