International Marketing

Political, Legal, and Regulatory Environment

Political Environment

- Global marketing activities take place within the political environment of governmental institutions, political parties, and organizations through which a country's people and rulers exercise power. Each nation has a unique culture that reflects its society. Each nation also has a political culture, which reflects the relative importance of the government and legal system and provides a context within which individuals and corporations understand their relationship to the political system. Any company doing business outside its home country should carefully study the political culture in the target country and analyse salient issues arising from the political environment. These include the governing party's attitude toward sovereignty, political risk, taxes, the threat of equity dilution, and expropriation.

Nation-States and Sovereignty

- Sovereignty can be defined as supreme and independent political authority. A century ago, U.S. Supreme Court Chief Justice Melville Fuller said, ***"Every sovereign state is bound to respect the independence of every other sovereign state, and the courts in one country will not sit in judgment on the acts of government of another done within its territory."*** More recently, Richard Stanley, president of the Stanley Foundation, offered the following concise description:
- A sovereign state was considered free and independent. It regulated trade, managed the flow of people into and out of its boundaries, and exercised undivided jurisdiction over all persons and property within its territory. It had the right, authority, and ability to conduct its domestic affairs without outside interference and to use its international power and influence with full discretion.
- Government actions taken in the name of sovereignty occur in the context of two important criteria: a country's stage of development and the political and economic system in place in the country.

Nation-States and Sovereignty (contd.)

- The economies of individual nations may be classified as industrialized, newly industrializing, or developing. Many governments in developing countries exercise control over their nations' economic development by passing protectionist laws and regulations. Their objective is to encourage economic development by protecting emerging or strategic industries. Government leaders can also engage in cronyism and provide favours for family members or "good friends." For example, former Indonesian president Suharto established a national car program that granted tax breaks and tariff privileges to a company established in South Korea by his youngest son. The United States, the EU, and Japan responded by taking the matter to the WTO.

Nation-States and Sovereignty (contd.)

- Conversely, when many nations reach advanced stages of economic development their governments declare that (in theory, at least) any practice or policy that restrains free trade is illegal. Antitrust laws and regulations are established to promote fair competition. Advanced- country laws often define and preserve a nation’s social order; laws may extend to political, cultural, and even intellectual activities and social conduct. In France, for example, laws forbid the use of foreign words such as le weekend or le marketing in official documents. Also, a French law passed in 1996 requires that at least 40 percent of the songs played by popular radio stations must be French. Companies that may be affected positively or negatively by legislative acts often use advertising as a vehicle for expressing their position on the issue.

Motherhood, apple pie and GATT

Quick, name something supported by Presidents Clinton, Bush and Reagan; 450 leading American economists, including four Nobel laureates; the National Governors Association; the Consumers Union; the Business Roundtable, and many others.

Motherhood? Apple pie? Well, probably. But there's no doubt that each of those individuals and organizations supports GATT, the General Agreement on Tariffs and Trade. What's known as the Uruguay Round of GATT, an accord that took 117 countries more than seven years to negotiate, is now awaiting approval by Congress.

The agreement will reduce import tariffs worldwide by an average of 40 percent and cover new areas such as agriculture, intellectual property and some services—areas of importance to the U.S. economy. It could generate as much as $5 trillion in new worldwide commerce by 2005.

In the words of former President Ronald Reagan: "In trade, everyone ends up a winner as markets grow." We've seen evidence of that this year since the North American Free Trade Agreement (NAFTA) went into effect January 1. Despite negative predictions to the contrary, trade is up, consumer prices are down and massive layoffs just haven't happened.

While the GATT tariff reductions are smaller than those for NAFTA, the number of countries involved and the size of their trade flows are much larger. GATT's effect on the U.S. alone will be five times that of NAFTA.

We hope the enacting legislation is approved before Congress adjourns for the year—and without any financing features that would hurt the companies GATT is intended to help.

What will GATT mean for the U.S.?

First, it's important to note that international trade represents about a quarter of U.S. gross domestic product, or GDP—the value of what the nation produces. Over the last five years, exports accounted for half of U.S. economic growth. More than 10.5 million U.S. workers owe their jobs directly or indirectly to the export of goods or services, and another 500,000 to 1.4 million jobs—at higher-than-average pay—are predicted from GATT.

The Treasury Department estimates that the long-range benefits of this GATT accord will amount to $100 billion to $200 billion a year in added income to the U.S., or $1,700 per family. Other studies predict increases to the GDP as high as 1.2 percent. Agricultural exports alone are expected to rise by as much as $8.5 billion a year in the next decade.

What makes GATT such a boon to the U.S.?

- Foreign countries on average have more trade restrictions and tariffs on U.S. goods than the U.S. does on theirs. GATT will reduce tariffs and level the playing field.
- GATT will, for the first time, protect "intellectual property" like patents, trademarks and copyrights. That'll help U.S. computer-software, entertainment, high-tech and pharmaceutical industries, to name a few.
- Also for the first time, GATT will open markets for service industries like accounting, advertising, computer services, construction and engineering.
- GATT will open markets for U.S. agricultural products.

So let's call our mothers, cut ourselves a slice of apple pie and let our senators and representatives know we want the GATT legislation passed this year.

Mobil®

Many global companies use corporate advertising to advocate their official position on trade-related issues. In the mid-1990s, Mobil mounted an ad campaign that addressed a number of topics of public interest, including trade issues, clean air, alternative fuels, and health care reform. This ad urged the U.S. Congress to approve GATT.

- Most of the world’s economies combine elements of market and nonmarket systems. The sovereign political power of a government in a predominantly nonmarket economy reaches quite far into the economic life of a country. By contrast, in a capitalist, market-oriented democracy, that power tends to be much more constrained. A current global phenomenon in both nonmarket and market structures is the trend toward privatization, which reduces direct governmental involvement as a supplier of goods and services in a given economy. In essence, each act of privatization moves a nation’s economy further in the free market direction. The trend is clearly evident in Mexico, where at one time there were over 1,000 “parastatals” — that is, companies owned wholly or in part by the government By the early 1990s, most had been sold, as President Carlos Salinas de Gortari presided over the sale of full or partial stakes in enterprises worth $23 billion, including the two Mexican airlines, mines, and banks. Privatization in Mexico and elsewhere is evidence that national governments are changing how they exercise sovereign power.

- Some observers believe global market integration is eroding national economic sovereignty. Economic consultant Neal Soss notes, ***"The ultimate resource of a government is power, and we've seen repeatedly that the willpower of governments can be overcome by persistent attacks from the marketplace."*** Is this a disturbing trend? If the issue is framed in terms of marketing, the concept of the exchange comes to the fore: Nations may be willing to give up sovereignty in return for something of value. If countries can increase their share of world trade and increase national income, perhaps they will be willing to cede some sovereignty.
- In Europe, the individual EU countries are giving up the right to have their own currencies, ceding the right to set their own product standards, and are making other sacrifices in exchange for improved market access.

Political Risk

- Political risk is the possibility of a change in a country's political environment or government policy that would adversely affect a company's ability to operate effectively and profitably. As Ethan Kapstein, a professor at INSEAD, has noted:

> ***Perhaps the greatest threats to the operations of global corporations, and those that are most difficult to manage, arise out of the political environment in which they conduct their business. One day, a foreign company is a welcome member of the local community; the next day, opportunistic politicians vilify it.***

- Political risk can deter a company from investing abroad; to put it another way, when a high level of uncertainty characterizes a country's political environment, it may have difficulty in attracting foreign investment. However, as Professor Kapstein points out, executives often fail to conceptualize political risk because they have not studied political science. For this reason, they have not been exposed to the issues that students of politics ask about the activities of global companies.

- Current events must be part of the information agenda; for example, businesspeople need to stay apprised of the formation and evolution of political parties. Valuable sources of information include The Economist, the Financial Times, and other business periodicals. The Economist Intelligence Unit (EIU; www.eiu.com), the Geneva-based Business Environment Risk Intelligence (BERI; www.beri.com), and the PRS Group (www.prsgroup.com) publish up-to-date political risk reports on individual country markets. These commercial sources vary somewhat in the criteria that constitute political risk. For example, BERI focuses on societal and system attributes, whereas The PRS Group focuses more directly on government actions and economic functions.

Categories of Political Risk

EIU	BERI	PRS Group
War	Fractionalization of the political spectrum	Political turmoil probability
Social unrest	Fractionalization by language, ethnic, and/or religious groups	Equity restrictions
Orderly political transfer	Restrictive/coercive measures required to retain power	Local operations restrictions
Politically motivated violence	Mentality (xenophobia, nationalism, corruption, nepotism)	Taxation discrimination
International disputes	Social conditions (including population density and wealth distribution)	Repatriation restrictions
Change in government/ pro-business orientation	Organization and strength of forces for a radical government	Exchange controls
Institutional effectiveness	Dependence on and/or importance to a major hostile power	Tariff barriers
Bureaucracy	Negative influences of regional political forces	Other barriers
Transparency or fairness	Societal conflict involving demonstrations, strikes, and street violence	Payment delays
Corruption	Instability as perceived by assassinations and guerrilla war	Fiscal or monetary expansion
Crime		Labour costs Foreign debt

Source: Adapted from Llewellyn D. Howell, The Handbook of Country and Political Risk Analysis, 2nd ed. (East Syracuse, NY: The PRS Group, Inc., 1998).

- For example, the political manoeuvrings of the Russian government create a high level of political risk. During his two terms as Russia's President Vladimir Putin implemented reforms in an effort to pave the way for Russia's membership in the WTO and to attract foreign investment.
- In 2008, when Dmitry Medvedev was elected president, Putin became prime minister. It is generally perceived that Putin, a conservative, is the most powerful member of this "ruling tandem." The Russian government has a number of bills pending that, if adopted, will strengthen intellectual property and contract law. Meanwhile, the level of political risk remains high; compounding matters is the fact that Russia's economy has been severely impacted by the global economic crisis.
- As Paul Melling, a partner at Baker & McKenzie law firm's office, explains, ***"Many multinationals are thinking long and hard about how big their company in Russia ought to be—the bigger the company, the bigger the risk."***

- The current political climate in the rest of Central and Eastern Europe is still characterized by varying degrees of uncertainty. As ranked by Economic Intelligence Unit's Political Instability Index, Hungary, Albania, and Latvia represent moderate levels of risk. Hungary and Latvia have already achieved upper-middle-income status, although Latvia is projected to grow more slowly. Albania's progress in transitioning to a market economy has attracted investment from abroad. Moreover, products that are "Made in Albania" are finding acceptance in global markets. The evidence can be seen in the success of DoniAnna, a shoe manufacturer that was founded by Albanian entrepreneur Donika Mici. Diligent attention to risk assessment throughout the region should be ongoing to determine when the risk has decreased to levels acceptable to management.

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- Companies can purchase insurance to offset potential risks arising from the political environment. In Japan, Germany, France, Britain, the United States, and other industrialized nations, various agencies offer investment insurance to corporations doing business abroad. The Overseas Private Investment Corporation (OPIC; www.opic.gov) provides various types of political risk insurance to U.S. companies; in Canada, the Export Development Corporation performs a similar function. OPIC's activities came under scrutiny in 1997 when the Clinton administration proposed reauthorizing it, along with the Export-Import Bank. Some legislators wanted to dismantle both agencies as part of an effort to reduce government involvement in business. These legislators criticized the agencies for providing unnecessary subsidies to large corporations.

Taxes

- Governments rely on tax revenues to generate funds necessary for social services, the military, and other expenditures. Unfortunately, government taxation policies on the sale of goods and services frequently motivate companies and individuals to profit by not paying taxes.
- In China, import duties have dropped since the country joined the WTO. Even so, many goods are still subject to double-digit duties plus a 17 percent value-added tax (VAT). As a result, significant quantities of oil, cigarettes, photographic film, personal computers, and other products are smuggled into China. In some instances, customs documents are falsified to undercount goods in a shipment; the Chinese military has allegedly escorted goods into the country as well. Ironically, global companies can still profit from the practice; it has been estimated, for example, that 90 percent of the foreign cigarettes sold in China are smuggled in. For Philip Morris, this means annual sales of $100 million to distributors in Hong Kong, who then smuggle the smokes across the border.7 High excise and VAT taxes can also encourage legal cross-border shopping as consumers go abroad in search of good values. In Great Britain, for example, the Wine and Spirit Association estimates that, on average, cars returning from France are loaded with 80 bottles of wine.

- Corporate taxation is another issue. The high level of political risk currently evident in Russia can be attributed in part to excessively high taxes on business operations. High taxes encourage many enterprises to engage in cash or barter transactions that are off the books and sheltered from the eyes of tax authorities. This, in turn, has created a liquidity squeeze that prevents companies from paying wages to employees; unpaid, disgruntled workers can contribute to political instability. Meanwhile, the Russian government is pursuing a tough new tax policy in an effort to shrink Russia's budget deficit and qualify for IMF loans. However, such policies should not have the effect of deterring foreign investment. As Bruce Bean, head of the American Chamber of Commerce in Moscow, summed up the situation:

- Change the name of the country, change the flag, change the border. Yes, this was done overnight. But build a market economy, introduce a meaningful tax system, create new accounting rules, accept the concept that companies which cannot compete should go bankrupt and the workers there lose their jobs? These things take time.

- Meanwhile, global companies are being caught up in the chaos. In July 1998, tax collectors seized dozens of automobiles belonging to Johnson & Johnson's (J&J) Russian division and froze the group's assets. The authorities claimed J&J owed $19 million in back taxes.
- The diverse geographical activity of the global corporation also requires special attention to tax laws. Many companies make efforts to minimize their tax liability by shifting the location of income. For example, it has been estimated that tax minimization by foreign companies doing business in the United States costs the U.S. government billions of dollars each year in lost revenue. In one approach, called "earnings stripping," foreign companies reduce earnings by making loans to U.S. affiliates rather than using direct investment to finance U.S. activities. The U.S. subsidiary can deduct the interest it pays on such loans and thereby reduce its tax burden.

STRATEGIC DECISION MAKING IN GLOBAL MARKETING: Microsoft versus the EU

- In 1998, Sun Microsystems filed a lawsuit in U.S. federal court alleging that Microsoft was restricting the ability of servers marketed by Sun and other companies to interface with PCs running the Windows operating system. More than 90 percent of the world's PCs run Windows as well as other Microsoft software; some of Microsoft's rivals believe the company uses unfair business practices to dominate the global software market.
- Although Microsoft settled the U.S. case in 2001, the European Commission had also begun to investigate Sun's complaint. The Commission also launched a separate investigation to determine whether Microsoft was creating a monopoly in digital music down- loads and other new market segments by bundling Windows with its Media Player program.
- The Commission issued a ruling in spring 2004 that Microsoft had violated antitrust laws. Three penalties were imposed. First, Microsoft must allow computer makers to market Windows-equipped PCs equipped with alternative brands of media software for playing music and videos. Second, Microsoft must provide competitors with more information about Windows codes and protocols, spurring innovation in new software products. Finally, Microsoft was ordered to pay a record fine of $602 million.

- Microsoft had taken the offensive by paying $3 billion to Sun, Novell, and RealNetworks to drop their charges in both the United States and the European Union. Meanwhile, some regulators suggested that Microsoft was intentionally delaying compliance with the commission's orders. A key task was to produce an instruction manual that would help rival companies write Windows-compatible software. Microsoft took the position that doing so amounted to revealing intellectual property. The manual would be especially helpful to companies that service the low-cost, open-source operating system known as Linux. Both copyright and patent law protect Windows source code.
- Taking the legal notion of "disclosure" to an extreme, Microsoft sent the regulators boxes containing thousands of pages of documents pertaining to the manual. After the EU team complained, Microsoft sent a lawyer to help sift through the documents. When engineers from Sun, Oracle, Novell, and IBM went to Microsoft head- quarters to view the 12,000-page manual, security was tight. The visitors concluded that the manual was disorganized and of no use. The commission ordered Microsoft to improve the manual.

- Meanwhile, Neelie Kroes, a former Dutch cabinet minister, became the European commissioner for competition. She met with Microsoft CEO Steve Ballmer to try to settle the matter, but to no avail. After an outside technical consultant determined that the manual was still inadequate, the commissioner formally charged Microsoft with disregarding orders. Microsoft countered that the commission had not made clear exactly what kind of documentation was to be produced. In July 2006, the commission fined Microsoft an additional
- €280.5 million for failing to comply with the 2004 antitrust ruling. Kroes also indicated that the precedents in the case would be applied to Vista, Microsoft's forthcoming replacement for Windows. In particular, the concern was that Vista would be bundled with Internet search software that would be an alternative to Google as well as a fixed document reader similar to Adobe Acrobat.

In the spring of 2006, attorneys for Microsoft and the European Commission appeared before a 13-judge panel at the European Court of First Instance in Luxembourg. In September 2007, the Court of First Instance upheld the European Commission's case against the software giant. The case was settled in 2009 after Microsoft offered a proposal that would make it easier for Europeans to choose Internet browsers other than Explorer.

THE CULTURAL CONTEXT: Europe Says “No” to GMOs

- In 2008, prior to the onset of the global economic crisis, surging world demand caused the price of oil to spiral upward; cash-strapped consumers felt the economic pain every time they stopped at the gas pump. Adding to consumers' misery was the fact that prices for grocery staples were also going up, due in part to rising transportation costs as well as increased demand for food in China and other emerging markets. Meanwhile, the search for alternative fuel sources sparked interest in ethanol and other biofuels. The resulting increase in demand for corn also contributed to record prices for agricultural commodities.
- As prices soared, politicians in all parts of the world looked for solutions. Some countries banned food exports to ensure adequate domestic supply. In Asian countries, authorities battled rice hoarding in the face of surging prices. What else could be done? Officials at Bayer, DuPont, Syngenta, Monsanto, and other companies that market seeds and other agricultural products believe that the answer is, in part, plant biotechnology, including genetic engineering. Plants that have been genetically modified are known as genetically modified organisms, or GMOs. The first generation of GMO crops— primarily corn, cotton, soybeans, and canola—demonstrated increased resistance to insect pests and weeds. A new generation of GMOs currently under development could offer different benefits, such as drought tolerance or flood resistance.

- The problem, however, is that a growing number of consumers around the world are deeply concerned about food products that have not been produced naturally. As a result, many are sceptical about GMOs and the benefits of eating food products that incorporate genetically engineered ingredients. As one French citizen noted, ***"We have a very risk-averse society that has been completely traumatized by food scares."***
- In Europe, a number of activist groups, including Greenpeace and Friends of the Earth (FoE), have taken up the fight against GMOs.
- They claim that GMOs pose threats to both people and the environment; terms such as Frankenfoods have been used to put the point across. The general public, already cynical thanks to perceived governmental mishandling of the "mad cow" scare, has been receptive.

- Monsanto and other biotech companies have begun to work more closely with government regulators. The companies had already been supplying regulatory agencies with their research; now the companies are advocating certain changes in the U.S. Food and Drug Administration's policies concerning GMOs. The agribusiness companies are hoping that the FDA can help reassure consumers so that mandatory labelling along the lines of the European model won't be required. American companies are also frustrated by lengthy regulatory delays in Europe, where all EU governments are involved in the process of approving new food products for sale to the public. At the European Commission itself, five separate directorates are involved in biotechnology issues, and two—DG Sanco and DG Environment— have responsibility for assessing the safety of the food supply.

European consumers have faced a number of food-safety issues in recent years, including outbreaks of hoof-and-mouth disease and mad cow disease. Not surprisingly, many Europeans are sceptical about GMOs (genetically modified organisms) and the benefits of eating food products that incorporate genetically engineered ingredients.

Seizure of Assets

- The ultimate threat a government can pose toward a company is seizing its assets. Expropriation refers to governmental action to dispossess a foreign company or investor. Compensation is generally provided, although not often in the “prompt, effective, and adequate” manner provided for by international standards. If no compensation is provided, the action is referred to as confiscation. International law is generally interpreted as prohibiting any act by a government to take foreign property without compensation. Nationalization is generally broader in scope than expropriation; it occurs when the government takes control of some or all of the enterprises in a particular industry. International law recognizes nationalization as a legitimate exercise of government power, as long as the act satisfies a “public purpose” and is accompanied by “adequate payment” (i.e., one that reflects fair market value of the property).

- In 1959, for example, the newly empowered Castro government nationalized property belonging to American sugar producers in retaliation for new American import quotas on sugar. Cuban-owned production sources were not nationalized. Castro offered compensation in the form of Cuban government bonds, which was adequate under Cuban law. The U.S. State Department viewed this particular act of nationalization as discriminatory and the compensation offered as inadequate. More recently, Venezuelan President Hugo Chávez nationalized Electricidad de Caracas, a utility company, and CANTV, a telecommunications provider. The Venezuelan government paid AES Corporation $739.3 million for Electricidad de Caracas; Verizon Communications received $572 million for its stake in CANTV.

- Short of outright expropriation or nationalization, the phrase creeping expropriation has been applied to limitations on economic activities of foreign firms in particular countries. These have included limitations on repatriation of profits, dividends, royalties, and technical assistance fees from local investments or technology arrangements. Other issues include increased local content requirements, quotas for hiring local nationals, price controls, and other restrictions affecting return on investment. Global companies have also suffered discriminatory tariffs and nontariff barriers that limit market entry of certain industrial and consumer goods, as well as discriminatory laws on patents and trademarks. Intellectual property restrictions have had the practical effect of eliminating or drastically reducing protection of pharmaceutical products.

- In the mid-1970s, J&J and other foreign investors in India had to submit to a host of government regulations to retain majority equity positions in companies already established. Many of these rules were later copied in whole or in part by Malaysia, Indonesia, the Philippines, Nigeria, and Brazil. By the late 1980s, after a “lost decade” in Latin America characterized by debt crises and low GNP growth, lawmakers reversed many of these restrictive and discriminatory laws. The goal was to again attract foreign direct investment and badly needed Western technology. The end of the Cold War and restructuring of political allegiances contributed significantly to these changes.

- When governments expropriate foreign property, a number of impediments can limit actions to reclaim that property. For example, according to the U.S. Act of State Doctrine, if the government of a foreign state is involved in a specific act the U.S. courts will not get involved. Representatives of expropriated companies may seek recourse through arbitration at the World Bank Investment Dispute Settlement Center. It is also possible to buy expropriation insurance from either a private company or a government agency such as OPIC. The expropriation of copper companies operating in Chile in the early 1970s shows the impact that companies can have on their own fate. Companies that strenuously resisted government efforts to introduce home-country nationals into the company management were expropriated outright; those companies that made genuine efforts to follow Chilean guidelines were allowed to remain under joint Chilean–U.S. management.

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International Law

- International law may be defined as the rules and principles that nation-states consider binding upon themselves. International law pertains to property, trade, immigration, and other areas that have traditionally been under the jurisdiction of individual nations. International law applies only to the extent that countries are willing to assume all rights and obligations in these areas. The roots of modern international law can be traced back to the seventeenth-century Peace of Westphalia. Early international law was concerned with waging war, establishing peace, and other political issues such as diplomatic recognition of new national entities and governments. Although elaborate international rules gradually emerged—covering, for example, the status of neutral nations—the creation of laws governing commerce proceeded on a state-by-state basis in the nineteenth century. International law still has the function of upholding order, although in a broader sense than dealing with problems arising from war. At first, international law was essentially an amalgam of treaties, covenants, codes, and agreements. As trade grew among nations, order in commercial affairs assumed increasing importance. The law had originally dealt only with nations as entities, but a growing body of law rejected the idea that only nations can be subject to international law.

- Paralleling the expanding body of international case law in the twentieth century, new inter- national judiciary organizations have contributed to the creation of an established rule of international law: The Permanent Court of International Justice (1920–1945); the International Court of Justice (ICJ; www.icj-cij.org), the judicial arm of the United Nations, founded in 1946; and the International Law Commission, established by the United States in 1947.

Located in The Hague, the International Court of Justice (ICJ) is the judicial arm of the United Nations. The court's 15 judges are elected to 9-year terms. The primary function of the ICJ is to settle disputes among different countries according to international law. The ICJ also offers advice on legal issues submitted by various international agencies.

- Disputes arising between nations are issues of public international law, and they may be taken before the ICJ (also known as the World Court) located in The Hague. As described in the supplemental documents to the United Nations Charter, article 38 of the ICJ Statute concerns international law:
- The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - International custom, as evidence of a general practice accepted as law;
  - The general principles of law recognized by civilized nations;
  - Subject to the provisions of article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

- Other sources of modern international law include treaties, international custom, judicial case decisions in the courts of law of various nations, and scholarly writings. What happens if a nation has allowed a case against it to be brought before the ICJ and then refuses to accept a judgment against it? The plaintiff nation can seek recourse through the United Nations Security Council, which can use its full range of powers to enforce the judgment.

Common Law versus Civil Law

- Private international law is the body of law that applies to disputes arising from commercial transactions between companies of different nations. As noted, laws governing commerce emerged gradually, leading to a major split in legal systems between various countries. The story of law in the Western world can be traced to two sources: Rome, from which the continental European civil law tradition originated, and English common law, from which the U.S. legal system originated.
- A civil-law country is one in which the legal system reflects the structural concepts and principles of the Roman Empire in the sixth century.
- For complex historical reasons, Roman law was received differently and at vastly different times in various regions of Europe, and in the nineteenth century each European country made a new start and adopted its own set of national private-law codes, for which the Code Napoleon of 1804 was the prototype. But the new national codes drew largely on Roman law in conceptual structure and substantive content. In civil-law countries, the codes in which private law is cast are formulated in broad general terms and are thought of as completely comprehensive, that, is, as the all-inclusive source of authority by reference to which every disputed case must be referred for decision.

- In a common-law country, many disputes are decided by reliance on the authority of past judicial decisions (cases). A common-law legal system is based on the concept of precedent, sometimes called stare decisis. Precedent is the notion that past judicial decisions on a particular issue are binding on a court when that same issue is presented later. This description is somewhat cryptic, because it is easier to observe the operation of precedent than to define it. Nevertheless, precedent and stare decisis represent the fundamental principle of common-law decision making. Although much of contemporary American and English law is legislative in origin, the law inferred from past judicial decisions is equal in importance to the law set down in codes. Common-law countries often rely on codification in certain areas—the U.S. Uniform Commercial Code is one example—but these codes are not the all-inclusive, systematic statements found in civil-law countries.

- The Uniform Commercial Code (UCC), fully adopted by 49 U.S. states, codifies a body of specifically designed rules covering commercial conduct. (Louisiana has adopted parts of the UCC, but its laws are still heavily influenced by the French civil code.) The host country's legal system—that is, common or civil law—directly affects the form a legal business entity will take. In common-law countries, companies are legally incorporated by state authority. In civil-law countries, a contract between two or more parties, who are fully liable for the actions of the company, forms a company.

- The United States, 9 of Canada's 10 provinces, and other former colonies with an Anglo- Saxon history founded their systems on common law. Historically, much of continental Europe was influenced by Roman law and, later, the Napoleonic Code.

In its origins, the legal system of the United States was substantially influenced by English law. The English and American systems are common law in nature; that is, the courts pronounce the law when there are no statutes to follow. Common-law systems are distinguishable from the civil-law systems found in much of Europe. Civil-law systems rely more heavily on statutes and codes, such as the Napoleonic Code of 1804, in deciding cases. From these code provisions abstract principles are perceived and then applied in specific cases. By contrast, common-law courts find abstract principles in particular cases and then generalize what the law is from those principles.

- Asian countries are split: India, Pakistan, Malaysia, Singapore, and Hong Kong are common law jurisdictions. Japan, Korea, Thailand, Indochina, Taiwan, Indonesia, and China are civil-law jurisdictions. The legal systems in Scandinavia are mixed, displaying some civil-law attributes and some common-law attributes. Today, the majority of countries have legal systems based on civil-law traditions.

- As various countries in Eastern and Central Europe wrestle with establishing legal systems in the post-Communist era, a struggle of sorts has broken out; consultants representing both common-law and civil-law countries are trying to influence the process. In much of Central Europe, including Poland, Hungary, and the Czech Republic, the German civil-law tradition prevails. As a result, banks not only take deposits and make loans but also engage in the buying and selling of securities. In Eastern Europe, particularly Russia, the United States has had greater influence. Germany has accused the United States of promoting a system so complex that it requires legions of lawyers. The U.S. response is that the German system is outdated. In any event, the constant stream of laws and decrees issued by the Russian government creates an unpredictable, evolving legal environment. Specialized publications such as The Russian and Commonwealth Business Law Report are important resources for anyone doing business in Russia or the 10 other nations that comprise the Commonwealth of Independent States.

Islamic Law

- The legal system in many Middle Eastern countries is identified with the laws of Islam, which are associated with “the one and only one God, the Almighty.” In Islamic law, the sharia is a comprehensive code governing Muslim conduct in all areas of life, including business. The code is derived from two sources. First is the Koran, the Holy Book written in Arabic that is a record of the revelations made to the Prophet Mohammed by Allah. The second source is the Hadith, which is based on the life, sayings, and practices of Muhammad. In particular, the Hadith spells out the products and practices that are haram (forbidden). The orders and instructions found in the Koran are analogous to code laws; the guidelines of the Hadith correspond to common law. Any Westerner doing business in Malaysia or in the Middle East should have, at minimum, a rudimentary understanding of Islamic law and its implications for commercial activities. Brewers, for example, must refrain from advertising beer on billboards or in local-language newspapers.

Sidestepping Legal Problems: Important Business Issues

- Clearly, the global legal environment is very dynamic and complex. Therefore, the best course to follow is to get expert legal help. However, the astute, proactive marketer can do a great deal to prevent conflicts from arising in the first place, especially concerning issues such as establishment, jurisdiction, patents and trademarks, antitrust, licensing and trade secrets, bribery, and advertising and other promotion tools.

Jurisdiction

- Company personnel working abroad should understand the extent to which they are subject to the jurisdiction of host-country courts. Jurisdiction pertains to global marketing insofar as it concerns a court's authority to rule on particular types of issues arising outside of a nation's borders or to exercise power over individuals or entities from different countries. Employees of foreign companies working in the United States must understand that courts have jurisdiction to the extent that the company can be demonstrated to be doing business in the state in which the court sits. The court may examine whether the foreign company maintains an office, solicits business, maintains bank accounts or other property, or has agents or other employees in the state in question. In a recent case, Revlon sued United Overseas Limited (UOL) in the U.S. District Court for the Southern District of New York. Revlon charged the British company with breach of contract, contending that UOL had failed to purchase some specialty shampoos as agreed. Claiming lack of jurisdiction, UOL asked the court to dismiss the complaint. Revlon countered with the argument that UOL was, in fact, subject to the court's jurisdiction; Revlon cited the presence of a UOL sign above the entrance to the offices of a New York company in which UOL had a 50 percent ownership interest. The court denied UOL's motion to dismiss.

Jurisdiction (contd.)

- Jurisdiction played an important role in two recent trade-related disputes. One pitted Volkswagen AG against General Motors. After GM's worldwide head of purchasing, José Ignacio López de Arriortúa, was hired by Volkswagen in 1992, his former employer accused him of taking trade secrets. Volkswagen accepted U.S. court jurisdiction in the dispute, although the company's lawyers requested that the U.S. District Court in Detroit transfer the case to Germany. Jurisdiction was also an issue in a trade dispute that pitted Eastman Kodak against Fuji Photo Film. Kodak alleged that the Japanese government helped Fuji in Japan by blocking the distribution of Kodak film. The U.S. government turned the case over to the WTO, despite the opinion expressed by many experts that the WTO lacks jurisdiction in complaints over trade and competition policy.

Intellectual Property: Patents, Trademarks, and Copyrights

- Patents and trademarks that are protected in one country are not necessarily protected in another, so global marketers must ensure that patents and trademarks are registered in each country where business is conducted. A patent is a formal legal document that gives an inventor the exclusive right to make, use, and sell an invention for a specified period of time. Typically, the invention represents an “inventive leap” that is “novel” or “nonobvious.” A trademark is defined as a distinctive mark, motto, device, or emblem that a manufacturer affixes to a particular product or package to distinguish it from goods produced by other manufacturers.

Intellectual Property: Patents, Trademarks, and Copyrights (contd.)

- A copyright establishes ownership of a written, recorded, performed, or filmed creative work.
- Infringement of intellectual property can take a variety of forms. Counterfeiting is the unauthorized copying and production of a product. An associative counterfeit, or imitation, uses a product name that differs slightly from a well-known brand but is close enough that consumers will associate it with the genuine product. A third type of counterfeiting is piracy, the unauthorized publication or reproduction of copyrighted work. Counterfeiting and piracy are particularly important in industries such as motion pictures, recorded music, computer software, and textbook publishing. Companies in these industries produce products that can be easily duplicated and distributed on a mass basis. The United States in particular has a vested interest in intellectual property protection around the globe because it is home to many companies in the industries just mentioned. However, the United States faces significant challenges in countries such as China. As one expert has noted:

> ***Current attempts to establish intellectual property law, particularly on the Chinese mainland, have been deeply flawed in their failure to address the difficulties of reconciling legal values, institutions, and forms generated in the West with the legacy of China's past and the constraints imposed by its present circumstances.***

- In the United States, where patents, trademarks, and copyrights are registered with the Federal Patent Office, the patent holder retains all rights for the life of the patent even if the product is not produced or sold. The Trademark Act of 1946, also known as the Lanham Act, covers trademarks in the United States. President Reagan signed the Trademark Law Revision Act into law in November 1988. The law makes it easier for companies to register new trademarks. Patent and trademark protection in the United States is very good, and U.S. law relies on the precedent of previously decided court cases for guidance.

- To register a patent in Europe, a company has the option of filing on a country-by-country basis or applying to the European Patent Office in Munich for patent registration in a specific number of countries. A third option will soon be available: The Community Patent Convention will make it possible for an inventor to file for a patent that is effective in the 27 signatory nations. Currently, patent procedures in Europe are quite expensive, in part because of the cost of translating technical documents into all the languages of the EU countries; as of mid-2004, the translation issue remained unresolved. In July 1997, in response to complaints, the European Patent Office instituted a 19 percent reduction in the average cost of an eight-country patent registration. The United States recently joined the World Intellectual Property Organization (WIPO); governed by the Madrid agreement of 1891 and the more flexible 1996 Madrid Protocol, the system allows trademark owners to seek protection in as many as 74 countries with a single application and fee.

Headquartered in Geneva, Switzerland, the World Intellectual Property Organization (WIPO) is one of 16 specialized subunits of the United Nations. WIPO's mission is to promote and protect intellectual property throughout the world. WIPO views intellectual property as a critical element in economic development; it has created illustrated booklets that explain trademarks, copyright, and other intellectual property issues in a straightforward, easy-to-understand manner. Local agencies can access and print the booklets directly from WIPO's Internet site.

- Companies sometimes find ways to exploit loopholes or other unique opportunities offered by patent and trademark laws in individual nations. Sometimes, individuals register trademarks in local country markets before the actual corporate entity files for trademark protection. For example, Starbucks filed for trademark protection in 1997 in Russia but did not open any cafés there. Sergei Zuykov, an attorney in Moscow, filed a petition in court in 2002 to cancel Starbucks' claim to the brand name because it had not been used in commerce. Technically, Zuykov is merely taking advantage of provisions in Russia's civil code; even though he has been denounced as a "trademark squatter," he is not violating the law. Zuykov has offered to sell Seattle-based Starbucks its name back for $600,000!

- Then there is the case of singer/songwriter Tom Waits. His distinctive vocal style—a gravelly growl—and songs about losers and dreams have endeared him to his fans. Within the music industry, Waits is distinctive for another reason: Unlike a growing number of musicians, he refuses to license his songs to marketers for use in broadcast commercials. In addition, he aggressively pursues lawsuits against marketers who use "ringers"—soundalikes—in their advertising. Twenty years ago Waits sued Frito-Lay for using a soundalike in a Doritos ad; he was awarded $2.5 million. Recently, the singer has pursued global marketers. For example, he sued Volkswagen's Audi division for a TV commercial that aired in Spain; Waits claimed that the music ripped off his song "Innocent When You Dream" and that the vocalist imitated his vocal style. An appeals court in Barcelona awarded Waits $43,000 for copyright infringement and $36,000 for violation of his "moral rights as an artist." Waits says he does not mind it when another singer imitates him as a form of artistic expression. As Waits explains, ***"I make a distinction between people who use the voice as a creative item and people who are selling cigarettes and underwear. It's a big difference. We all know the difference. And it's stealing. They get a lot out of standing next to me, and I just get big legal bills."***

Luxury goods marketer Louis Vuitton recently sued Carrefour, the French hypermarket operator, in China. Attorneys for Louis Vuitton alleged that a Shanghai Carrefour store sold counterfeit copies of Vuitton's handbags for 50 yuan, the equivalent of about $6. Genuine Louis Vuitton handbags sell for about $1,000 in China. China is experiencing an increase in lawsuits involving patents, trade secrets, and counterfeit goods.

- International concern about intellectual property issues in the nineteenth century resulted in two important agreements. The first is the International Convention for the Protection of Industrial Property. Also known as the Paris Union or Paris Convention, the convention dates to 1883 and is now honoured by nearly 100 countries. This treaty facilitates multi-country patent registrations by ensuring that once a company files in a signatory country it will be afforded a “right of priority” in other countries for 1 year from the date of the original filing. A U.S. company wishing to obtain foreign patent rights must apply to the Paris Union within 1 year of filing in the United States or risk a permanent loss of patent rights abroad.
- In 1886, the International Union for the Protection of Literary and Artistic Property was formed. Also known as the Berne Convention, this was a landmark agreement on copyright protection. References to the convention pop up in some unexpected places. For example, as the credits roll at the end of The Late Show with David Letterman, the following message appears:
- Worldwide Pants Incorporated is the author of this motion picture for purposes of the Berne Convention and all laws giving effect thereto. Unauthorized duplication, distribution, exhibition, or use may result in civil liabilities and/or criminal prosecution.

- Two other treaties deserve mention. The Patent Cooperation Treaty (PCT) has more than 100 contracting states, including Australia, Brazil, France, Germany, Japan, North Korea, South Korea, the Netherlands, Switzerland, the Russian Federation and other former Soviet republics, and the United States. The members constitute a union that provides certain technical services and cooperates in the filing, searching, and examination of patent applications in all member countries. The European Patent Office administers applications for the European Patent Convention, which is effective in the EU and Switzerland. An applicant can file a single patent application covering all the convention states; the advantage is that the application will be subject to only one procedure of grant. Although national patent laws remain effective under this system, approved patents are effective in all member countries for a period of 20 years from the filing date.
- In recent years, the U.S. government has devoted considerable diplomatic effort to improving the worldwide environment for intellectual property protection. For example, China agreed to accede to the Berne Convention in 1992; on January 1, 1994, China became an official signatory of the PCT. After years of discussion, the United States and Japan have agreed to make changes in their respective patent systems; Japan has promised to speed up patent examinations, eliminate challenges to patent submissions, and allow patent applications to be filed in English.

- Effective June 7, 1995, in accordance with GATT, new U.S. patents are granted for a period of 20 years from the filing date. Previously, patents had been valid for a 17-year term effective after being granted. Thus, U.S. patent laws now harmonize with those in the EU as well as Japan. Even with the changes, however, patents in Japan are narrower than those in the United States. As a result, companies such as Caterpillar have been unable to protect critical innovations in Japan because products very similar to those made by U.S. companies can be patented without fear of infringement.
- Another key issue is global patent protection for software. Although copyright law protects the computer code, it does not apply to the idea embodied in the software. Beginning in 1981, the U.S. Patent and Trademark Office extended patent protection to software; Microsoft has more than 500 software patents. In Europe, software patents were not allowed under the Munich Convention; in June 1997, however, the EU indicated it was ready to revise patent laws so they cover software. Table ranks the 10 companies that received the most U.S. patents in 2009. IBM, which has topped the rankings every year since 1993, generates more than $1 billion in revenues by licensing patents and other forms of intellectual property.

New products and innovation are the lifeblood of E.I. du Pont de Nemours and Company, better known simply as DuPont. The company's business units include Safety & Protection, Coatings & Color Technologies, and Agriculture & Nutrition. One subsidiary, Pioneer Hi-Bred International, is a biotechnology company headquartered in Iowa. Pioneer develops hybrid seeds that enable farmers in all parts of the world to raise crop yields.

Companies Receiving the Most U.S. Patents, 2009

Company	No. of Patents
1. IBM	4,887
2. Samsung Electronics	3,592
3. Microsoft	2,901
4. Canon Kabushiki Kaisha	2,200
5. Panasonic	1,641
6. Toshiba	1,561
7. Sony	1,549
8. Intel	1,271
9. Seiko-Epson	1,328
10. Hewlett-Packard	1,269

Source: U.S. Patent and Trademark Office

"There are two ways to fight piracy in China. The first is the Coca-Cola method. You make your product so well and you distribute it so cheaply that there's no money left for the counterfeiters. The second is the Budweiser approach: Budweiser beer cans in China have fluted edges that are difficult to manufacture. Chinese companies can brew beer and call it Budweiser, but they can't yet put it in a can that looks real. If you don't have an intellectual property rights plan as part of your business plan, you're in trouble."

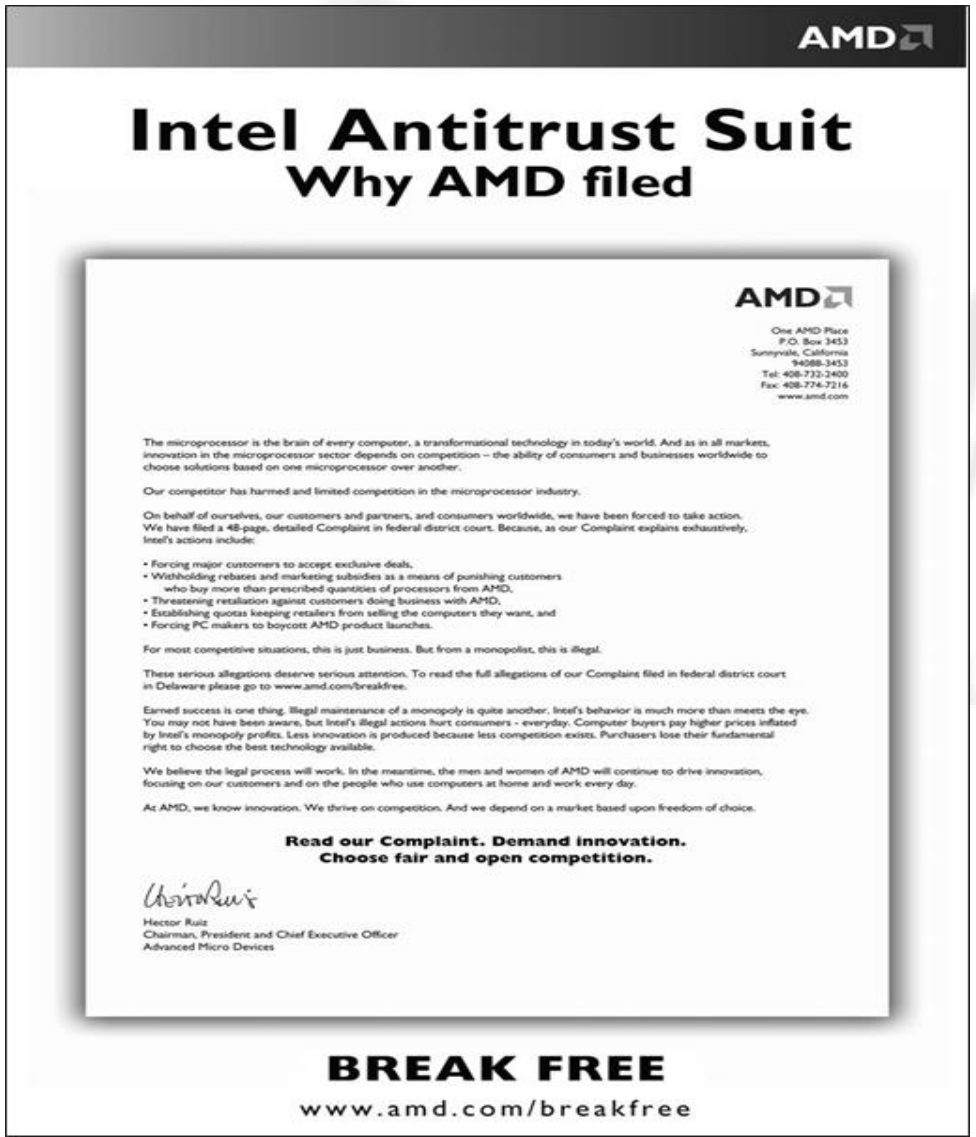
Thomas Boam, commercial attaché, United States Embassy, Beijing

"We have confidence in international law. When you invent something, it is necessary immediately to defend your creativity with intellectual patents. Italy has one of the poorest records in Europe with regard to patents. We need to educate businessmen about this."

Mario Moretti Polegato, chairman, Geox (Italy's biggest shoe company)

Antitrust

- Antitrust laws in the United States and other countries are designed to combat restrictive business practices and to encourage competition. Agencies such as the U.S. Federal Trade Commission, Japan's Fair Trade Commission, and the European Commission enforce antitrust laws.



Advanced Micro Devices (AMD) is the world's second-largest supplier of microprocessors for PCs and servers and is recognized as a technology innovation leader. The dominant market leader, Intel, has held its market share constant in the 80%–90% range over the years. AMD filed a lawsuit against Intel in U.S. Federal Court, claiming Intel uses its dominant market power to stifle or exclude competition and engage in anticompetitive behaviour around the globe. Full-page ads were deployed to describe Intel's conduct.

- Some legal experts believe that the pressures of global competition have resulted in an increased incidence of price-fixing and collusion among companies. As then-FTC chairman Robert Pitofsky said, "***For years, tariffs and trade barriers blocked global trade. Now those are falling, and we are forced to confront the private anticompetitive behaviour that often remains."*** A recent rash of antitrust actions brought in the United States against foreign companies has raised concerns that the United States is violating international law as well as the sovereignty of other nations. The U.S. antitrust laws are a legacy of the nineteenth-century trust-busting era and are intended to maintain free competition by limiting the concentration of economic power. The Sherman Act of 1890 prohibits certain restrictive business practices, including fixing prices, limiting production, allocating markets, or engaging in any other scheme designed to limit or avoid competition. The law applies to the activities of U.S. companies outside U.S. boundaries, as well as to foreign companies conducting business in the United States. In a precedent-setting case, Nippon Paper Industries was found guilty in a U.S. court of conspiring with other Japanese companies to raise fax paper prices in the United States. The Japanese government denounced the U.S. indictment of Nippon Paper in December 1995 as a violation of international law and Japan's sovereignty. The meetings at which pricing strategies were allegedly discussed took place outside the United States; a U.S. federal judge struck down the indictment, ruling that the Sherman Act does not apply to foreign conduct. However, a federal appeals court in Boston reversed the decision. In his opinion, U.S. Circuit Judge Bruce Selya wrote, ***"We live in an age of international commerce, where decisions reached in one corner of the world can reverberate around the globe."***

- For the past four decades, the competition authority of the European Commission has had the power to prohibit agreements and practices that prevent, restrict, and distort competition. The commission has jurisdiction over European-based companies as well as non-European ones that generate significant revenues in Europe, such as Microsoft. For example, the commission can block a proposed merger or joint venture, approve it with only minor modifications, or demand substantial concessions before granting approval. The commission begins with a preliminary study of a proposed deal; serious concerns can lead to an in-depth investigation lasting several months.

- Beginning in the mid-1990s, the commission has taken an increasingly activist approach. Mario Monti, an Italian with an economics background, was Europe's antitrust chief during this period. Nicknamed "Super Mario" by the European press, Monti blocked the proposed merger of WorldCom and Sprint in 2000. He also demanded major concessions before allowing America Online to acquire Time Warner.28 There have been calls for the EU to revamp its approach to antitrust issues and reduce its caseload. Any proposed changes will pit modernists against traditionalists.
- As one European attorney complained, ***"The commission is putting resources into regulating cases that don't actually restrict competition, which means that the cases that do need to be looked at are not being resolved efficiently."***

- Following table summarizes some recent joint ventures, mergers, and other global business deals that have been subject to review by antitrust authorities on both sides of the Atlantic.

Companies Involved	Global Antitrust Review	Antitrust Review in USA
Acquisition of Anheuser-Busch (United States) by InBev (Belgium/Brazil), 2008, $52 billion	Deal approved in China but company is prohibited from pursuing Huaran Snow or Beijing Yanjing.	Approved; InBev was required to sell Labatt USA.
Merger of Sony Music (Japan) and BMG (Germany), 2004	Approved by EU.	Approved.
Acquisition of Honeywell (United States) by GE (United States), 2001, $40 billion	Deal was vetoed on grounds that merged firm would be stronger than competitors in aviation equipment.	Deal was on track for approval, subject to conditions.
Joint venture between music businesses of EMI Group PLC (Great Britain) and Time Warner (United States), 2000, $20 billion	EU regulators expressed concern that the new EMI–Time Warner would dominate the growing market for digital music distribution.	Deal was scrapped in October 2000 before regulatory review began.

- The interstate trade clause of the Treaty of Rome applies to trade with third countries, so that a company must be aware of the conduct of its affiliates. The commission also exempts certain cartels from Articles 85 and 86 of the treaty in an effort to encourage the growth of important businesses. The intent is to allow European companies to compete on an equal footing with Japan and the United States. In some instances, individual country laws in Europe apply to specific marketing mix elements. For example, some countries permit selective or exclusive product distribution. However, European Community law can take precedence.
- In one case, Consten, a French company, had exclusive French rights to import and distribute consumer electronics products from the German company Grundig AG. Consten sued another French firm, charging the latter with bringing "parallel imports" into France illegally; that is, Consten charged that the competitor bought Grundig products from various foreign suppliers without Consten's knowledge and was selling them in France. Although Consten's complaint was upheld by two French courts, the Paris Court of Appeals suspended the judgment, pending a ruling by the European Commission on whether the Grundig–Consten arrangement violated Articles 85 and 86 of the Treaty of Rome. The commission ruled against Consten on the grounds that ***"territorial protection proved to be particularly damaging to the realization of the Common Market."***

- In some instances, companies or entire industries have been able to secure exemption from antitrust rules. In the airline industry, for example, KLM and Northwestern won an exemption from the U.S. government and now share computer codes and set prices jointly. Similarly, the European Commission permitted United International Pictures (UIP), a joint venture between Paramount, Universal, and MGM/UA, to cut costs by collaborating on motion picture distribution in Europe. In 1998, the commission reversed itself and notified the three studios that they must distribute their films independently in Europe. A cartel is a group of separate companies that collectively set prices, control output, or take other actions to maximize profits. For example, the group of oil-producing countries known as OPEC is a cartel.
- In the United States, most cartels are illegal. One notable exception, however, has a direct impact on global marketing. A number of the world's major shipping lines, including the U.S.-based Sea-Land Service and Denmark's A.P. Moller/Maersk line, have enjoyed exemption from antitrust laws since the passage of the Shipping Act of 1916. The law was originally enacted to ensure reliability; today, it has been estimated that the cartel results in shipping prices that are 18 percent higher than they would be if shippers set prices independently. Attempts in recent years to change the law have been unsuccessful.

Licensing and Trade Secrets

- Licensing is a contractual agreement in which a licensor allows a licensee to use patents, trade- marks, trade secrets, technology, or other intangible assets in return for royalty payments or other forms of compensation. U.S. laws do not regulate the licensing process per se as do technology transfer laws in the EU, Australia, Japan, and many developing countries. The duration of the licensing agreement and the amount of royalties a company can receive are considered a matter of commercial negotiation between licensor and licensee, and there are no government restrictions on remittances of royalties abroad. Important considerations in licensing include analysis of what assets a firm may offer for license, how to price the assets, and whether to grant only the right to "make" the product or to grant the rights to "use" and to "sell" the product as well. The right to sublicense is another important issue. As with distribution agreements, decisions must also be made regarding exclusive or nonexclusive arrangements and the size of the licensee's territory.

- To prevent the licensee from using the licensed technology to compete directly with the licensor, the latter may try to limit the licensee to selling only in its home country. The licensor may also seek to contractually bind the licensee to discontinue use of the technology after the contract has expired. In practice, host-government laws and even U.S. antitrust laws may make such agreements impossible to obtain. Licensing is a potentially dangerous action: It may be instrumental in creating a competitor. Therefore, licensors should be careful to ensure that their own competitive position remains advantageous. This requires constant innovation.

- As noted, licensing agreements can come under antitrust scrutiny. In one recent case, Bayer AG granted an exclusive patent license for a new household insecticide to S.C. Johnson & Sons. The German firm's decision to license was based in part on the time required for EPA approval, which had stretched to 3 years. Bayer decided it made better business sense to let the U.S. firm deal with regulatory authorities in return for a 5 percent royalty on sales. However, a class action suit filed against the companies alleged that the licensing deal would allow Johnson to monopolize the $450 million home insecticide market.

- At this point, the U.S. Justice Department stepped in, calling the licensing agreement anticompetitive. In a statement, Anne Bingaman, then head of the Justice Department's antitrust unit, said, ***"The cosy arrangement that Bayer and Johnson maintained is unacceptable in a highly concentrated market."*** Bayer agreed to offer licenses to any interested company on better terms than the original contract with Johnson. Johnson agreed to notify the U.S. government of any future pending exclusive licensing agreements for household insecticides. If Bayer is party to any such agreements, the Justice Department has the right to veto them. The reaction from the legal community was negative. One Washington lawyer who specializes in intellectual property law noted that the case "really attacks traditional licensing practices." As Melvin Jager, president of the Licensing Executives Society, explained, ***"An exclusive license is a very valuable tool to promote intellectual property and get it out into the marketplace."***

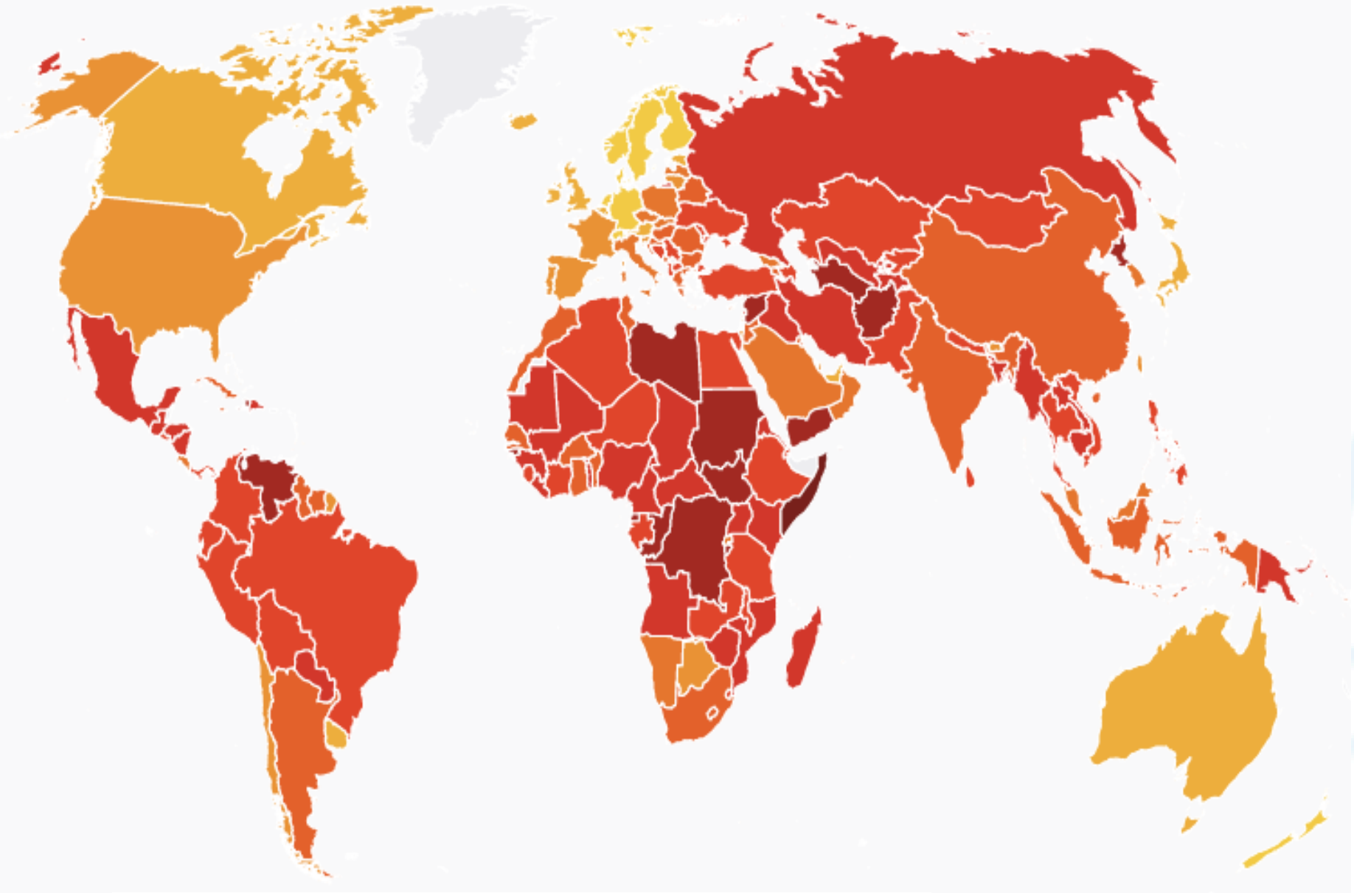
- What happens if a licensee gains knowledge of the licensor’s trade secrets? Trade secrets are confidential information or knowledge that has commercial value and is not in the public domain and for which steps have been taken to keep secret. Trade secrets include manufacturing processes, formulas, designs, and customer lists. To prevent disclosure, the licensing of unpatented trade secrets should be linked to confidentiality contracts with each employee who has access to the protected information. In the United States, trade secrets are protected by state law rather than federal statute; most states have adopted the Uniform Trade Secrets Act (UTSA). The U.S. law provides trade secret liability against third parties that obtain confidential information through an intermediary. Remedies include damages and other forms of relief.

- The 1990s saw widespread improvements in laws pertaining to trade secrets. Several countries adopted trade secret statutes for the first time. Mexico's first statute protecting trade secrets became effective on June 28, 1991; China's first trade secret law took effect on December 1, 1993. In both countries, the new laws were part of broader revisions of intellectual property laws. Japan and South Korea have also amended their intellectual property laws to include trade secrets. Many countries in Central and Eastern Europe enacted laws to protect trade secrets. When NAFTA became effective on January 1, 1994, it marked the first international trade agreement with provisions for protecting trade secrets. This milestone was quickly followed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) that resulted from the Uruguay Round of GATT negotiations. The TRIPs agreement requires signatory countries to protect against acquisition, disclosure, or use of trade secrets "in a manner contrary to honest commercial practices." Despite these formal legal developments, in practice, enforcement is the key issue. Companies transferring trade secrets across borders should apprise themselves not only of the existence of legal protection but also of the risks associated with lax enforcement.

Bribery and Corruption: Legal and Ethical Issues

- History does not record a burst of international outrage when Charles M. Schwab, head of Bethlehem Steel at the beginning of the twentieth century, presented a $200,000 diamond and pearl necklace to the mistress of Czar Alexander III's nephew. In return for that consideration, Bethlehem Steel won the contract to supply the rails for the Trans-Siberian railroad. Today, in the post-Soviet era, Western companies are again being lured by emerging opportunities in Central and Eastern Europe. Here, as in the Middle East and other parts of the world, they are finding that bribery is a way of life and that corruption is widespread. Bribery is the corrupt business practice of demanding or offering some type of consideration—typically cash payment—when negotiating a cross-border deal. U.S. companies in particular are constrained in their responses to such a situation by U.S. government policies of the post-Watergate age. Transparency International (www.transparency.org) compiles an annual report ranking countries in terms of a Corruption Perceptions Index (CPI). Transparency International's Corruption Perceptions Index scores countries on their perceived levels of public sector corruption on a scale from 0 (highly corrupt) to 10 (very clean).

2019 Corruption Perceptions Index



Ranking of Nations according to 2019 CPI score

List of Least Corrupted Nations		
Rank	**Country**	**2019 CPI score**
1	Denmark	87
1	New Zealand	87
3	Finland	86
4	Singapore	85
4	Sweden	85
4	Switzerland	85
7	Norway	84
8	Netherlands	82
9	Germany	80
9	Luxembourg	80

List of Most Corrupted Nations		
Rank	**Country**	**2019 CPI score**
180	Somalia	9
179	South Sudan	12
178	Syria	13
177	Yemen	15
173	Afghanistan	16
173	Equatorial Guinea	16
173	Sudan	16
173	Venezuela	16
172	North Korea	17
168	Democratic Republic of the Congo	18

Source: https://www.transparency.org/en/cpi/2019/results

- In the United States, the Foreign Corrupt Practices Act (FCPA) is a legacy of the Watergate scandal during Richard Nixon's presidency. In the course of his investigation, the Watergate special prosecutor discovered that more than 300 American companies had made undisclosed payments to foreign officials totalling hundreds of millions of dollars. Congress unanimously passed the act, and President Jimmy Carter signed the act into law on December 17, 1977. Administered by the Department of Justice and the Securities and Exchange Commission, the act was concerned with disclosure and prohibition. The disclosure part of the act required publicly held companies to institute internal accounting controls that would record all trans- actions. The prohibition part made it a crime for U.S. corporations to bribe an official of a foreign government or political party to obtain or retain business. Payments to third parties were also prohibited when the company had reason to believe that part or all of the money would be channelled to foreign officials.

- The U.S. business community immediately began lobbying for changes to the act, complaining that the statute was too vague and so broad in scope that it threatened to severely curtail U.S. business activities abroad. President Ronald Reagan signed amendments to the statutes into law in 1988 as part of the Omnibus Trade and Competitiveness Act. Among the changes were exclusions for “grease” payments to low-level officials to cut red tape and expedite “routine governmental actions” such as clearing shipments through customs, securing permits, or getting airport passport clearance to leave a country.
- Convictions carry severe jail sentences and substantial fines. Johnson & Johnson, Tyson Foods, Chevron, Siemens, and Daimler are among the companies that have been slapped with sanctions in recent years. The law is worded quite broadly and has plenty of gray areas; even so, in 2009 and 2010 the U.S. Justice Department collected $2 billion in fines and penalties. A company cannot pay or reimburse fines incurred by “rogue” employees; the rationale is that individuals commit such crimes.

Justice Department’s Website noted:

- The following criminal penalties may be imposed for violations of the FCPA’s anti- bribery provisions: corporations and other business entities are subject to a fine of up to $2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to $100,000 and imprisonment for up to five years. Moreover, under the Alternative Fines Act, these fines may be actually quite higher—the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. You should also be aware that fines imposed on individuals may not be paid by their employer or principal.
- It has also been made clear that the law will not let a person do indirectly (e.g., through an agent, joint venture partner, or other third party) what it prohibits directly.

- Some critics of the FCPA decry it as a regrettable display of moral imperialism. At issue is the extraterritorial sovereignty of U.S. law. It is wrong, according to these critics, to impose U.S. laws, standards, values, and mores on American companies and citizens worldwide. As one legal expert points out, however, this criticism has one fundamental flaw: There is no nation in which the letter of the law condones bribery of government officials. Thus, the standard set by the FCPA is shared, in principle at least, by other nations.
- One criticism of the FCPA is that it puts U.S. companies in a difficult position vis-à-vis foreign competitors, especially those in Japan and Europe. Several opinion polls and surveys of the business community have revealed the widespread perception that the act adversely affects
- U.S. businesses overseas. Some academic researchers have concluded that the FCPA has not negatively affected the export performance of U.S. industry. However, a U.S. Commerce Department report prepared with the help of U.S. intelligence services indicated that in 1994 alone, bribes offered by non-U.S. companies were a factor in 100 business deals valued at $45 billion. Foreign companies prevailed in 80 percent of those deals. Although accurate statistics are hard to come by, the rankings shown in Table highlight some areas of the world where bribery is still rampant.

- The existence of bribery as a fact of life in world markets will not change because the U.S. Congress condemns it. Bribery payments are considered a deductible business expense in many European countries. According to one estimate, the annual price tag for illegal payments by German firms alone is more than $5 billion. Still, increasing numbers of global companies are adopting codes of conduct designed to reduce illegal activities. Moreover, in May 1997 the OECD adopted a formal standard against bribery by drafting a binding international convention that makes it a crime for a company bidding on a contract to bribe foreign officials. The OECD's anti-bribery convention (officially known as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) went into effect in 1999. The OECD is also working on a smaller scale to create so-called islands of integrity. The goal is to achieve transparency at the level of an individual deal, with all the players pledging not to bribe.
- Investigative reporters often file stories regarding bribery or other forms of malfeasance. In emerging countries, journalists may themselves become targets if they criticize the rich or powerful.

Anna Politkovskaya, a reporter for Russia's Novaya Gazeta ("New Paper"), often filed stories critical of President Vladimir Putin. On October 7, 2006, Politkovskaya was gunned down by assailants as she returned from a shopping trip. Since 2000, more than a dozen journalists have been murdered in Russia. Observers note that Russia's independent press suffered as the Kremlin tightened control in anticipation of the 2008 presidential election.

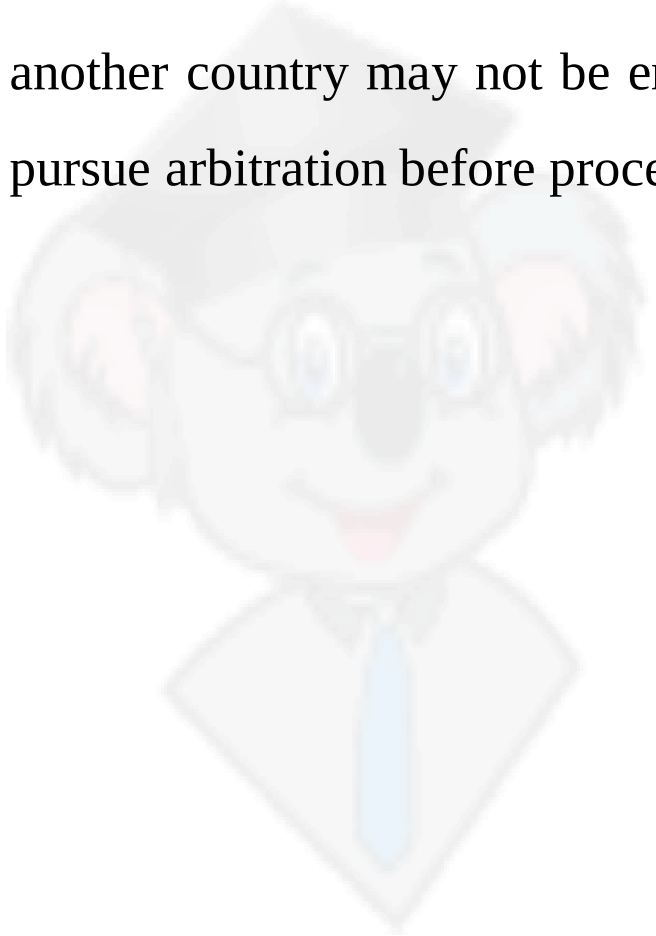
- When companies operate abroad in the absence of home-country legal constraints, they face a continuum of choices concerning company ethics. At one extreme, they can maintain home-country ethics worldwide with absolutely no adjustment or adaptation to local practice. At the other extreme, they can abandon any attempt to maintain company ethics and adapt entirely to local conditions and circumstances as they are perceived by company managers in each local environment. Between these extremes, one approach that companies may select is to utilize varying degrees of extension of home-country ethics. Alternatively, they may adapt in varying degrees to local customs and practices.
- What should a U.S. company do if competitors are willing to offer a bribe? Two alternative courses of action are possible. One is to ignore bribery and act as if it does not exist. The other is to recognize the existence of bribery and evaluate its effect on the customer's purchase decision as if it were just another element of the marketing mix. The overall value of a company's offer must be as good as, or better than, the competitor's overall offering, bribe included. It may be possible to offer a lower price, a better product, better distribution, or better advertising to offset the value added by the bribe. The best line of defence is to have a product that is clearly superior to that of the competition. In such a case, a bribe should not sway the purchase decision. Alternatively, clear superiority in service and in local representation may tip the scales.

"Corruption is probably the most immediate threat and difficulty that any business faces in Russia—and the trend is increasing." Carlo Gallo, business risk consultant

Conflict Resolution, Dispute Settlement, and Litigation

- The degree of legal cooperation and harmony in the EU is unique and stems, in part, from the existence of code law as a common bond. Other regional organizations have made far less progress toward harmonization. Countries vary in their approach toward conflict resolution. The United States has more lawyers than any other country in the world and is arguably the most litigious nation on earth. In part, this is a reflection of the low-context nature of American culture and the spirit of confrontational competitiveness. Other factors can contribute to differing attitudes toward litigation. For example, in many European nations class action lawsuits are not allowed. Also, European lawyers cannot undertake cases on a contingency fee basis. However, change is in the air, as Europe experiences a broad political shift away from the welfare state.
- Conflicts inevitably arise in business anywhere, especially when different cultures come together to buy, sell, establish joint ventures, compete, and cooperate in global markets. For American companies, the dispute with a foreign party is frequently in the home-country jurisdiction. The issue can be litigated in the United States, where the company and its attorneys might be said to enjoy “home court” advantage. Litigation in foreign courts, however, becomes vastly more complex, partly because of differences in language, legal systems, currencies, and traditional business customs and patterns.

- In addition, problems arise from differences in procedures relating to discovery. In essence, discovery is the process of obtaining evidence to prove claims and determining which evidence may be admissible in which countries under which conditions. A further complication is the fact that judgments handed down in courts in another country may not be enforceable in the home country. For all these reasons, many companies prefer to pursue arbitration before proceeding to litigate.



Alternatives to Litigation for Dispute Settlement

- In 1995, the Cuban government abruptly cancelled contracts with Endesa, a Spanish utility company. Rather than seek restitution in a Cuban court, Endesa turned to the International Arbitration Tribunal in Paris, seeking damages of $12 million. Endesa's actions illustrate how alternative dispute resolution (ADR) methods allow parties to resolve international commercial disputes without resorting to the court system. Formal arbitration is one means of settling inter- national business disputes outside the courtroom. Arbitration is a negotiation process that the two parties have, by prior agreement, committed themselves to using. It is a fair process in the sense that the parties using it have created it themselves. Generally, arbitration involves a hearing of the parties before a three-member panel; each party selects one panel member, and those two panel members in turn select the third member. The panel renders a judgment that the parties agree to abide by in advance.

- The most important treaty regarding international arbitration is the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Also known as the New York Convention, the treaty has 107 signatory countries, including China. Brazil is notable among the big emerging markets for not being a signatory. The framework created by the New York Convention is important for several reasons. First, when parties enter into agreements that provide for international arbitration, the signatory countries can hold the parties to their pledge to use arbitration. Second, after arbitration has taken place and the arbitrators have made an award, the signatories recognize and can enforce the judgment. Third, the signatories agree that there are limited grounds for challenging arbitration decisions. The grounds that are recognized are different than the typical appeals that are permitted in a court of law.

- Some firms and lawyers inexperienced in the practice of international commercial arbitration approach the arbitration clauses in a contract as “just another clause.” The terms of every contract are different and, therefore, no two arbitration clauses should be the same. Consider, for example, the case of a contract between an American firm and a Japanese one. If the parties resort to arbitration, where will it take place? The American side will be reluctant to go to Japan; conversely, the Japanese side will not want to arbitrate in the United States. An alternative, “neutral” location—Singapore or London, for example—must be considered and specified in the arbitration clause. In what language will the proceedings be conducted? If no language is specified in the arbitration clause, the arbitrators themselves will choose.
- In addition to location and language, other issues must be addressed as well. For example, if the parties to a patent-licensing arrangement agree in the arbitration clause that the validity of the patent cannot be contested, such a provision may not be enforceable in some countries. Which country’s laws will be used as the standard for invalidity? Pursuing such an issue on a country- by-country basis would be inordinately time-consuming. In addition, there is the issue of acceptance: By law, U.S. courts must accept an arbitrator’s decision in patent disputes; in other countries, however, there is no general rule of acceptance.

- To reduce delays relating to such issues, one expert suggests drafting arbitration clauses with as much specificity as possible. To the extent possible, for example, patent policies in various countries should be addressed; arbitration clauses may also include a provision that all foreign patent issues will be judged according to the standard of home-country law. Another provision could forbid the parties from commencing separate legal actions in other countries. The goal is to help the arbitration tribunal zero in on the express intentions of the parties.
- For decades, business arbitration has also been promoted through the International Court of Arbitration at the Paris-based International Chamber of Commerce (ICC; www.iccwbo.org). The ICC recently modernized some of its older rules. However, because it is such a well-known organization, it has an extensive backlog of cases. Overall, the ICC has gained a reputation for being slower, more expensive, and more cumbersome than some alternatives. As U.S. involvement in global commerce grew dramatically during the post–World War II period, the American Arbitration Association (AAA) also became recognized as an effective institution within which to resolve disputes. In 1992, the AAA signed a cooperation agreement with China's Beijing Conciliation Center.

- Another agency for settling disputes is the Swedish Arbitration Institute of the Stockholm Chamber of Commerce. This agency frequently administered disputes between Western and Eastern European countries and has gained credibility for its even-handed administration. However, a favourable ruling from the arbitration tribunal is one thing; enforcement is another. For example, Canada's IMP Group took its case against a Russian hotel development partner to Stockholm and was awarded $9.4 million. When payment was not forthcoming, IMP's representatives took matters into their own hands: They commandeered an Aeroflot jet in Canada and released it only after the Russians paid up!
- Other arbitration alternatives have proliferated in recent years. In addition to those mentioned, active centres for arbitration exist in Vancouver, Hong Kong, Cairo, Kuala Lumpur, Singapore, Buenos Aires, Bogotá, and Mexico City. A World Arbitration Institute was established in New York; in the United Kingdom, the Advisory, Conciliation and Arbitration Service (ACAS) has achieved great success at handling industrial disputes. An International Council for Commercial Arbitration (ICCA) was established to coordinate the far-flung activities of arbitration organizations. The ICCA meets in different locations around the world every 4 years.

- The United Nations Conference on International Trade Law (UNCITRAL; www.uncitral.org) has also been a significant force in the area of arbitration. Its rules have become more or less standard, as many of the organizations just named have adopted them with some modifications. Many developing countries, for example, long held prejudices against the ICC, AAA, and other developed-country organizations. Representatives of developing nations assumed that such organizations would be biased in favour of multinational corporations. Developing nations insisted on settlement in national courts, which was unacceptable to the multinational firms. This was especially true in Latin America, where the Calvo Doctrine required disputes arising with foreign investors be resolved in national courts under national laws. The growing influence of the ICCA and UNCITRAL rules, coupled with the proliferation of regional arbitration centres, have contributed to changing attitudes in developing countries and resulted in the increased use of arbitration around the world.

The Regulatory Environment

- The regulatory environment of global marketing consists of a variety of governmental and nongovernmental agencies that enforce laws or set guidelines for conducting business. These regulatory agencies address a wide range of marketing issues, including price control, valuation of imports and exports, trade practices, labelling, food and drug regulations, employment conditions, collective bargaining, advertising content, and competitive practices. As noted in The Wall Street Journal:

> ***Each nation's regulations reflect and reinforce its brand of capitalism—predatory in the U.S., paternal in Germany, and protected in Japan—and its social values. It's easier to open a business in the U.S. than in Germany because Germans value social consensus above risk- taking, but it's harder to hire people because Americans worry more about discrimination lawsuits. It's easier to import children's clothes in the U.S. than Japan because Japanese bureaucrats defend a jumble of import restrictions, but it's harder to open bank branches across the U.S. because Americans strongly defend state prerogatives.***

- In most countries, the influence of regulatory agencies is pervasive, and an understanding of how they operate is essential to protect business interests and advance new programs. Executives at many global companies are realizing the need to hire lobbyists to represent their interests and to influence the direction of the regulatory process. For example, in the early 1990s McDonald's, Nike, and Toyota didn't have a single representative in Brussels. Today, each of the companies has several people representing its interests to the European Commission. U.S. law firms and consulting firms also have sharply increased their presence in Brussels; in an effort to gain insight into EU politics and access to its policymakers, some have hired EU officials. In all, there are currently approximately 15,000 lobbyists in Brussels representing about 1,400 companies and non-profit organizations from around the world

Regional Economic Organizations: The EU Example

- The legal dimensions are important, however, and will be briefly mentioned here. The Treaty of Rome established the European Community (EC), the precursor to the EU. The treaty created an institutional framework in which a council (the Council of Ministers) serves as the main decision-making body, with each country member having direct representation. The other three main institutions of the community are the European Commission, the EU's executive arm; the European Parliament, the legislative body; and the European Court of Justice.
- The 1987 Single European Act amended the Treaty of Rome and provided strong impetus for the creation of a single market beginning January 1, 1993. Although technically the target was not completely met, approximately 85 percent of the new recommendations were implemented into national law by most member states by the target date, resulting in substantial harmonization. A relatively new body known as the European Council (a distinct entity from the Council of Ministers) was formally incorporated into the EC institutional structure by Article 2 of the 1987 act. Composed of heads of member states plus the president of the commission, the European Council's role is to define general political guidelines for the union and provide direction on integration-related issues such as monetary union.48 Governments in Central and Eastern European countries that hope to join are currently getting their laws in line with those of the EU.

- The Treaty of Rome contains hundreds of articles, several of which are directly applicable to global companies and global marketers. Articles 30 through 36 establish the general policy referred to as “Free Flow of Goods, People, Capital and Technology” among the member states. Articles 85 through 86 contain competition rules, as amended by various directives of the 20-member EU Commission. The commission is the administrative arm of the EU; from its base in Brussels, the commission proposes laws and policies, monitors the observance of EU laws, administers and implements EU legislation, and represents the EU to international organizations. Commission members represent the union rather than their respective nations.
- The laws, regulations, directives, and policies that originate in the commission must be submitted to the parliament for an opinion and then passed along to the council for a final decision. Once the council approves a prospective law, it becomes union law, which is somewhat analogous to U.S. federal law. Regulations automatically become law throughout the union; directives include a time frame for implementation by legislation in each member state. For example, in 1994 the commission issued a directive regarding use of trademarks in comparative advertising. Individual member nations of the EU have been working to implement the directive; in the United Kingdom, the 1994 Trade Marks Act gave companies the right to apply for trademark protection of smells, sounds, and images and also provides improved protection against trademark counterfeiting.

- With the rise of the single market, many industries are facing new regulatory environments. The European Court of Justice, based in Luxembourg, is the EU's highest legal authority. It is responsible for ensuring that EU laws and treaties are upheld throughout the union. Based in Luxembourg, it consists of two separate tribunals. The senior body is known as the Court of Justice; a separate entity, the Court of First Instance, hears cases involving commerce and competition.
- Although the European Court of Justice plays a role similar to that of the U.S. Supreme Court, there are important differences. The European court cannot decide which cases it will hear, and it does not issue dissenting opinions. The court exercises jurisdiction over a range of civil matters involving trade, individual rights, and environmental law. For example, the court can assess damages against countries that fail to introduce directives by the date set. The court also hears disputes that arise among the 27 EU member nations on trade issues such as mergers, monopolies, trade barriers and regulations, and exports. The court is also empowered to resolve conflicts between national law and EU law. In most cases, the latter supersedes national laws of individual European countries.

- Marketers must be aware, however, that national laws should always be consulted. National laws may be stricter than community law, especially in such areas as competition and antitrust. To the extent possible, community law is intended to harmonize national laws to promote the purposes defined in Articles 30 through 36. The goal is to bring the lax laws of some member states up to designated minimum standards. However, more restrictive positions may still exist in some national laws. For example, Italy recently introduced the Reguzzoni-Versace Law. It is intended to regulate trade in textiles, leather, and footwear; it states that if at least two stages of production—there are four stages altogether—occur in Italy, a garment can be labeled "Made in Italy." In addition, the country or countries in which the remaining production stages took place must be identified. Reguzzoni-Versace was supposed to enter into force October 1, 2010. However, Brussels objected on grounds that the law conflicts with Article 34 which prohibits national measures providing restrictions to trade in the European Union. EU regulators view Reguzzoni-Versace as "protectionist" and more stringent than EU law which only requires that one main production stage take place in Europe.

Recent Cases before the European Court of Justice/Court of First Instance

Country/Plaintiffs Involved	Issue
Chocoladefabriken Lindt & Sprüngli AG (Switzerland)/Franz Bauswirth GmbH (Austria)	Lindt markets gold-foil wrapped chocolate Easter bunnies (Goldhase), for which it owns a trademark. Lindt sued Hauswirth for trademark infringement after the Austrian company began marketing its own foil-wrapped bunny. The Austrian Supreme Court asked the ECJ to rule on "bad faith" in trademark matters.
L'Oreal (France)/Bellure (France)	Perfume marketer L'Oreal sued rival Bellure for marketing "knockoff" perfume that mimicked the bottles, packaging, and fragrances of L'Oreal's brands. The ECJ ruled in favour of L'Oreal on the grounds that the similarity of Bellure's products to L'Oreal's constituted an unfair advantage. The Court of Appeal later upheld the ECJ's decision.
Italy/Monsanto, Syngenta, Pioneer Hi-Bred International	In 2000, fearing risk to human health, Italy banned foods containing four strains of genetically modified corn. The Italian court hearing the plaintiffs' appeal asked for ECJ intervention; in 2003, the ECJ ruled that the ban was not justified. The case was returned to Italy for a final ruling; the Italian court ruled that the government was not entitled to impose the ban.

EMERGING MARKETS BRIEFING:
BlackBerry in the Middle East

BlackBerry

BlackBerry
RIM

- Research in Motion (RIM) is a Canadian company best known as the marketer behind the wildly successful BlackBerry. RIM markets BlackBerry devices in more than 175 countries and has more than 40 million subscribers. The BlackBerry Messenger is popular with politicians and businesspeople, for a very simple reason: The BlackBerry Enterprise Server offers advanced encryption that provides superior data security. However, in some countries that advantage is actually a disadvantage, at least as far as officials are concerned.
- In the Middle East, for example, governments typically maintain strict controls over the Internet for security reasons. In 2009, Etisalat, a telecommunications company in the United Arab Emirates (UAE), urged BlackBerry users to download a software upgrade; it turned out the upgrade contained spyware. The following year, UAE officials at the Telecommunications Regulatory Authority (TRA) threatened to suspend some services to the country's 500,000 BlackBerry users. The rationale: Blackberry technology allows encrypted data to be sent abroad without going through a country's telecommunications infra- structure. According to government officials, this makes it easier for a variety of undesirable types—organized crime figures and drug smugglers, for example—to conduct "business" from the UAE.

- BlackBerry's services, it was alleged, were "causing serious social, judicial and national security repercussions." In the end, however, the TRA relented and there was no service interruption. Few details were available to explain the about-face, however. Saudi Arabia's Communication and Information Technology Commission (CITC) was also ready to restrict BlackBerry services, citing national security concerns. The issue in Saudi Arabia was tied to the location of RIM's servers: Canada. Unlike the UAE, where many BlackBerry users are expatriate businessmen and bankers, many of the 700,000 subscribers in Saudi Arabia are citizens of the kingdom. Some observers think the restrictions are intended to allow the government to maintain control over the social fabric of the nation. As one Saudi noted, "I think it's mainly a social issue. It's suddenly become trendy to have a BlackBerry . . . and it's now the most popular way to chat among Saudi youths."

- Beginning in the mid-1990s, the commission has taken an increasingly activist approach. Mario Monti, an Italian with an economics background, was Europe's antitrust chief during this period. Nicknamed "Super Mario" by the European press, Monti blocked the proposed merger of WorldCom and Sprint in 2000. He also demanded major concessions before allowing America Online to acquire Time Warner. There have been calls for the EU to revamp its approach to antitrust issues and reduce its caseload. Any proposed changes will pit modernists against traditionalists. As one European attorney complained, "The commission is putting resources into regulating cases that don't actually restrict competition, which means that the cases that do need to be looked at are not being resolved efficiently." Table summarizes some recent joint ventures, mergers, and other global business deals that have been subject to review by antitrust authorities on both sides of the Atlantic.