1. Background
Washington and Global Trade

- Washington No. 4 trade state in entire nation with $86.4 billion in exports (2015)
  - Washington exported $6,035 per person
  - U.S. national average only $2,594 per person
- > 325,000 jobs in Washington directly sustained by exports and hundreds of thousands more are indirectly supported
- Washington ranked 10th by GDP per capita in 2016
- Washington 4th fastest-growing export state since 2012 (up 14.1%) behind Kentucky, South Carolina and Arizona

Sources: Washington Council on International Trade; TradeStats ITA

Washington Top Export Commodities

[Diagram showing top export commodities for Washington from 2010 to 2013]

- Total All Industries
- Aircraft
- Agricultural Products
- Mineral Fuel, Oil
Washington Top Export Markets

Top Export Industry Sectors

<table>
<thead>
<tr>
<th>Top Export Industry Sectors</th>
<th>Sample Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation Equipment</td>
<td>The Boeing Company, Pacific Marina USA Inc., PACCAR, Thunder Jet River Boats, TORAY Composites</td>
</tr>
<tr>
<td>Retail</td>
<td>REI, Nordstrom, Costco, Outdoor Research, Amazon.com, Starbucks Coffee Company, Zulily, Eddie Bauer, Tommy Bahama</td>
</tr>
</tbody>
</table>
WASHINGTON TOP IMPORT COUNTRIES

- Canada: 13.8
- China: 14.1
- Japan: 8.7
- Korea: 8.5
- Taiwan: 6.1

GLOBAL MARKETS NOT JUST FOR “BIG” COMPANIES

- Small and medium-sized enterprises (SMEs) can also buy, sell in global markets today.
- SMEs produced over 24% of Washington’s total exports in 2012.
- Complex but generally open business environment in most major regional markets: Asia, European Union, Latin America, Middle East/North Africa.
- Still huge new market potential for “early entrants” to establish brand recognition, acceptance.
- Opportunities for supply chain optimization, lower cost of finished goods with equivalent quality.
- However, more challenges for domestic firms with less or even no experience in international business.
Consider U.S. and Local Laws

- U.S. immigration laws may restrict travel of foreign personnel to United States for training, meetings
- U.S. export control laws may restrict exports of U.S.-origin technology, products to different national markets
- U.S. Foreign Corrupt Practices Act (FCPA) limits payments to any government, party officials or their family members
- International taxation rules under Internal Revenue Code
- Protection of intellectual property (IP)
- Local law issues for income taxes, labor and employment, health and safety, distributors, importers, product testing or marking (e.g., CE mark), “localized” language materials

2. Strategic Planning
Learning about Target Country

- Each global region is unique business, legal environment
- Each country in region has vastly different culture, politics, language, history
- In some countries, massive cultural, social changes taking place as market-driven economic transformation occurs
  - BRICS: Brazil, Russia, India, China, South Africa
- If company has limited budget and bandwidth for "international" expansion, weigh carefully relative costs and benefits
- Newer markets may offer more opportunities but also more risks, costs

Selecting Right Location

- Internal transportation in target country may be inefficient, time consuming and expensive – need to factor into planned total cost of sales or sourcing
- Some locations (e.g., Ireland, Singapore) may be ideal as regional "hub" locations with special incentives
- May be new government-sponsored industrial parks and clusters of businesses in certain “2nd tier” cities
- Popular locations may prove more expensive in terms of labor, housing, traffic, other key cost drivers
Identify Key Business and Legal Considerations

- *Why* company wants to “go to target country X”
- Assess “risk” limitations for company investment
- Identify key resources, advisers
- Allocate appropriate budget
- Create realistic timelines, milestones
- Select competent, empowered implementation teams in United States and in target country
- Prepare for unknown

3. Various Legal Considerations
U.S. Export Control and Economic Sanctions Laws and Regulations

- Embargoes administered by U.S. Treasury Department's Office of Foreign Assets Control (OFAC)
- Export Administration Regulations (EAR) administered by U.S. Commerce Department's Bureau of Industry and Security (BIS)
- International Traffic in Arms Regulations (ITAR) administered by U.S. State Department's Directorate of Defense Trade Controls (DDTC)

Other Government Entities Regulating Exports

- Nuclear Regulatory Commission (nuclear materials, equipment)
- Department of Energy (nuclear technology)
- Drug Enforcement Administration (controlled drugs, chemicals, precursors)
- Department of Agriculture (plants, plant products, live animals)
- Bureau of Alcohol, Tobacco, Firearms and Explosives (firearms, ammunition, explosives)
- Food and Drug Administration (medical devices, pharma)
FCPA

• U.S. law prohibiting U.S. companies from bribery of foreign government officials to gain international business
• Basic components:
  – Anti-bribery prohibitions
  – Accounting requirements (applicable only to “issuers” whose securities are publicly traded in United States)
• Rationale: Response to SEC studies in 1970s: >400 U.S. companies had paid >US$300 million to foreign government officials, politicians and political parties to gain foreign business
  – Mentality before FCPA: “When in Rome…” so, if bribery was “normal” business practice in a nation, many U.S. companies often adapted to local business culture
  – Without such new legislation, no ability to regulate foreign behavior of U.S. businesses (or to insulate them from local pressures to pay such bribes)

Key Elements of Offense Under FCPA

Anti-Bribery Law

1. **Payment**: Payment, offer or promise to pay
2. **Thing of Value**: Anything of value
3. **Recipient**: Any foreign government or political party official or political party, candidate for office or intermediary for any of the above
4. **Intent**: Corrupt intent by U.S. company to influence foreign official’s action or inaction
5. **Purpose**: To obtain or retain foreign business for U.S. company

* Limited exceptions and affirmative defenses
Transparency International

- Transparency International (TI) Corruption Perception Index ranks countries in terms of degree to which corruption is perceived to exist among public officials and politicians: www.transparency.org

- Global Corruption Barometer (2009)
  - United States and Canada: about 1 - 3%
  - European Union: about 8%
  - Asia-Pacific and Latin America: about 13%
  - Newly independent states: about 30%
  - Middle East and North Africa: about 40%

- Corruption = “abuse of entrusted power for private gain”
  - Cost of corruption: political, economic, social, environmental

- TI further differentiates between corruption that is
  - “According to the rule” = facilitation (grease) payments, where bribe is paid to receive preferential treatment for something that bribe receiver is required to do by law
  - “Against the rule” = bribe paid to obtain services bribe receiver is prohibited from providing
4. Selecting Proper “Platform” in Target Country

Due Diligence in Selecting Partners

- Proper “due diligence” needed to select business partners in any foreign country
- Many possible types, quality, location of partners
- Patience + market knowledge + intermediaries
- Different languages, cultures can limit understanding, create misunderstandings
- Key human “bridge”: can try to have own bilingual, bicultural employees inside U.S. company
Essential Due Diligence Items

- List checking
- Interviewing executives
- Interviewing client/customer references
- Litigation records
- Media search
- Visit

Considerations for Choosing “Platform”

- Multiple government approvals may be needed to commence doing business in target country
- For sales in target country, consider
  - Local sales representatives or distributors
  - Representative office
- For sourcing in target country, consider
  - Local purchasing agent
  - Representative office
- Be sure local partner in target country is legally qualified to do business as partner
International Distribution and Consulting/Sales Agency Agreements

- Appointment and scope
- Territory
- Financial considerations

Diligence Red Flags

- Agent insists on payment in advance of contract being executed or insists on payment terms that are widely inconsistent with industry standard
- Agent uses off-shore accounts without reasonable explanation
- Agent requests that commissions be paid to or through third party, in different name or in different currency or country
- Agent requires unusually large commission;
International Distribution and Consulting/Sales Agency Agreements (cont’d)

• Exclusivity
• Restrictive covenants
• Reservation of rights
• Subdistributors
• Competitive products

International Distribution and Consulting/Sales Agency Agreements (cont’d)

• Independent contractor
• Obligations, customer agreements, marketing materials, warranties, product recall
• Forecasts, purchase orders, delivery
• Royalties and setting prices
• Expenses, audit rights
Additional Diligence Red Flags

- Agent has unexplained or unexpected access to usually unavailable information
- Agent lacks staff to do required technical work
- Agent refuses to agree to contractually required audit or refuses to enter into contract that allows for periodic audits
- Agent misrepresents any material fact or makes materially inconsistent statements

International Distribution and Consulting/Sales Agency Agreements (cont’d)

- Government registrations, requirements
- Confidentiality, non-disclosure
- IP ownership and use, inventions, copyrights
- Indemnification, limitations on liability, insurance
- Term, termination
- Dispute resolution
- Applicable laws, compliance with laws, business ethics
5. Conclusion

Pick Right Teams

- **External advisers**
  - Attorneys, accountants, real estate brokers, recruiters, customs brokers, U.S. Commercial Service resources
- **Senior U.S. management team with knowledge of target market, commitment, authority, trust**
- **Local partner management team with knowledge of United States, commitment, authority, trust**
- **Other key factors: some bilingual-bicultural skills and demonstrated operational experience in target country in combined company and external advisor teams**
“Macro” Issues that can Upset Small, Medium Companies

- Global trade deficit
- Currency valuation
- Whether U.S. IP expectations can be met in other countries
- Food or other consumer product safety
- Potential for enabling “knock-off” local competition in target country
- American protectionist sentiments
- World events

THANK YOU!

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