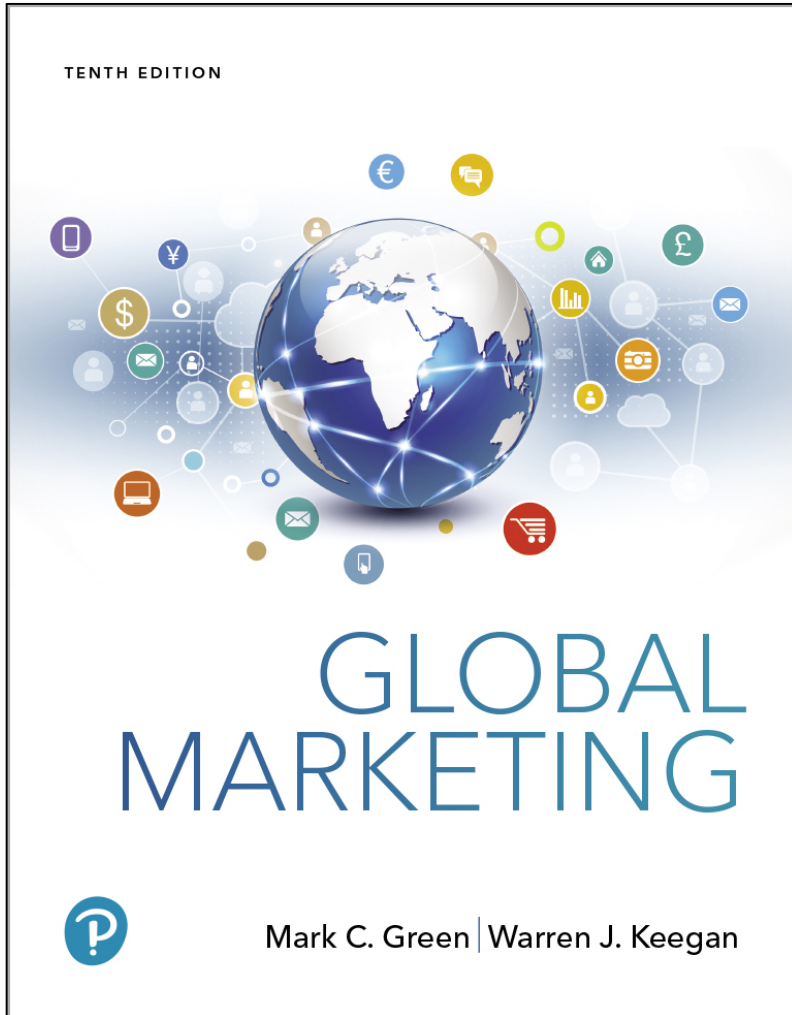


Global Marketing

Tenth Edition



Chapter 5

The Political, Legal, and
Regulatory Environments

Learning Objectives

5.1 Understand the elements of a country's political environment that can impact global marketing activities.

5.2 Define international law and describe the main types of legal systems found in different parts of the world.

5.3 Understand the most important business issues that can lead to legal problems for global marketers.

5.4 Describe the available alternatives for conflict resolution and dispute settlement when doing business outside the home country.

5.5 In general terms, outline the regulatory environment in the European Union

Political Environment

- The **Political Culture** reflects the importance of the government and legal system and provides a context within which individuals and corporations understand their relationship to the political system.
- **Political Issues** include sovereignty, political risk, tax policies, threat of equity dilution, risk of expropriation.

Sovereignty

- **Sovereignty:** Supreme and independent political authority
- “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.”

Richard Stanley

President, Stanley Foundation

Sovereignty & Global Market Integration

- Some believe that global market integration is eroding national economic sovereignty
- In the EU, individual countries gave up their rights to a national currency, product standards in exchange for better market access
- **“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.”**

~ Neal Soss, Economic Consultant

Political Risk (1 of 3)

- Risk of change in political environment or in 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.
- Managers need to track political trends such as the emergence of far-right parties in Germany, France, Austria, etc.
- Some governments offer political risk insurance.

Political Risk (2 of 3)

- Some examples of political risk include:
 - War
 - Social unrest, fractionalized by language, ethnic and/or religious groups
 - Orderly political transfer
 - Politically motivated violence
 - International disputes
 - Change in government/pro-business orientation
 - Social conditions (population density and wealth distribution)
 - Corruption, nepotism

Political Risk (3 of 3)

- Crime
- Labor costs
- Tax discrimination
- Exchange controls, tariff barriers
- Dependence on and/or importance to a major hostile power
- Repatriation restrictions

Taxes

- Government taxation policies
 - High taxation can lead to black market growth and cross-border shopping
 - High import duties in China leads to smuggling of oil, cigarettes, PCs, film
 - In Great Britain, cars returning from France bring in an average 80 bottles of wine
- Companies like Amazon, Google, and Apple attempt to limit tax liability by shifting location of income

Seizure of Assets (1 of 3)

- 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 (2 of 3)

- **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 “adequate payment”

Seizure of Assets (3 of 3)

- 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
- Pertains to property, trade, immigration, and other areas
- Disputes between nations are issues of public international law
 - World Court or International Court of Justice (ICJ);
 - Judicial arm of the United Nations

International Court of Justice

- Judicial arm of the United Nations founded in 1947
- Settles disputes between nations
- Offers advice on legal issues submitted by various international agencies

Common Law vs Civil Law (1 of 2)

- 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 vs Civil Law (2 of 2)

- 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 fully adopted by 49 states, Louisiana still influenced by French civil law
- 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
 - Advertising & promotion

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 the jurisdiction of host-country courts.
- Courts have jurisdiction if it can be demonstrated that the company is doing business in the state in which the court sits.

Intellectual Property (1 of 2)

- 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 (2 of 2)

“You may not realize it, but by using the name **Kleenex®** as a generic term for tissue, you risk erasing our coveted brand name that we’ve worked so hard for all these years. **Kleenex®** is a registered trademark and should always be followed by the ® and the words ‘Brand Tissue.’ Just Pretend it’s in permanent marker.”



You may not realize it, but by using the name **Kleenex®** as a generic term for tissue, you risk erasing our coveted brand name that we’ve worked so hard for all these years. **Kleenex®** is a registered trademark and should always be followed by a ® and the words ‘Brand Tissue’. Just pretend it’s in permanent marker.



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Protecting Intellectual Property (1 of 3)

- In the U.S., registration is with the **Federal Patent and Trademark Office**
- In Europe, applicants use the **European Patent Office** or register country-by-country
- Soon the **Community Patent Convention** will cover 27 countries
- **Madrid Protocol** trademark owners are protected in 74 countries with 1 application

Protecting Intellectual Property (2 of 3)

- World Intellectual Property Organization
 - Governed by the Madrid Agreement and the Madrid Protocol, allows trademark owners to seek protection in 74 countries with one application and fee.
- Firms exploit loopholes in patent laws by filing for patent protection before entering the market.

Protecting Intellectual Property (3 of 3)

- International Convention for the Protection of Industrial Property
 - Also known as the Paris Convention
 - Honored by almost 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
 - Over 100 countries cooperate with patent applications
- European Patent Convention
 - the EU and Switzerland

Companies Receiving the Most International Patents, 2015

Table 5 - 2 Companies Filing the Most International Patent Applications under PCT, 2015

Company	Country	Number of Patent Applications Filed
1. Huawei Technologies	China	3,898
2. Qualcomm	United States	2,442
3. ZTE	China	2,155
4. Samsung Electronics	South Korea	1,683
5. Mitsubishi Electric	Japan	1,593
6. Telefonaktiebolaget LM Ericsson	Sweden	1,481
7. LG Electronics	South Korea	1,457
8. Sony	Japan	1,381
9. Koninklijke Philips	Netherlands	1,378
10. Hewlett-Packard Development	United States	1,310

Other Patent Issues

- U.S. patents are issued for 20 years in accordance with GATT
- U.S. laws are **harmonized** with those in the EU and Japan
 - Patents in Japan are narrower than the U.S. so companies like Caterpillar cannot protect critical innovations
- Global software protection
 - U.S. copyright law protects computer code
 - U.S. Patent and Trademark Office protects software (1981)
 - EU covered software in 1997
 - American Innovation Act (2011) protects companies against trolls who file multiple patents to get large tech companies to pay
 - Patent Trial and Appeal Board resolves patent infringement

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 the EU
 - 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.
 - Applies to U.S. companies outside U.S. borders and to foreign companies operating in the U.S.

Licensing and Trade Secrets (1 of 2)

- **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 (2 of 2)

- 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
- NAFTA was first international agreement protecting trade secrets
- 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; e.g., getting shipments through customs, getting permits

Conflict Resolution

- **Litigation**
- **Arbitration**
 - Settles disputes outside of court
 - Groups agree in advance to abide by a three-member 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 157 countries

The Regulatory Environment

- Agencies, both governmental and non-governmental, enforce laws or set guidelines for conducting business
 - EU has 15,000 lobbyists representing 1,400 companies and nonprofits globally

Regional Economic Organizations: The European Union

- The **Treaty of Rome** established the European Community which became the EU
- It created the **Council of Ministers** which is the main decision-making body along with the **European Commission, the European Parliament, and the European Court of Justice**
- The **European Council** guides integration-related issues, e.g., monetary union

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