The Political, Legal, and Regulatory Environments of Global Marketing

Chapter 5

Marketers must:

- Attempt to comply with each nation’s laws and regulations.
- Keep up with laws and regulations that change frequently.
- Clarify ambiguous regulations.

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

Democracy

- Representative Democracy
  - Freedoms
    - Expression, opinion, organization
    - Media
    - Regular elections with universal suffrage
    - Limited terms for elected representatives
    - Fair and independent court system
    - Non-political bureaucracy, police force and armed service
    - Relatively free access to information

Totalitarianism

- Constitutional guarantees are denied
- Four majors forms:
  - Communist
  - Theocratic
    - Based on religious principles
  - Tribal
    - Mostly African
  - Right wing
**Risk**
- Political
  - Likelihood that political forces will cause drastic changes that adversely affect profits and other goals.
- Legal
  - Likelihood that a trading partner will opportunistically break a contract or expropriate property rights.

**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

**Legal Systems**
- Rules or laws that regulate behavior
  - Property rights
  - Private action
  - Public action
- International property issues
  - Protection of intellectual property
    - Lax enforcement
  - Product safety and product liability
    - Competitiveness
    - Ethics

**Political impact on Economic Transformation**
- Deregulation
  - Removal of legal restrictions to free markets
- Privatization
  - Transfer of state ownership of property into private hands
- Creation of legal systems to protect property rights

**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
  - no compensation is provided
**Seizure of Assets**

- **Nationalization**—a government takes control of enterprises in an entire industry
  - Oil is the current target of nationalization
  - Chavez-Venezuela
  - International law considers acceptable if
    - Satisfies public purpose
    - Includes compensation

**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 the 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 versus Civil Law**

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

- **Civil law country**
  - 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
  - Hadith
    - Based on life, sayings, and practices of Muhammad
    - Identifies forbidden practices, "haram"
**Sidestepping Legal Issues**
- Get expert legal help
- In the market involved
- Prevent conflicts
- Establish jurisdiction
- Protect intellectual property
- 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

**Protecting Intellectual Property**
- In the United States, 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 25 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, ensuring that once a company files, it has a "right of priority" in other countries for 1 year from that date
- Patent Cooperation Treaty
- European Patent Convention

European Patent Convention
- Stalemate on discussions
- Still no EU-wide patent program

Antitrust
- Laws are designed to combat restrictive business practices and to encourage competition.
  - Enforced by:
    - FTC in the United States
    - Fair Trade Commission in Japan
    - European Commission in European Union
  - The Sherman Act of 1890 prohibits certain restrictive business practices
    - 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 United States.

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
  - Carter 1977
  - Transparency in publicly held companies
  - Crime for a U.S. corporation to bribe an official to obtain or retain business
  - Prohibits payments to third parties that may be channeled to foreign officials
- Omnibus Trade and Competitiveness Act
  - Reagan-1988
  - Allows for "grease" payments
**Conflict Resolution**

- Litigation
- Formal arbitration
  - Settles disputes outside of court
  - Groups agree to abide by panel's decision
- Mediation
  - 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