Industry & Trade Summary

Legal Services

USITC Publication 2594 (SV-3)
February 1993

OFFICE OF INDUSTRIES
U.S. International Trade Commission
Washington, DC 20436

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PREFACE

In 1991 the United States International Trade Commission initiated its current Industry and Trade Summary series of informational reports on the thousands of products and services imported into and exported from the United States. Each summary addresses a different industry area and contains information on product uses, U.S. and foreign producers, trade barriers, and industry trends. Also included is an analysis of the basic factors affecting trends in consumption, production, and trade of the domestic and foreign markets.[1]

This report on the legal services industry covers the period from 1986 to mid-1991 and represents one of approximately 250 to 300 individual reports to be produced in this series during the first half of the 1990s. Listed below are the individual summary reports published to date on the service industries sectors.

USITC publication number	*Publication Date*	*Title*
2456 (SV-1)	November 1991	Insurance
2569 (SV-2)	October 1992	Advertising
2594 (SV-3)	February 1993	Legal Services

[1] The information and analysis provided in this report are for the purpose of this report only. Nothing in this report should be construed to indicate how the Commission would find in an investigation conducted under statutory authority covering the same or similar subject matter.

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INTRODUCTION

The legal services industry consists of "establishments which are headed by members of the bar and are primarily engaged in offering legal advice or services."[1] Partly due to the changing nature of the legal profession, what was once a profession has now evolved into a major industry. The legal services industry has witnessed dramatic growth since the 1970s. In 1991, there were about 775,000 lawyers in the United States, compared to approximately 275,000 in 1970. Receipts increased from about $12 billion in 1975 to an estimated $100 billion in 1991 (figure 1).[2] This growth has primarily resulted from increased corporate demand for legal services, given a changing business environment characterized by deregulation, corporate restructuring and the emergence of new finance and investment instruments.

This report analyzes domestic and international developments in the legal services industry, focusing primarily on the effects of the industry's growth during the 1980s and subsequent retrenchment in the 1990s, as well as the evolution of international trade in legal services and the pattern of demand for U.S. legal services in important foreign markets.[3] Industry analysts generally use developments in the business and financial law sectors as weathervanes for the entire industry. In this study, as well, the primary focus will be on the business-related sector because these law firms are most active in the provision of international legal services.

In recent years, U.S. law firms have benefited from the liberalization of legal services trade in important foreign markets in Western Europe and Asia. Furthermore, multilateral negotiations are taking place concerning the elimination of nontariff barriers to international trade in services. However, since the legal services industry is a regulated profession, different national licensing requirements may limit the extent of liberalization of international trade in legal services.

The provision of legal services differs significantly from the production and sale of tangible consumer merchandise. Direct measures of output, demand and competitiveness are, at best, difficult to determine due to the customized nature of legal services. Consumers purchase legal services in order to facilitate the achievement of some other objective, and, in many cases, only a lawyer can provide the means toward this end. In other cases, substitutes, such as paralegals or self-representation, may be able to fulfill the demand for legal services. In general, the demand for legal services is not likely to be very price elastic. In other words, consumers would not necessarily purchase a greater quantity of legal services simply because they became cheaper.

In the legal services industry, external developments indirectly increase the range of "products" available on the market, creating additional supply- and demand-side opportunities. Changes in federal and state law have in a sense created demand for legal services in such areas as product and personal liability, bankruptcy, family law, and civil rights. Business corporations now require a greater volume of legal services in order to comply with myriad regulations at all levels of government. Developments in the international business and finance arenas, such as the evolution of the Eurodollar market and new debt and investment instruments have increased the scale and scope of business corporations' demand for legal services and have broadened the range of services that lawyers are able to offer.

Law firms increasingly offer business-related legal services on an international scale. The largest U.S. law firms have maintained some form of foreign presence for decades, but internationalization in the form of foreign branch offices became a widespread trend beginning in the 1960s with the expansion of U.S. multinational corporations. The number of such firms grew at an even faster pace during the 1970s and 1980s with the growth of international banking and finance. In 1991, U.S. exports of legal services, i.e., cross-border transactions, amounted to nearly $1.2 billion (table 1).[4] The European Community (EC)[5] and Japan are the most important foreign markets for U.S. legal services, accounting respectively for 46 and 26 percent of total foreign sales of U.S. legal services in 1991 (figure 2).[6]

U.S. imports of legal services are less substantial, amounting to $222 million in 1991 (table 2). However, this represents a more than 100 percent increase over 1987 imports (table 2). Increased demand for imported legal services may be partly due to increased Japanese and European foreign investment in the United States after 1985. From 1987-1991, several States' introduction of regulations allowing foreign lawyers to practice in the United States as foreign legal consultants also helped to facilitate this increase. British law firms had the largest single-country percentage and supplied 25 percent of imported U.S. legal services in 1991.

Despite the expansion of international trade, the foreign revenues of the U.S. legal services industry appear insignificant compared to domestic revenues, amounting to less than 2 percent of total domestic revenues in 1991.[7] Nevertheless, this represents a

[1] Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987*. SIC code 8111.

[2] U.S. Department of Commerce, *Statistical Abstract of the United States, 1992*, and Richard H. Sander and E. Douglass Williams, "Why Are There So Many Lawyers? Perspectives on a Turbulent Market," *Law and Social Inquiry: Journal of the American Bar Foundation*, Summer 1989, p. 435.

[3] For this report, USITC staff conducted extensive interviews with lawyers from several major U.S. law firms.

[4] These figures represent unaffiliated or direct exports and imports, as opposed to receipts and payments derived from direct foreign investment, i.e., branch offices.

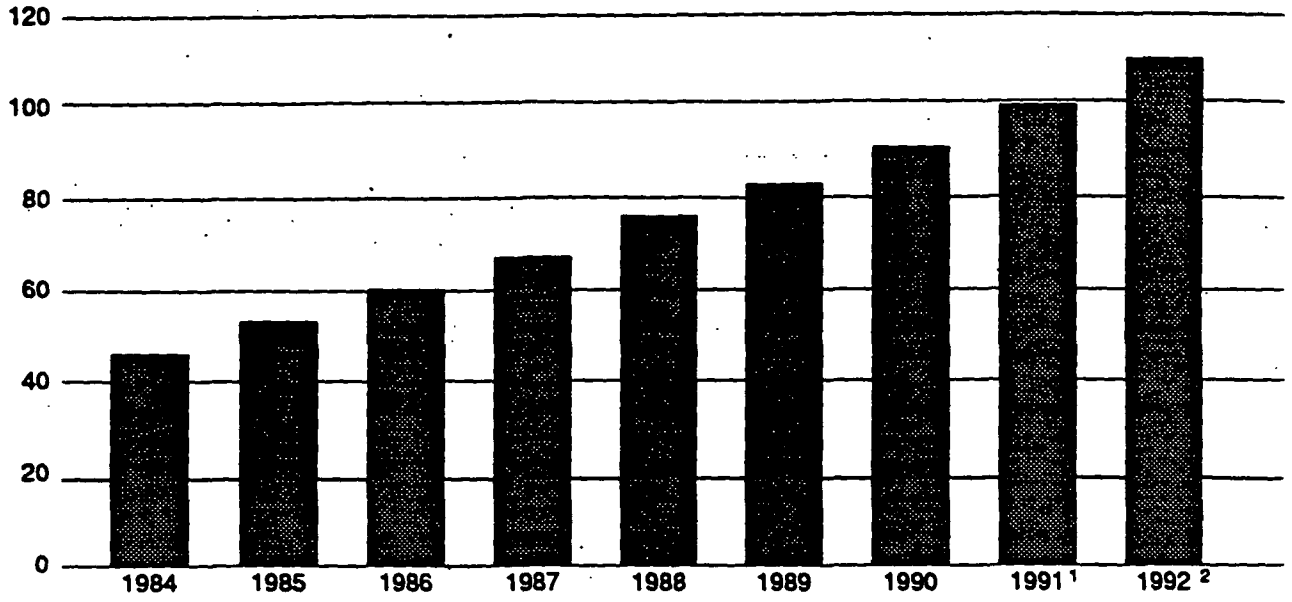
[5] The European Community member states are: France, Germany, Italy, the Netherlands, Belgium, Luxembourg, the United Kingdom, Ireland, Denmark, Greece, Spain, and Portugal.

[6] U.S. Department of Commerce, "U.S. International Sales and Purchases of Services," *Survey of Current Business*, September 1991.

[7] Ibid.

[8] Ibid.

Figure 1
U.S. legal services industry domestic receipts, 1984-92



[1] Estimate.
[2] Forecast.
Source: Statistical Abstract of the United States, 1991 and 1990, and "Legal Services," *U.S. Industrial Outlook,* 1992, pp. 53-4, U.S. Dept. of Commerce, Bureau of the Census.

Table 1
United States. Legal Services, Unaffiliated Receipts, 1987-91[1]

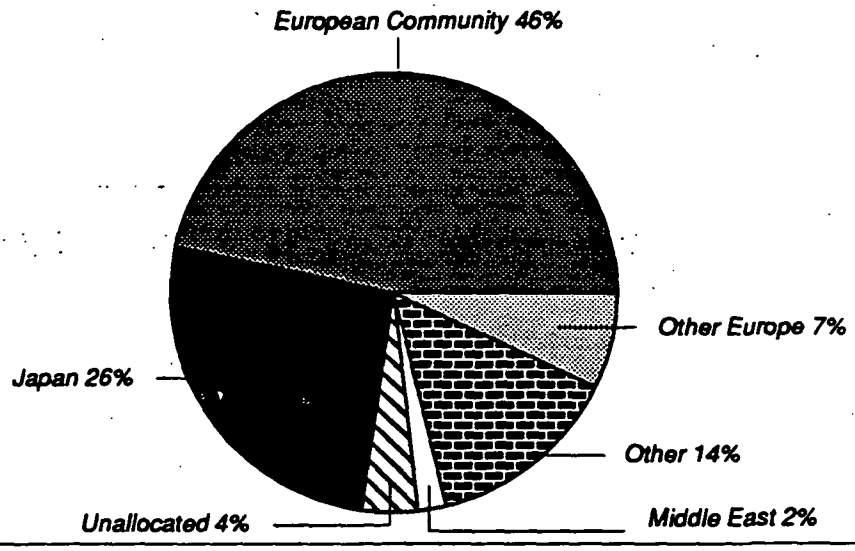
	1987	*1988*	*1989*	*1990*	*1991*
	(Millions of dollars)				
Europe					
EC	55	98	130	153	539
Non-EC	6	14	18	19	87
Total, Europe	61	112	148	172	626
Asia/Pacific					
Japan	21	53	72	112	302
Hong Kong	3	6	8	6	12
Other	2	4	7	6	40
Total, Asia/Pacific	26	63	87	124	354
North America					
Canada	11	20	18	18	65
Mexico	2	1	3	4	12
Total, North America	13	21	21	22	77
South America & Other Western Hemisphere	3	5	13	10	34
Middle East	1	10	16	15	28
Africa	(2)	2	1	3	2
Unallocated	43	49	114	109	52
Total	147	262	400	455	1,173

[1] These data are estimates calculated by the Bureau of Economic Analysis, U.S. Department of Commerce.
[2] Less than $500,000.

Note.—Figures may not add to totals shown due to rounding.

Source: "U.S. International Sales and Purchases of Services," *Survey of Current Business,* September 1991 and September 1992.

Figure 2
U.S. legal services industry exports by country or region, 1991



Note.—Figure does not add up to 100% due to rounding.

Source: "U.S. International Sales and Purchases of Services," *Survey of Current Business*, September 1991 and September 1992.

Table 2
United States. Legal Services, Unaffiliated Payments, 1987-1991[1]

	1987	1988	1989	1990	1991
	(Millions of dollars)				
Europe					
EC	11	22	21	35	106
Non-EC	0	0	1	3	18
Total, Europe	11	22	22	38	124
Asia/Pacific					
Japan	2	[3]	4	6	24
Hong Kong	1	3	4	2	3
Other	1	0	1	6	23
Total, Asia/Pacific	4	[3]	9	14	50
North America					
Canada	1	[3]	2	2	14
Mexico	0	[2]	[2]	[2]	6
Total, North America	1	[3]	2	2	20
South America & Other Western Hemisphere	2	9	1	1	9
Middle East	[2]	1	1	1	2
Africa	0	0	[2]	[2]	2
Unallocated	37	[3]	47	54	14
Total	55	98	82	110	221

[1] These data are estimates calculated by the Bureau of Economic Analysis, U.S. Department of Commerce.
[2] Less than $500,000.
[3] Suppressed to avoid disclosure of data on individual companies.

Note.—Figures may not add to totals shown due to rounding.

Source: "U.S. International Sales and Purchases of Services," *Survey of Current Business*, September 1991 and September 1992.

significant increase over 1987, when foreign sales amounted to 0.2 percent of total domestic revenues.[9] However, official trade statistics understate the total volume of international legal services revenues because U.S. legal services tend to be sold more through foreign investment than direct exports.[8] In addition, many law firms maintain consolidated financial statements, making it difficult to determine the amount of revenue generated by the firms' individual foreign offices.[10]

UNITED STATES INDUSTRY

Evolution from Profession to Industry

Law is no longer the gentlemanly, clubby profession it once was, primarily because of the amounts of money involved and the level of competition. While it continues to be a profession in the sense that national or sub-national Bar associations and courts set guidelines for admission and conduct, bottom line considerations have become the most important component of management decisions, especially at the large business law firms. As a partner in a major Wall Street firm stated, "It's a business and to survive you have to play it as a business."[11]

The transformation from legal profession to legal business can be traced to the late 1970s and early 1980s as the demand for business-related legal services increased in scale and scope. In response to this growing demand, the large law firms became even larger in order to handle business corporations' increasingly complex legal matters.

As the industry grew, competition forced law firms to act more like businesses and to use corporate management techniques, such as identifying profitable niche markets, packaging firms' services to appeal to target markets, and advertising these services to specific markets. The largest firms claimed to be "full-service" law firms that could provide the range of specialized legal counsel required by major corporations and financial institutions. Increased competition for corporate clients forced law firms and lawyers to engage in more aggressive marketing strategies to capture the business needed to maintain high profit per partner ratios and to cover escalating overhead costs and salaries.[12]

[9] Foreign direct investment in legal services entails the establishment of overseas branch offices, while international trade or direct export involves the temporary physical relocation of a U.S. lawyer to serve a client in the client's home country or the foreign client receiving legal counsel from a U.S. lawyer in the United States. Data on sales of affiliated U.S. legal services are unavailable because law firms are generally organized as partnerships and are thus not required to provide public information on earnings and revenues.

[10] Executive director of a major Washington, D.C. law firm, telephone interview with USITC staff, October 21, 1991.

[11] Quoted by Josephine Carr in "Shakeout in the 80s," *International Financial Law Review*, June 1987, p. 5.

[12] Steven Brill, "The Law Business in the Year 2000," *The American Lawyer*, June 1989, p. 14.

Regulations Governing the Practice of Law in the United States[13]

U.S. Lawyers

In the United States, the practice of law is State-regulated, and each State establishes the requirements for admission to the State Bar. In all States, attorneys must become members of the State Bar in order to practice law on a continuing basis.[14] Generally, candidates seeking admission to the Bar must have completed a course of study at an American Bar Association (ABA) accredited law school and must have passed a state bar examination. State Bar examinations vary in length and scope, but some States' examinations include a multi-state section, which enables attorneys to practice in other states with reduced additional examination requirements. Other requirements for admission to the State Bar may include residency conditions (although many of these have been struck down by the U.S. Supreme Court) and moral and ethical character requirements.

Foreign Lawyers

Until the 1970s, State Bar rules held that foreign lawyers in the United States who gave legal advice on a continuing basis, including advice on the law of their own country, were considered to be engaged in the unauthorized practice of law and were subject to sanctions. However, by the 1970s, many U.S. law firms had already established substantial U.S. and international law practices in West European countries.

In 1971, the French Government passed the *Conseil Juridique* or legal advisor law that contained a reciprocity provision authorizing French authorities to restrict the activities of foreign lawyers, including U.S. lawyers, in France unless French lawyers were granted similar privileges in foreign jurisdictions.[15] Under pressure from the New York City Bar Association and the major Wall Street law firms, the New York State Court of Appeals adopted rules authorizing the licensing of "a person admitted to practice in a foreign country as an attorney or counsellor...as a legal consultant, without examination and without regard to citizenship . . ."[16] The New York Foreign Consultant Rules of 1974 served as a model for jurisdictions such as the District of Columbia, California, Texas, Michigan, Massachusetts, and Hawaii that implemented regulations allowing foreign attorneys to practice as legal consultants.

[13] U.S. lawyers' scope of activity and the conditions of practice vary widely in different overseas markets. Therefore, these issues will be discussed in the next section, along with features of the major foreign markets for U.S. legal services.

[14] In some U.S. States and Anglo-Saxon common law countries, individuals may represent themselves before courts of law, and, in some cases, may represent others (without pay) after proper notification to their "clients" that they are unlicensed.

[15] Loi #71-1130 du 31 decembre 1971 pourtant reforme de certaines professions judiciaires et juridiques, *Journal Officiel de la Republique Francaise*.

[16] Roger J. Goebbel, "Professional Qualification and Educational Requirements For Law Practice in a Foreign Country: Bridging the Cultural Gap," *Tulane Law Review*, February 1989, p. 445.

Foreign legal consultants in the United States may give advice on their home country law and international law and may also offer advice on U.S. State and Federal law, provided they do so only after consultation with a qualified attorney, and only if this advice is relevant to a client's home country or international law-related case. Resident foreign lawyers may use the title of "foreign legal consultant" or the authorized title of their home country and their home country law firm name, but may not claim to be qualified attorneys of any U.S. jurisdiction unless they have fulfilled the necessary educational and examination requirements.[17]

Foreign lawyers may also become full members of the Bar in New York, California, Texas, the District of Columbia, and several other U.S. States. In 1973, the United States Supreme Court ruled that States could not require citizenship as a condition for admission to the Bar.[18] Several States introduced rules which provided for the admission graduates of foreign law schools. In New York, for example, a law school graduate with a degree from a common law jurisdiction may sit for the New York State Bar examination without further preparation. Graduates with degrees from civil law or other legal systems must complete twenty-four credit hours of legal training at an ABA-approved law school before becoming eligible to sit for the Bar examination. There are no official data available on the number of foreign lawyers who obtain U.S. qualification in this manner.

The establishment of foreign legal consultant rules serves the interests of U.S. law firms with international practices. The increased availability of foreign attorneys enables U.S. law firms to provide clients with immediate advice on foreign law. More importantly, foreign attorney licensing arrangements enable U.S. law firms to expand their international presence by demonstrating reciprocity.[19]

Foreign lawyers have made use of the foreign legal consultant status to establish offices in the United States or to work for U.S. law firms. Although official statistics on the number of foreign legal consultants in the United States are unavailable, industry observers estimated that by 1988, over one hundred foreign lawyers had registered as legal consultants in New York State.[20] By 1986, over thirty foreign law firms had established foreign offices in New York City, most of which are large British law firms.[21]

Foreign lawyers in the United States perform services similar to those of U.S lawyers abroad—the spectrum of activities related to trade/investment facilitation and to private legal matters for individuals, such as taxes, real estate, and family law. Most foreign law firms established branch offices in New York during the early and mid-1980s as the volume of European foreign investment in the United States began to grow.

In September 1991, certain U.S. regulatory agencies—the Federal Trade Commission, the Department of Justice, the Securities and Exchange Commission, and the Commodity Futures Trading Commission—adopted rules allowing EC attorneys to appear before them as foreign legal consultants on behalf of their clients.[22] This measure, designed to facilitate greater cooperation between U.S. and EC regulatory agencies, also demonstrates reciprocity on the part of the United States. U.S. attorneys admitted to practice in an EC member state have long been able to represent clients before the European Commission, the EC Court of First Instance, and the European Court of Justice, and these new measures should help to preserve that privilege.

Characteristics of U.S. Industry Structure

Private partnerships and sole-proprietor law offices are the principal forms of structural organization in the U.S. legal services industry, comprising about two-thirds of all practicing attorneys. Roughly one-third of all lawyers practice law outside the legal services industry—in corporations, banks, trade associations, government agencies, and legal aid societies.[23] Most lawyers are in general practice, but increasingly, many specialize in fields such as environmental, tax, civil rights, and intellectual property law.

The legal services industry is not monolithic. Indeed, increasing fragmentation appears to be an emerging trend. Analysts identify five basic types of law firms: (1) the elite, "brand-name" business law firm that does "cutting-edge," premium-billing work for major domestic and international corporations and financial institutions; (2) the relatively small "boutique," no-leverage[24] firm that charges premium rates for its specialty services; (3) the regional powerhouse firm that provides routine legal services to large local corporations and smaller corporations that lack sufficient in-house counsel; (4) the national specialty firm that concentrates on a particular industry and serves national or international clients; and (5) the low-cost providers of routine legal services, generally handling matters such as family law, criminal, and personal injury cases.[25]

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[17] Kelly C. Crabb, "Providing Legal Services in Foreign Countries: Making Room For the American Attorney," *Columbia Law Review*, 1983, pp. 1784-1787.

[18] Goebbel, "Bridging the Cultural Gap," p. 474.

[19] "California Becomes the Latest to Consider 'Foreign Legal Consultant,'" *American Journal of International Law*, No. 197, 1986, p. 199.

[20] Stephen Labaton, "Foreign Lawyers Migrating to the U.S.," *New York Times*, March 6, 198, p. D-2.

[21] "The Pitfalls of Opening a New York Office," *International Financial Law Review*, September 1986, p. 9.

[22] "FTC Extends Welcome to Foreign Practitioners," *Legal Times*, September 30, 1991, p. 6.

[23] Barbara Curran, *Supplement to the Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s*. American Bar Foundation, 1986.

[24] In no-leverage firms, the partners bring in the business and do the work. Therefore, such firms do not have to hire large staffs of associates to assist the partners, as is the case with their bigger counterparts.

[25] Steven Brill, "Short-Term Pain, Long-Term Gain," *The American Lawyer*, January/February 1991, p. 57.

In 1990, there were approximately 141,000 legal service establishments in the United States, the majority of which contained four or fewer employees (Figure 3). Only 1 percent of all legal services establishments are so-called business law mega-firms (large, international firms specializing in corporate and financial work), but these firms employed over 11 percent of all attorneys in 1985.[26] During the 1980s, this type of firm grew in terms of both size and number. In 1988, 35,000 lawyers practiced in the 115 firms of more than 200 lawyers as compared to 3,500 lawyers at the 15 such firms that existed in 1978.[27]

The so-called mega-firm sector is the most concentrated subsector of the U.S. legal services industry. The law firms included in an annual listing of the top 100 firms produced nearly 21 percent of total legal services industry revenues in 1990.[28] In addition, these firms occupy the top spot in the legal profession hierarchy in terms of total revenue, profit per partner, number of attorneys and partners per firm, average attorney salary, and average billing rate (table 4). The foreign branch offices of the largest law firms also account for the majority of U.S. international sales of legal services.

The emergence and growth of the mega-firm can be attributed to the increase in the volume and scope of corporate demand for legal services during the 1980s. Corporations typically require large teams of lawyers to handle legal matters, and the big firms can amass the required volume of specialized legal talent for many such cases. Some smaller firms merged in order to reach the critical mass of specialist lawyers necessary to compete with the larger firms in the elite business law sector. All types of law firms, particularly the mega-firms, also expanded through the process of internal growth.[29]

In the future, certain trends may limit further growth in the mega-firm sector. Many large corporations have expanded their in-house legal departments as an alternative to subcontracting the company's sophisticated legal work to expensive, elite firms. Growing numbers of associates and partners are reportedly leaving prestigious law firms to work as in-house counsel in corporations and financial institutions, citing as reasons the appeal of new, challenging work and the desire to escape from private practice aggravations such as high quotas for billable hours and the partnership track.[30]

[26] Curran, *Supplement to Lawyer Statistical Report*.

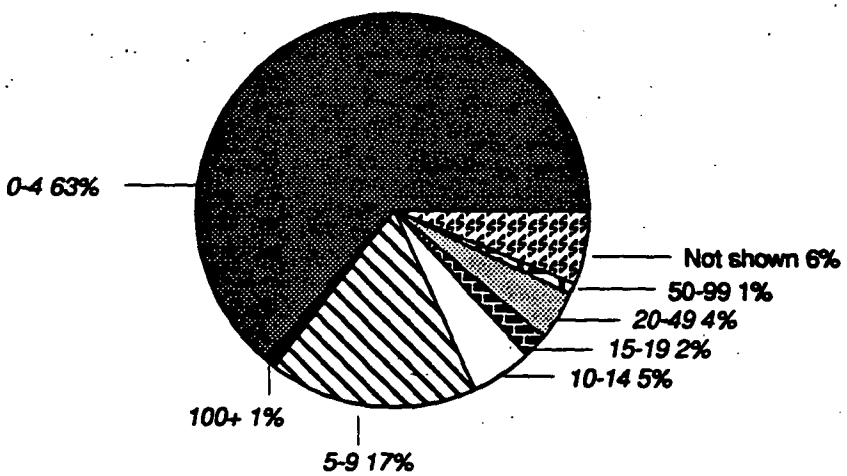
[27] Steven Brill, "The Law Business in the Year 2000," *The American Lawyer*, June 1989, p. 10.

[28] "The AmLaw 100," *The American Lawyer*, July/August 1991.

[29] This type of expansion is the result of the "growth inertia" imperative whereby firms generally offer in-coming associates the prospect of partnership in order to attract and retain this new talent. For every new partner created, the firm must hire two or three new associates in order to do the work that this partner brings in.

[30] "Corporate Counsel: Lawyers Move In-House," *The Complete Lawyer*, Volume 7, No. 3, May 1989. Data on in-house legal counsel are incomplete at best because in U.S. statistics, in-house counsel are counted as corporate employees rather than lawyers. Furthermore, American Bar Association (ABA) statistics do not classify lawyers by type of practice.

Figure 3
U.S. legal services industry, industry concentration by law firm size*, 1990



* Number of employees.

Note.—Figure does not add up to 100% due to rounding.

Source: *Dunn's Census of American Business*, 1991.

Table 3
The 20 Largest U.S. Law Firms, 1990[1]

(Ranked by gross revenue, millions of dollars)

Firm	*Gross Revenue*	*Size[2]*
1. Skadden, Arps, Slate, Meagher & Flom	503.0	966/225
2 Baker & McKenzie	404.0	1,522/478
3. Jones, Day, Reavis & Pogue	390.0	1,555/410
4. Shearman & Sterling	299.0	541/132
5. Gibson, Dunn & Crutcher	290.0	620/205
6. Vinson & Elkins	275.5	493/200
7. Davis Polk & Wardwell	250.0	397/98
8. Sullivan & Cromwell	240.0	344/98
9. Latham & Watkins	234.0	536/182
10. O'Melveny & Myers	230.0	495/163
11. Sidley & Austin	228.0	637/164
12. Weil, Gotshal & Manges	225.0	500/124
13. Cleary, Gottlieb, Steen & Hamilton	217.0	379/122
14. Fried, Frank, Harris, Shriver & Jacobson	213.0	362/107
15. Morgan, Lewis & Bockius	212.0	625/232
16. Cravath, Swaine & Moore	205.0	284/66
17. Fulbright & Jaworski	197.0	615/232
18. Morrison & Foerster	196.0	533/194
19. Simpson, Thacher & Bartlett	195.0	412/97
20. Paul, Weiss, Rifkind, Wharton & Garrison	193.0	392/83

Note.—The top 5 U.K. solicitor firms compare favorably with the 20 largest U.S. law firms in terms of gross revenues:[3]

(Ranked by gross revenue, millions of dollars)

Firm	*Gross Revenue*	*Size[2]*
1. Clifford Chance	406.0	1,122/225
2. Linklaters & Paines	252.0	692/136
3. Freshfields	201.5	556/114
4. Slaughter & May	198.0	542/93
5. Lovell White Durant	194.5	599/124

[1] "The AmLaw 100," *The American Lawyer*, July/August 1991. Gross revenue and size data are based on estimated provided by law firms.
[2] Lawyers/Partners.
[3] Karen Dillion, "How London's Solictors Stack Up: The Highest Grossing Firms," *The American Lawyer*, April 1992, p. 18. These figures reflect the fiscal year ending April 1992.

A recent Gallup survey commissioned by a legal research firm revealed that corporations increasingly expect to rely on outside counsel only for certain litigation matters (particularly antitrust) and plan to use a combination of more in-house and outside counsel for non-litigation matters such as mergers and acquisitions, banking/finance, and labor-related issues.[31] Factors contributing to this trend include the cost containment imperative and the perceived benefit of having an in-house legal staff familiar with the firm's business operations.

[31] "Gallup Survey: General Counsel," *Lex Mundi World Reports*, Supplement No. 1, 1991.

In addition, corporations, like the major Wall Street banks, are moving away from exclusive relationships with certain law firms. Instead, they use different law firms for different types of work and base their outside counsel hiring decisions on the quality of individual lawyers rather than the reputation of the firm or the company's traditional ties to a particular law firm.[32]

Technology and Complementary Business Services

Advances in computer technology and the development of on-line information services have had a time-saving effect on the legal services industry. Databases of prior case precedents and statutes enable lawyers to complete research more quickly; document assembly software programs enable lawyers to create instant drafts of complex legal texts. Facsimile copiers and video-conferencing have improved coordination and information exchange among firms' national and international branch offices and with the home office.

Information technology and the increasing use of non-attorney legal service professionals, such as paralegals, have had a greater impact on efficiency than on overhead costs. Paralegals, with the assistance of on-line data bases and computers, perform some of the research and administrative aspects of legal work in many firms.[33] The attorneys, free to work on the more complex aspects of cases, can thus use their skills in a more efficient manner. The use of paralegals can indirectly increase profits, however, in the sense that cases can be completed more quickly, enabling the firm to serve more clients.

Business services used by law firms include legal search services or "headhunters," which some firms use to entice specialist lawyers and "rainmaking" (business-generating) partners from other firms in order to develop new practice areas. Lawyers, sensing impending restructuring at their own firms, have sometimes sought the services of legal search firms to actively seek out opportunities at other law firms.[34] There are also management consulting firms that specialize in providing business analysis and advice to law firms. During the expansionary 1980s, law firms typically engaged consultants for advice on interstate and international mergers and associations with other law firms; in the 1990s, legal industry consultants will likely provide services related to law firm restructuring and revision of billing methods.[35]

[32] Consultant at a legal industry management consulting firm, telephone interview with USITC staff, October 1, 1991.

[33] Grace King, "Paralegal Firms Gain Foothold Despite Attacks," *Wall Street Journal*, July 5, 1992, p. B-1.

[34] Brill, "Short-Term Pain, Long-Term Gain," p. 56.

[35] Consultant at a legal industry management consulting firm, telephone interview with USITC staff, October 1, 1991.

THE MARKET FOR LEGAL SERVICES IN THE UNITED STATES

The total U.S. market for legal services has grown since the 1970s, due to changes in the legal system and in the international business and financial environment. Of the two broad markets for legal services—individuals and corporations—demand has grown more rapidly in the latter, especially among large corporations and financial institutions.

During the 1980s, the big law firms assumed that demand for their services would continue to grow, apparently confident in the belief that the frenzy of corporate deal-making, such as mergers and acquisitions (M&A) and leveraged buy-outs (LBOs), requiring extensive legal counsel at premium billing rates, would continue apace.[36] Law firms could boost their revenues by taking on M&A and LBO work because of the structure of corporate deals in the 1980s and the development of innovative and complex financial instruments, such as junk bonds, encouraged bigger deals and enabled the lawyers to follow investment bankers in adjusting their fees upward.

The big law firms also set up boutiques (areas of specialized practice within the firm such as intellectual property or mergers and acquisitions) and engaged in "cross-selling" or marketing these new specialties to existing clients. The firms hired more lawyers to handle the new specialties. Some firms boosted revenue per lawyer and profit per partner ratios by passing along the cost to the clients in the form of higher hourly rates. Firms also accelerated international expansion, adding more attorneys to established offices in Western Europe and Asia and planned for expansion in China and the Soviet Union.

By the end of the decade, however, demand and revenue growth slowed. Although gross revenues rose in absolute terms, many firms, particularly those that grew most rapidly in the mid-1980s, began to retrench, given the slowdown in growth rate. From 1986-1988, the legal service industry's years of the highest revenue growth, revenues increased by more than 20 percent annually.[37] In 1990, the annual revenue growth rate dropped to 9.1 percent, and it fell to 4.3 percent in 1991.[38]

Because of slower growth, the big law firms are reversing the expansionary tide of the 1980s and, in

[36] Corporate restructuring requires the use of lawyers at two levels. The necessity to comply with Federal and State regulations means that lawyers play an essential role in the business decisions leading to the merger, acquisition or buy-out. Second, there is the perceived need to involve each party's lawyers in the final stages of the business deal to insure that each side gets what it wants out of the agreement.

[37] Brill, "The AmLaw 100," *The American Lawyer*, July/August 1991, p. 8.

[38] "Professional Services," *U.S. Industrial Outlook 1992*, p. 54-3.

some instances, have laid off partners, as well as the once highly-valued young associates, citing the decline in premium-billing, labor-intensive M&A work as the principal reason.[39] Furthermore, demand for specific types of legal services responds to macroeconomic fluctuations. For example, during recessions, corporate customers' demand for advice on bankruptcy, tax, litigation and corporate downsizing tends to rise, while demand for advice on M&As and LBOs may fall.[40] However, firms' efforts to maintain profit per partner ratios may be an equally salient consideration in the downsizing process. During the 1980s, annual growth rates of 15 to 20 percent allowed firms to hire more associates and create new partners without reducing current partners' share of the profits. By 1990, the major law firms witnessed decreases in average profit per partner, with a few of the top ten grossing firms reporting figures more than 10 percent lower than those of 1989.[41] Consequently, many major law firms have initiated cost containment measures, primarily through staff reductions.

Current pessimistic predictions about the future of the legal services industry may be overstated. Demand for legal services is expected to increase, albeit at a relatively slow rate. U.S. lawyers and law firms see new opportunities in international finance and international trade, given the development of capital markets and accelerated foreign direct investment in Latin America and Eastern Europe.[42] In addition, demand for legal services related to regulatory compliance is likely to increase at the state, national, and international level in areas such as environmental and trade law.

Yet, these analysts doubt that increased participation in the market for "recessionary legal services" and in the new growth areas such as environmental and intellectual property law will compensate for law firms' diminished revenues from corporate restructuring.[43] For example, in corporate bankruptcy proceedings, judges sometimes scrutinize the petitioner's legal bills, the result often being lower billable hours.[44] Thus, bankruptcy cases do not tend to generate high revenues for law firms.

Industry consultants describe the current legal services market as "mature," characterized by a growing number of lawyers, increased competition for available business, and a greater degree of client sophistication. As a result, all sectors of the industry now must aggressively market themselves in what appears to be a buyers' market for legal services in the United States.

[39] David Margolick, "Pink Slips for Law Firm Partners as Tradition Bows to Tough Times," *New York Times*, December 24, 1990, p. 1.

[40] Brill, "Short-Term Pain, Long-Term Gain," p. 6.

[41] Ibid.

[42] Attorney at a major New York law firm, telephone interview with USITC staff, November 20, 1991.

[43] Attorney at a major New York law firm, telephone interview with USITC staff, November 14, 1991.

[44] Ellen Joan Pollack," Trying Case: Big Law Firms Learns That They, Too Are A Cyclical Business," *Wall Street Journal*, August 15, 1991, p. 1.

INTERNATIONAL TRADE/INVESTMENT IN LEGAL SERVICES

Factors Contributing to Increased Internationalization

The trend toward the internationalization of legal services has resulted from increased international economic interdependence. The development of multinational business and finance has created demand for legal counsel on matters that transcend any one nation's jurisdiction, such as international capital markets and international commercial disputes. Transnational lawyers and law firms provide legal services to two broad categories of clientele: (1) domestic corporations and financial institutions with multinational operations, and (2) foreign clients with business interests in the firm's home country.

Financial institutions, business corporations, and sometimes private individuals with extensive transnational interests commonly engage lawyers from their own country to negotiate contracts and provide advice on potential liabilities under home country law. Such companies and individuals also require counsel on matters related to the national law of the country where transactions will take place. In this instance, lawyers from the client's home country will provide this information themselves, if authorized to do so under national regulations, or establish relationships with foreign law firms.[45]

As international commercial, financial and trade issues become more complex, transnational lawyers also act in a broader capacity as transaction facilitators. They advise clients and serve as "trouble-shooters" in areas of business and finance that transcend the parameters of the client's home country law, such as antitrust and antidumping legislation, regulations governing securities and banking, joint ventures, and intellectual property rights. International lawyers also represent foreign clients, offering general legal advice on business operations in the lawyers' home countries.

Industry observers believe that the opportunities for international legal practice will increase as long as trade and investment liberalization continues.[46] A few U.S. law firms had branch offices in Europe before World War II, but the greatest influx, however, took place after World War II, as U.S. law firms established branch offices in the world's important business and financial centers—London and Paris in the 1960s and 1970s; Hong Kong and Singapore in the early and mid-1980s and Brussels and Tokyo in the late 1980s. Law firms anticipate growth in new international markets, such as Latin America and Eastern Europe. In these regions, U.S. lawyers will likely advise investors and foreign governments and facilitate business

[45] Attorney at Washington, D.C., law firm, telephone interview with USITC staff, October 7, 1991.

[46] Timothy Harper, "Going Global: Big Law Firms Expand Overseas," *ABA Journal*, September 1989.

transactions, such as joint ventures and privatizations.[47]

Although international law firms have expanded in number, international, like domestic, legal practice is subject to external conditions, such as the general economic and investment climate in foreign countries. Furthermore, licensing requirements and foreign investment regulations have traditionally restricted the scope of international trade in legal services. (See the "Nontariff Barriers" section for a full discussion of this topic.)

U.S. Law Firms and Transnational Legal Practice

The top U.S. business law firms dominate the world market for transnational legal services. Although Japanese and European industrial firms and financial institutions are equally, if not more, active than their U.S. counterparts, the United States continues to attract considerable foreign investment. Furthermore, in the international arena, U.S. law firms benefit from having greater experience in the global market for legal services. The large U.S. law firms traditionally enjoyed a competitive advantage over other U.S. and foreign firms because of their long-standing relationships with the major New York investment banks. These banks produced a regular and guaranteed flow of work for the firms, enabling the firms to acquire in-depth expertise in all areas. The banks also referred corporate clients to "their" law firm. This "captive" client base enabled these firms to expand into transnational practice as the banks and their corporate clients internationalized their operations.[48]

Most law firms do not operate foreign branches as separate profit centers because it is usually difficult to determine the income attributable to each office. The foreign offices of U.S. law firms recruit clients locally and receive referrals from local lawyers; they often relay this business to the home office in the United States which records the revenues on the firm's consolidated financial statement. In U.S. law firms' foreign offices, lawyers from the firms' other foreign offices or from the home office often work together on cases as teams. This practice makes it impossible to calculate the revenues generated by the firms' various foreign offices. Accordingly, many firms maintain comprehensive financial statements in order to avoid competition and partnership battles among the branch offices.[49]

Industry observers believe that U.S. firms' prominence in the global legal services market also resulted from the prevalence of Anglo-Saxon common law as the basis for international financial transactions and because of "the sophisticated business sense and functional adaptability of the pragmatically trained American lawyer."[50] However, foreign lawyers increasingly display these characteristics and are acquiring expertise in international business law as firms in their domestic industries become more active internationally. In addition, U.S. law firms face increasing competition from the prominent British solicitor firms and from firms in other countries that have expanded their international law capabilities and have acquired business law expertise by hiring U.S. and local, U.S.-trained lawyers.

Some law firms operate international practices without the benefit of foreign offices. Because of the expenses and staffing problems associated with foreign offices, some law firms participate in informal law firm networks or alliances in order obtain access to client referral systems. Nevertheless, considerations such as proximity to current and potential clients and the prestige attached to foreign offices in general, have engendered a dynamic of overseas expansion among large, and, increasingly, medium-sized business-oriented law firms.[51]

NONTARIFF BARRIERS AND OTHER IMPEDIMENTS

Overview

In all countries, "the law" is a licensed, regulated profession, and nations (or sub-national regulatory jurisdictions) have an interest in maintaining strict control over who may provide legal services on a continuing basis within their territories. National and local governments have an obligation to preserve the integrity of their laws and insure that the activities of lawyers and the courts benefit the public. Problems arise when lawyers seek to practice outside their home jurisdictions, because each jurisdiction has different legal codes, legal systems, and traditions.

Lawyers qualified in one jurisdiction are generally unable to competently serve clients in other jurisdictions on matters related to local jurisprudence. Thus, they can justifiably be barred from practicing local law. In matters of transnational or international law, however, U.S. lawyers tend to view regulations that prohibit or restrict the practice of foreign attorneys as nontariff trade impediments.[52]

Types of Nontariff Barriers

The barriers to trade in legal services fall into one of three broad categories. Some impediments are the result of (1) divergent national definitions of "lawyer" and "practice of law" that prohibit foreign attorneys from practicing law. In countries where foreign attorneys are allowed to practice, impediments often take the form of (2) restrictions on the scope of practice, and (3) internal restraints on cooperation among different categories of lawyers.

[47] Attorney at an major law firm in Washington, D.C., telephone interview with USITC staff, October 7, 1991.
[48] Ibid.
[49] Ibid.
[50] Goebbel, "Bridging the Cultural Gap," p. 445.
[51] Resident partner of the Paris office of a major New York law firm, telephone interview with USITC staff, November 20, 1991.
[52] President of an international lawyers' professional association, telephone interview with USITC staff, September 20, 1991.

In the United States, the term "lawyer" encompasses the entire spectrum of legal practice. In other countries, the "practice of law" is usually more narrowly defined and the local legal establishment, often fragmented into various sub-professions, has a monopoly on the provision of a specialized type of legal service. As a result, the regulatory jurisdiction can bar foreigners from using the title of "lawyer" and may block their admission to the local Bar.

The precise definition of "lawyers" and their scope of competence often works to the benefit of legal practitioners from countries where "the practice of law" is more broadly defined. In most foreign countries, the advocate lawyer or "officer of the court" is the most important and most highly regulated category of legal practitioner. There are also specialized categories of lawyers that prepare documents and handle real estate transactions. Many of the activities of the U.S. business lawyer do not fall within foreign lawyers' specific realms of competence. Business-related legal services often fall into the residual and vaguely-defined category of "legal adviser," the status granted to U.S. and other foreign attorneys in many countries.

Foreigners practicing law under this title are usually restricted to offering advice on the law of their own country or international law. Industry observers believe that the various citizenship and educational requirements that restrict U.S. lawyers' access to the courts and to the Bar do not constitute major trade impediments because U.S. lawyers generally have limited interest in or occasion to practice local law. When the need arises, U.S. lawyers typically hire local lawyers or maintain referral networks with local law firms.[53] Therefore, this type of nontariff impediment does not seriously restrict market access. More important barriers include national customs and traditions related to the practice of law, such as regulations governing partnership formation and collaboration with members of the legal or other professions, which can limit U.S. lawyers' scope of activity in foreign jurisdictions.

FOREIGN INDUSTRY PROFILES

The European Community

The structure of the legal services industry in most EC countries differs greatly from that in the United States. In the United States, sub-national jurisdictions and the State Bars regulate the legal profession, while in most EC countries, the legal profession is regulated by the central government. Therefore, for the purposes of the educational qualifications and scope of competence, there is one regulatory jurisdiction per country and one set of practice and procedural rules. In addition, law firms in the EC member states, with the exception of those in the United Kingdom, have tended to be smaller, newer and more narrowly focused on litigation matters than their U.S. counterparts.[54] As a result, EC law firms tend to have less expertise in business-related legal matters and lack the volume of personnel necessary to perform this type of work on a large scale.

In 1990, there were more than 340,000 registered lawyers in the European Community, and the total revenue of the legal profession amounted to ECU 20 billion (about $25 billion).[55] Thus, the revenues of the U.S. legal profession exceed those of the EC by nearly 300 percent, despite the fact that the EC would appear to be the larger market for legal services, with a total population of about 342 million.

Compared to the United States, most EC countries have limited markets for personal and product liability and civil rights protection services, due to different national legal systems and traditions. For example, in the Netherlands, there are pre-determined amounts of allowable monetary compensation for personal liability cases. In addition, trial by a jury of judges rather than trial by peers seems to limit the number of such cases that reach the courts.[56]

In the United States, the terms "lawyer" and "practice of law" are broadly defined and include a wide range of legal services. In the EC member states, on the other hand, the practice of law is more narrowly defined, and legal work is divided between advocates and notaries, the two basic types of legal practitioner. The advocate, who represents clients in court cases, remains the most important category of legal practitioner. Notaries, also a regulated profession, provide services related to property transfers and estate administration. In most EC countries there is the third, more general type of legal adviser, who offers business-related legal services. In most EC member states, this category has either been a residual, unregulated category or an established, less prestigious subsector of the legal profession.[57]

As a result, U.S. law firms (and British solicitor firms), with their more extensive experience in the legal aspects of business transactions, have been competitive in Continental countries, providing legal services that local lawyers could not or were not willing to offer. U.S. and British firms traditionally have had an advantage over their Continental counterparts due to precedent-based, case-by-case approach of common law as opposed to the code-based civil law system prevalent in most non-English speaking countries. The common law system facilitates business transactions because it is considered to be more amenable to flexible application and interpretation.[58]

However, EC lawyers and law firms have begun to adopt some of their U.S. counterparts' strategies and practices in order to increase their competitiveness. They are moving away from the single practitioner

[53] Ibid.

[54] "Europe's Law Firms: The Next 10 Years," *International Financial Law Review*, September 1984.

[55] "Legal Services," *Panorama of EC Industry, 1991-1992, p. 27-11.*

[56] Dutch lawyer at the European Commission, conversation with USITC staff, September 17, 1991.

[57] "Legal Services," *Panorama of EC Industry, 1991-1992, pp. 27-14 to 27-17.*

[58] "Europe's Law Firms: The Next 10 Years," *International Financial Law Review*, September 1984, p. 5.

organizational structure in favor of partnerships or incorporated entities. Recent years have witnessed a trend toward law firm expansion in terms of size and specialization through mergers, enabling these new, larger firms to offer business-related legal services similar to those provided by U.S. law firms. For example, during the early and mid-1980s, each of the three largest law firms in the Netherlands grew through mergers with smaller firms in a deliberate effort to acquire the personnel and the specialized expertise necessary for a more international orientation.[59] Similarly, the two leading British law firms merged in 1987 to create a firm with a full range of specialty practices. These firms' combined network of foreign offices provides the new, merged firm with global coverage, as well as a U.S.-style mega-firm partnership of over 1,000 lawyers.[60]

On the European Continent, the traditionally narrow definition of the lawyer's realm of activity is slowly evolving toward the broad American definition of the lawyer who acts as both advocate and transaction facilitator. European innovations in this area include arrangements under German, Dutch, Spanish, and British law that allow the formation of multi-disciplinary practices between lawyers and other professionals—accountants, notaries, patent agents, and management consultants—in order to provide corporate clients with a broader range of business services. This new organizational structure could erode U.S. law firms' competitive advantage in providing business-oriented legal services.[61]

For the most part, national regulation and custom continue to prevail in the individual member states' legal professions. However, the EC Council's Legal Services Directive of 22 March 1977,[62] designed to facilitate the free flow of services across borders, requires all member states to extend national treatment to all professionals covered by the EC Council's definition of "lawyer."[63] Further, the Directive on Recognition of Diplomas of 21 December 1988,[64] as applied to lawyers, requires the Bars and courts of the member states to extend national treatment to qualified lawyers of other EC member states.

In order to further facilitate transnational legal practice, the Council of the Bars and Law Societies of the European Community (CCBE) prepared a draft directive proposal on the rights of establishment for EC-qualified lawyers. The proposal, based on the principle of equivalence of existing diplomas, makes provisions for differences among the legal and judicial systems of the various member states and enables EC member state lawyers to sit for additional qualifying examinations and become full members of the Bar in other EC member states.[65] The CCBE considers these measures to be the first steps toward the creation of a European Bar. The European Commission, however, has not yet submitted a proposal to the EC Council.

However, these directives make no specific provisions for non-EC nationals with EC member state law degrees. With regard to the conditions of practice and rights of establishment of EC-qualified non-nationals, individual member state regulations prevail in the absence of Community regulations. Thus, dually-qualified U.S. lawyers must meet each member state's education and training requirements in order to practice law throughout the European Community, while EC member state lawyers need only fulfill the practical requirements.[66]

The completion of the internal market program ("EC 1992") is creating new demand for legal services in the European Community on the part of European and Europe-based corporations, which now require legal counsel to ensure that business decisions comply with an increasing body of EC regulations, particularly in the area of competition law.

As a result of an October 1991 agreement signed by the EC and the European Free Trade Association (EFTA)[67] countries, the latter will eventually come under the EC competition law.[68] Furthermore, it is likely that the East European countries' legal systems will develop in harmony with EC law, given their long-term objective of EC membership.[69] Growth in the EC market for legal services will likely take place in Community and international law; as a result, EC member state law firms are expanding their international capabilities in order to compete with U.S. firms in Europe. EC firms are also competing to provide legal services in other regions, particularly in Asia.[70]

Japan

The Japanese legal profession is highly fragmented and tightly regulated, and the practice of law is very narrowly defined. There are five categories of lawyers,

[59] "Leading Law Firms in the Netherlands," *International Financial Law Review*, March 1985, p. 7.

[60] Josephine Carr, "Clifford Chance, the City cats which stole the cream," *International Financial Law Review*, March 1987, p. 5.

[61] Consultant at a legal industry management consulting firm, telephone interview with USITC staff, October 1, 1991.

[62] Council Directive Relating to the Effective Exercise by Lawyers of Freedom to Provide Services, *Official Journal of the European Communities*, No. L 78, March 22, 1977, p. 17.

[63] This definition covers only the "advocate" or "officer of the court" class of lawyer, as well as U.K. and Irish solicitors.

[64] Council Directive on a General System for the Recognition of Higher-Education Diplomas Awarded on Completion of Professional Education and Training of at Least Three Years' Duration, *Official Journal of the European Communities*, No. L 19, January 24, 1989, p. 16.

[65] *Panorama of EC Industry, 1991-1992*, "Legal Services," p. 27-15.

[66] Executive Committee of the Section of Commercial and Federal Litigation of the New York State Bar Association, *The Practice of Law in the EEC by New York Litigators After "1992,"* p. 16.

[67] The EFTA countries are: Sweden, Norway, Finland, Austria, Switzerland, and Iceland.

[68] "EC and EFTA to Create 19-Nation Trade Zone," *Financial Times*, October 23, 1991, and "Survey: The Legal Profession," *The Economist*, July 18, 1992.

[69] Attorney at a New York law firm, telephone interview with USITC staff, October 20, 1992.

[70] "Europe's Law Firms: The Next Ten Years," *International Financial Law Review*, September 1984.

the most important of which, the *bengoshi*, possess a monopoly on representing clients before the courts, a privilege jealously guarded by their powerful Bar association.[71] The *bengoshi* are regulated by the Japanese Supreme Court, while the other recognized legal professions, which offer services related to the preparation of documents for the courts and administrative agencies, patents, tax, accounting and notarization, fall under the regulatory jurisdiction of government ministries or municipal governments. As in many EC countries, the traditional definition of "the practice of law" does not cover many of the services provided by U.S. international business lawyers.

While about 30,000 Japanese students receive undergraduate law degrees each year, only about 500 students pass the rigorous examination required for admission to the state-run, two-year training institute that graduates prospective lawyers.[72] Thus, compared to the United States, lawyers are relatively scarce in Japan.

Japanese law firms are small; only a few employ more than 20 attorneys, and most have fewer than ten. However, large corporations have their own in-house legal departments, staffed by those law school graduates who do not pass the law institute examination. These in-house legal staffers handle almost all domestic and international business-related legal matters that do not involve litigation.

Japanese law firms cope with the limited supply of Japanese lawyers by relying heavily on paralegals. Although Japanese firms engage in a significant amount of international legal work, none have reportedly established overseas branch offices.[73] Explanations for this include ambiguity as to whether the Japanese Federation of Bar Associations rules prohibit firms from maintaining more than one office and the relatively small number of Japanese lawyers in Japan.

MAJOR FOREIGN MARKETS FOR U.S. LEGAL SERVICES

London

Because it is a major global financial center, nearly all the U.S. law firms with foreign offices have established a base in London. The influx of U.S. law firms began in the late 1960s and early 1970s with the growth of the Eurocurrency market. During this wave of U.S. entry, the major Wall Street firms followed the investment banks as they increased their activity in the London financial markets. U.S. law firms also use London as a base for providing legal services to clients in the Middle East.

[71] "Foreign Lawyers in Japan: A Growing U.S. Export," *Japan Economic Institute (JEI) Report*, July 26, 1991, p. 3.

[72] Terence Murphy, "Japan Slides Open the Legal Door," and James S. Altschul, "Japan's Elite Law Firms," *International Financial Law Review*, March 1987 and June 1984, respectively.

[73] Stephen Labaton, "Foreign Lawyers Migrating to the U.S.," *New York Times*, March 6, 1989, p. D-2.

The next wave began in the late 1970s and continued until the mid-1980s. At first, U.S. law firms sought to capture new business resulting from the United Kingdom's full-fledged entry into the European Community. Later, the capital markets boom generated by then-Prime Minister Margaret Thatcher's deregulation of the financial services industry (the so-called Big Bang of 1986) increased the profile of U.S. banks and securities houses on the London financial scene, creating demand for a greater volume of legal services. At this time, other U.S. law firms seeking to develop international clientele established London offices as bases for providing services on the Continent.

Despite its importance as one of the world's financial capitals, the leading business law firms maintain small London offices compared to their offices in Paris. The Law Society of England and Wales (the equivalent of the American Bar Association) enforces informal restrictions limiting the conditions of practice of foreign firms.[74] U.S. lawyers may not appear in court or prepare official documents, but they are not otherwise prohibited from handling British legal affairs or providing opinions on English law. However, U.S. lawyers tend to limit themselves to advising on U.S. and international law so as to maintain good relations with English business law-oriented solicitor firms. In addition, U.S. law firms want to continue receiving referrals from British law firms on matters concerning U.S. law, and also wish to avoid potential malpractice claims.[75]

Prior to the passage of the British Courts and Legal Services Act of 1990, Law Society regulations prevented U.S. law firms from developing their British offices into full-service regional branch offices as some firms had done in Paris and Brussels. The British Courts and Legal Services Act sanctions the formation of multinational practices, thereby enabling British solicitors to form partnerships with foreign lawyers after January 1, 1992.[76] This reform will enable U.S. law firms in London to expand the range of services offered and to develop closer links with their British counterparts, perhaps leading U.S. firms to transform their "close associations" with British solicitor firms into full-fledged mergers.

At present, however, administrative and financial obstacles impede the completion of several U.S.-British mergers. Under current British regulations, U.S. law firms with British partners must pay registration fees based on the number of partners in the entire firm, not just the partners in the British office. Further, the Law Society requires certification

[74] "United States Lawyers in London," *International Financial Law Review*, August 1984, p. 5

[75] "The Transatlantic Merger: Is It Already Here?" *International Financial Law Review*, June 1987, p. 8.

[76] The Act also permits the formation of multi-disciplinary practices. It is unlikely, however, that U.S. law firms will be able to take advantage of this reform since such practices are generally frowned upon by the State Bars and the ABA in the United States. (Comment by an attorney at a major New York law firm, telephone conversation with USITC staff, November 13, 1991.)

that all of a firm's partners are members in good standing of their respective State Bars and that their State Bars have no objection to multinational partnerships. The Law Society expects that the statute will be amended during the 1992 Parliamentary session, enabling the Law Society to develop more flexible administrative and financial procedures for foreign lawyers.[77]

Tokyo

Though Japan has been a major participant in international business and trade since the 1960s, Japan's legal services market was, until recently, almost completely closed to U.S. lawyers. As a result of United States-Japan bilateral negotiations begun in the mid-1980s, the sales of U.S. legal services in Japan increased dramatically, from $21 million in 1987, when Japan began to allow U.S. firms to open branch offices, to $302 million in 1991 (See table 1). Most U.S. law firms' Japanese business comes from advising Japanese banks and companies on their activities in the United States and on their purchases in the U.S. securities market. In addition, U.S. law firms are following the investment banks as they increase their presence in the Japanese financial services market.[78]

Japan has traditionally restricted the ability of foreign lawyers to practice law. Under the Lawyers Law of 1949, foreign lawyers could be admitted as special members of the Japanese Bar and were allowed to offer advice on the law of their home jurisdiction. In 1955, three years after the expiration of the occupation statute, Japan revoked this provision, essentially barring all foreign attorneys, except those admitted before 1955, from practicing law in Japan.

The small number of U.S. lawyers admitted before 1955 practiced law in Japan under the unregulated category of "foreign legal consultant." Foreign lawyers could establish themselves as in-house counsel in foreign or Japanese corporations or as "trainees" in Japanese law firms. These arrangements did not cause difficulties with the Japanese Federation of Bar Associations because such activities were not considered to be "the practice of law" in Japan.

Complications arose in 1977 when a major U.S. law firm opened a Tokyo office, staffed by U.S. lawyers and Japanese *bengoshi*. The Japanese Bar Association re-interpreted the rules governing the activity of foreign attorneys and concluded that foreigners could conduct legal business only as trainees under the supervision of a *bengoshi*.[79]

In the late 1970s, the American Bar Association began to lobby the United States Government regarding U.S. law firms' restricted access to the Japanese legal services market. In 1982, the Office of the United States Trade Representative broached the issue with the Japanese Government, declaring the restrictions to be a significant nontariff trade barrier. Legal services then became part of the Japanese Government's "Action Program," a market liberalization package formulated in 1985.

United States Government pressure on Japan to liberalize its legal profession culminated in the passage of the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers ("Foreign Lawyers Law of 1987"). This law permits foreign lawyers from jurisdictions that offer reciprocity to acquire the official status of *gaikoku-ho jimu-bengoshi* or, literally translated "a [foreign] lawyer who does office work" [as opposed to litigation] related to foreign law."[80] This title can be granted only to individual attorneys, not to entire law firms. Though foreign lawyers may display their firm name on their letterhead, the Foreign Lawyers Law effectively restricts U.S. lawyers' ability to promote business on the basis of their firms' reputation and prestige.

Foreign lawyers must be qualified in their home jurisdiction and have five years' experience. However, time spent practicing international law in overseas branch offices or as a trainee in a Japanese law firm may not be counted toward this requirement.[81] Foreign lawyers may give advice only on their home jurisdiction law and international law and are not allowed to enter into partnerships or other formal associations with Japanese lawyers. In other words, a U.S. law firm may not hire Japanese lawyers to provide Japanese legal advice to businesses faced with problems of market access and investment in Japan. Japanese firms, on the other hand, may freely hire U.S. or other foreign lawyers to provide this type of all-around legal service.

Paris

One major U.S. law firm has had a Paris office since 1879, and a few others established offices in the 1920s and immediately after World War II. However, the majority of the U.S. law firms in Paris arrived during the early 1960s, following industrial multinational clients in the wake of the expansion of the French economy and massive U.S. direct foreign investment in the nascent European Community.

Since the late 1970s, U.S. law firms operating in France have been active in corporate reorganization, sovereign debt restructuring (country representation), project finance work, and international commercial arbitration. The liberalization of France's domestic financial markets in the mid-1980s brought new work for U.S. lawyers through the increasing involvement of foreign-owned banks in French capital markets.

Apparent weaknesses in the traditional French legal profession created opportunities for U.S., as well as British, law firms.[82] During the 1960s and

[77] Karen Dillon, "Making Transatlantic Work Easier — Or Harder," *The American Lawyer*, January/February 1992, p. 20.

[78] Resident partner of the Tokyo office of a major New York law firm, facsimile correspondence with USITC staff, November 21, 1991.

[79] "Foreign Lawyers in Japan," *International Financial Law Review*, August 1984, p. 11.

[80] Terence Murphy, "Japan Slides Open the Legal Door," *International Financial Law Review*, March 1987, pp. 9-12.

[81] Resident partner of the Tokyo office of a major New York law firm, facsimile correspondence with USITC staff, November 21, 1991.

[82] Chris Blackhurst, "Lawyers Question Foreign Offices," *International Financial Law Review*, October 1985, p. 11.

1970s, French lawyers could not or would not offer the specialized business advice that U.S. multinationals and French corporations required. France's relatively liberal rules regulating foreign attorneys' practice allowed U.S. lawyers to practice U.S., private international and even French commercial law as *conseils juridiques* or legal advisers.[83] The French government implemented new regulations pertaining to the profession of *conseil juridique* in 1971, formalizing the requirements for French and non-French lawyers using this title. For non-French lawyers, their foreign professional qualifications satisfied the diploma requirement, and the prospective non-French *conseils juridiques* had to have three years' experience as practicing lawyers.

Most attorneys currently work for U.S. law firms that have *conseil juridique* status. Some U.S. law firms engage French lawyers to plead on behalf of clients in French and EC courts[84] and hire other EC-national lawyers in order to broaden their scope of competence. Other U.S. law firms limit their activities to the practice of U.S. and international law, forming close relationships with French law firms, which handle matters related to French laws and regulations. Generally, the French firms reciprocate by referring their U.S. law-related matters to their correspondent U.S. law firm. Some U.S. lawyers join French law firms, and they may become full partners.

In 1990, the French Government passed legislation that could reverse its previously liberal policies toward foreign lawyers and law firms. This law[85] merges the formerly distinct professions of *avocat* and *conseil juridique*, putting into effect a "long overdue modernization of the French legal profession."[86] The French Government deemed this necessary due to the increasing degree of overlapping competence and activity in the two professions. Practitioners of this new profession will be called *avocats conseils*—effectively U.S.-type lawyers with a near-monopoly on the provision of legal services. This reform became law in early 1991.

Foreign lawyers established in France under the 1971 *Conseil Juridique* law have been "grandfathered." Other non-EC-qualified lawyers must fulfill the old *conseil juridique* requirements and must also pass an as-yet-unspecified aptitude test, which, French Embassy officials assert, will not be the full French Bar examination. EC-qualified lawyers, on the other hand need only satisfy the requirement of three years' legal practice. Thus, the 1988 Council Directive on the Recognition of Diplomas apparently does not apply to non-EC nationals because "EC rules address the right of establishment and right to practice of EC nationals only . . . each member state maintains its own governing rules regarding non-nationals' practice and establishment rights."[87]

French Embassy officials stated that the new law was merely an internal reform measure with no intended external effects.[88] It is likely that the French legal profession will benefit from modernization; however, the internal reforms that created the *avocat conseil* category may have adverse effects on U.S. lawyers in France because the new law does not make provision for a specific category of limited practice for foreign lawyers. Thus, some lawyers have argued that the new law appears to have been developed in response to constraints on the ability of French lawyers to practice in the United States.[89] Some observers have also concluded that this law is designed to protect French law firms as they expand and modernize in an effort to capture more of the international business law market in France, at present dominated by U.S. firms.[90]

Some U.S. lawyers believe that by unifying the profession and broadening its scope of competence through elimination of the *conseil juridique* profession, the French Government has effectively barred new U.S. law firm entry into the French legal services market with legislation that could result in "extinction through attrition" for U.S. lawyers in France.[91] Others contend that the practical effect of the new law will depend on the difficulty of the aptitude test. According to one lawyer's understanding, the new law will not endanger U.S. presence in France because U.S. law firms can be registered as *avocats conseils* as long as the resident partners are so registered.[92]

OTHER MARKETS

Brussels

U.S. law firms followed their corporate clients to Brussels in the late 1950s in response to the Belgian

[83] The competence to advise on French commercial law applied to foreign lawyers resident in France before the 1971 *Conseil Juridique* Law and was extended to attorneys from jurisdictions that granted reciprocal privileges to French lawyers.

[84] French lawyers must resign from the French Bar if employed by non-*avocats*. They may continue to plead in French courts, but must do so under their own name, not that of the U.S. law firm that employs them.

[85] Loi #90-1259 du 31 decembre 1990, modification de la Loi #71-1130 du 31 decembre 1971 pourtant reforme de certaines professions judiciaires et juridiques, *Journal Officiel de la Republique Francaise*, 5 janvier 1991.

[86] Chief legal officer at the Embassy of France, Washington, D.C., telephone interview with USITC staff, October 15, 1991.

[87] Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, *The Practice of Law in the EEC by New York Litigators After 1992*, quoted on p. 17.

[88] Chief legal officer at the Embassy of France, Washington, D.C., telephone interview with USITC staff, October 15, 1991.

[89] Attorney in a major New York law firm, telephone interview with USITC staff, November 13, 1991.

[90] Resident partner of the Paris office of a major New York law firm, telephone conversation with USITC staff, November 20, 1991.

[91] Attorney in a major New York law firm, telephone interview with USITC staff, November 13, 1991.

[92] Resident partner of the Paris office of a major New York law firm, telephone interview with USITC staff, November 20, 1991.

government's inward investment incentives and the establishment of the European Community. Many firms left Belgium when their corporate clients did, following changes in the economic climate during the early and mid-1970s; others remained, diversifying into antidumping-related EC work.

U.S. law firms displayed renewed interest in Brussels in the 1980s, when the European Commission began to actively investigate competition and antidumping cases; the resulting body of EC legislation became a major consideration for U.S. corporations in Europe. U.S. law firm expansion in Brussels accelerated in the late 1980s as firms saw lucrative opportunities in the preparations for the completion of the EC internal market at the end of 1992. However, the legal services market is becoming increasingly competitive as greater numbers of U.S. lawyers seek to represent and lobby on behalf of U.S., non-EC European, and Asian clients who have allegedly violated EC antitrust or antidumping regulations.

There are no formal restrictions on who may provide legal advice in Belgium, including counsel on Belgian and EC law.[93] U.S. lawyers use the title of *conseiller juridique*, but are not obliged to do so since this remains an unregulated profession. However, as part of the regulatory process, the partners of foreign law firms or single practitioners must obtain a "professional card," which is a license from the Belgian government specifying restrictions on the scope of practice and the nature of professional organization. Associates in foreign law firms need only obtain regular work permits.[94]

In 1984, the Brussels Bar amended its rules to allow Belgian *avocats* to associate with foreign law firms without resigning from the Bar.[95] The 1984 Brussels Bar rules set up a so-called B-list of foreign lawyers established in Brussels and registered with the Brussels Bar. To become B-list members, foreign lawyers must be established in the Brussels office of a member of the Brussels Bar who has completed the required three-year traineeship at the Bar, i.e., an A-list lawyer. As B-list members, foreign lawyers must agree to practice only international, EC, and foreign law and must submit to the disciplinary authority of the Brussels Bar Council, which implements and interprets the regulations.[96] After three years, B-list foreign lawyers and law firms may formally associate with A-list members (or firms including A-list members.)[97]

[93] However, only Belgian-qualified lawyers, *avocats*, may plead in Belgian courts.

[94] Resident partner at the Brussels office of a major New York law firm, telephone interview with USITC staff, March 26, 1992.

[95] Christopher Stoakes, "Brussels' Supranational Law Firms," *International Financial Law Review*, July 1984, p. 9.

[96] Resident partner at the Brussels office of a major New York law firm, facsimile correspondence with USITC staff, May 26, 1992.

[97] A foreign law firms can obtain B-list status if at least one of its lawyers fulfills the B-list requirements. (Resident partner of the Brussels office of a New York law firm, telephone interview with USITC staff, March 26, 1992.)

Although the 1984 regulations enable U.S. law firms to represent clients before Belgian courts, it appears that foreign firms are more interested in demonstrating their willingness to register as B-list lawyers in order to facilitate easier relations with the Brussels legal community.[98] One industry observer believes that this regulation was apparently designed to allow Belgian lawyers to hire foreign lawyers without having to make them qualify as fully-fledged *avocats*.[99] Thus, U.S. lawyers can become employed associates of Belgian *avocats*, and after three years, may become partners in Belgian *avocat* firms.[100]

While some U.S. law firms in Brussels are merely on-site "listening posts" for the EC departments of the home office, others, generally firms with long-standing presence in Brussels, have made use of Belgium's liberal foreign lawyers regime and have developed their own client bases by joining forces with Belgian and other European lawyers or acquiring existing European law firms.

U.S. law firms initially benefited from the lack of local expertise in business law. Belgian lawyers, like their French counterparts, tend to have a strong theoretical background focused on litigation. Until the mid-1980s, Brussels Bar restrictions prohibited the formation of multi-office partnerships, and thus prevented Belgian *avocats* from adopting the more business-oriented approach of U.S. lawyers.

However, U.S. law firms' success in Belgium has reportedly generated some ill-will between Belgian lawyers and their foreign counterparts.[101] U.S. firms have allegedly bid up the salaries of recent Belgian law school graduates and have angered traditionally-minded Belgian lawyers with their "aggressive" tactics. Some Belgian firms appear to resent the increased competition, particularly in the last few years, which have witnessed the establishment of over 20 additional U.S. law firms in Brussels.[102]

Big U.S. law firms have an advantage in Brussels due to their experience with U.S. federal regulations, and their greater familiarity with putting together complex mergers and acquisitions deals. Yet, competition from U.S. firms has also stimulated change from within the Belgian legal profession. Belgian firms are growing in size through mergers and have developed alliance and association arrangements with law firms in other European countries.

Germany[103]

Prior to 1989, most U.S. law firms' activities in Germany were linked to the presence of the U.S.

[98] Resident partner of the Brussels office of a New York law firm, telephone interview with USITC staff, March 26, 1992.

[99] Ibid.

[100] Goebbel, "Bridging the Cultural Gap," p. 478.

[101] Joel Haveman, "U.S. Law Firms Chasing New Clients in Brussels," *Los Angeles Times*, December 4, 1990.

[102] Ibid.

[103] USITC staff obtained most of the information for this section through telephone interviews with an attorney in the Frankfurt office of a major New York law firm, November 1991 and September 1992.

military. Sole practitioners and very small law firms held contracts to represent U.S. military personnel in U.S. and German civil and criminal matters. These U.S. lawyers have always been a small community, which will likely diminish in the next few years and the United States reduces its military presence in Germany. Since the falling of the Berlin Wall and the collapse of communism in Eastern Europe in 1989, Germany has become a desirable location for U.S. law firms. Most U.S. law firms have opened offices in Frankfurt, Germany's financial center, due to the preeminence of the German banks in West and East European corporate finance. U.S. law firms provide the usual array of business-related legal services to U.S. and foreign clients.

Traditionally, the German legal services market has been closed to U.S. lawyers and law firms. However, some U.S. lawyers and law firms work under the status of *Rechtsbeistand* or legal adviser, a title that reportedly lacks the relative prestige and responsibility of the (now abolished) *conseil juridique* status in France. In 1990, the Bundestag passed legislation abolishing most restrictions for non-EC attorneys from jurisdictions that offer reciprocal privileges to German lawyers. The new rules continue to limit U.S. lawyers to practicing the law of their qualifying jurisdiction and international law, but remove restrictions on U.S. lawyers' use of their firm name, and enable U.S. attorneys to use the more prestigious title of *Rechtsanwalt* (advocate lawyer).

However, in early 1992, the Federal Bar Association of Germany issued a position paper which objected to the five year practice requirements included in some U.S. states' foreign legal consultant rules. The paper recommended that the MOJ withhold reciprocity certifications until these requirements are lifted. As a result, the MOJ has apparently changed its position and is now uncertain whether there will be any reciprocity certifications.

The Ministry of Justice (MOJ) has not yet acted on requests filed in 1990 to certify the United States as a country offering reciprocity. Originally, observers believed that the MOJ would eventually grant certification on a state-by-state basis. They predicted that this would be sufficient for the majority of U.S. law firms because the important commercial/financial U.S. States have already implemented rules allowing foreign lawyers to practice as foreign legal consultants.

In the absence of precise rules concerning the conditions of practice for U.S. lawyers in Germany, some U.S. law firms already operate under their home country name, have German partners and associates, and use the title of *Rechtsanwalt*. In the past, the MOJ has refrained from investigating U.S. law firm activities in these gray areas, in anticipation of reciprocity determinations. In light of recent events, however, U.S. lawyers and law firms will reportedly maintain a low profile in order to avoid controversy.

Opposition to U.S. and other foreign law firms in Germany comes mainly from the smaller German law firms, which apparently fear competition from U.S., British, French, and larger German law firms. Many German law firms have expanded in size and have established domestic and international branch offices since 1989. In that year, the Bundestag passed legislation that allowed German lawyers to practice in more than one *Land* (State) and permitted law firms to open branch offices. Observers believe that these market liberalization measures, as well as the easing of restrictions on foreign lawyers, were intended to comply with EC directives regarding the freedom to provide services and to facilitate German law firms' access to foreign markets. However, given opposition to further liberalization among some sectors of the German legal profession, it appears that U.S. lawyers and law firms will continue to operate in Germany under an informal regime.

Eastern Europe

Lawyers and industry analysts view Eastern Europe as a promising, albeit highly unpredictable, new market. U.S. law firms provide two broad categories of services in Eastern Europe: (1) advice to governments and government ministries on privatization and advice on the drafting of legislation and regulatory statutes, and (2) standard business law advice, primarily to foreign companies and individuals seeking to invest in Eastern Europe. U.S. firms are not alone in Eastern Europe; they have to compete with the Western Europeans, especially German, Austrian, and British firms.

U.S. law firms also face competition from U.S. and European accounting firms. Accounting firms, particularly those with consulting divisions, have gone to Eastern Europe to offer some of the same services as law firms. Accounting firms arrange joint ventures, develop debt restructuring plans, and offer general business advice. Accounting firms may also offer legal advice through their in-house legal departments.

U.S. law firms operate in the East European legal services market under various arrangements. Some of these law firms handle their East European work from the home office, others establish affiliations with local lawyers, and a few work from branch offices in Western Europe, waiting to see how business develops before embarking on expensive investment in East European offices. U.S. law firms' approach to the East European market tends to be one of outward growth from the existing client base in Western Europe. A few U.S. law firms have established foreign offices, most notably in Hungary but also in Czechoslovakia and Poland, one reason being that local presence is often an eligibility condition for the competitive tendering process for the award of government contracts.[104] While interest in Eastern Europe has been high, actual foreign investment has been slow and sporadic.[105] Furthermore, East European corporate deals rarely amount to more than a few million dollars, the result being relatively small lawyers' fees.[106]

[104] Celia Hampton, "Unpredictable Opportunities," *Financial Times Survey: The Legal Profession*, October 18, 1991, p. 36.

[105] Executive director of a major Washington, D.C. law firm, telephone interview with USITC staff, October 21, 1991.

[106] Saundra Torry, "With the Cold War Over, Lawyers in Eastern Europe Still Chasing Cold Cash," *Washington Post*, November 18, 1991.

U.S. law firms realize that the privatization work will eventually subside, but they view such projects, often taken on a *pro bono* basis, as a means of cultivating relations with governments and establishing private business contacts in Eastern Europe. The arrival of U.S. law firms has reportedly generated some resentment within the local legal communities because U.S. law firms tend to get the best cases and appropriate the best local lawyers. In Hungary, for example, moves have been made to limit the activity of foreign lawyers.[107] In addition, the difficulties involved in doing business in Eastern Europe—underdeveloped infrastructures, high turnover of government personnel, and incomplete laws and regulations related to business—could delay the take-off of this new market.

The Commonwealth of Independent States

Approximately 10 U.S. law firms have opened offices in Moscow and St. Petersburg[108] since the passage of the first Soviet foreign joint venture statute in 1987, and U.S. lawyers serve as all-purpose transaction facilitators on behalf of U.S. and other foreign companies. However, factors such as the threat of potential social and political unrest, the depreciating ruble and the as-yet-incomplete structure of the Commonwealth of Independent States (C.I.S.), have made the former Soviet Union a less-than-promising market for U.S. lawyers. A few U.S. law firms are reportedly still considering opening offices in the Russian Republic, but most U.S. law firms that handle C.I.S. and Republic-related work intend to rely on affiliations with local lawyers and will send U.S. attorneys to Russia as needed rather than invest in a Moscow branch office.[109]

U.S. law firms already present in the C.I.S. expect to continue advising U.S. and other foreign companies on investment opportunities in the Republics. They might also seek to advise the Republic governments on matters related to joint ventures and other business opportunities. At present, there are no laws that prohibit U.S. lawyers from advising on Republic law. However, the costs of doing business in the C.I.S. are high, and the laws concerning business and other matters remain ill-defined and incomplete. Furthermore, many U.S. law firms are mindful of the fact that the jury is still out on the profitability of branch offices in Eastern Europe, where the investment climate is more favorable than that of the former Soviet Union.

Mexico

The liberalization of Mexico's foreign investment regulations, in 1991 generated interest among U.S. lawyers seeking to assist and advise U.S. and other foreign investors on joint ventures, mergers, and acquisitions in Mexico. A number of U.S. law firms have applied to the Mexican Foreign Investment Commission for licenses to open branch offices in Mexico. Some U.S. law firms have obtained permission to establish consulting offices with in-house lawyers, apparently a more expeditious method of establishing branch offices in Mexico.[110]

Under the terms of the North American Free Trade Agreement (NAFTA), law firms headquartered in the United States and Canada will have the right to establish in Mexico to provide legal services through licensed foreign legal consultants, provided that the State or province in which the U.S. and Canadian lawyers are licensed accords equivalent treatment to Mexican lawyers and law firms.[111] While informal arrangements of this sort already exist between the Mexican Government and the U.S. States that have adopted foreign legal consultant rules, the Mexican Government will formalize the foreign legal consultant system and introduce greater transparency into the process by implementing licensing guidelines and procedures.[112] However, foreign lawyers are still prohibited form practicing Mexican law, and U.S. law firms may not hire Mexican lawyers or enter into forma association, i.e., partnership, with members of the Mexican legal profession.[113]

One U.S. attorney predicts that the NAFTA provisions will not significantly affect the legal services trade among ther three signatories because U.S. firms with an interest in Mexico have already established themselves in that market, and, given the relatively small amount of trade between canada and Mexico, it appears unlikely that Mexican-Canadian legal services trade will increase significantly as a result ot the agreement.[114]

A group of prominent, Mexico City international lawyers favors the entry of U.S. law firms as long as there are strict practice and internal cooperation restrictions.[115] Since Mexican lawyers would have an advantage in representing Mexican clients and because there will likely to be enough work for Mexican and foreign lawyers, the Mexican Bar Association does not view U.S. law firm presence as direct competition.[116]

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[107] Sheila Kaplan, "Eastern Europe: Dealmakers Rush to a New Frontier," *The American Lawyer*, April 1991.

[108] For the most part, these are one-attorney establishments.

[109] "Attorneys Wary of Ex-Soviet Republics," *Wall Street Journal*, January 3, 1992.

[110] Member of the American Bar Association, International Law Section (Mexico), telephone interview with USITC staff, November 6, 1991.

[111] NAFTA, Annex VI - Mexico, October 7, 1992, VI-M-2.

[112] Member of the American Bar Association, International Law Section (Mexico), telephone interview with USITC staff, October 20, 1992.

[113] Under NAFTA, Canadian lawyers may hire or associate with Mexican lawyers provided that Mexican lawyers are granted similar privileges.

[114] Member of the American Bar Association, International Law Section (Mexico), telephone interview with USITC staff, October 20, 1992.

[115] "Mexico Braces for Rush of U.S. Lawyers, *Wall Street Journal*, October 13, 1991, p. B-10.

[116] Member of the American Bar Association, International Law Section (Mexico), telephone interview with USITC staff, November 6, 1991.

Hong Kong and Singapore

Traditionally, Hong Kong and Singapore have been relatively closed markets for transnational legal services. Foreign law firms may not practice local law, nor may they hire or form partnerships with local attorneys. Furthermore, Hong Kong and Singapore prohibit the establishment of referral relationships between local and foreign law firms.[117] As a result, U.S. law firms have had difficulties in providing the full range of U.S., international and local legal services that corporate and banking clients require.[118]

Foreign law firms arrived in the early 1980s to serve corporate clients with interests in China. The large U.S. and British law firms involved in Euromarket issues and offshore banking "discovered" Hong Kong and Singapore in the early 1980s.[119] By the end of the 1980s, however, several major law firms had closed their offices in Hong Kong when the China-related business did not materialize in the expected quantity and because Hong Kong did not evolve into a financial center rivaling Tokyo as had been expected. The firms remaining in the colony have diversified their clientele, using Hong Kong as a base for serving clients throughout the Pacific Rim region.

The Middle East

The late 1970s and early 1980s marked the height of foreign law firms' involvement in the Middle Eastern market for business legal services. Some firms opened branch offices, primarily in Saudi Arabia and the Gulf States, but most firms handled Middle East business from their European offices. U.S. and British law firms dominated the market for "positive" legal work such as company formation, negotiations, and loan syndications. The law firms followed the investment bank and multinational corporate clients that participated in big-ticket government-sponsored infrastructure construction projects throughout the region.

By the mid-1980s, the massive infrastructure projects had been completed, and Middle Eastern governments' oil revenues began to erode as the price of oil plummeted. There was still a market for "negative" work such as company dissolutions, debt-rescheduling and claims work, but political turmoil in the region has discouraged foreign investment and has thus diminished demand for U.S. legal services in the region.

The People's Republic of China

Moves toward economic liberalization in the late 1970s stimulated U.S. law firms' interest in China. Only two or three U.S. law firms opened offices on the Chinese mainland; most handled China business from the firms' Hong Kong offices. Some law firms "lent" attorneys to foreign corporations with offices in China to act as the companies' legal representatives vis-a-vis the Chinese government.

U.S. lawyers in China assist U.S. and other foreign corporations in the negotiation of production and export contracts. Work related to Chinese joint ventures declined in the immediate aftermath of Tiananmen Square, but legal industry observers reported in 1991 that "two years later, firms [were] back in China."[120] U.S. law firms have not rushed to open offices on the Chinese mainland due to expense and political uncertainty: the future of China-related joint venture work now depends on annual Congressional approval of China's most favored nation status. However, continued development of China's commercial relations with other countries will likely increase demand for U.S. legal services in China-related matters.

OUTLOOK

Trends in the U.S. Legal Services Industry

The U.S. legal services industry, previously considered to be recession-proof, is undergoing a process of major restructuring. Law firms have been laying off associates, dismissing unproductive partners, and hiring fewer new lawyers because the market for premium-billing legal services such as large- scale mergers and acquisitions and leveraged buy-outs has contracted since 1988. The accelerating growth of revenues and the rapid concentration of the industry has ended. As a result, firms that hired new lawyers in the mid-1980s to handle the increased volume of work have apparently sought to reduce firm size to levels commensurate with the slower growth rate in what now appears to be a mature market for legal services.

Increasingly, the legal services industry must be examined in terms of market segments. Demand for certain types of legal services responds to conditions in the general business and economic environment; therefore, demand for premium-billing services has declined while demand for bankruptcy-related services has grown. Changes in government regulations also affect demand for legal services, for example, in such areas as environmental and tax law.

Trends in International Legal Services

U.S. firms will likely continue to be major players in the market for international legal services despite increased competition from the new, larger European law firms that resulted from mergers during the 1980s. Observers predict that foreign demand for U.S. legal services will continue to grow in coming years, despite the current economic slowdown, due to privatization and economic liberalization programs in Asia, Eastern

[117] Sara Khalil, "Finance: Blue-Chip Losses and Gains," *International Business*, June 1991, pp. 16-18 and State Department Cable 10136, Singapore, November 4, 1991.

[118] Ibid.

[119] Since Hong Kong is a British colony (until 1997), U.K.-qualified lawyers are also qualified as Hong Kong lawyers.

[120] "Two Years Later, Firms Are Back in China, *National Law Journal*, June 17, 1991, p. 27.

Europe, and Latin America. Reportedly, U.S. law firms are more eager to provide services in foreign markets in order to offset slower growth in the U.S. legal services market.[111]

The past few years have witnessed a general trend toward greater liberalization of legal services in important U.S. foreign markets in Western Europe and Asia. Yet, France, the second largest European market for U.S. legal services, recently passed legislation that could possibly limit U.S. law firms' activity in the French market. However, there has been little consensus among U.S. lawyers in France on the significance and possible effects of the law.

The removal of nontariff barriers in international services trade is being negotiated in the Uruguay Round of GATT talks scheduled to be concluded in 1992. The current round of trade talks have witnessed a first attempt at including services industries within the GATT trade negotiations framework. The nontariff barriers most relevant to U.S. providers of legal services involve issues of market access, namely, the right of establishment and national treatment provisions. However, since the provision of legal services requires continuous contact with the client and the market, negotiations concerning liberalized trade in legal and other professional services must include such issues as foreign investment regulations, licensing requirements and mutual recognition of qualifications — issues more relevant to foreign direct investment than to traditional cross-border trade.

Services, including legal services, are also being discussed in the North American Free Trade Agreement negotiations. Many observers feel that if Mexico removes most foreign investment restrictions, U.S. lawyers will be able to practice law in some form in Mexico. However, whether this approach or the development of an international framework covering professional services will lead to liberalized trade in international legal services remains to be seen.

[121] Consultant at a legal industry management consulting firm, telephone interview with USITC staff, October 1, 1991.