



A FRAMEWORK FOR ITALIAN ENTERPRISES ENTERING THE U.S. MARKETPLACE

US-ITALY CROSSROADS

Marco Q. Rossi, U.S. and Italian
International Tax and Legal Counsel –
Principal and Managing Director

Mark V. Santo, Corporate Lawyer and
Business Consultant – Principal and
Managing Director

*Boutique consulting and
management firm providing
strategy and management
services forged from a deep
understanding and experience
with managing and counseling
Italian enterprises seeking U.S.
market entry.*



The U. S. marketplace is the largest and the most competitive market in the world, yet it is the easiest to access, the most transparent and free from stifling regulation.

Overview of U.S.-Italy Market Stats

USA PRINCIPAL IMPORTS

- INDUSTRIAL SUPPLIES (630.7)
- CONSUMER GOODS (474.9)
- CAPITAL GOODS (444.7)
- VEHICLES AND PRODUCT (258.9)
- FOOD AND BEVERAGES (81.7)

ITALY PRINCIPAL EXPORTS

- MACHINERY & TRANSPORT (191.0)
 - EQUIP
- CHEMICALS &
 - RELATED PROD (51.2)
- FOOD, DRINK & TOBACCO (29.9)
- MINERAL FUELS &
 - LUBRICANTS (19.7)

PRELIMINARY COMMENTS

Of all foreign markets across the globe, it is often the case that Italian firms prize most highly the U.S. market. However, understanding industry structure within the U.S. is the key to successful market entry.

- You can assume a market exists for your products and services in the U.S.
- However, need to understand the competitive profile of the target industry.
 - Intensity of competition
 - Power of suppliers and buyers
 - Threats of new entrants
 - Barriers to entry
 - Threats of substitute products or services
- The strength of these competitive forces affect prices, costs, and the investment required to compete in the U.S.



MODES OF ENTRY

Mode of entry into the U.S. marketplace is commensurate with the level of with respect to customer needs and demands in the U.S. marketplace. Entry can be as simple as agency appointment to direct onshore investment.

- Italian companies most often look for a viable distribution channel as its first approach to the U.S. marketplace.
 - Sales Agents
 - Distributors
 - Licensees
 - VAR's
- Common threads to each modality:
 - Ability to market and sell
 - Expertise in industry and product
 - Excellent customer support
- Joint ventures and direct onshore investment (M&A) are more complex forms of market entry



CASE STUDY ANALYSIS

Examples of Market Entry

- 1. Italian Fashion House**
- 2. Italian ERP Supplier**
- 3. Italian Embedded System Supplier**
- 4. Italian Motor Vehicle Propulsion Supplier**
- 5. Italian Multinational**



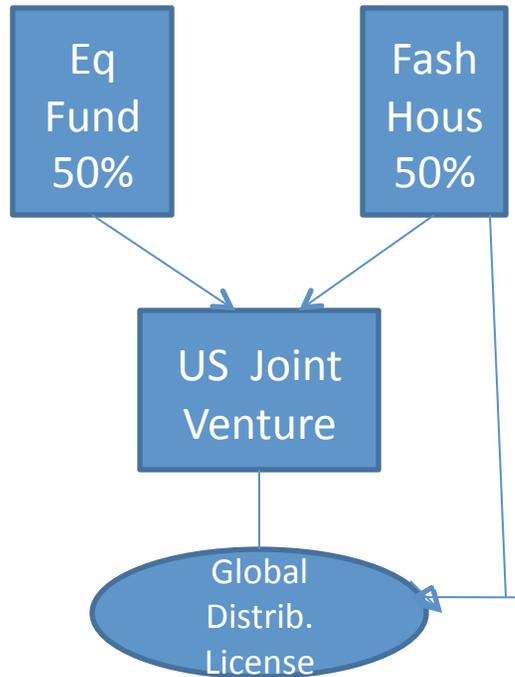
1. ITALIAN FASHION HOUSE

High-end Italian designs, whether in consumer or industrial markets, has historically been successful in the U.S.

- Italian fashion house sells to private clientele and trunk shows in Europe and U.S.
- Seeking to expand brand and distribution in the U.S.
- Strategy - begin distribution in U.S. with fashion storefront opening in NYC
- U.S. private equity fund will provide the financing to bring fashion house onshore
- U.S. Joint Venture formed between private equity fund and Italian fashion house
- Italian fashion house will extend worldwide distribution rights to U.S. joint venture company



Italian Fashion House



- U.S. Joint Venture

- Equal holdings / 50-50 shareholding
- Board control equal with third director
- Private Equity Fund investment
 - Preferred stock
 - Carries participating cumulative dividend
 - Dividend carries higher interest rate than loan due to no security
 - Not convertible
 - Liquidation preference
- Fund is looking for exit from investment at some point
- Italian partner wants exit as well since U.S. company must continue to pay dividends and participate in profits

Italian Fashion House

Note: the Distribution Agreement was not contributed as capital in order for Italian Fashion House to receive its 50% stake in the U.S joint venture.

- Distribution Agreement
 - Italian Fashion House grants worldwide exclusive license to U.S JV to use:
 - Trademarks, trade name and copyrights of Italian Fashion House for the purpose of worldwide distribution and sale of Italian fashions
 - U.S. licensee must meet benchmark performances
 - Sales levels, etc
 - Protection of trademarks® and copyrights / must be registered in U.S.
 - Licensor has right to terminate agreement should benchmarks not be met



Joint Ventures

A Dual Edged Sword By Any Other Name

- Can be contractual or equity joint venture
- Equity JV not for faint of heart
- Prefer majority position
- Capital contributed can be \$\$ or property
- Valuation always at issue
- Management authority lines must be clear as well as corporate governance composition
- Must have absolute confidence in JV partner
- Like any domestic JV – it's a marriage and divorce is often painful
- Choice of law, dispute resolution and dissolution process should be carefully delineated
- International tax planning critical – may result in permanent establishment in foreign country



2. ITALIAN ERP SUPPLIER

Aborted Market Entry

- Italian developer of enterprise resource planning software
- ERP's are very sophisticated software management systems
- Controls entire production process of manufacturing concerns and tied into to sales function as well as financial controls
- Ineffective installation of ERP systems can severely disrupt operations with significant loss of profitability and impact upon customers
- U.S. market heavily saturated with offerings for both large and small companies with brand names like Microsoft, People Soft, SAP,
- Barriers to entry are high



Italian ERP Supplier

Moderate installed base in Italy does not bode well for U.S. market entry

- Decided to appoint Sales Representative in the Upper Northwest of U.S.A.
- Had customer nearby
- Representative was charged with selling throughout the Western United States - Nevada, Utah, etc
- ERP users need extensive training and support and must have 24/7 capabilities
- One U.S. sales representative is not enough customer support
- Product was also not complete for U.S. end users / translation problems
- Forced to abandon U.S. market



Italian ERP Supplier

Selling technology based products in the U.S. must meet customer requirements completely and not just technical specifications

- Italian technology based products and systems in U.S. must meet the following:
 - Must offer whole product – if professional services are necessary to make the product work, then services must be provided locally or thru 24/7 web based support
 - Must be “referenceable” – i.e. Product must have positive references from users in the marketplace since technology communities will not buy unless product is referenceable
 - Cannot be a “nice to have” – has to be a “must have” – solves a real problem for customers in new way or is a totally disruptive product



3. ITALIAN EMBEDDED SYSTEMS GROUP

- Successful young Italian Company growing rapidly in the market for providing ruggedized embedded computing systems for defense, medical and transportation industries
- Had success in selling its board designs throughout Italy and Europe
- Office in China
- Wanted to enter U.S. market since the U.S. defense market was the most dynamic



Italian Embedded Systems Group

U.S. market entry strategy based upon make vs. buy analysis

- Started U.S. market strategy with appointing sales representative in Florida where there is large defense and aerospace industry
- Problem is that customers demanded local technical support and sales representative often had to rely on Italian engineers for solutions
- Demonstrates that in many instances, full onshore support is critical to sales process with respect to technology based products or services



Italian Embedded Systems Group

***Build from ground-up
or buy into the
market?***



- On the Make Side:
 - Establishing U.S. operations on an autonomous basis
 - Needed technical force of 3-4 engineers and sales / marketing person
 - Profitability - 3-5 years away
- On the Buy Side:
 - Merger or acquisition allows immediate U.S. market entry
 - Larger investment required
 - Settled on acquiring small Salt Lake based embedded engineering firm specializing in U.S. defense industry

Italian Embedded Systems Group / Acquisition

***Acquisition of U.S. target
allows immediate entry
into the marketplace.
There are, of course, risks
accompanying this form of
market entry.***



- Due diligence undertaken:
 - Target product line
 - Competitive position in the marketplace
 - Target technical expertise
 - Sales and Marketing plans
 - Financial condition and projections
 - U.S. management capability
- Proceeded next to negotiation of Letter of Intent
 - Non binding
 - Purchase price
 - Financing terms
 - Special conditions
 - Closing subject to due diligence

***Italian Embedded Systems
Group / Post Acquisition
Integration***

***The most important
assets of an
enterprise reside in
human form.***



- Post acquisition integration is where the “rubber meets the road”
- Merits of the decision to purchase the Target will start to materialize
- Integration proved difficult
- Founder very intelligent embedded design engineer but very difficult to manage
 - Impeded ability to make changes and restructure the company
 - Also, prevented assessment of skill level of key U.S. managers
- Also, cultural difficulties arose
 - Comparative compensation practices
 - ERP problems

Italian Embedded Systems Group / Result of make vs. Buy

***The “Buy Decision”
proved the right one***



- The Italian supplier gained an immediate channel for its products to be sold in the U.S.
- The Target was a successful embedded systems company and the acquisition allowed the Italian parent to “free ride” on the Target’s good will
- Within 3 years, Target undergone comprehensive restructuring - all facets of operations and opened new strategic market channels
- Target subsequently merged into a larger acquisition of a well known competitor in the U.S – revenues in the US grew from 10m to 100m in three years.
- If the Italian parent would have decided to **make vs. buy**, would never have grown so quickly
- Italian parent went public in Italy

4. ITALIAN ALTERNATIVE FUEL VEHICLE SYSTEMS SUPPLIER

***Italian Manufacturer
of LPG and CNG
Motor Vehicle
Propulsion Systems***



- Large, global Italian manufacturer of LPG and CNG propulsion systems for auto, truck and bus markets seeking U.S. market entry
- Serves as OEM to many of large auto and truck makers
- Served markets throughout the world
- U.S. market for alternative fuels starting to grow dramatically
- California State environmental laws mandate usage of alternative fuel driven vehicles and prescribes certifications of systems and components

Italian Alternative Fuel Vehicle Systems Supplier

***U.S. facilities often
established near
customer base***



- Two step entry strategy (make and buy strategy): direct entry and parallel acquisition of U.S. business to gain immediate access and accelerate business growth in the U.S. market
- Entry strategy - establish an industrial facility in LA near customer base which would serve as a manufacturer, technical and repair facility
- Hired US-Italian national to lead build-up of technical and engineering capabilities in U.S.
 - Comparative compensation issues
- Marketing and sales layered on top of engineering
- Acquired small CNG fuel injection software engineering company based on West Coast
- Management and post acquisition integration of the two businesses critical for the success of the project

5. ITALIAN MULTINATIONAL

Publically Traded Italian Multinational Process Automation Group



- Industrial process automation systems - control processes that are in continuous production – electricity, pharmaceuticals, chemicals, etc
- Eltag Bailey Group had 40 operating units in over 25 countries with \$2bn of revenue (NYSE: EBY)
- Market Entry Strategies:
 - Local Agents and Distributors:
 - Deployed where market was not fully developed or needed a local partner to open market channel
 - Used predominately in Mid-east and developing countries where manufacturing sector was weak

Italian Multinational



➤ Technology Licenses:

- Deployed in countries where healthy or large market for product line but still needed local partner to penetrate market and assess customers
 - South Korea, Japan and India
- Scope of license
 - No manufacturing rights (except Japan)
 - Licensee must purchase system components from Licensor
 - Assembly only
 - Sales levels / termination
 - Dispute Resolution

➤ VAR's / System Integrators:

- Higher level of distribution / requires significant technical skills for product line

Italian Multinational

Multinational Process Automation Group



- Acquisitions:
 - In large and important markets, made acquisitions in order to quickly establish an operating unit and presence in market
 - Depending on product line, acquisitions ranged from small deals (usually niche product line) to buying large competitor in foreign market
 - Post acquisition integration becomes critical litmus test for success of deal
 - Expatriate vs. in-country management
 - Post – acquisition integration critical
 - Through cross border acquisitions, Group grew from 300m to 2bn in 7 years

6. LESSONS LEARNED FROM WORKING FOR AN ITALIAN MULTINATIONAL

***Operations
throughout the world
with diverse
workforce and
cultures***

- Critical that the vision, mission and the strategy of the Parent is articulated clearly and often throughout its operating units
- Management should strive to ensure that each Country Manager understands that every action undertaken in his or her territory must be consistent with the Parent's mission and strategy
- Quality of global workforce is the most important asset regardless of value of technology or product
- It is fine balancing act – must allow local units to have certain degree of autonomy for their domestic market while at the same time ensuring coordination with the Parent and sharing of key resources



7. FINAL OBSERVATIONS

Some Observations on Direct Foreign Investment

- Industry structure understanding is mandatory and must understand target's competitive profile in the industry
- Like any domestic M&A deal – risk is high but often is the preferred choice of direct onshore entry and capture of market share
- Due diligence on foreign target must be thorough and it affirms reasons for acquisition
- Transaction completely in-line with corporate strategy
- Financial ability to close deal and beyond
- Human resource strategy must be compelling
- Commitment to stay the course



INTERNATIONAL M&A KEYS TO SUCCESS

DUE DILIGENCE

***“Leave No Stone
Unturned”***

- Due Knowledge Diligence - conform with corporate strategy
- Position forged from industry structure analysis
- Competitive profile of Target:
 - ❖ Target’s position in market
 - ❖ Target’s near term strategic plan and projections
 - ❖ Management and workforce strengths
 - ❖ Technology assets
 - ❖ Sales channels
 - ❖ Marketing strategies
 - ❖ IP Portfolio



PROJECTIONS

Projected synergies often proven illusory. Many deals have foundered in these dangerous waters.

- Sales forecast and projections should be seen as suspect, both of the Target's as well as from the acquirer
- Projected synergies are often ILLUSORY
- Graveyard of many acquisitions



M&A

Valuation and Structure

- Valuation is critical - price is determinative of future profitability – particularly if overpaid
 - Do not put balance sheet at risk
- *Projected SYNERGIES are often illusory/ be conservative here*
- Comparative tax principles will affect valuation:
 - Amortization of Goodwill
 - Taxation of local income and dividend treatment
 - Transfer pricing
 - Tax deferred assets
 - Net operating losses
 - R&D capitalization
 - Consolidation of financial results
- Must understand methodology of accounting rules of target's country – may skew financial statements
 - US GAAP v. International GAAP
- Financial statements will be in foreign currency – need to understand exchange rate policy



HUMAN RESOURCES

The most important assets of an enterprise reside in human form



- Cannot overemphasize intelligent human resource strategy in direct foreign investment
- Must strive to overcome cultural clash
- In-country management vs. expatriate manager
- Compensation schemes – U.S. compensation schemes are far different from rest of the world
- Labor management critical – local laws may dictate labor strategy / Union workforce
- Reductions in force feasible?
 - Plant closings?
- Share resources as much as possible and exchange of employees

ITALIAN SUBSIDIARY OF U.S. ENTERPRISE

Serving as Italian Subsidiary of U.S. Parent Company



- I. Start-up of Italian Operations
 - Will have many different forms
 - Agency/distributor
 - VAR/licensee
 - Joint Venture
 - Will have responsibility to develop Italian market channel
 - Sales quotas will apply
- II. Italian Company purchased by U.S. Enterprise
 - What are reasons for Italian Company selling?
 - Capital Infusion
 - Growth opportunities
 - Cash-out

Italian Subsidiary of U.S. Enterprise

***Reverse due diligence –
Italian Company must
understand everything
about its suitor and decide
if selling the Company
meets its strategic
objectives***

- Does Owner of Italian entity only care about sales price?
 - Concern for workforce?
 - Will management be retained?
- What will be the new management structure?
 - US expatriate management or Italian management
- Retention agreements for key management
- Workforce issues
 - Reduction in force /Union rights
- What plants or product lines will be cancelled or merged?
- Product Standards
 - Must be Uniform



INTERNATIONAL ACCOUNTING AND TAX PLANNING

***Permeates all aspects
of U.S. market entry.
Adroit international tax
planning is critical to
strategic plans***



International Tax

- Establishing foreign subsidiaries — analyzing the consequences of establishing foreign subsidiaries
- Transfer pricing — must determine acceptable transfer pricing methods and required documentation
- Technology transfer — technology licensing issues need to be understood
- International acquisitions/reorganizations — U.S. and foreign tax aspects of acquiring a business abroad
- Planning for repatriation of earnings — providing alternatives which will facilitate repatriation of earnings
- Foreign tax credit utilization — maximizing foreign tax credit utilization

INTERNATIONAL ACCOUNTING

***Must harmonize
comparative
accounting standards
so as to correctly
analyze financial
statements***



- May find it difficult to analyze the accuracy of both sets of financial statements if significantly different operating results, financial positions or cash flow classifications are reported under different accounting standards for the same period
- Financial Statements differences must be understood
- Examples of treatment of following items:
 - Goodwill
 - Tax deferred assets
 - Net operating losses
 - Consolidation of earnings
 - R&D
 - Cash Flows
- U.S. SEC continues to move forward to replace US GAAP with IFRS for listed companies

***ITALIAN ENTREPRENEURS /
THE BUSINESS COMPETENCE
ACCELERATOR PROGRAM (BCAP)***



***THE BUSINESS
COMPETENCE
ACCELERATOR PROGRAM
(BCAP)***

- Providing an opportunity for aspiring and practicing Italian entrepreneurs and innovators to gain business competencies that are needed to be competitive internationally.
- Suited to anyone who needs to acquire business skills in a short timeframe for use within their own ventures.
- Approach allows for the individual to set their own goals while teachers serve as mentors and guide to help them achieve their aspirations.
- Objective is to place entrepreneur in position to attract investment and succeed in the marketplace
- NY based and offices in Italy



US-ITALY CROSSROADS SERVICES

Extensive experience in guiding and managing Italian enterprises with respect to efficient and successful U.S. market entry with abiding commitment to client's strategic objectives



- Project Management
 - Turn Key management and coordination of market entry from initial market entry to complex investment transactions- M&A
 - Assist with market survey, identification of local partners, facility location and state and local foreign attraction programs
 - Interim management assistance
- External “General Counsel” Role
 - Legal administration of local legal entity
 - International and domestic legal and tax advice and compliance
 - Negotiation and documentation of all relevant transactions with respect to market entry
 - Agency/Distributor Agreement
 - IP Agreements
 - Key Management Agreements
 - Mergers and Acquisitions
- Bookkeeping, financials, tax returns preparation and filings
- Management of external service providers on cost efficient basis

***For many industries and markets,
the U.S. marketplace is the
pinnacle of business opportunity
and growth; competitive, fast
moving, dynamic yet the most
accessible in the world. US- Italy
Crossroads stands ready to assist
with your plans to successfully
enter the U.S. marketplace.***



US-Italy Crossroads Managing Directors

Marco Q. Rossi

Extensive expertise in providing International and U.S. legal and tax advice to Italian companies establishing or operating a business in the U.S.

- Graduate Law Degree – *University of Genoa, School of Law* (Genoa, Italy)
- Post graduate International Tax Law degree – *New York University School of Law* (New York, NY)
- Founder and Principal at Marco Q. Rossi & Associati, Italian and U.S. international boutique law firm with offices in Italy and New York (www.lawrossi.com)
- Member of International Fiscal Association, American Bar Association (Tax Section), New York State Bar association (Tax Section), New York City Bar (Business Taxation Committee)
- Specialized in U.S. and Italian international tax planning and legal and tax advice on U.S./Italy cross border transactions.
- Provides legal and tax advice to foreign and Italian clients doing business in or with the U.S. and U.S. and foreign clients doing business in or with Italy and the E.U.



Mark V. Santo

Extensive career in facilitating and enabling Italian enterprises with respect to successful U.S. market entry, from initial market entry to complex investments .

- Post graduate international law degree – *Georgetown University Law Center* (Washington D.C.)
- EU Community Law Program / *Università degli Studi di Firenze*
- U.S. Legal Counsel for *Finmeccanica S.p.A.* (Rome, Italy)
- Group Vice President and General Counsel for *Elsag Bailey Process Automation N.V.* (NYSE: EBY / the Netherlands)
- President of *parvus corporation* – U.S. Subsidiary of *Eurotech Group of Udine, Italy*
- Board Director – public and private companies
- Adjunct Professor – Strategy Formation / *Duquense University School of Business* (Pittsburgh, PA.)

