



hio
Global Summit



Concurrent Breakout Session 2

Room #2

**Emerging Markets –
India**



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Department of
Development

Ohio India Office



New Market Opportunities – India

Ohio India Office

14 September 2010



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The Indian Economy: An Overview

- 4th largest economy in the world with a GDP of over US\$ 1 trillion
- At GDP growth rates of 7.4% in 2009-10 and estimates of 7.5-8% in the current fiscal, India remains one of the fastest growing economies in the world
- At GDP growth rates of 7.4% in 2009-10 and estimates of 7.5-8% in the current fiscal, India remains one of the fastest growing economies in the world
- Ranked no. 3 in the world in purchasing power parity (PPP)



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- The most attractive global retail destination with the retail market growing at 15-20% for the next 2 years.
- Service sector contributes 53% of GDP followed by industries (29%) and agriculture (18%).
- Major industries include textiles, chemicals, food processing, steel, transport, equipment, cement, mining, petroleum, machinery and software.



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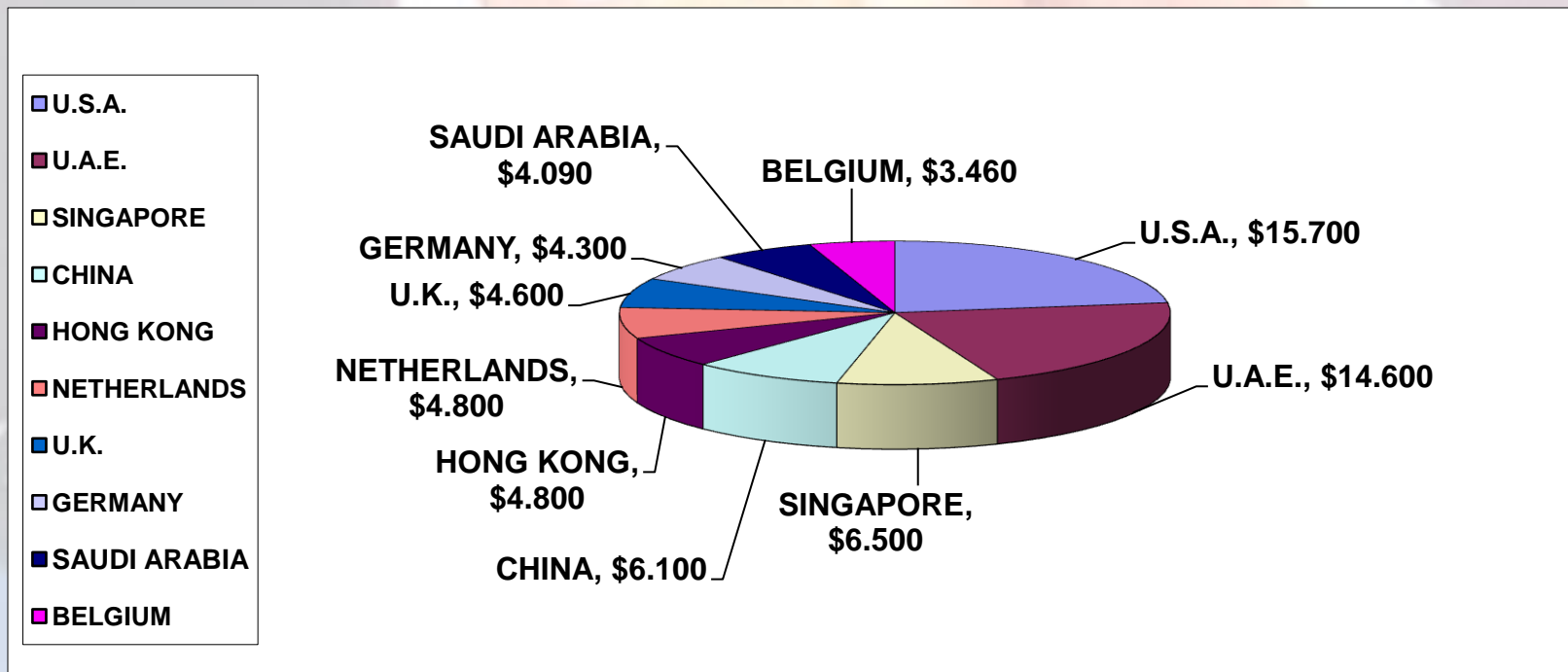
The Indian Political Scenario

- A secular, sovereign democratic republic following a parliamentary form of government
- The Indian National Congress and its allies in the United Progressive Alliance were elected to a second 5-year term in 2009 under the leadership of Prime Minister Dr. Mahmohan Singh



Exports

- India's exports in 2009 were valued at US\$ 185 billion
- Major items – petroleum products, precious stones, machinery, iron & steel, chemicals, vehicles, apparel
- Largest export destinations – USA (\$15.700) and UAE (\$14.600)

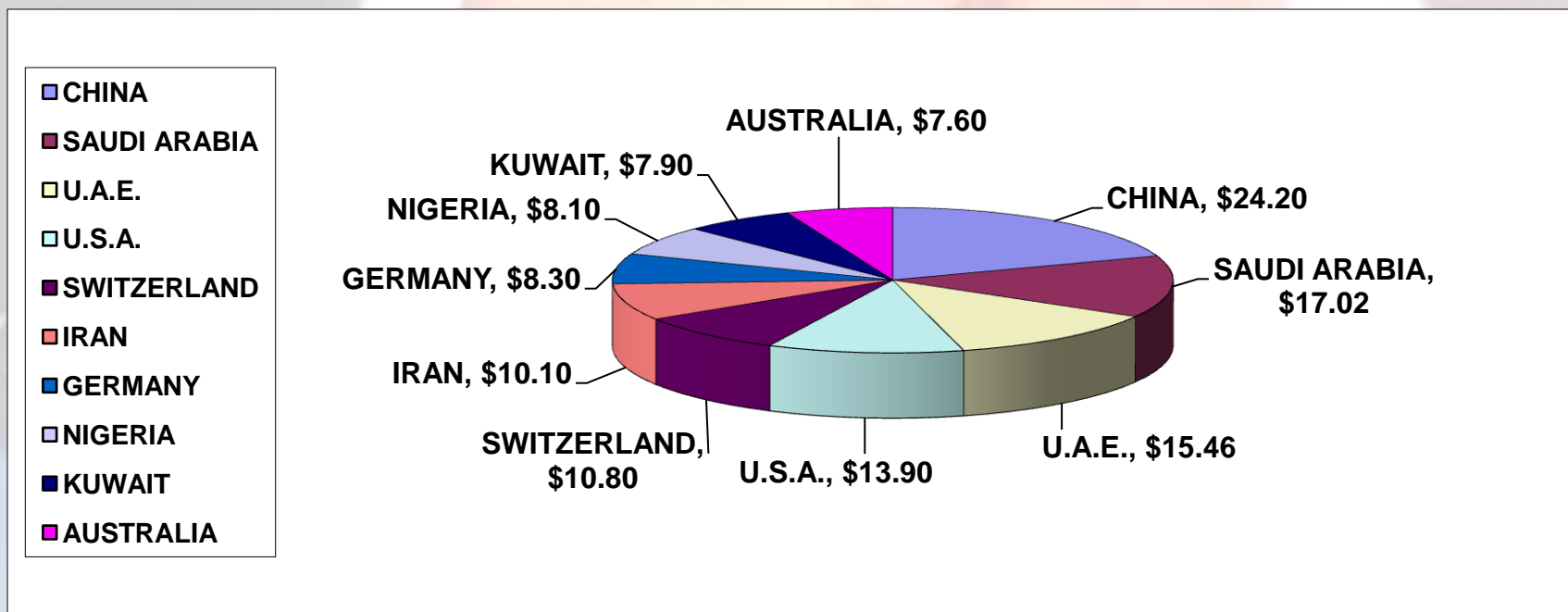


* Value in Us \$ billion (April 2008 – December 2009)



Imports

- India's imports in 2009 were valued at US\$ 303 billion
- Major items – crude oil, precious stones, machinery, fertilizer, iron & steel, chemicals
- Largest importing countries – China (USD 24.20) and Saudi Arabia (17.02 USD)



* Value in Us \$ billion (April 2008 – December 2009)



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Sunrise Industry Sectors

- Automotive
 - The automobile industry of India is the seventh largest in the world
 - The country is the largest manufacturer of two wheelers and the fifth largest producer of commercial vehicles.
 - Experts state that by the year 2050, India will top the car volumes of all the nations with about 611 million cars running on its roads.



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- Food
 - The Indian food and beverages market is expanding rapidly and is projected to grow at a compound annual growth rate (CAGR) of about 7.5 per cent during 2009-13 and would touch US\$ 330 billion by 2013.
 - The food processing sector has grown from 6 per cent a year ago to 14.9 per cent in 2010



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- Information Technology

- The information technology IT spend in India is expected to touch US\$ 67 billion in 2010, an increase of 14.1 per cent from 2009
- The domestic IT services sector, at US\$ 6.1 billion, accounted for more than 10 per cent of the overall domestic information, communication and technology (ICT) market in India in 2009
- The growth of India's Information Technology sector has been driven largely by domestic consumption, with the Indian PC market expected to grow 19 per cent in 2010 and by more than 21 per cent in 2011.



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- Renewable Energy

- Currently, India is the fifth largest consumer of energy in the world, and will be the third largest by 2030.
- India's total installed capacity of electricity generation has expanded from 105,045.96 MW at the end of 2001–02 to 1,57,229.48 MW at the end of February, 2010.
- Renewable energy sources contribute over 10% to the total power generation in the country producing 15,789 MW (as on 31.1.2010).



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Inbound Investments

- FDI inflows during 2009-10 amounted to US\$ 25.89 billion as compared to US\$ 27 billion in 2008-09
- Mauritius, Singapore and the US are top foreign investors in India
- Services (financial & non-financial) account for the highest share of FDI inflows followed by housing & real estate, telecommunications and construction.



Outbound Investments

- Total outward investment in 2009-10 stood at US\$ 10.3 billion compared to US\$ 15.9 billion in 2008-09
- Singapore, Mauritius, the Netherlands, the United States and the British Virgin Islands accounted for 67% of total outward FDI
- Manufacturing accounted for 43% of FDI while finance, insurance, real estate and business services attracted 28.1%



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Some leading Ohio companies in India

- Abbott Laboratories
- Bry Air Inc.
- Eaton Corporation
- GE Lighting
- GenCorp Inc.
- Procter & Gamble
- Rockwell Automation Inc.
- Timken Co.



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THANK YOU



An Overview - The Indian Legal Landscape

presented by Vinita Bahri-Mehra, Esq.
September 22, 2010
Ohio Global Summit

India's FDI Regime

- 100% foreign investment permitted in most sectors on automatic basis, except:
 - Banking (74%)
 - Telecom services (74%)
 - Civil Aviation (49%)
 - Insurance (49%), etc.
 - Retail trading – Single Brand up to 51% with prior approval
- Certain sectors where FDI is prohibited:
 - Atomic Energy
 - Lottery business
 - Gambling and Betting
 - Certain sectors where there are minimum capitalization requirements:
 - Non-banking financial services activity (certain activities – fee-based and fund-based)
 - Real estate construction and development projects

I. Entry Strategies for U.S. Investors As an Indian Company

- A U.S. company can commence operations in India by incorporating a company under the Indian Companies Act, 1956, through:
 - (1) Joint Ventures
 - (2) Wholly-Owned Subsidiaries
- Acquisition of shares/business assets of an existing Indian company.

As an Indian Company

“Private Limited Company” is the most preferred option

- Subject to fewer regulatory compliances
- Charter documents can be made adaptable to shareholders’ requirements
- However, restrictions on transfer of shares and borrowings

As a Foreign Company

- U.S. companies can set up their operations in India through:
 - (1) Liaison/Representative Office
 - (2) Project Office
 - (3) Branch Office
- Each can undertake only specific activities.
- Some other variants:
 - (1) Build-Operate-Transfer (BOT)
 - (2) Third-Party Outsourcing (BPO or KPOs)
 - (3) Franchising/Distribution/Agency

II. Key Legal Issues For Doing Business In India

- Are non-compete and non-solicitation clauses applicable?
- What is the tax incidence on profits and gains and are any tax breaks provided by government?
- Are repatriation of investments and profits allowed?
- Are there any contractual issues related to employment?
- What should be done to protect one's IP?

II. Key Legal Issues For Doing Business In India

- What law should govern the contract and which courts should have jurisdiction to adjudicate on disputes?
- What mechanism of dispute resolution is preferable?

A. Non-compete/Non-solicitation

- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business is void. (Section 27 of the Indian Contract Act, 1872)
- Non-compete and non-solicitation are considered such restrictive covenants.
- **Exception**: Restrictive covenants that reasonably protect a party's proprietary or commercial interest, post-acquisition, of a business with goodwill.

A. Non-compete/Non-solicitation

- **Exception**: A partial restriction, reasonable in terms of time, geography or other limitations.
- Indian courts tend to enforce a restrictive covenant operating “during term of employment” and not those “*after the term of employment*”.

B. Taxation in India

- Dividends declared can be repatriated freely through banks.
- Dividends are tax-free in the hands of shareholders
 - A distribution tax of approximately 16% is payable by company.
- Corporate tax rate for foreign companies is 41.86%. For domestic companies, 33.66%.
- Withholding tax on royalties/technical fees/interest income
 - Domestic tax law – 10%
 - Indo-US DTAA – 20%

B. Taxation in India, cont.

- The tax rate provision of domestic law could be utilized, as it is less than DTAA.
- Service tax rate is 10.30%
 - Computed on the “Gross Amount” charged by the service provider.
- Sales tax rate (CST & VAT) ranges from 0% to 12.5%
 - Varies from state to state, depending upon classification of goods.
- Tax incentives are available during a limited time for 100% Export-Oriented Unit under Software Technology Park Scheme and Special Economic Zones, etc.

Important Taxation Issues

- India's tax code has elaborate Transfer Pricing Regulation.
- Avoidance of Permanent Establishment ("PE") status is critical.

C. Employment Issues

- Employment Agreement – Advisable to have a detailed document (not a one-pager!) read in conjunction with the existing employment policies of the Company.
- Compliance required of both Federal and State laws
 - Important to identify locational advantages
 - Indian states have restrictions and relaxations

C. Employment Issues, cont.

- “Without cause” termination for “Workmen” may become subject to:
 - “Last come, first go”
 - Some level of compensation based on years of service
 - Sufficient notice to employee
 - Employer issuing a release certificate
 - However, consider the following while issuing release:
 - » Is there a possibility of breach of confidentiality?
 - » Is there a possibility of breach of a non-compete covenant?
 - Otherwise “**At-Will**” employment is recognized.

D. Intellectual Property Rights

- A foreign company should be careful to maintain control over its IPR
 - Especially with a third-party BPO entity.
- Contractual provisions:
 - Explicit obligations to ensure that the “receiving” party will protect “disclosing” party’s IP.
- Business practices:
 - From the beginning, have a method in place.

D. Intellectual Property Rights, cont.

- Indian IP Laws do not provide for automatic assignments.
- **Golden Rule**: Advisable to have a covenant to assign IP in contracts and to obtain Deed of Assignment where required.

D. Intellectual Property Rights, cont.

- **Trade Secrets:**

- No specific Indian legislation for statutory protection of trade secrets or confidential information.
 - However, courts (several precedents) specifically enforce confidentiality agreements through mandatory injunctions.

E. Jurisdiction and Laws Governing Contract

- Indian courts follow customary Private International Law rules.
 - Choice of law made by parties is acceptable
 - Parties may also choose which court will have jurisdiction
 - Subject to public policy, courts recognize and enforce foreign laws
- It is possible to split contract, to allow different parts to be governed by different laws.
- Absent choice, courts determine proper law of contract.
 - Law with the closest connection to transaction

E. Jurisdiction and Laws Governing Contract, cont.

Caveat:

- However, certain issues may be subject to a law different from the one agreed upon by parties.
 - For example: IP transfer, registration, protection in vendor territory, real estate, labor laws, bankruptcy or enforcement of foreign judgment/award.

Dispute Resolution: Litigation vs. Arbitration

(i) Enforcement of Foreign Judgment

- Judgments from courts in “reciprocating territories” can be enforced directly by filing before an Indian court an Execution Decree.
 - The United Kingdom of Great Britain and Canada are noted as “reciprocating territories”.
 - Presently, the U.S. is not recognized as a “reciprocating territory”.

Dispute Resolution

- Judgments from “non-reciprocating territories,” such as the United States, can be enforced only by filing a law suit in an Indian court for a judgment based on the foreign judgment.
- (ii) Enforcement of Foreign Arbitral Award
- India is a party to the New York Convention, 1958.

Dispute Resolution

- U.S. arbitral awards on commercial disputes are directly enforceable in India through foreign award being made a decree of the court.
- Indian courts may grant preliminary injunctions and other protective orders pending international commercial arbitration.
- An arbitration clause can avoid the time-consuming and sometimes ineffective process of seeking damages through the civil courts in India.

Things to Ponder

- Analyze your long-term objectives and accordingly decide on entry strategies and related tax structuring
- Analyze and identify the region/state most appropriate for your business needs
- ***Do business in India the “Indian Way”- ‘Think Global, Act Local’***
 - The Indianized Chinese
 - Kellogg’s – No to cold cereal
 - KFC – Tandoori Chicken preferred to the ‘KFC experience’
 - McDonald’s – ‘McVeggie Burger’ & ‘McAloo Tikki’
 - Dominos – ‘Peppy Paneer’ & ‘Chicken Chettinad’
 - Pizza Hut/Pizza Express – spicing it up!
- Due Diligence is the Key
 - Knowledge of Indian business and legal environment leads to steady growth

Thank You

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Legal Advice

- This presentation is designed to provide an overview of a number of legal principles and considerations
- As each legal issue is fact dependent, this presentation should not be used or viewed as legal advice, and your legal counsel should be consulted on the application of your particular factual situation to the current law
- Copyright: 2010 Kegler, Brown, Hill & Ritter

ANNEALING FURNACE SYSTEMS



RAD-CON
INC.
CLEVELAND, OHIO U.S.A.

COMPANY OVERVIEW



Cal Blackman
RAD-CON Founder (1966)



Current RAD-CON Office
(in multi-tenant facility)

- **Manufacturer of Capital Equipment** (Industrial Furnaces)
- **Manufacturing** is outsourced local to the greater Cleveland, Ohio USA area (two main manufacturing shops)
- **R&D, engineering, technical supervision, packaging & shipping, sales & marketing** is performed from HQ in Lakewood, Ohio USA
- **Size:** US\$7.5-11.5M revenue, 20 employees
- **Niche Product** with few competitors (European mainly)
- **Oversized Equipment** does not fit into shipping containers

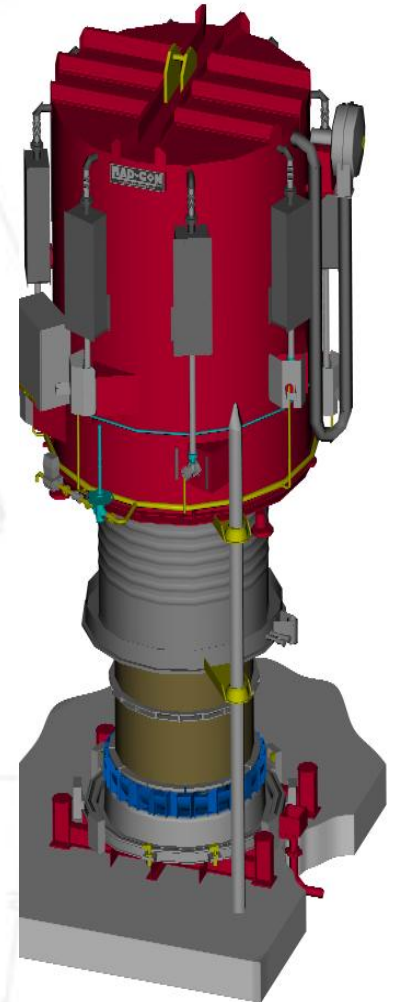
CRANE LIFTS BELL FURNACE



RAD-CON'S MARKET



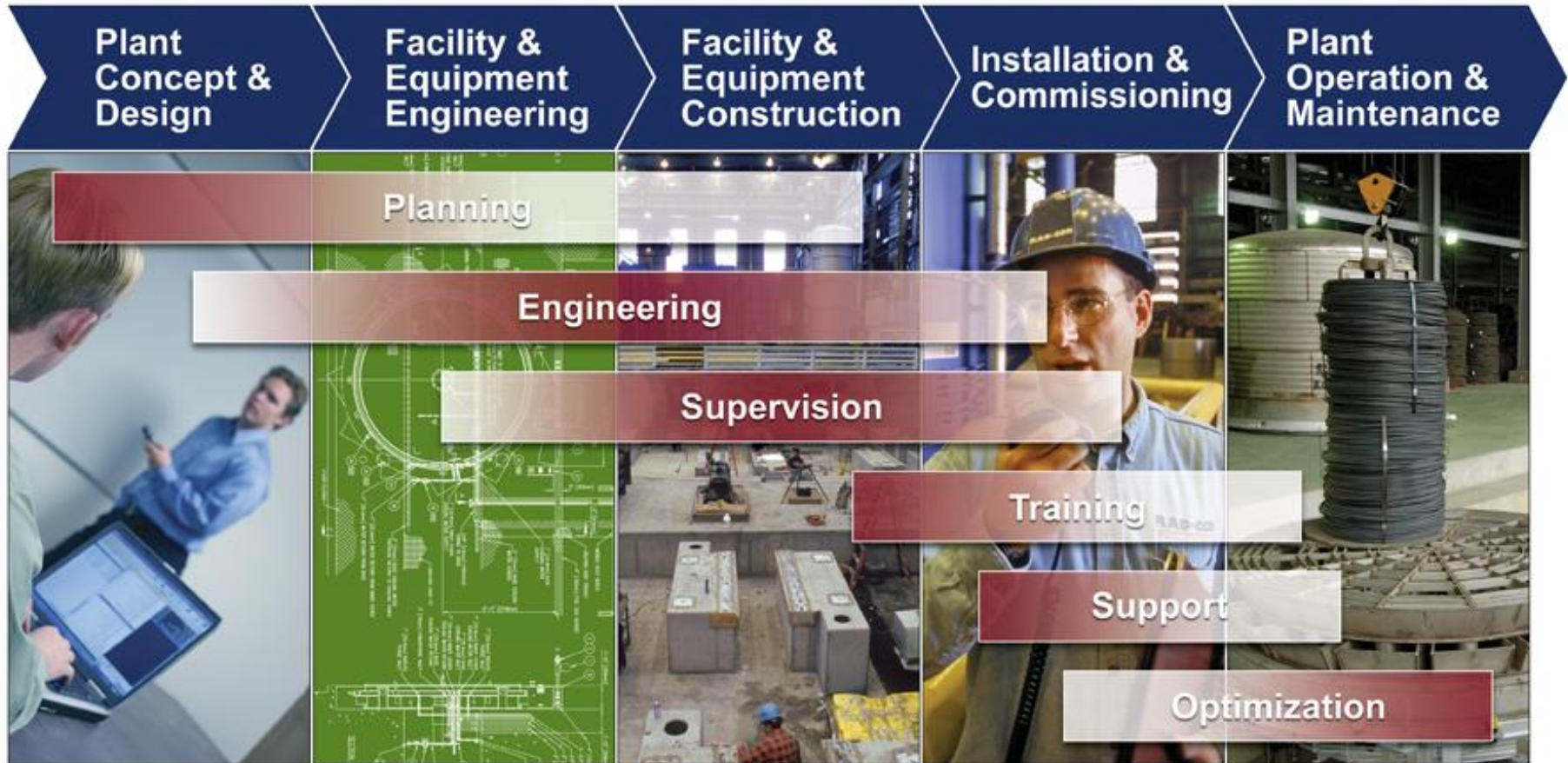
- **Process & Production Expertise** is the main draw: How to Anneal, High Quality
- **Annealing** is a metallurgical process that makes metal softer, more formable
- **Specializing** in bell-type furnaces using a protective atmosphere of 100% Hydrogen
- **Steel Industry** is the principle market.....
(mill itself or one-step downstream)
- **Targets** are those companies adding annealing capacity for high quality demands
- **Exporting** since 1980s
- **References** in USA, Canada, Mexico, Chile, El Salvador, Pakistan, India, Taiwan, China, Sweden, Thailand, Indonesia, and Vietnam



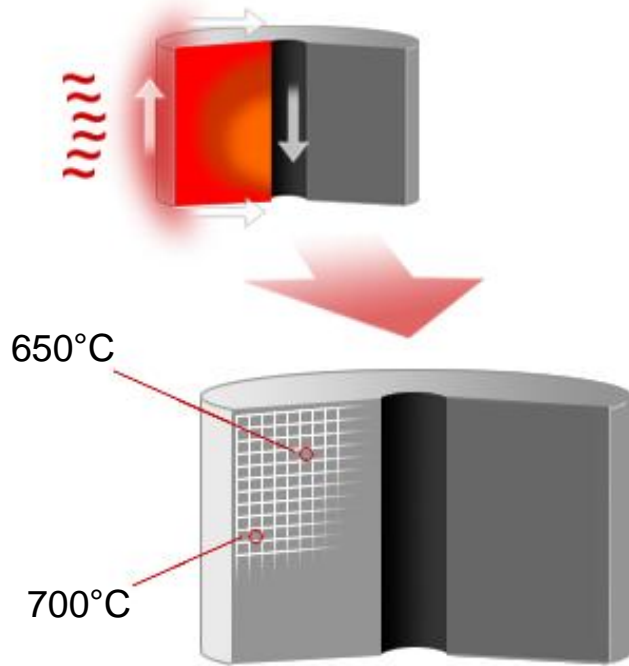
BELL FURNACE FACILITY



MORE THAN JUST AN EQUIPMENT SUPPLIER...

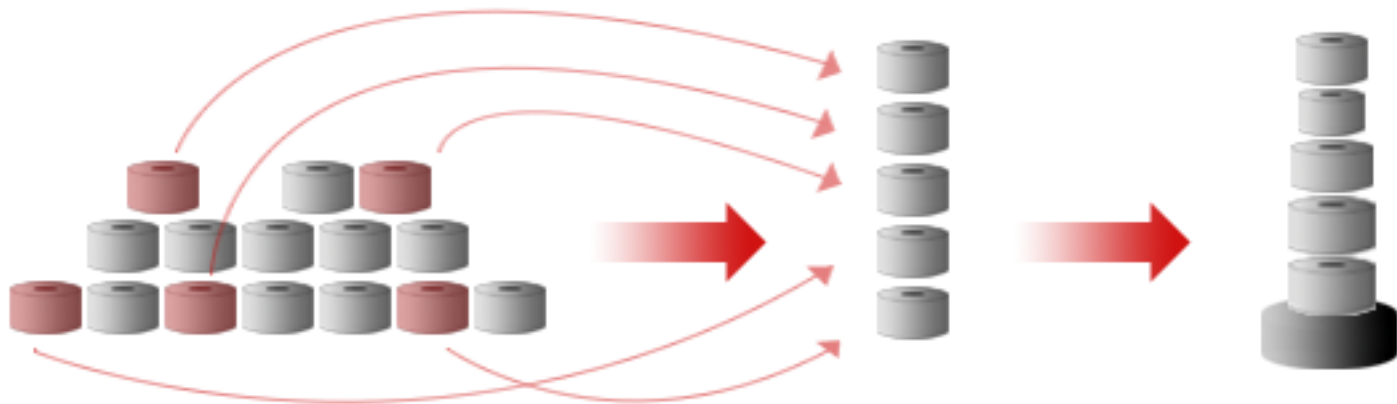


SOFTWARE



Software for managing large scale annealing facilities (>250kt/y)

- Advanced *Thermal Models* predict inside temperature of coils
- Scheduling software manages the movement of coils and equipment
- Saves energy, improves efficiency



MARKETS & PRODUCTS

- Fastener
- Automotive
- Construction
- Industrial
- Bearing
- Agricultural
- Electrical Cable
- Wire & Wire Rod
- Flat-Rolled Coils
- Ferrous
- Non-Ferrous

ANNEALING

Glühen

Recuit

Ricottura

Recocido

Recozimento

Отжиг

焼きナマシ

退火

소둔

Anil

Lò ủ

ռն

الصلب

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Questions & Answers