

INTERNATIONAL LAW SECTION Annual Report

In October of 2005, we held our Annual Meeting and elected Bruce Birgbauer as Chair, Lois Bingham as Chair-elect, Scot Fenstermaker as Secretary and Piotr Swiecicki as Treasurer, Narinder Kathuria, Marc McGuire, Andrew Segovia and Nick Stasevich were elected as Council members to a term expiring in 2008. Council members have been contributing actively, and our meetings have been well attended.

At our Annual Meeting, the Section had an excellent program entitled *Business and Legal Challenges in China and India for Automotive Suppliers*. This program and its speakers are described in an attachment to this report.

At our December meeting, our speaker was John Carroll of the Detroit Regional Chamber of Commerce. John is Senior Vice President, Business Development and Executive Directors, Detroit Region Economic Partnership. He gave a very interesting talk on new business opportunities and future plans for the Detroit Region.

At our January meeting, Andrew Doornaert of Miller, Canfield gave a very useful presentation entitled *Legal Issues of Importing and Exporting; Best Practices for Companies*. Mr. Doornaert pointed out that companies that do not dedicate adequate resources to ensure import and export compliance risk civil and criminal penalties, as well as, delays in their supply chain.

Our Section has been supporting our Michigan law schools. We gave \$500 to help fund the International Moot Court Competition, which was held at Wayne State Law School. Not only did Section members help as judges, but also Lois Bingham spoke to the participants at a dinner in their honor. Your Chair made a presentation at Cooley Law School in Lansing on "Why Law Students Should Consider a Career in International Law." The classroom was filled, and the students asked many excellent questions.

Our theme for this year has been "globalization." Each day we see the effects of globalization in our lives. Our cars and trucks now come from many parts of the world. Even U.S. made cars and trucks have many components from Canada, Mexico, South America, Europe and Asia. In addition, the clothes we wear each day come from a multitude of countries.

Globalization is here to stay, and it will affect all of us. For example, the United States is now in global competition for resources such as oil, gas, steel, cement, resins and many other items. As countries with huge populations become more industrialized and more reliant on automotive vehicles, pressures on pricing and availability of products has, and will continue, to have an effect on all of our lives.

Another factor in globalization is the spread of terrorism around the world. On April 26, 2006, we held a Council meeting at the University of Michigan Law School. Our speaker was U of M Professor Stephen R. Ratner who gave a fascinating presentation on International Law and Terrorism. A copy of his law school course curriculum on this same subject is attached.

The timeliness of Professor Ratner's presentation became evident in early June when an Islamic group of 12 men and 5 teenagers were arrested near Toronto after the group acquired three tons of ammonium nitrate which can be mixed with fuel oil to make powerful explosives. The explosives were allegedly intended for locations in the City of Toronto and Canadian governmental officials.

Our next Council meeting will be held on June 20, 2006, at the Detroit Athletic Club to discuss strategic planning and our goals and objectives for 2006-2007.

This summer or early fall, we will try to repeat our very successful program entitled "Business and Legal Challenges in China and India for Automotive Suppliers." We anticipate holding the program in Western Michigan.

As previously announced, we plan to hold the International Law Section's Annual Meeting in conjunction with the State Bar Annual Meeting which is being held September 13-15, 2006. Our meeting is scheduled at 2 p.m. on Thursday, September 14. Lois Bingham as Chair-elect has organized a program after the Annual Meeting entitled "Going Global: Manufacturing Operations in Mexico and Other Key Latin American Countries", which are becoming increasingly important areas to the United States.

In conclusion, I want to thank my Council members and officers for their insights, support and friendship. I also want to thank Susan McMann, our State Bar liaison, for her experience and helpfulness. Finally, I want to wish my Chair-elect, Lois Bingham, great success in the year ahead.

Respectfully submitted,

Bruce D. Birgbauer, Chair

Section Meeting Review:

Business and Legal Challenges for Automotive Suppliers in China and India

MIL Staff

After the Annual meeting of the International Law Section of the State Bar of Michigan held in the Sheraton Hotel, Novi, on October 6th, the Section hosted the program: *Business and Legal Challenges for Automotive Suppliers in China and India*. Bruce D. Birgbauer, Chair of the Section, acted as moderator to the four speakers, Charlie Choi, Richard Goetz, Seema Chaturvedi, and Gerald B. Fedchun. A brief overview of their statements follow.

Globalization and the Chinese Automotive Industry

Charlie Choi, Associate Principal, McKinsey & Company

Choi discussed the state of the automotive industry in China and several issues to be considered in the decision to relocate operations to China.

Quality. China has been traditionally considered to be a low cost location to produce goods that may lead to compromises in quality, but China has evolved into a host for high quality manufacturing, as demonstrated by the lean factories of Audi and Honda.

Planning. In order for a transnational relocation to be as successful, business leaders must plan the operations carefully. A relocation from the West to China may take up to 30% more planning time than other relocations. Specifically, interested companies should plan for home office representatives to stay in China longer,

potentially needing several years to execute a smooth transi-



From left to right, former section President Randolph M. Wright, incoming President Bruce Bingbauer, and presenters Gerald B. Fedchun, Charlie Chan, Richard Goetz, and Seema Chaturvedi

tion. A longer transition time should facilitate more efficient production and profitability. In order to obtain maximum profits from potential domestic sales in China, planning should address potential sourcing from within China. Lawyers can help their clients prepare for related issues by recognizing the importance of dealing with business decisions in a synchronized, integrated way.

Labor Costs. The low cost of labor has often been a driving factor in a company's decision to relocate to Asia. Labor costs have recently become inflated in China, but remain significantly lower than the United States

The Automotive Market. There has been an explosive growth of over 40% in the automotive market in China in recent years. However, that situation is leveling off as the domestic market becomes saturated with cars, diminishing demand and profits.

Final Decision. To decide where or when to move, leaders must find a place with high productivity and competitive cost of materials. China offers a flexible labor market, an efficient domestic market,

and a way (although not always an easy one) to take profits out of the country.

Legal Challenges for Automotive Suppliers in China

Richard Goetz, Associate General Counsel, Ford Motor Company

Goetz identified several challenges facing automotive suppliers in China.

Control. When opening a plant in China, suppliers must determine whether to control operations via equity ownership or contracted rights.

Those considering gaining control through equity should be aware that complete ownership of a company in China is permitted only if it is an export-only company. The Chinese government will allow up to 50% equity in auto assembly. Those electing equity, must determine whether to create a Wholly Foreign Owned Enterprises (WFOE) or joint venture. A joint venture is often more efficient in terms of resources and transition time, because it allows representatives from the non-Chinese compa-



Charlie Choi, Associate Principal, McKinsey & Company



Richard Goetz, Associate General Counsel, Ford Motor Co.

ny to work with the Chinese company to ensure cultural understanding and a smoother transition.

A joint venture may provide additional intellectual property protection and control over sales, quality, and services.

Drafting a contract to provide control raises several challenges. For example, even with careful drafting, protection of intellectual property rights may be limited. Furthermore, contractual control limits the flexibility of suppliers to obtain political help. It is becoming more common for suppliers to provide foreign arbitration clauses in contracts, often selecting the Swedish courts to resolve disputes. Enforcement of breach of contract remedies or foreign arbitration awards may prove difficult.

Location. As in selecting any location, interested parties should consider the location of key customers, suppliers, and skilled workers. China also has tax incentives to drive investment in key areas, including incentives to operate in Central or West China.

Reputation. Suppliers operating anywhere overseas should be diligent to protect their reputations. In particular, suppliers should be aware of their obligations under the Foreign Corrupt Practices Act (FCPA), human rights laws, environmental regulations, workers'

health and safety regulations, and other compliance issues. Suppliers should pay attention to their own compliance and the compliance of their suppliers, partners and distributors.

Intellectual Property Rights. One of the greatest challenges facing suppliers operating in China is the risk to intellectual property rights. Suppliers can reduce the risk, but not eliminate the risk, by following registration procedures and closely monitoring the registries and the market for similar products.

Tax Issues: Sources suggest that the income tax may soon be lowered from 33% to approximately 20%.

Opportunities in India: 2005 and Beyond, from the perspective of an investment banker

Seema Chaturvedi, Managing Director, Accelerator Group, LLC

Chaturvedi discussed the business climate in India and potential opportunities for automotive suppliers.

The next step now is to integrate India in the global automotive industry. This is just now starting to take place, with the India Auto Expo that will be opened in New Delhi on January 12-17, 2006.

Overview of the Market. Many OEMs have created joint ventures in India, driven by the lifting of restrictions on foreign owned industries in 2001. Furthermore, 9 out of the 10 largest auto-component suppliers have joint venture operations in the northern and southern regions of India. There are also 483 parts suppliers in India, mainly producing

engine parts. India is striving to meet international quality standards. Currently, 277 auto suppliers have certified for ISO 9000, and 9 have certified for QS 9000.

India is mainly a two-wheeled vehicle market, but all vehicle segments are growing. India is the fourth largest in the pas-

senger vehicle market and the fifth largest in the tractor market, with a fast increasing exports sector. The component manufacture segment is expected to grow at a rate of 25% or 30% per annum.

Exports are growing, and they have been estimated to reach \$10 billion by 2010. Indian companies, which operate with zero debt, are for the first time seeking to acquire foreign companies. As suppliers are setting shop in China, there is increased availability of private equity in the Indian component sectors that should be taken into account.

Educated Work Force. India has a well-educated workforce with a large number of engineers educated in English and a new generation of management professionals trained in the United States. Indian companies strive to be global companies rather than domestic providers.

Profitability. Several reasons explain India's success. There has been steady growth and strong in-house institutions. Furthermore, the consumer market has grown considerably in rural and urban areas. Roughly fifty percent of the working population can now buy \$8,000 cars, a sharp increase from the past that signals a profitable domestic market for automotive companies settling in India. The low cost of materials and labor costs contribute to high profit margins. In addition, India enjoys an educated labor force and an environment with strong respect for engineering and design patents.



Seema Chaturvedi, Managing Director of the Accelerator Group, LLC during her presentation



The audience during the presentations

Business and Legal Challenges for Automotive Suppliers in India

Gerald B. Fedchun, President, Automotive Parts Manufacturers' Association of Canada



Fedchun explained the challenges and opportunities related to establishing a company in India.

Overview. Asia is providing lower costs to automotive suppliers to the point that there has been a shift to buy fewer products from Mexico and to purchase more from Asia. India, Thailand, Indonesia, and Vietnam have become

strong competition to China as hot places to locate.

India has strong engineering, development, and information technology sections. It is the largest growing market for light vehicles, with estimated growth from one million to two million for 2009. The market is growing at a rate of 25% a year, with investment of \$3 billion.

Key Advantages. India presents many advantages for companies who choose to settle there. As an English speaking country, communication from Indian offices to with other English-based offices is easier and allows for the transfer of officers and facilitates the transfer of officers and expertise. In spite of low domestic volume sales, India is a competitive market due to the low cost of labor, including low cost highly-skilled personnel. India provides a high level of productivity using TPS, as well as high quality of engineering and engineering centers. Other advantages to operating in India, include the recent liberalization measures, lower foreign exchange con-

trols, allowance of 100% equity participation, reduced tariffs, and better infrastructure than other Asian countries.

Other Advantages. Although obtaining a patent is a lengthy and complicated process, India has strong intellectual property protection mechanisms. India is also an English common law system, where the judiciary is an independent from the other branches of government. Suppliers may also consider it to be an advantage that India is a democracy.

Challenges. India still has poor infrastructure, unreliable power service, and a deficient road system. Suppliers may also be frustrated by the government bureaucracy, which may cause delays and difficulties, particularly to smaller companies. Corruption is also an issue. Finally, the legacy of the caste system may interfere with staffing.

Going Forward. Manufacturing in India would support exports and a growing domestic market. In general, companies tend to use their own engineers when abroad, but in India local engineers can, and should, be used to enhance the value of relocation. Finally, as suppliers move from China to other Asian countries, companies aiming at the American market should not forget that India is seven days closer than China!

Treasurer's Report

STATE BAR OF MICHIGAN

International Law Section
For the four months ending 01/31/06

	Current Activity January	Activity to date January
Income:		
International Law Section Dues	300.00	12,005.00
International Stud/Affil Dues		45.00
Total Income	300.00	12,050.00
Expenses:		
ListServ	25.00	100.00
Annual Meeting Expenses	432.20	548.80
Travel Expenses		63.06
Copying		35.05
Printing		99.72
Newsletter		1,233.16
Miscellaneous		2,342.38
Total Expenses	457.20	4,322.45
Net Income	(157.20)	7,727.55
Beginning Fund Balance:		
Fund Bal-International Law Sec		30,312.96
Total Beginning Fund Balance		30,312.96



LAW SCHOOL COURSE DESCRIPTION

INTERNATIONAL LAW AND TERRORISM

The campaign by numerous states and international organizations against Al Qaeda and other nonstate terrorist actors raises critical questions for international law. Terrorism and the response to it have challenged traditional distinctions in international law, including those between armed conflict and law enforcement, civilians and combatants, military and civilian justice, and torture and legitimate intelligence gathering. They also force us to address difficult issues regarding the relevance of international law to governmental decisionmaking. This seminar will examine a variety of issues associated with the “war on terrorism,” including the legitimacy of military force, treatment of detainees, prosecution of terrorists in different fora, renditions of suspects outside normal law enforcement channels, and methods to stop financing of terrorism. In the process we will examine areas of the law of armed conflict, human rights law, the law of international organizations, and international criminal law. Prerequisite: Transnational Law or comparable introduction to international law.