



The Political, Legal, and Regulatory Environments of Global Marketing

Chapter 5

Dr Inda Sukati
Faculty of Management
Universiti Teknologi Malaysia

Introduction

- The global marketer must comply with each nation's laws and regulations with respect to the cross-border movement of services, people, money, and know-how.
- Be aware of laws and regulations that change frequently or are ambiguous and can hamper the company's activities.

The Political Environment

- Made up of governmental institutions, political parties, and organizations that rulers and people use to wield power
- Each nation's *political culture* reflects the importance of the government and legal system
- Issues for foreign investors include the governing party's view on sovereignty, political risk, taxes, equity dilution, and expropriation

Nation-States and Sovereignty

“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.”

U.S. Supreme Court Justice Fuller

Political Risk

- Risk of change in political environment or government policy that would adversely affect a company's ability to operate effectively and profitably



- When perceived political risk is high, a country will have a difficult time attracting foreign direct investment

Political Risk

- Some examples of political risk include:
 - War
 - Social unrest
 - Politically-motivated violence
 - Transparency
 - Social conditions (population density and wealth distribution)
 - Corruption, nepotism
 - Crime
 - Labor costs
 - Tax discrimination

Taxes

- Government taxation policies
 - High taxation can lead to black market growth and cross-border shopping
- Corporate taxation
 - Companies attempt to limit tax liability by shifting location of income

Seizure of Assets

- **Expropriation**—governmental action to dispossess a foreign company or investor
 - Compensation should be provided in a “prompt, effective, and adequate manner”
- **Confiscation** occurs when no compensation is provided

Seizure of Assets

- **Nationalization**—a government takes control of some or all of the enterprises in an entire industry
 - Acceptable according to international law if:
 - satisfies public purpose
 - includes compensation

Seizure of Assets

- **Creeping expropriation**—limits economic activities of foreign firms
- May include:
 - Limits on repatriation of profits, dividends, or royalties
 - Technical assistance fees
 - Increased local content laws
 - Quotas for hiring local nationals
 - Price controls
 - Discriminatory tariff and nontariff barriers
 - Discriminatory laws on patents and trademarks

International Law

- The rules and principles that nation-states consider binding among themselves
- Disputes between nations are issues of public international law
 - World Court or International Court of Justice (ICJ)
 - Judicial arm of the United Nations

Common Law vs. Civil Law



- The Napoleonic Code of 1804 drew on Roman legal system and is the basis for continental European law today. Code law is also known as civil law.
- U.S. law is rooted in English common law.

Common Law vs. Civil Law

- **Common Law**

- Disputes are decided by reliance on the authority of past judicial decisions
- Companies are legally incorporated by state authority
- Code law is used in only a few areas; the U.S. Uniform Commercial Code

- **Civil Law**

- Legal system reflects the structural concepts and principles of the Roman Empire
- Companies are formed by contract between two or more parties who are fully liable for the actions of the company

Islamic Law

- Legal system in many Middle Eastern countries
- *Sharia*—a comprehensive code governing Muslim conduct in all areas of life, including business
 - Koran—Holy Book; like code law
 - Hadith—like common law
 - Based on life, sayings, and practices of Muhammad
 - Identifies forbidden practices “haram”

Sidestepping Legal Issues



- Get expert legal help
- Prevent conflicts
 - Establish jurisdiction
 - Protect intellectual property
 - Protect licenses and trade secrets
 - Avoid bribery

Jurisdiction

- Refers to 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 should understand the extent to which they are subject to jurisdiction of host-country courts
- Courts have jurisdiction if it can be demonstrated that the company is doing business in the state the court sits

Intellectual Property

- Intellectual property must be registered in each country where business is conducted
 - Patent—gives an inventor exclusive right to make, use, and sell an invention for a specified period of time
 - Trademark—distinctive mark, motto, device, or emblem used to distinguish it from competing products
 - Copyright—establishes ownership of a written, recorded, performed, or filmed creative work

Infringement of Intellectual Property

- Counterfeiting—unauthorized copying and production of a product
- Associative Counterfeit/Imitation—product name differs slightly from a well-known brand
- Piracy—unauthorized publication or reproduction of copyrighted work

Intellectual Property

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Masquerading as Champagne...

might be legal,
but it isn't fair.

In a country of consumer rights, a federal law tests our traditions. There are many fine sparkling wines, but only those originating in the chalky hills of Champagne, France can bear that region's name. A legal loophole allows some U.S. wines to masquerade as "Champagne." Even names of American wine regions like Napa Valley and Walla Walla Valley are also misused.

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Protecting Intellectual Property

- In the U.S., registration is with the Federal Patent Office
- In Europe, applicants use the European Patent Office or register country-by-country
- Soon the Community Patent Convention will cover 27 countries

Protecting Intellectual Property

- World Intellectual Property Organization
 - Governed by the Madrid Agreement and the Madrid Protocol
 - Allows trademark owners to seek protection in as many as 74 countries with a single application and fee

Protecting Intellectual Property

- International Convention for the Protection of Industrial Property
 - Paris Convention
 - Honored by 100 countries
 - Facilitates multi-country patent registration, ensures that once a company files, it has a “right of priority” in other countries for one year from that date
- Patent Cooperation Treaty
- European Patent Convention

U.S. Companies Receiving the Most Patents, 2005

<u>Company</u>	<u># of Patents</u>
1. IBM	2,941
2. Hitachi	1,918
3. Canon Kabushiki Kaisha	1,875
4. Matsushita Electric Industrial	1,813
5. Hewlett-Packard	1,808
6. Samsung Electronics	1,641
7. Micron Technology	1,561
8. Intel	1,549
9. Siemens	1,345
10. Toshiba	1,338

Antitrust

- Laws are designed to combat restrictive business practices and to encourage competition
 - Enforced by FTC in the U.S., Fair Trade Commission in Japan, European Commission in European Union
 - The Sherman Act of 1890 prohibits certain restrictive business practices including fixing prices, limiting production, allocating markets, or any other scheme designed to limit or avoid competition. Law applies to U.S. companies outside U.S. borders and to foreign companies operating in the U.S.

Licensing and Trade Secrets

- **Licensing** is a contractual agreement in which a licensor allows a licensee to use patents, trademarks, trade secrets, technology, and other intangible assets in return for royalty payments or other forms of compensation
- Important considerations
 - What assets may be licensed
 - How to price assets
 - The rights granted

Licensing and 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 it secret
- To prevent disclosure, use confidentiality contracts
- The Uniform Trade Secrets Act has been adopted by most U.S. states
- TRIPS, Trade-Related Aspects of Intellectual Property Rights signed by members of GATT

Bribery and Corruption

- Foreign Corrupt Practices Act
 - Requires publicly held companies to institute internal accounting controls that would record all transactions
 - Makes it a crime for a U.S. corporation to bribe an official of a foreign government or political party to obtain or retain business
 - Prohibits payments to third parties when there is reason to believe it may be channeled to foreign officials
- Omnibus Trade and Competitiveness Act
 - Allows for “grease” payments to cut red tape; i.e., getting shipments through customs, getting permits

2008 Corruption Rankings

“Cleanest” Countries

1. Denmark
1. New Zealand
1. Sweden
4. Singapore
5. Finland
5. Switzerland
7. Iceland
7. Netherlands
9. Australia
9. Canada

Most Corrupt Countries

171. Dem. Rep. Of Congo
171. Equatorial Guinea
173. Chad
173. Guinea
173. Sudan
176. Afghanistan
177. Haiti
178. Iraq
178. Myanmar
180. Somalia

Conflict Resolution

- Litigation
- Formal arbitration
 - Settles disputes outside of court
 - Groups agree to abide by panel's decision
- 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
 - Most important treaty regarding international arbitration signed by 107 countries

The Regulatory Environment

- Agencies, both governmental and non-governmental, that enforce laws or set guidelines for conducting business
- Marketing activities affected by international and regional economic organizations
 - EU
 - WTO

Looking Ahead to Chapter 6

- Global Information Systems and Market Research

Exercises

1. What is sovereignty? Why is it an important consideration in the political environment of global marketing?
2. Describe some of the sources of political risk. Specifically, what forms can political risk take?