



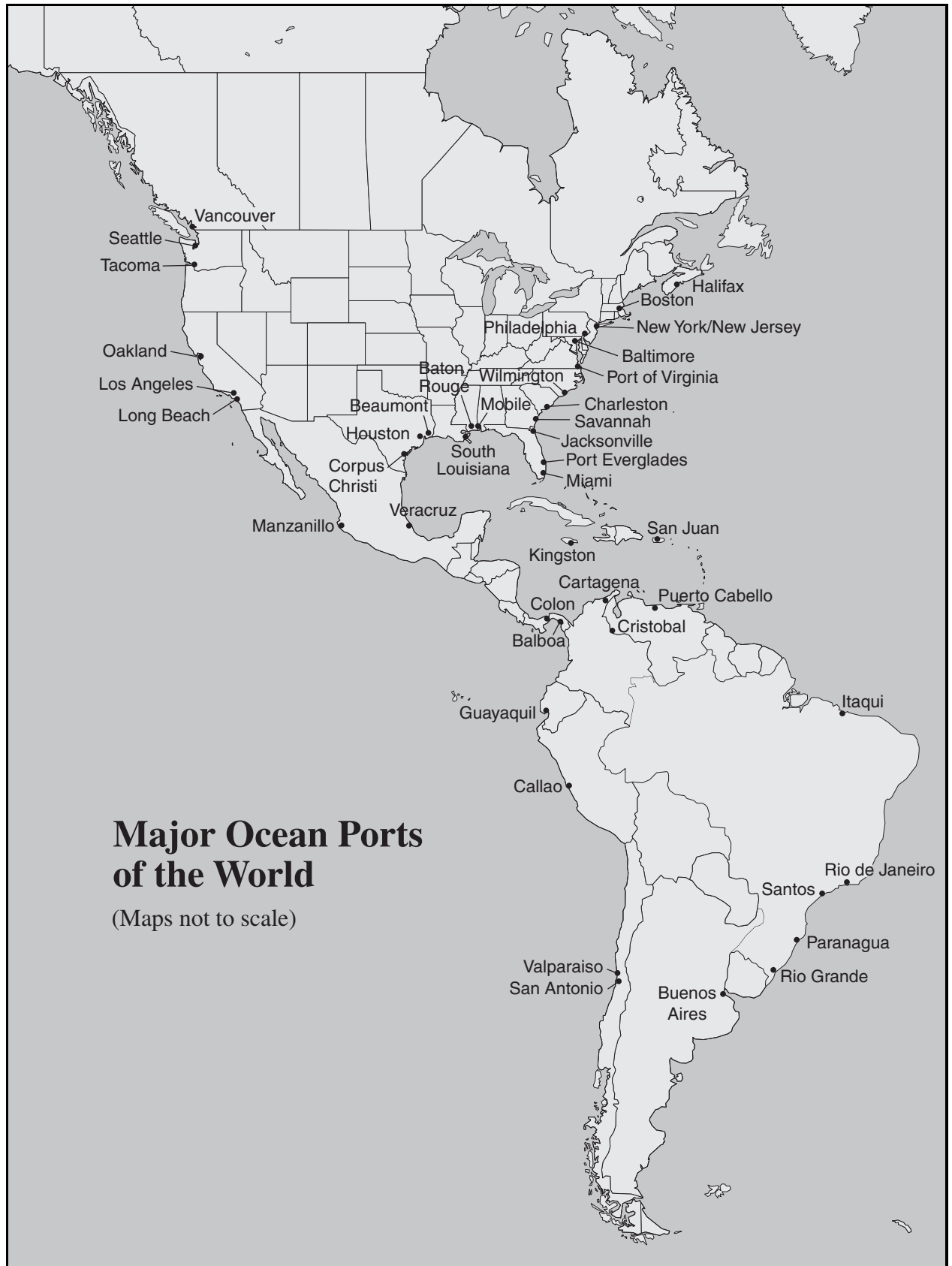
**CENGAGE LEARNING
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INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT

Schaffer
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NINTH EDITION





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International Business Law and Its Environment

RICHARD SCHAFFER

*Professor Emeritus (Ret.)
Walker College of Business
Appalachian State University*

FILIBERTO AGUSTI

*Senior Partner
Steptoe & Johnson LLP
Attorneys at Law
Washington, DC*

LUCIEN J. DHOOGHE

*Sue and John Staton Professor of Law
College of Management
Georgia Institute of Technology*



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R. S.
To Avery, for her love, patience, and encouragement.
*And to Richard T. Fenton, formerly of West Publishing and Foundation Press, for having brought the first
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for their abundant patience.*

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About the Authors

Richard Schaffer is Professor Emeritus of Business Law (retired) in the Department of Finance of the Walker College of Business at Appalachian State University. He has taught business law, international business law and transactions, and the law of international trade and investment since 1977. Professor Schaffer received his J.D. from the University of Mississippi and his LL.M. from New York University. From 1976 through 1982, he assisted United Nations agencies in New York, San Jose, and Vienna, with projects examining the relationship between corrupt practices, multinational corporations, and socioeconomic development, and served as rapporteur of UN working groups on international economic crime. Schaffer was director of international business studies at ASU and founder of its business study abroad programs. He has served as consultant to business schools on the internationalization of curriculum, and to industry trade groups. Professor Schaffer has extensive experience in business, including manufacturing and global sourcing, and he regularly consults on matters related to the international home textile industry.

Filiberto Agusti is a partner in the international law firm of Steptoe & Johnson LLP, where he has practiced law since 1978. He represents governments, multinational corporations, manufacturers, and investors in international arbitrations, lawsuits, and negotiations, including bankruptcy reorganizations. Mr. Agusti has authored articles for the *Harvard Law Review* and other legal publications. He is a frequent speaker at professional seminars around the world and is a regular on camera commentator for Univisión, Telemundo, and CNN en Español. Mr. Agusti was law clerk to Judge William H. Timbers at the U.S. Court of Appeals for the Second Circuit in 1977–78. He is a graduate of the Harvard Law School, where he was a senior editor of the *Harvard Law Review*. He graduated summa cum laude with a B.A. from the University of Illinois in 1974.

Lucien J. Dhooge is the Sue and John Staton Professor of Law at the Scheller College of Business at the Georgia Institute of Technology, where he teaches international business law and ethics and serves as the area coordinator in law and ethics. Prior to his tenure at the Georgia Institute of Technology, Professor Dhooge practiced law for eleven years and served on the faculty of the University of the Pacific in California for twelve years. He has authored more than fifty scholarly articles, co-authored and contributed to thirteen books, and is a past editor-in-chief of the *American Business Law Journal* and the *Journal of Legal Studies Education*. Professor Dhooge has presented courses and research throughout the United States, as well as in Asia, Europe, and Central and South America, and he has received numerous research and teaching awards, including six Ralph C. Hoerber Awards for excellence in published research. After completing an undergraduate degree in history at the University of Colorado, Professor Dhooge earned his J.D. from the University of Denver College of Law and his LL.M. from the Georgetown University Law Center.



Brief Contents

Table of Cases	xv
Table of Treaties	xxi
Table of Statutes	xxiii
Preface	xxv
Acknowledgments	xxxiii

Part One The Legal Environment of International Business 1

- 1 Introduction to International Business 2
- 2 International Law and the World's Legal Systems 29
- 3 Resolving International Commercial Disputes 56

Part Two International Sales, Credits, and the Commercial Transaction 85

- 4 The Formation and Performance of Contracts for the Sale of Goods 86
- 5 The Documentary Sale and Terms of Trade 120
- 6 Legal Issues in International Transportation 151
- 7 Bank Collections, Trade Finance, and Letters of Credit 182

Part Three International and U.S. Trade Law 213

- 8 National Lawmaking Powers and the Regulation of U.S. Trade 214
- 9 The World Trade Organization: Basic Legal Principles 236
- 10 Laws Governing Access to Foreign Markets 263
- 11 Regulating Import Competition and Unfair Trade 290
- 12 Imports, Customs, and Tariff Law 313
- 13 Export Controls and Sanctions 348
- 14 North American Free Trade Law 374
- 15 The European Union 407

Part Four Regulation of the International Marketplace 435

- 16 Marketing: Representatives, Advertising, and Anti-Corruption 436
- 17 Protection and Licensing of Intellectual Property 460
- 18 The Legal Environment of Foreign Direct Investment 494
- 19 Labor and Employment Discrimination Law 532
- 20 Environmental Law 564
- 21 Regulating the Competitive Environment 593

Index	623
-------	-----



Contents

Table of Cases	xv
Table of Treaties	xxi
Table of Statutes	xxiii
Preface	xxv
Acknowledgments	xxxiii

Part One The Legal Environment of International Business 1

CHAPTER 1

Introduction to International Business	2
---	----------

Introduction 2

Forms of International Business 2

Trade 2
Licensing and Protection of Intellectual Property Rights 6
Foreign Direct Investment 10

Conducting Business in Developing and Newly Industrialized Countries 11

Developed Countries 12
Developing Countries 12
The Newly Industrialized Countries 13
The Least Developed Countries 15

Some Common Risks of International Business 16

Distance and Logistics 16
Language and Cultural Differences 17
Cross-Border Trade Controls 19
Currency Risk 19
Obtaining Professional Assistance 23

CHAPTER 2

International Law and the World's Legal Systems	29
--	-----------

Introduction 29

International Law 29

Definition and Characteristics of International Law 29
The Law of Treaties 30
Customary International Law 33

International Business Law and Crimes 36

Sources of International Business Law 36
Crimes Related to International Business 37
Criminal Jurisdiction and the Extraterritorial Reach of Domestic Law 38

International Court of Justice 42

Ethics, Social Responsibility, and Codes of Conduct 44

International Business and Human Rights 44
International Labour Organization 45
The OECD Codes of Conduct 45
United Nations Global Compact 46
CERES Principles 46
Corporate Codes of Conduct 46

Comparative Law: Differences in National Laws and Legal Systems 47

Modern Japan: An Example of Legal Change 47
Modern Legal Systems of the World 47
Origins of Civil Law Systems 47
Origins of Common Law Systems 48
Differences between Modern Civil Law and Common Law Countries 49
Islamic Law 49

CHAPTER 3

Resolving International Commercial Disputes . . . 56

Avoiding Business Disputes 56

Cultural Attitudes toward Disputes 56
Methods of Resolution 57

Alternative Dispute Resolution	57	Specific Performance	110
Mediation	57	Anticipatory Breach	111
Arbitration	57	Excuses for Nonperformance	111
Litigation	61	Impossibility of Performance	111
Jurisdiction	61	Frustration of Purpose	112
Venue	68	Commercial Impracticability	112
Forum Non Conveniens	68	The CISG Exemption for Impediments Beyond	
Forum Selection Clauses	72	Control	113
Conflict of Laws	72	Avoiding Performance Disputes: Force Majeure	
The Restatement (Second) of the Conflict of Laws	72	Clauses	113
Choice of Law Clauses	74	CHAPTER 5	
The Application of Foreign Law in American		The Documentary Sale and Terms of Trade	120
Courts	75	Transaction Risk	121
Enforcement of Foreign Judgments	77	Delivery Risk	121
Commercial Disputes with Nations	78	Payment Risk	121
Sovereign Immunity	78	The Documentary Sale	121
Abstention Doctrines	79	The Document of Title	122
		The Bill of Lading	122
		Rights of Purchasers of Documents of Title	124
		Certificates of Inspection or Analysis	129
		How Secure Are Documentary Payment Terms?	130
		Measuring Damages for Breach of the Documentary	
		Sale	131
		Types of Ocean Bills of Lading	132
		Other Types of Transport Documents	133
		Electronic Data Interchange	134
		Allocating Shipping Responsibilities and the Risk of	
		Loss	134
		Freight and Transportation Charges	134
		Allocating the Risk of Loss	135
		The Risk of Loss in International Sales under the	
		CISG	136
		Trade Terms	136
		International Rules for the Interpretation of Trade	
		Terms	136
		E Terms	137
		F Terms	137
		C Terms	143
		D Terms	143
		Modification of Trade Terms	144
		CHAPTER 6	
		Legal Issues in International Transportation	151
		The Liability of International Air Carriers	151
		The Montreal Convention of 1999	152
		Air Carrier's Liability for Death or Bodily Injury	154
		Air Waybills and Air Cargo Losses	157
		Maritime Law and the Carriage of Goods by Sea	159
		Admiralty Jurisdiction in the United States	161
		Cargo Losses and the Carriage of Goods by Sea	162
		Liability of the Carrier	163
		The Per-Package Limitation	166
Part Two	International Sales, Credits, and		
	the Commercial Transaction		85
CHAPTER 4			
The Formation and Performance of Contracts for			
the Sale of Goods			86
Introduction to Contracts for the International			
Sale of Goods			86
Cultural Influences on Contract Negotiations			86
Negotiating Contracts in Japan			86
The Law of Sales			87
The Origin of Modern Sales Law			87
The Convention on Contracts for the International Sale			
of Goods (CISG)			89
Applicability of the CISG to International Sales			89
Validity and Formation of International Sales			
Contracts			92
General Requirements for a Valid Contract			93
The Effect of Illegality			93
The Writing Requirement			93
Problems of Contract Interpretation			94
Mutual Assent: The Offer			95
Mutual Assent: The Acceptance			96
Standard Business Forms and Contract			
Modifications			100
Performance of Contracts			104
Performance of Seller			104
Performance of Buyer			105
Remedies for Breach of Contract			108
The Requirement of Fundamental Breach			108
Seller's Right to Cure			108
Price Reduction			109
Money Damages			109

The Liability of Ocean Transportation
Intermediaries 169
 Freight Forwarders 169
 Non-Vessel Operating Common Carriers 170

Marine Cargo Insurance 171
 Marine Insurance Policies 171
 General Average 171
 Particular Average Claims 172
 Types of Coverage 172

CHAPTER 7

Bank Collections, Trade Finance, and Letters of Credit182

The Bill of Exchange 182
 The Origin of Bills of Exchange 182
 Brief Requirements of a Bill of Exchange 183
 The Documentary Draft and the Bank Collection Process 183
 Documentary Drafts Used in Trade Finance 184
 Credit Risks in Factoring Accounts Receivable: The Rights of the Assignee 186

The Letter of Credit 187
 The Documentary Letter of Credit 187
 Law Applicable to Letters of Credit 188
 The Independence Principle and Letters of Credit 190
 Following a Letter of Credit Transaction 190
 The Rule of Strict Compliance 196
 Enjoining Banks from Purchasing Documents in Cases of Fraud 199
 Confirmed Letters of Credit 200
 Standby Letters of Credit 204
 Other Specialized Uses for Letters of Credit 205
 Electronic Data Interchange and the eUCP 205
 Letters of Credit in Trade Finance Programs 206

Part Three International and U.S. Trade Law 213

CHAPTER 8

National Lawmaking Powers and the Regulation of U.S. Trade214

The Separation of Powers 214
 Legislative Power of Congress 215
 Presidential Power 215
 President's Inherent Powers 216
 The Treaty Power 219
 Presidential Power and U.S. Trade Relations 220
 The Reciprocal Trade Agreements Act of 1934 220
 Trade Agreements and Trade Promotion Authority 222

Survey of U.S. Trade Legislation since 1962 222
 Enhanced and Emergency Powers of the President 223

Federal-State Relations 223
 The Supremacy Clause 223
 The Import-Export Clause 226
 The Commerce Clause 227
 The Commerce Clause and Multiple Taxation 227

Federal Agencies Affecting Trade 230
 United States Department of Commerce 230
 United States Department of Homeland Security 230
 United States Trade Representative 230
 United States Department of the Treasury 231
 International Trade Commission 231
 The U.S. Court of International Trade 231

CHAPTER 9

The World Trade Organization: Basic Legal Principles236

Introduction to Trade Regulation 236
 Reasons for Regulating Imports 236
 Tariffs 237
 Non-tariff Barriers to Trade 237

History of Gatt 1947 238
 GATT Multilateral Trade Negotiations 239
 Transition from GATT to the WTO 239

The World Trade Organization and WTO Law 240
 Organization of the WTO 240
 The WTO and U.S. Law 241

Major Principles of WTO Trade Law 242
 Transparency 242
 Tariff Concessions, Bound Rates, and Tariff Schedules 242
 Nondiscrimination, Most-Favored-Nation Trade, and National Treatment 244
 National Treatment 244
 Licenses, Quotas, and Prohibitions on Imports 247
 Exceptions Permitting Import Restrictions 251

WTO Dispute-Settlement Procedures 251
 WTO Reports as Legal Precedent 252

Exceptions To Normal WTO Trade Rules 254
 Trade Preferences for Developing Countries 254
 Free Trade Areas and Customs Unions 256

CHAPTER 10

Laws Governing Access to Foreign Markets263

The General Principle of Least Restrictive Trade 263

Technical Barriers to Trade 265
 The Protection of Public Health, Safety, or Welfare 266
 European Union Standards and Technical Regulations 267

Japanese Standards and Technical Regulations	268
Chinese Standards and Technical Regulations	268
The WTO Agreement on Technical Barriers to Trade	270
International Organization for Standardization	273
Government Procurement	274
The <i>WTO Agreement on Government Procurement</i>	274
Trade in Services	275
The <i>WTO General Agreement on Trade in Services</i>	275
Trade in Agriculture	276
Some Agricultural Trade Issues in the EU and Japan	277
The <i>WTO Agreement on Agriculture</i>	278
Sanitary and Phytosanitary Measures: Food, Animal, and Plant Safety	278
<i>Codex Alimentarius</i>	278
Other WTO “Trade-Related” Agreements	280
Trade-Related Investment Measures	280
Trade-Related Aspects of Intellectual Property Rights	281
Trade Sanctions and U.S. Section 301: The Threat of Retaliation	282
Basic <i>Section 301</i>	283
CHAPTER 11	
Regulating Import Competition and Unfair Trade	290
Safeguards Against Injury	290
The GATT Escape Clause	291
The <i>WTO Agreement on Safeguards</i>	291
Safeguards against Injury under U.S. Law	293
Trade Adjustment Assistance	296
Unfair Import Laws: Dumping	297
Reasons for Price Cutting in a Foreign Market	297
The <i>WTO Antidumping Agreement</i>	297
U.S. Antidumping Investigations	297
The Material Injury Requirement	300
WTO Dispute Settlement in Dumping Cases	301
Dumping and Nonmarket Economy Countries	301
Unfair Import Laws: Subsidies	304
WTO Agreement on Subsidies and Countervailing Measures	304
WTO Subsidy Dispute Settlement	306
Countervailing Duty Actions	306
Subsidies and Nonmarket Economy Countries	307
Judicial Review in Unfair Trade Cases	309
CHAPTER 12	
Imports, Customs, and Tariff Law	313
Dutiable Status of Goods	313
Classification of Goods	314
An Outline of the U.S. Harmonized Tariff Schedule	314
Customs Valuation	322
Rules of Origin	323
Definition and Types of Rules of Origin	324
Non-Preferential Rules of Origin	324
Preferential Rules of Origin	327
WTO Agreement on Rules of Origin	327
Marking and Labeling of Imports	327
Other Customs Laws Affecting U.S. Imports	328
Drawbacks	328
Foreign Trade Zones	329
The Administration of U.S. Customs and Tariff Laws	331
The Formal Entry	331
Liquidation and Protest	334
Enforcement and Penalties	335
Binding Rulings	340
Judicial Review of U.S. Customs	340
Judicial Review of Customs Rulings	341
CHAPTER 13	
Export Controls and Sanctions	348
Multilateral Cooperation in Controlling Technology	349
The Wassenaar Arrangement	349
History of U.S. Export Control Laws	350
Changes in the Export Environment since 2001	350
Balancing National Security with Economic Competitiveness	350
Export Controls on Commercial and Dual-Use Goods and Technology	351
Export Administration Act of 1979 and EAR Regulations	351
Reasons for Control	352
Foreign Availability	353
Exports and Re-exports	355
Illegal Diversions of Controlled Items	355
Deemed Exports	355
Export Licensing	356
End User Controls	356
Licensing Review Process	356
Automated Export System	357
Extraterritorial Jurisdiction of Export Control Laws	359
Antiboycott Provisions	360
Compliance and Enforcement	362
Economic and Financial Sanctions	365

Effectiveness of Economic and Financial Sanctions	365
Authority for U.S. Sanctions	366
International Emergency Economic Powers Act	366
U.S. Sanctions on Trade with Cuba	368
CHAPTER 14	
North American Free Trade Law	374
The Philosophy of Economic Integration 374	
Federal Model	374
Free Trade Area	375
Customs Union	375
Common Market	376
Compatibility of Trade Areas with the WTO and GATT	377
The North American Free Trade Area	377
Canada–U.S. Trade 378	
Mexico–U.S. Trade	378
The North American Free Trade Agreement	378
National Treatment	379
Rules of Origin 380	
Goods Wholly Produced or Obtained in North America	380
Annex 401 Tariff Shift Rule of Origin	380
The NAFTA Certificate of Origin	382
Standards and Technical Barriers to Trade	383
Marking and Labeling Rules	385
Trade in Goods: Sectoral Issues 385	
Trade in Motor Vehicles and Parts	386
Trade in Textiles and Apparel	386
Trade in Agriculture	386
Government Procurement	387
Emergency Action to Protect Domestic Industry (NAFTA Safeguards)	387
Trade in Services 388	
Financial Services	388
Transportation	388
Telecommunications	391
Cross-Border Investment 391	
NAFTA's Investment Provisions	392
Other NAFTA Provisions 393	
Intellectual Property Rights	395
Environmental Cooperation and Enforcement	396
Labor Cooperation and Worker Rights	396
Rights to Temporary Entry	397
Administration and Dispute Settlement 397	
NAFTA Fair Trade Commission	397
Production Sharing: Assembly Plants and the Mexican Maquiladoras 398	
Assembly Plant Tariff Rules	399
Issues Related to the Mexican Maquila Industry	401
CHAPTER 15	
The European Union	407
History of the European Union 407	
Founding Treaties	407
Membership in the European Union 409	
The Accession Process	409
Structure of the European Union 411	
The European Council	411
The Council of Ministers of the European Union	411
The European Commission	412
The European Parliament	412
The Court of Justice of the European Union	413
Distinctions among Institutions	414
Harmonization: Directives and Regulations	414
The European Union and the Regulation of Business:	
The Four Freedoms 417	
The Free Movement of Goods	417
The Free Movement of Services	420
The Free Movement of Capital	423
The Free Movement of People	424
Other Areas of Integration: Some Examples 424	
The Common Agricultural Policy	424
Consumer Protection	427
Energy and the Environment	427
The Business Implications of the European Union	428
The European Economic Integration Model and the Financial Crisis 428	
The Financial Crisis in Specific States	428
The EU's Response to the Financial Crisis	430
The Future of the Euro	430
<hr/>	
Part Four	Regulation of the International Marketplace 435
<hr/>	
CHAPTER 16	
Marketing: Representatives, Advertising, and Anti-Corruption 436	
Regulation of Relationships with Representatives 436	
Supersession of Agreement with Representative	437
Tax and Labor Regulation and Principal Liability: The Dependent–Independent Distinction	439
Regulation of Advertising Abroad 440	
Truth in Advertising	440
Content-Specific Regulations	442
Marketing Considerations: The Nestlé Infant Formula Case	445
The Foreign Corrupt Practices Act 445	
Origins of the FCPA and Other Antibribery Laws	446
Structure of the FCPA	447

The Department of Justice Review Process	449
FCPA Enforcement Actions	449
Territorial Jurisdiction over Non-U.S. Persons	451
Difficulty in Prosecuting Individuals for FCPA Violations	452
Foreign Enforcement Actions	452
International Refusal to Enforce Contracts Induced by Bribery	454
Best Practices for the U.S. Businessperson	456
CHAPTER 17	
Protection and Licensing of Intellectual Property	460
Introduction	460
Litigation	461
Reasons for Intellectual Property Transfer Arrangements	462
Intellectual Property Rights: Transfer Arrangements	463
Right to Use and Conditions of Use	463
Competitive Circumstances	464
Confidentiality and Improvements	464
International Protection for Patents, Trademarks, and Other Intellectual Property	465
Paris Convention	465
Patents	465
Trademarks	469
Domain Names	469
Copyrights	471
Trips	473
The Doha Declaration on Trips and Public Health	475
The War of Geographical Indications	476
Geographical Indications under the Doha Development Agenda	478
Continuing TRIPS Turmoil on Biodiversity	479
Nonenforcement of IPR Laws	480
The Proposed Anti-Counterfeiting Trade Agreement	481
The Mechanics of IPR Transfer Regulations	481
Prior-Approval Schemes	482
Notification-Registration Schemes	482
The Gray Market	483
The Nature of the Problem	483
Resolution of the Dispute	484
Franchising: Licensing Outside the Technological Context	485
Antitrust Considerations	486
CHAPTER 18	
The Legal Environment of Foreign Direct Investment	494
Choosing Foreign Direct Investment	494
Reasons for Foreign Direct Investment	494
Methods of Foreign Direct Investment	495
The Legal Consequences of Foreign Direct Investment	497
Country and Regional Risks in Foreign Direct Investment	498
Currency Risk	498
Political Risk and Government Stability	500
Attitudes Toward FDI in Developing Countries and the Taking of Investor's Property	502
Sovereign Rights versus Investor Rights in Developing Countries	503
Threats to an Investor's Private Property	505
Privatization	507
Resolving Investment Disputes	509
The Use of Arbitration in Settling Investment Disputes	509
Resolving Investment Disputes Before Courts	511
Taxation of Multinational Firms	517
The Government Dilemma in Taxing Multinational Firms: Economic and Enforcement Problems	517
Territorial and Extraterritorial Income	517
Systems for Taxing Multinational Firms	518
Other Issues in International Taxation	521
CHAPTER 19	
Labor and Employment Discrimination Law	532
Different Approaches to Labor Law	532
Employee Participation in Strategic Decisions	532
Impediments to Dismissal	534
Assumption of Employment Arrangements	535
Employment Discrimination Outside the United States	536
The Extraterritorial Application of U.S. Employment Discrimination Law	537
Defenses to U.S. Employment Law When Applied Extraterritorially	541
Antidiscrimination Laws Outside the United States	543
Foreign Laws Permitting Difficult Work Conditions	553
Unsafe Labor Conditions	554
Prison Labor	554
Child Labor	554
Consequences of Participation in Illegal or Harsh Work Conditions	555

CHAPTER 20	CHAPTER 21
Environmental Law 564	Regulating the Competitive Environment 593
Consideration of Varying Environmental Requirements 564	Historical Development of International Competition Law 593
Differences in Regulatory Schemes 564	Basic Regulatory Framework 594
Environmental Law as an Anticompetitive Tool 565	Prohibitions Against Agreements to Restrict Competition 594
Traditional International Remedies 566	Abuse of Dominant Market Position 596
The Polluter Pays: Responsibility for Pollution 566	Mergers and Acquisitions 600
Pending ICJ Matters 566	Other Attributes of U.S. and Non-U.S. Competition Law 607
Regulation of Products That Violate Environmental Objectives 568	Private Causes of Action for Damages 607
Regulation of Products with Environmentally Objectionable Production Processes 570	Potential Criminal Liability 607
Inadequacies of the Traditional International Pollution-Control System 574	Article 101(3) and the Rule of Reason 608
Emerging Problems and Solutions 574	Preapproval Procedures versus Litigation 608
Regional Approaches 574	Extraterritorial Effect of Competition Laws 609
Global Solutions 581	The U.S. Effects Test 610
	The European “Implementation” Test 614
	Blocking Legislation 619
	Index 623



Table of Cases

Principal cases are in bold type.

- A. Ahlstrom Osakeyhtio v. Comm'n**, 621–622
A. Bourjois & Co. v. Katzel, 488–489
ADC Affiliate et al. v. The Republic of Hungary, International Center for Settlement of Investment Disputes, 516–517
Air France v. Saks, 154–155
Airtours v. Comm'n, 606
Aldana v. Del Monte Fresch Produce N.A., Inc., 562
Alfadda v. Fenn, 70–72
Alfred Dunhill of London, Inc. v. Cuba, 519
Allied Chemical International Corp. v. Companhia De Navegacao Lloyd Brasileiro, 126, 148
Amerada Hess Corp. v. S/T Mobil Apex, 172
American Banana Co. v. United Fruit Co., 614
American Mint LLC v. GOSoftware, Inc., 110, 117
Anheuser-Busch Brewing Association v. United States, 328
Animal Science Products, Inc. v. China Minmetals Corp., et al., 619–620
Apple, Inc. v. Samsung Electronics Co., Ltd., 465–466
Argentina—Safeguard Measures on Imports of Footwear, 295, 296–297
Arizona v. United States, 223, 224–226
Asahi Metal Ind. v. Superior Court of California, Solano County, 63–64
Asante Technologies, Inc. v. PMC–Sierra, Inc., 91–92
Asoma Corp. v. M/V Land, 163
Badbwar v. Colorado Fuel and Iron Corp., 147
Banco General Runinahui, S.A. v. Citibank, 208
Bancroft & Masters Inc. v. Augusta Nat'l Inc., 66
Bank of America Nat'l Trust & Savings Assn. v. United States, 523–524
Banque de Depots v. Ferroligas, 125
Barbara Berry, S.A. v. Ken M. Spooner Farms, Inc., 93
Barclay's Bank, Ltd. v. Commissioners of Customs and Excise, 147
Barclays Bank PLC v. Franchise Tax Board of California, 227
Basse and Selve v. Bank of Australasia, 131
BAT Reynolds v. Commission, 1987 E.C.R. 4487, 620
Bende and Sons, Inc. v. Crown Recreation and Kiffe Products, 116
Bernina Distributors v. Sewing Machine Co., 19, 20
Bestfoods v. United States, 389
Better Home Plastics Corp. v. United States, 324–325
Biddell Brothers v. E. Clemens Horst Co., 129–130
Binladen BSB Landscaping v. The Nedlloyd Rotterdam, 168
Board of Trustees v. United States, 228
BP Oil International, Ltd. v. Empresa Estatal Petroleos de Ecuador, 149
Briggs & Stratton Corp. v. Baldrige, 365–366
Bulk Aspirin from the People's Republic of China, 306–307
Bulmer v. Bollinger, 418
Calder v. Jones, 66
California v. American Stores Co., 604
CamelBak Products, LLC v. U.S., 348
Carlill v. Carbolic Smoke Ball Co., 445–446
Carl Zeiss, Inc. v. United States, 322–323
Case Concerning the Factory at Chorzów (Poland v. Germany), 42
Case of New Zealand Mussels (Germany), 105
Chateau Des Charmes Wines, Ltd. v. Sabaté U.S.A., Ltd., 99–100
Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 304, 345
Chicago Prime Packers, Inc. v. Northam Food Trading Co., 106–107
China—Certain Measures Affecting Electronic Payment Services, 291
Cicippio-Pueblo v. Islamic Republic of Iran, 521

- C.J. Van Houten & Zoon v. United States, 322
Comité Interprofessionnel du Vin de Champagne v. Wineworths Group, Ltd., 480–482
Commission of the European Communities v. Italian Republic, 420–421, 424–426, 436
Commission of the European Communities v. Portuguese Republic, 422–423
Compaq Computer Corp. Subsidiaries v. Commissioner of Internal Revenue, 525–527
Consumers Union of U.S., Inc. v. Kissinger, 233
Courtaulds North America, Inc. v. North Carolina National Bank, 197–198
Crosby v. National Foreign Trade Council, 225, 226
Cybersell, Inc. v. Cybersell Inc., 66
Daimler Chrysler AG v. Land Baden—Wurttemberg, 436
Dayan v. McDonald’s Corp., 9–10
Delchi Carrier, SpA v. Rotorex Corp., 116
Delovio v. Boit, 161
Department of Revenue of the State of Washington v. Association of Washington Stevedoring Cos., 227
Department of Transportation v. Public Citizen, 395
Diamond v. Chakrabarty, 471–472
DIP SpA v. Commune di Bassano del Grappa, 22–23
Dole v. Carter, 216–217
Eagle Terminal Tankers, Inc. v. Insurance Co. of USSR, 172
Eastern Air Lines, Inc. v. Floyd, 157
Ehrlich v. American Airlines, Inc., 157
El Al Israel Airlines, Ltd. v. Tseng, 153–154
Electra-Amambay S.R.L. v. Compañía Antártica Paulista Ind., 441–442
Equal Employment Opportunity Commission v. Arabian American Oil Co., 541–542
Equitable Trust Co. of New York v. Dawson Partners Ltd., 197
European Commission Proceedings against Czech Republic on the Race Equality Directive and the Employment Equality Directive, 549–550
European Communities—Measures Affecting the Approval and Marketing of Biotech Products, 264
European Communities—Measures Affecting Asbestos and Asbestos-Containing Products, 264, 573–574
European Communities—Measures Concerning Meat and Meat Products (Hormones), 264, 283–284
European Economic Community—Import Regime for Bananas, 247
Executive Jet Aviation, Inc. v. Cleveland, 161
Fallini Stefano & Co. s.n.c. v. Foodic BV, 106
Federal Energy Administration v. Algonquin SNG, Inc., 233
Federal Republic of Germany v. European Parliament and Council of the European Union, 448
Ferrostaal Metals Corp. v. United States, 329–330
F. Hoffman-La Roche Ltd. v. Empagran S. A., 618, 624
Finnish Fur Sales Co., Ltd. v. Juliette Shulof Furs, Inc., 75–77
First Flight Associates v. Professional Golf Co., Inc., 26
Fishman & Tobin, Inc. v. Tropical Shipping & Const. Co., Ltd., 180
Foreign Corrupt Practices Act Review Opinion Procedure Release 10-01, 454–455
Freedom to Travel Campaign v. Newcomb, 372–373
Frigalimont Importing Co., Ltd. v. B.N.S. International Sales Corp., 26
Gaskin v. Stumm Handel GMBH, 17–18
GATT Dispute Settlement Panel Report: Canada Import, Distribution and Sale of Alcoholic Drinks By Canadian Provincial Marketing Agencies, 291
General Instrument Corp. v. United States, 404
Geneva Pharmaceuticals Technology Corp. v. Barr Laboratories Inc., 93
Gibson-Thomsen Co. v. United States, 328
Gonzales v. Chrysler Corp., 83
Goodyear Dunlop Tires Operations, S.A. v. Brown, 82
Gulf Oil v. Gilbert, 68
Hanil Bank v. Pt. Bank Negara Indonesia (Persero), 209
Hadley v. Baxendale, 209
Heavyweight Motorcycles & Engines & Power-Train Subassemblies, 298–300
Harriscom Svenska, AB v. Harris Corp., 113–114
Hartford Fire Insurance Co. v. California, 41, 616–618
Havana Club Holding v. Galleon, 374
Heartland By-Products, Inc. v. United States, 326
Herman Chang v. United States, 371
Hoffman Plastic Compounds, Inc. v. NLRB, 225
Hy Cite Corp. v. Badbusinessbureau.com L.L.C., 83
Hyundai Electronics Co., Ltd. v. United States, 258
INA Corp. v. Islamic Republic of Iran, 509–510
Inceysa Vallisolenta, S.L. v. Republic of El Salvador, 458
Inner Secrets v. United States, 349
In the Matter of Cross Border Trucking, 393–394
In re Independent Service Organizations Antitrust Litigation CSU et al. v. Xerox Corporation, 491
In re Union Carbide Corporation Gas Plant Disaster at Bhopal, 14–15, 69
INS v. Lopez-Mendoza, 225
Intercontinental Hotels Corp. v. Golden, 77
International Shoe Co. v. Washington, 62, 63–64, 66
Iragorri v. United Technologies Corp. & Otis Elevator Co., 70–72
ITC Report on Heavyweight Motorcycles, 298–300
Japan Line, Ltd. v. County of Los Angeles, 227, 228
Japan—Taxes on Alcoholic Beverages, 249–250

- J. Gerber & Co. v. S.S. Sabine Howaldt**, 165–166
 J. H. Rayner and Co., Ltd. v. Hambro's Bank, Ltd., 209
 J. McIntyre Machinery, Ltd. v. Nicastro, 82
 Joseph Muller Corp., Zurich v. Societe Anonyme De
 Gérance Et D'Armement, 615
Judgment of February 23, 1988 (Austria), 576–577
 KMart Corp. v. Cartier, Inc., 489
**Kathleen Hill & Ann Stapleton v. Revenue Comm'rs &
 Dpt. of Finance**, 555–556
Kiobel v. Royal Dutch Petroleum Co., 53, 559–561
 Kisen Kaisha Ltd. v. Regal-Beloit Corp., 163
Kochi Hosono (Broadcasting Co.), 540
 Kruger v. United Airlines, Inc., 179
Kumar Corp. v. Nopal Lines, Ltd., 144–145
 Leegin Creative Leather Products, Inc. v. PSKS, Inc., 612
Liechtenstein v. Guatemala, 42–44
**Lite-On Peripherals, Inc. v. Burlington Air Express,
 Inc.**, 125, 126
 Luke v. Lyde, 160
M. Aslam Khaki v. Syed Mohammad Hashim, 58–61
MacNamara v. Korean Air Lines, 32–33
Mahoney v. RFE/RL, Inc., 547–548
**Malgorzata Jany & Others v. Staatssecretaris van
 Justitie**, 552–553
 Marbury v. Madison, 80
 Marlwood Commercial Inc. v. Kozeny, 458
**Maurice O'Meara Co. v. National Park Bank of New
 York**, 190, 192–193, 199, 200
 Mavrommatis Palestine Concessions, 42
 MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova
 D'Agostino, S.P.A., 94
 Medellin v. Texas, 31
 Merrit v. Welsh, 325
**Metalclad Corporation v. The United Mexican
 States**, 397, 398–399
 Michelin Tire Corp. v. Wages, 227
**Microsoft Corp. v. Commission of the European
 Communities**, 600–603
 Mid-America Tire, Inc. v. PTZ Trading Ltd., 211
 Milliken v. Meyer, 63–64
 Mineral Park Land Co. v. Howard, 112
**Mobile Communication Service Inc. v. WebReg,
 RN**, 473–474
 Monarch Luggage Co. v. United States, 326
Morgan Guaranty Trust Co. v. Republic of Palau, 76
 Morrison v. Nat'l Australia Bank LTD, 41
M/S Bremen v. Zapata Off-Shore Co., 73–74
**National Farmers' Union and Secrétariat général du
 gouvernement (France)**, 429–431
 National Group for Communications and Computers,
 Ltd. v. Lucent Technologies International, Inc., 116
 National Juice Products Association v. United States, 329
National Thermal Power Corp. v. The Singer Co., 514–515
**New Zealand—Comite Interprofessionel du Vin de
 Champagne v. Wineworths Group, Ltd.**, 480–482
Nissan Motor Mfg. Corp., U.S.A. v. United States, 334
 Norfolk Southern Railway Co. v. James N. Kirby, Ltd., 163
 Norfolk Southern Railway Co. v. Power Source Supply,
 Inc., 93
Nottebohm Case (Liechtenstein v. Guatemala), 42–44
 Ofori-Tenkorang v. American Intern. Group, Inc., 545
Olympic Airways v. Husain, 155–156
Paquette Habana, The, 32–33
Pebble Beach Company v. Caddy, 65–67
**Pesquera Mares Australes Ltda. v. United States
 (Chilean Salmon)**, 303–304
 Pestana v. Karinol Corp., 148
 Phillips Puerto Rico Core, Inc. v. Tradax Petroleum
 Ltd., 148
 Pillowtex Corp. v. United States, 70–72
 Piper Aircraft Co. v. Reyno, 71
 Poland v. Germany, 42
Prima U.S. Inc. v. Panalpina, Inc., 170–171
**Pulp Mills on the River Uruguay (Argentina v.
 Uruguay)**, 570–571
 Quality King Distributors v. L'anza Research Int'l.
 Inc., 495
**Québec (Procureur général) c. Entreprises W.F.H.
 Itée**, 447–448
 Raw Materials, Inc. v. Manfred Forberich GMBH &
 Co., 117
 Regent Corp., U.S.A. v. Azmat Bangladesh, Ltd., 200
 Republic of Argentina v. Weltover, Inc., 517, 518
**Reyes-Gaona v. North Carolina Growers Ass'n,
 Inc.**, 543–544
 Rio Properties Inc. v. Rio Int'l Interlink, 66
 Robertson v. American Airlines, Inc., 179
**Russian Entertainment Wholesale, Inc. v. Close-Up
 International, Inc.**, 7–8
Samsonite Corp. v. United States, 403–404
 Sanders Brothers v. Maclean & Co., 127
 Sarl Louis Feraud International v. Viewfinder, Inc., 82
Saudi Arabia v. Nelson, 517, 518–519
 Schaefer-Condulmari v. U.S. Airways Group, LLC, 179
Scherk v. Alberto-Culver, 59–61
**Schneider Electric SA v. The European
 Commission**, 607–608
 Schooner Exchange v. McFaddon, 78
 Seaver v. Lindsay Light Co., 132
 Sebago Inc. v. GB Unie, SA,
**Securities and Exchange Commission v. Siemens
 Aktiengesellschaft**, 456–457

- Seung v. Regent Seven Seas Cruises, Inc., 82
Semetex v. UBAF Arab American Bank, 200, 202–203
 Sharpe & Co., Ltd. v. Nosawa & Co., 132
Shaver Transportation Co. v. The Travelers Indemnity Co., 175–177
 Shekoyan v. Sibley Int'l Corp., 544
 Silhouette International Schmied GmbH & Co. KG v. Hartlauer Handelsgesellschaft GmbH, 489
 Singh v. North American Airlines, 156
Skeena River Fishery: Canada, 579–582
 Sky Cast, Inc. v. Global Direct Distribution, LLC, 117
 Smith-Corona Group v. United States, 315
 Smith Kline and French Laboratories v. Bloch, 57
 Solae, LLC v. Hershey Canada, Inc., 99–100
 Sony Magnetic Products Inc. of America v. Merivienti, 180
Sosa v. Alvarez-Machain, 34–36
 South-Central Timber Development, Inc. v. Wunnicke, 229
 Sport D' Hiver di Genevieve Culet v. Ets Louys et Fils, 107
 Sports Graphics, Inc. v. United States, 349
 Squillante & Zimmerman Sales, Inc. v. Puerto Rico Marine Management, Inc., 180
 St. Eve International v. United States, 349
St. Paul Guardian Ins. Co. v. Neuromed Medical Systems & Support, GmbH, 137–139
Star-Kist Foods, Inc. v. United States, 221–222
 Stichting ter Behartiging van de Belangen van Oudaandeelhouders in Het Kapitaal van Saybolt International B.V. v. Schreiber, 452
Sumitomo Electric Industries Ltd., 557
Sztejn v. J. Henry Schroder Banking Corp., 200–202, 209
Tarbert Trading, Ltd. v. Cometals, Inc., 4–5
 Tel-Oren v. Libyan Arab Republic, 41
Tetra Laval BV v. Comm'n, 608, 609
 Texas Instruments v. United States, 321
Thailand—Restrictions on Importation of Cigarettes, 268–269
 Tokio Marine & Fire Ins. Co., Ltd. v. Nippon Express U.S.A., 168
Transatlantic Financing v. United States, 16–17
 Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, 17 October 1995, 116
 Tupman Thurlow Co. v. Moss, 229–230, 234
 Turicentro, S.A. v. American Airlines Inc., 619
TVBO Production Limited v. Australia Sky Net Pty Limited, 476–477
 Underhill v. Hernandez, 79
 United City Merchants (Investments), Ltd. v. Royal Bank of Canada, 209
 United States—Certain Country of Origin Labeling (COOL) Requirements, 290
United States—Countervailing Measures Concerning Certain Products from the European Communities, 311–312
United States—Import Prohibition of Certain Shrimp and Shrimp Products, 264, 574–576
United States—Measures Affecting the Production and Sale of Clove Cigarettes, 275–277
 United States—Standards for Reformulated and Conventional Gasoline, 264
United States v. Aluminum Co. of America, 614–615
 United States v. Bowman, 41
United States v. Campbell, 40–41
United States v. Chmielewski, 362–363
 United States v. Curtiss-Wright Export Co., 215
United States v. Golden Ship Trading Co., 339, 340–341
 United States v. Guy W. Capps, Inc., 234
 United States v. Haggard Apparel Co., 345, 404
United States v. Lindh, 376
United States v. Mandel, 357, 358–359
United States v. Mead Corp., 345–346
 United States v. Microsoft, 611
 United States v. Pink, 32
 United States v. Ramzi Yousef, 40
 United States v. Roberts, 39–40
 United States v. Romero-Galue, 41
United States v. Zhi Yong Guo, 363–364
Ventress v. Japan Airlines, 32–33
 Voest-Alpine Trading Co. v. Bank of China, 198–199
 Xerox Corporation v. County of Harris, Texas, 234
 Warner Bros. & Co. v. A.C. Israel, 148
 Waterproofing Systems, Inc. v. Hydro-Stop, Inc., 441
 Wilko v. Swan, 60
WIPO Arbitration and Mediation Center, 473–474
 Wisconsin Dept. of Industry v. Gould Inc., 225
 Woodling v. Garrett Corp., 76
World Duty Free Company Limited v. The Republic of Kenya, 458–459
 Worldwide Volkswagen Corp. v. Woodson, 62
W.S. Kirkpatrick v. Environmental Tectronics Corp., 520
WTO Report of the Appellate Body on European Communities-Regime for the Importation, Sale and Distribution of Bananas, 256, 257–258
WTO Report on Argentina—Safeguard Measures on Imports of Footwear, 295, 296–297
WTO Report on EC Measures Concerning Meat & Meat Products (Hormones Dispute), 283–284
WTO Report on European Communities—Measures Affecting Asbestos & Asbestos-Containing Products, 573–574

- WTO Report on European Communities—Regime for the Importation, Sale & Distribution of Bananas, WTO (GATT) Report on European Economic Community—Import Regime for Bananas, 257–258**
- WTO Report on India—Quantitative Restrictions on Imports of Agricultural, Textile, & Industrial Products, 253–255**
- WTO Report on Japan—Taxes on Alcoholic Beverages, 295–297**
- WTO Report on Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef, 264
- WTO (GATT) Report on Thailand—Restrictions on Importation of Cigarettes, 268–269**
- WTO Report on United States—Countervailing Measures Concerning Certain Products from the European Communities (European Steel), 311–312**
- WTO Report on United States—Import Prohibition of Certain Shrimp and Shrimp Products, 574–576**
- WTO Report on United States—Sections 301–310 of the Trade Act of 1974, 286–287**
- WTO Report on United States—Standards for Reformulated and Conventional Gasoline, 264
- WTO Report on United States—Subsidies on Upland Cotton, 309
- Youngstown Sheet & Tube v. Sawyer, 217–219**
- Z.K. Marine, Inc. v. M/V Archigetis, 167–168**





Table of Treaties and International Agreements

- Agreement on the Conservation of Nature and Natural Resources (ASEAN), 584
- Algiers Agreement, 371
- Anti-Counterfeiting Trade Agreement (ACTA), 485
- Arab Convention on Commercial Arbitration, 58
- ASEAN Agreement on the Conservation of Nature and Natural Resources, 584
- Barcelona Convention for the Protection of the Mediterranean Sea from Pollution, 584
- Basel Convention on Transboundary Movements of Hazardous Wastes and Their Disposal, 587
- Berne Convention for the Protection of Literary and Artistic Works, 475
- Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 64
- Cancun Agreements, 589–590
- Central American Free Trade Agreement, 223
- Draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works, 475
- European Convention on International Arbitration, 61
- European Convention Providing a Uniform Law on Arbitration (Strasbourg Convention), 58
- European Union - European Patent Convention, 470
- European Union - Agreement Relating to Community Patents, 470
- European Union - Maastricht Agreement, 411, 413
- European Union - Single European Act, 412, 583
- European Union - Treaty Establishing a Constitution for Europe, 413
- European Union - Treaty of Maastricht, 413
- Friendship, Commerce, and Navigation treaties, 550–551
- General Agreement on Tariffs and Trade 1947 (GATT), 242–243, 244, 247, 248, 267–268, 281, 285, 295–297, 383, 305, 308, 381, 401, 482, 572–576, 578, 586
- General Agreement on Trade in Services (GATS), 244, 248, 279–280
- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, 470
- Geneva Convention on the Execution of Foreign Arbitral Awards, 58
- Geneva Protocol on Arbitration Clauses, 58
- Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, 67
- Hague Rules. See International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading
- Hague–Visby Rules, 168
- Hague System for the International Registration of Industrial Designs, 470
- Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, 584
- Inter-American Convention on International Commercial Arbitration, 58
- International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Hague Rules), 162, 169
- International Union for the Protection of New Variety of Plants, 483
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, 583, 589
- League of Nations - Warsaw Convention of 1929, 151–152, 154
- London Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 584
- Madrid Agreement Concerning the International Registration of Marks of 1891 (Madrid Protocol), 473
- Montreal Convention for the Unification of Certain Rules for International Carriage by Air, 31, 152–154, 157

- Montreal Protocol on Substances That Deplete the Ozone Layer, 588, 592
- New York Convention. See United Nations – Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- North American Agreement on Environmental Cooperation, 400
- North American Agreement on Labor Cooperation, 400–401
- North American Free Trade Agreement (NAFTA), 223, 260, 279, 328, 382–389, 399–401, 578–579
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business, Transactions, 45–46, 450–451, 456
- Paris Convention for the Protection of Industrial Property, 469
- Performance and Phonograms Treaty, 475
- Patent Cooperation Treaty (PCT), 469–470
- Protocol on Civil Liability and Damage Caused by the Transboundary Effects of Industrial Accidents, 585
- Stockholm Declaration on the Human Environment, 585
- Tax Information Exchange Agreement (TIEA), 529
- Treaty on the Functioning of the European Union (TFEU), 413, 597
- Treaty of Paris Establishing the European Coal and Steel Community, 411
- Treaty of Rome Establishing the European Economic Community, 411, 412, 418–419, 421, 427, 428, 432
- United Nations - Charter, 31, 42, 418
- United Nations - Convention on Biological Diversity, 483
- United Nations - Convention to Combat Desertification, 585
- United Nations - Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules), 168–169
- United Nations - Convention on Contracts for the International Sale of Goods, 36, 89–92, 99–100, 102–103, 110–111, 113, 136
- United Nations - Convention against Corruption, 38, 451, 458
- United Nations - Convention on Environment Protection and Sustainable Development of the Carpathians, 585
- United Nations - Convention on International Trade in Endangered Species of Wild Fauna and Flora, 587–588
- United Nations - Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 266
- United Nations - Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 58, 61
- U.S.–Central America–Dominican Republic Free Trade Agreement (CAFTA-DR), 260, 380
- WTO - Agreement on Agriculture, 282
- WTO - Agreement on Basic Telecommunications, 280
- WTO - Agreement Establishing the World Trade Organization, 223, 244
- WTO - Agreement on Government Procurement (AGP), 244, 278–279
- WTO - Agreement on Implementation of Article VI, 244
- WTO - Agreement on Implementation of Article VII, 244
- WTO - Agreement on Import Licensing Procedures, 244
- WTO - Agreement on Preshipment Inspection, 244
- WTO - Agreement on Rules of Origin, 244, 331
- WTO - Agreement on Safeguards, 244, 295–297
- WTO - Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), 282–284
- WTO - Agreement on Subsidies and Countervailing Measures, 309–310
- WTO - Agreement on Technical Barriers to Trade, 244, 274–277
- WTO - Agreement on Textiles and Clothing, 244, 390
- WTO - Agreement on Trade in Financial Services, 280
- WTO - Agreement on Trade Policy Review Mechanism, 244
- WTO - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 244, 285, 479–484
- WTO - Agreement on Trade-Related Investment Measures (TRIMS), 244, 284–285
- WTO - Antidumping Agreement, 301, 305
- WTO - Understanding on Balance of Payments, 244
- WTO - Understanding on Dispute Settlement, 244
- WTO - Understanding on Financial Services, 244
- WTO - Understanding on Rules and Procedures Governing the Settlement of Disputes, also known as the WTO Dispute-Settlement Understanding, 244

Table of Statutes

- African Growth and Opportunity Act, 223, 259–260, 317
Andean Pact Decision 24, 513
Andean Trade Program and Drug Eradication Act
(Andean Trade Preference Act), 223, 320
Australia - Copyright Act of 1968, 476
Canada - Fisheries Act, 579
Canada - Investment Canada Act, 396
China - Arbitration Law of the People's Republic of
China, 58–59
China - Contract Law for the People's Republic of China, 93
China - Foreign Trade Law of the People's Republic of
China, 306
China - Tort Liability Law, 70
Cuba - Democracy Act of 1992, 623
Czech Republic - Anti-Discrimination Act, 549
England - Bills of Exchange Act, 183
England - Sale of Goods Act of 1894, 88
EU - Council Regulation No. 44/2001, 64
EU - Directive 73/241/EEC, 436
EU - Directive 86/653, 441, 443
EU - Directive 89/662, 430–431
EU - Directive 2000/43/EC, 547, 549–550
EU - Directive 2000/78/EC, 547, 549
EU - Directive Concerning the Safety of Toys, 273
EU - European Fiscal Compact (EFC), 434
EU - Harmonization Directives, 418–421
EU - Measures Concerning Meat and Meat Products
(hormones), 283–284
EU - Trademark Directive, 489
EU - Treaty and Community Directives 75/117, 555
France - French Civil Code, 70, 88, 90
France - Marine Ordinance of 1681, 160
Germany - Bürgerliches Gesetzbuch, 48
Germany - Renewable Energy Sources Act, 591
Germany - Works Constitution Act, 537
India - Arbitration Act, 514, 515
India - Foreign Awards Act, 514
Japan - Antimonopoly Act, 598, 603
Japan - Large-Scale Retail Stores Law, 242
Japan - Liquor Tax Law, 249–250
Korea - Criminal Code, 450
Korea - Monopoly Regulation and Fair Trade Act, 598
Puerto Rico Dealer's Act, 441
Rome Statute of the International Criminal Court, 44. *See*
also United Nations - Statute of the International Court
of Justice
Russian arbitration law, 59
United Kingdom - Arbitration Act, 58–59
United Kingdom - Sale of Goods Act of 1979, 88
United Nations - Model Law on International
Commercial Arbitration, 59
United Nations - Statute of the International Court of
Justice, 30, 42
United States - Age Discrimination in Employment Act
(ADEA), 541, 547
United States - Alternative Fines Act, 451
United States - Alien Tort Claims Act, 577
United States - Alien Tort Statute (ATS), 34–35, 559–561
United States - Americans with Disabilities Act, 541, 546
United States - Automotive Products Trade Act, 320
United States - Buy American Act, 297
United States - Caribbean Basin Economic Recovery Act,
223, 320
United States - Caribbean Basin Trade Partnership Act, 321
United States - Carriage of Goods by Sea Act (COGSA),
162–169
United States - Civil Rights Act of 1964, 542
United States - Civil Rights Act of 1991, 546
United States - Clayton Act, 597, 604
United States - Clean Air Act, 264, 590
United States - Constitution, 62, 77, 161, 214, 215, 219,
228, 534, 378–379
United States - Copyright Term Extension Act (CTEA),
475
United States - Customs Modernization and Informed
Compliance Act of 1993 (Mod Act), 342

- United States - Electronic Signatures in Global and National Commerce Act, 93
- United States - Employee Retirement Income Security Act of 1974 (ERISA), 545
- United States - Energy Policy Act of 2005, 591
- United States - Equal Pay Act, 545
- United States - Export Administration Act, 355–367
- United States - Export Trading Company Act, 4
- United States - Fair Labor Standards Act (FLSA), 543, 545
- United States - Family and Medical Leave Act, 545
- United States - Farm Bill, 281
- United States - Federal Bills of Lading Act, 124
- United States - Federal Arbitration Act (U.S.), 59
- United States - Federal Insecticide, Fungicide, and Rodenticide Act, 578
- United States - Federal Trade Commission Act, 332
- United States - Flammable Fabrics Act, 270
- United States - Foreign Corrupt Practices Act, 449–456, 458, 460, 520
- United States - Flammable Fabrics Act, 270
- United States - Foreign Sovereign Immunities Act, 78, 517, 518
- United States - Freedom of Information Act, 453
- United States - Generalized System of Preferences, 259, 320, 321, 328, 383
- United States - Harmonized Tariff Schedule, 247, 259, 318–321, 385, 402
- United States - Harter Act, 162–163
- United States - Hart–Scott–Rodino Act, 604
- United States - Informed Compliance Act of 1993, 342
- United States - Internal Revenue Code, 521, 523, 524, 528
- United States - International Emergency Economic Powers Act, 223, 356, 367, 370–372
- United States - Judiciary Act of 1789, 560
- United States - McCarran–Ferguson Act, 618
- United States - National Labor Relations Act, 545
- United States - Occupational Safety & Health Act, 545
- United States - Ocean Shipping Reform Act of 1998, 170
- United States - Omnibus Trade and Competitiveness Act of 1988, 223
- United States - Patent Act of 1793, 471
- United States - Patent Law Treaties Implementation Act (PLTIA), 470
- United States - Patriot Act, 370–371
- United States - Reciprocal Trade Agreements Act of 1934, 220–221
- United States - Resource Conservation and Recovery Act (RCRA), 578
- United States - Sarbanes–Oxley Act of 2002 (SOX), 453, 545
- United States - Sherman Antitrust Act, 597, 614–615
- United States - Shipping Act of 1984, 170
- United States - Taft–Hartley Act, 218
- United States - Tariff Act of 1930 (Smoot–Hawley), 214, 220, 321
- United States - Torture Victim Protection Act, 562
- United States - Toxic Substances Control Act, 578, 587
- United States - Trade Act of 1974, 286–288, 297, 300, 485, 562
- United States - Trade Act of 2002, 235
- United States - Trade Expansion Act of 1962/1974, 233
- United States - Trade Reform Act of 1974, 222
- United States - Trading with the Enemy Act, 370, 372
- United States - Uniform Commercial Code, 36–37, 88, 92, 102, 103, 104, 110, 112, 124, 183, 188, 189, 200
- United States - Uniform Foreign-Country Money Judgments Recognition Act of 2005, 77, 82
- United States - Uniform Foreign Money Claims Act, 78
- United States - Uniform Negotiable Instruments Law of 1866, 183
- United States - Uniform Sales Act of 1906, 88
- United States - Uruguay Round Agreement Act, 487
- United States - Worker Adjustment, Retraining, and Notification Act, 532
- United States - Webb–Pomerene Act of 1918, 621–622
- United States - Bahrain Free Trade Agreement Implementation Act, 320
- United States - Caribbean Basin Trade Partnership Act, 321
- United States - Chile Free Trade Agreement, 320
- United States - Colombia Free Trade Promotion Agreement Implementation Act, 321
- United States - Israel Free Trade Area, 320
- United States - Jordan Free Trade Area Implementation Act, 320
- United States - Korea Free Trade Agreement Implementaton Act, 321
- United States - Morocco Free Trade Agreement Implementation Act, 321
- United States - Oman Free Trade Agreement Implementation Act, 321
- United States - Panama Trade Promotion Agreement Implementation Act, 321
- United States - Peru Trade Promotion Agreement Implementation Act, 321
- United States - Singapore Free Trade Agreement, 321



Preface

It has been said that America's interest in international education has peaked and ebbed with the changing tide of the American political climate, rising in times of economic expansion and ebbing during periods of political isolation or economic protectionism. Perhaps, however, the cycle has finally been broken, and industry leaders, government policymakers, and educators alike have come to understand the importance of making a permanent commitment to international business education.

In the last half century America faced an increasingly competitive global marketplace and a mounting trade deficit. Rather than seek protection behind often-politicized trade laws, America's leaders committed the nation to policies of free trade and open investment. American managers realized that they had no choice but to compete aggressively with international competitors, in markets both at home and abroad. Witness not only America's great multinational corporations but also the successes of the many small and medium-sized companies that today do business internationally.

Among nations, the spirit of free trade has become contagious. Examples can be seen everywhere: The rush of nations to join the World Trade Organization, the growth of regional economic integration, privatization of national economies, the opening of once tightly controlled markets in developing countries and in formerly communist countries, and China's rise to prominence. The outcome has been the globalization of firms and of world markets for goods, services, and ideas, and the interdependence of national economies. It is in this climate that we have seen perhaps the greatest renewal of interest in international business education in America's history.

TRADE, INTELLECTUAL PROPERTY, AND FOREIGN DIRECT INVESTMENT: A THEMATIC APPROACH

International Business Law and Its Environment is intended for use in such courses as International Business Law, International Business Transactions, or The Law of International Trade and Investment. Our thematic approach tracks the basic market-entry strategies of many firms as they expand into international markets: Trade in goods and services, the protection and licensing of intellectual property rights, and foreign direct investment. Through the study of law, we examine each of these market-entry methods – and their variations and combinations – as they might fit into the overall strategy of a firm. We begin our discussion with trade, which involves the least penetration into the international market, and progress to the protection and licensing of intellectual property, and end with foreign direct investment, which immerses the firm completely in the social, cultural, and legal systems of its host country. Each step in the progression presents new and more complex risks, and following the old adage, we hope the sequence of this book teaches us to walk before we run. This progression patterns the life cycle of many firms, as well as the careers of many of our graduates, as they mature and then move more aggressively into new international markets.

PRIVATE AND PUBLIC INTERNATIONAL LAW

International Business Law and Its Environment emphasizes both private and public law. The private law applicable to international business transactions includes the law of international sales, trade finance and letters of credit, licensing and distribution agreements, agreements with foreign sales representatives, and other governing law.

Public international law includes conventions, treaties, and agreements among nations that make up the legal framework within which international business takes place. Customs and tariff laws are good examples, as are laws that open markets to international investors. The treaties of the European Union, the GATT agreements, the agreements of the World Trade Organization, and NAFTA are prime sources of public international law. Public international law provides the basis for government regulation of international business. It affects the environment within which a firm develops its international business strategies, and establishes the firm's responsibility under national laws and administrative regulations. We also treat general principles of the law of nations, the jurisdiction and work of international courts and tribunals, as well as the work of various intergovernmental organizations (such as UN agencies, the WTO, and the OECD), because these are fundamentals needed for study.

INTERNATIONAL AND COMPARATIVE APPROACH

No text can attempt to teach the law of every nation in which a firm might do business, and we have resisted the temptation to merely catalog foreign laws. Instead, we present foreign laws and foreign court decisions throughout the book for comparison purposes, to illustrate differences in legal or economic systems, and to show how business is done in other countries. Where applicable, we compare civil law, common law, socialist law, labor and employment law, Islamic law, and concepts from different legal systems. Examples include comparative sales law, labor and employment law, advertising law, agency law, and competition law. For instance, our discussion of Chinese law provides U.S.

readers with many interesting comparisons, because the United States and China are in different stages of development, with very different political systems. We discuss European law throughout the book, and frequently use Japan for comparison purposes as well. Of course, we treat U.S. law in greater detail. However, the text focuses on relevant international agreements, uniform codes, and the decisions of international tribunals. Moreover, its focus on international law, the legal environment in developing countries, and a comparative view of national laws, makes the text perfect for use anywhere.

THE MECHANICS AND THEORY OF INTERNATIONAL BUSINESS TRANSACTIONS

International Business Law and Its Environment not only teaches the “hands on” mechanics of international business transactions but also provides the theory needed for businesspeople to understand the consequences of their actions.

Commercial transactions are thoroughly examined and explained. This includes negotiating contracts for the sale of goods and services, negotiating contractual terms of trade, handling shipping contracts and cargo insurance, making agency contracts, dealing with letters of credit and other banking arrangements, considering alternatives for dispute settlement, and much more. Many sample forms and documents are included. Methods for protecting one's intellectual property are closely considered, as are the handling of international investment arrangements, employing persons abroad, and other issues. Similarly, we take readers through many thorny problems of dealing with the government, such as learning how to use the harmonized tariff code when entering goods and “clearing customs,” or when licensing exports.

A BUSINESS AND MANAGERIAL PERSPECTIVE

We begin with the premise that the world of international business is a dangerous place, and that the management of international business is the management of risk. Whether one is developing and implementing an international business strategy or managing an international business transaction, an understanding of the special risks involved will help ensure a project's success. In keeping with our

thematic approach, we examine the risks of trade (for example, managing credit and marine risk); protecting and licensing intellectual property (for example, dealing with gray-market goods and registering foreign patents); handling foreign mergers and acquisitions (for example, coping with unexpected differences in foreign corporate or labor law); and evaluating political risk in less stable regions of the world. We then show how to avoid, reduce, or shift the risk to other parties or intermediaries. The case study approach is excellent for this purpose, as it shows readers the mistakes others have made, and how disputes have been resolved.

We also stress strategic business decision making. For example, our chapter on imports, customs, and tariff law does not view importing as an isolated transaction. Rather, it addresses the importance of customs and tariff law.

THE CULTURAL, POLITICAL, SOCIAL AND ECONOMIC ENVIRONMENT, AND HUMAN RIGHTS CONCERNS

As with each previous edition, we have made a special effort to discuss the cultural, economic, political, and social aspects of international business as they bear on differences in attitudes toward the law, their impact on trade relations, and how they affect the way we do business in another country.

In discussing trade issues, it is almost impossible to separate politics, foreign policy, and trade. This is evident in our coverage of export controls and trade sanctions imposed for reasons of foreign policy or national security. We have also devoted considerable attention to current events in many countries and their impact on international business there.

Many topics require a historical perspective, such as the *Smoot-Hawley* era of the 1930s, the development of GATT in the 1940s, export controls and the Cold War, the Iranian Revolution of 1979 or fifty years of U.S.-Cuba relations. We often try to draw on the lessons of history, such as the implications of President Carter's grain embargo of the Soviet Union in response to that nation's invasion of Afghanistan, or President Reagan's embargo of U.S. participation in the construction of the Siberian natural gas pipeline to Western Europe.

Throughout the book, readers are asked to consider the impact of world current events on their strategic business decisions, particularly in unstable regions or under hostile political and economic conditions.

We believe that it is impossible to cover the real world of international business without exploring the larger problems of human rights. Thus, we treat the areas of human rights law and international criminal law as global issues of concern to international business.

DEVELOPING COUNTRIES

The developing countries of Africa, Asia, Latin America, and the Caribbean present special problems for their richer trading partners. We have tried to paint a realistic picture of trade opportunities, colored by the realities of disease, poverty, and environmental degradation that threaten much of our planet.

Trade and investment issues in developing countries are incorporated in all parts of the book. Examples include the *Generalized System of Preferences*, the *CARICOM Single Market and Economy Treaty*, the *Doha Development Agenda*, labor and environmental issues in developing countries, and U.S. trade initiatives for Latin America, the Caribbean, and Africa. Many special issues related to doing business in the independent republics of the former Soviet Union are covered. The integration of China, Vietnam, and other countries into the world's economic system is stressed.

ETHICS AND SOCIAL RESPONSIBILITY

Because ethical questions can arise in varying contexts, we have chosen to integrate the subject throughout the book. However, we give a more focused treatment to ethics, social responsibility, and corporate codes of conduct in Chapter Two, the chapter on international law. All chapters conclude with a hypothetical case problem on ethics, called *Ethical Considerations*. Examples include, among others:

- *Codes of conduct*
- *Bribery and corruption*
- *Child labor*
- *Workers' rights*
- *Protection of the environment and of fish and wildlife*
- *Prison and forced labor*

- Fair trade initiatives
- Human rights issues
- AIDS and other world health issues
- Discrimination issues in foreign countries
- Special issues related to U.S. investments
- Mexican maquiladora plants
- The ban on asbestos products
- Maritime fraud

WHY STUDY INTERNATIONAL BUSINESS LAW?

As you begin your study of international business law using this text, realize that no book can tell you what the law “is.” We can only introduce you the legal environment of international business, explain some basic principles of international law and international business law, and challenge you to consider the legal implications of any international business strategy or transaction. Thus, we study international business law because we want to understand:

1. How the legal and regulatory environment affects firms operating internationally;
2. The legal issues bearing on international business (IB) decision-making or strategies;
3. That the management of IB is the management of risk;
4. The sources of public and private international law, particularly international business law, as reflected in treaties and other international agreements, harmonized codes, national laws, and the decisions of national and international courts and tribunals.
5. The mechanics and legal implications of common IB transactions, particularly regarding trade in goods, the licensing of intellectual property, and foreign direct investment;
6. The influence of ethics and social responsibility in IB and when doing business in foreign countries, to encourage the development of an individual ethical value system for IB managers, and in particular to develop an appreciation for the rights of workers, consumers, and other stakeholders in civil society when doing business in foreign countries;
7. The importance of advance planning for dispute resolution in IB and the alternatives for dispute resolution;
8. The special legal and regulatory issues facing the multinational firm, and the relationship between the firm and host governments;
9. How to better communicate with attorneys on IB matters;
10. The role of agents, contractors, and intermediaries in IB, particularly those involved in international sales, transportation, banking, insurance, and customs brokerage.

TO OUR INTERNATIONAL READERS

We are pleased to know that our work is contributing to student learning at universities on virtually every continent and in every region of the world. Naturally, our audience is primarily an American one. We necessarily devote a major portion of the text to American law, U.S. trade relations, and the needs of the American firm. However, we have made every effort to maintain our international perspective and to draw important international comparisons. Cases from countries other than the United States appear throughout the book, as do decisions of international courts and tribunals, and discussions of foreign codes and practices. Moreover, the increased reliance on uniform rules, harmonized codes, and international standards makes the book suitable for any student interested in international business law.

KEY REVISIONS TO THE NINTH EDITION

Despite many changes in content in the ninth edition of *International Business Law and its Environment*, surely our greatest challenge was to make it more readable and manageable. To this end, we have tried to condense an ever-expanding body of legal material, clarify and simplify key terms and concepts, and refocus on the essentials of international business law. The writing style is tighter, boxed cases are shorter, coverage has been streamlined, and many details not necessary to an introductory course have been eliminated. Although dated material has been removed throughout, some historical perspectives are richer and more meaningful. Following are some of the major content changes to the ninth edition.

Part One: The Legal Environment of International Business

- Chapter 1 has been largely rewritten to better prepare readers for the remainder of the book. The statistical data on international trade and investment has been eliminated and non-core areas condensed. The chapter now focuses on introducing the legal environment of international business and on key concepts and definitions needed in later reading. Chapter 1 contains four cases new to this edition.
- Chapter 2 on international law has been greatly revised, with two case replacements plus a significantly re-edited version of *Nottebohm*. The chapter is even more relevant to business readers: A new section looks at the nature and sources of international business law, and international criminal law and human rights issues now focus on international business issues. Any duplication of subjects in Chapter 2 (on international law) and Chapter 8 (national lawmaking powers) has been eliminated.
- Chapter 3 on dispute resolution now has a greater emphasis on key areas: Arbitration and alternative dispute resolution, jurisdiction in the Internet age, including the Ninth Circuit's *Pebble Beach* decision, personal jurisdiction and the recognition of judgments in China and India. It consolidates and includes new sections on sovereign immunity, abstention, act of state, comity, and political question doctrines.

Part Two: International Sales, Credits, and the Commercial Transaction

- Chapter 4 has been retitled as *The Formation and Performance of Contracts for the Sale of Goods*, and has a new focus on contract formation, performance, breach, and damages, as reflected in the new title.
- Chapter 5 on documentary sales has an updated discussion of international commercial terminology governing the use and interpretation of trade terms.
- Chapter 6 is now titled *Legal Issues in Transportation* to reflect its broader coverage. Aviation law has been fully updated post-Montreal. It includes all-new presentations of general maritime law (including a discussion of the historical development of maritime law) and admiralty jurisdiction. The carriage of goods by sea sections have been condensed and updated. A challenging but fun ethics case related to maritime fraud has been added to the chapter.
- Chapter 7 has been updated.

Part Three: International and U.S. Trade Law

- Chapter 8 on national lawmaking powers has been reorganized and focuses on core subjects, including U.S. trade agreements and key U.S. trade legislation. The role of the Department of Treasury in regulating international transactions has been added. The U.S. Supreme Court decision in *Arizona v. U.S.* is used to discuss federal preemption, while also introducing readers to immigration issues in the United States. The section on presidential powers in the war on terror has been eliminated.
- Chapter 9 on the WTO has also been completely reorganized to focus on basic WTO principles. New subjects include overview of trade preferences and free trade, which has been removed from Chapters 12 and 15 and consolidated here. Most other sections have been completely rewritten to simplify and condense. Materials on *Jackson-Vanik*, normalization of relations with China, Russia, and Vietnam were eliminated; historical materials on GATT reduced; materials on import licensing, custom procedures, quotas and other non-tariff barriers have been rewritten for clarity.
- Chapter 10 on market access updated throughout, and includes new WTO U.S.-Clove Cigarettes case on technical barriers to trade.
- Chapter 11 on import competition has been significantly rewritten for clarity, the WTO *Argentina-Footwear* decision has been re-edited for easier reading, the dumping section greatly simplified, subsidies and nonmarket economies updated, and the China safeguard materials eliminated reflecting end of that program.
- Chapter 12 on imports and customs has been condensed, simplified, and reorganized with a greater focus on the foundations of customs and tariff law. Sections on U.S. administration of customs law and enforcement issues has been moved to later in the chapter. The three major subject areas — classification, valuation, and rules of origin — are largely rewritten. Other changes include: Rules for using the harmonized tariff code are simplified, complex rules of origin for textiles eliminated, materials on electronic entry processing updated, trade preference material removed from this chapter. Other additions include the frequently cited *Carl Zeiss* customs classification case, and a new managerial case question provides a more realistic experience.
- Chapter 13 has been retitled, *Export Controls and Sanctions* to more accurately describe the material covered. It has been significantly rewritten,

condensed, and updated, with non-essential material eliminated or reduced. New sections on today's export environment, policy issues related to balancing national security with competitiveness, ongoing reform of export controls, and the automated export system. The sanctions material has been simplified but strengthened, with the elimination of narrower issues related to the war on terror. Chapter 13 also has a new case selection, with two cases removed and three shorter cases added.

- Chapter 14 clarifies the distinctions between economic integration in federal models, free trade agreements, customs unions, and common markets; contains updated general and sectoral North American trade information.
- Chapter 15 now focuses entirely on the EU and includes key updates on the accession process, expansion, the financial crisis, and monetary issues, with new and updated cases on the supremacy doctrine and free movement of goods.

Part Four: Regulation of the International Marketplace

- Chapter 16 has been significantly revised to reflect changes in enforcement of the corrupt practices statute in the United States and by the EU of the OECD bribery convention. The chapter includes several new cases, including *World Duty Free on bribery*.
- Chapter 17 has been completely revised to emphasize intellectual property as a company asset. New material on IPR litigation, standard essential patents, strategic use of cross-licensing agreements, legal implications of IPR transfer, and U.S.-China relations. The chapter includes cases on software inventions, China IPR protection (WTO), and discusses international issues related to recent changes in U.S. patent legislation. The 2013 *Apple v. Samsung* decision is included.
- Chapter 18 materials on foreign direct investment has been entirely revised, and includes litigation over recent expropriations in Latin America, revised material on U.S. taxation of international transactions (including new material on transfer pricing), and addresses both legal and illegal methods used by multinational companies to reduce global taxes. Also includes a new ICSID case involving remedies for expropriation.
- Chapter 19 expands its comparative legal view of different employment laws and practices, and now

includes the “Chinese Approach” (as well as U.S., EU, and Japanese approaches) to the subject. Additions to the chapter include the new role of the WTO as a multilateral tool for dealing with labor conditions in developing countries, institutional discrimination in China, discrimination against women (particularly in emerging economies), and includes the Supreme Court decision in *Kiobel v. Royal Dutch Petroleum*.

- Chapter 20 new topics include: Environmental litigation at the International Court of Justice, international law implications of “swine flu,” new rulings by the NAFTA environmental commission, the EU ban on GMOs, updates on global warming treaty issues and U.S. legislation.
- Chapter 21 now expands the discussion of competition law from the U.S. and EU to include a larger perspective of competition laws around the world, including those of Japan and China. Includes new Animal Science decision on extraterritoriality of U.S. antitrust laws.

OUR GREATEST CHALLENGE

Perhaps the greatest challenge in preparing any edition is simply to keep up with the rapid pace of political, economic, and legal changes around the world. We had to make revisions almost daily to keep abreast of current developments. There are countless topics that had to be included or revised at the last moment. Other issues are still outstanding. Will the U.S. Congress renew the president's trade promotion authority? Will the *Doha Development* rounds conclude successfully? Will there be progress toward a free trade area of the Americas? How will the future U.S. response to international terrorism affect U.S. business interests? Will American consumers pressure U.S. clothing and apparel retailers and firms in their global supply chain to increase wages and provide safe working conditions in developing country factories? These and many other questions must await the next edition.

PEDAGOGICAL FEATURES OF THE NINTH EDITION

The *Key Terms* section at the end of each chapter gives the most important international business vocabulary and operative terminology expected of the successful student. The *Ethical Considerations* feature provides

end-of-chapter case studies containing ethical or social responsibility issues. Examples include:

- *Bribery and corruption*
- *Environmental litigation in Ecuador and India*
- *Sales law and “ethically tainted” goods*
- *Insurance coverage in the wake of September 11*
- *The use of maquiladoras in Mexico*
- *The HIV epidemic in sub-Saharan Africa*
- *Gender discrimination in the global marketplace*
- *Sewing contractors in India*
- *Sales commissions on arms sales in the Middle East*
- *Exports of outdated pharmaceuticals to Africa*
- *Letter of credit fraud*
- *Free trade vs. cultural diversity*
- *Trade in genetically modified foods*
- *Chinese dumping: Is low cost selling unfair?*
- *Fair trade products—will paying a higher price for coffee eradicate poverty?*
- *Lobbying to decontrol exports of dual-use chemical*
- *Maritime fraud*

Other end-of-chapter features include *Managerial Implications*, which provides case problems suitable for extended discussions and end-of-chapter questions, many of which are based on actual cases (citations provided).

Primary source materials include landmark and cutting-edge cases from U.S. and foreign courts, and decisions of the WTO, NAFTA, ICSID, International Court of Justice, European Court of Justice, and other international judicial and arbitral tribunals.

In addition, we have incorporated

- *Business and industry examples, sample documents, and forms*
- *A transactions-oriented approach to those areas likely to be encountered by students, including international sales contracts, documentary sales and trade terms, handling letters of credit, procedures for import customs clearance and export licensing are examples.*
- *An expanded list of acronyms frequently used in international business*

COMPREHENSIVE LEARNING RESOURCES

Online Resources for Instructors and Students. The *International Business Law and Its Environment* instructor supplements are available exclusively on the

textbook companion site, which is accessible through www.cengagebrain.com. You must log in using your Faculty SSO account.

- *The Instructor’s Manual has been revised and enhanced by to align with all of the new book content. The Instructor’s Manual provides answers to case questions and problems, end-of-chapter questions, Managerial Implications, and Ethical Considerations. It also offers teaching summaries, supplemental cases and exercises, teaching suggestions, and class activities.*
- *Chapter PowerPoint® slides are also available to instructors for use during lectures.*
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Student Guide to the Sarbanes-Oxley Act. This brief overview for undergraduate business students explains the Sarbanes-Oxley Act, describes its requirements, and shows how it potentially affects students in their business life. The guide is available as an optional package with the text.

Business Law Digital Video Library. Featuring more than seventy-five video clips that spark class discussion and clarify core legal principles, the Business Law Digital Video Library is organized into five series: Legal Conflicts in Business (includes specific modern business and e-commerce scenarios); Ask the Instructor (presents straightforward explanations of concepts for student review); Drama of the Law (features classic business scenarios that spark classroom participation); Real World Legal (presents legal scenarios encountered in real businesses); and Business Ethics (presents ethical dilemmas in business scenarios). For more information about the Digital Video Library, visit www.cengagebrain.com.

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Cengage Learning's Global Economic Watch. Make the current global economic downturn a teachable moment with Cengage Learning's Global Economic Watch—a powerful online portal that brings these pivotal current events into the classroom. The watch includes:

- *A content-rich blog of breaking news, expert analysis, and commentary—updated multiple times daily—plus links to many other blogs*

- *A powerful real-time database of hundreds of relevant and vetted journal, newspaper, and periodical articles, videos, and podcasts—updated four times every day*
- *A thorough overview and timeline of events leading up to the global economic crisis*
- *Discussion and testing content, PowerPoint® slides on key topics, sample syllabi, and other teaching resources*
- *Social Networking tools: Instructor and student forums encourage students*

Visit www.cengage.com/thewatch for more information.



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RAVEN DAVENPORT
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SANDRA J. DEFEBAUGH
Eastern Michigan University

LARRY A. DI MATTEO
University of Florida

RAFI EFRAT
California State University—Northridge

JOHN ELLIOTT
Pepperdine University

JOAN T. A. GABEL
University of Missouri

JOHN M. GARIC
University of Central Oklahoma

CHRISTOPHER GIBSON
Suffolk University

REX D. GLENSY
Drexel University

DAVID P. HANSON
Duquesne University

MICHAEL E. JONES
University of Massachusetts—Lowell

ROMAIN M. LORENTZ
University of St. Thomas—Minneapolis

SEAN P. MELVIN
Elizabethtown College

CAROL J. MILLER
Missouri State University

FRED NAFFZIGER
Indiana University—South Bend

GREGORY T. NAPLES
Marquette University

LYNDA J. OSWALD
University of Michigan

MARISA ANNE PAGNATTARO
University of Georgia—Athens

KIMBERLIANNE PODLAS
University of North Carolina—Greensboro

EMILIA JUSTYNA POWELL
Georgia Southern University

BRUCE L. ROCKWOOD
Bloomsburg University

JOHN C. RUHNKA
University of Colorado—Denver

MARTIN L. SARADJIAN
Boston University

LISA SPEROW
Cal Poly—San Luis Obispo

RICHARD STILL
Mississippi State University

CLYDE D. STOLTENBERG
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Richard Schaffer
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PART 1

The Legal Environment of International Business

Part One of *International Business Law and Its Environment* provides a framework for understanding both international business and the legal environment in which it operates. This part covers several main areas: international business, the nature and sources of international business law, international public law, and the resolution of international business disputes. It also covers the economic, social, political, and historical forces that have influenced the development of the national and international law.

Chapter One introduces international business from a legal perspective. It explains the three major forms of international business: trade (importing and exporting); licensing agreements for the transfer and legal protection of patents, copyrights, trademarks, and other intellectual property; and direct investments in foreign firms. The reader is also introduced to the environment of doing business in the developing and newly industrialized countries. This chapter discusses how the risks of international business differ from those of doing business at home; how a firm deals with the added risks of doing business over great distances, including those associated with language and cultural barriers, country financial and political risk, the risks of trade controls or restrictions on investment, and the risks of foreign laws and foreign litigation. By illustrating some of the risks of international business, Chapter One sets the stage for the remainder of the book, which teaches that the law is an important tool for managing international business risk.

Chapter Two defines and explains international business law and the larger area of international law. It explains the sources of international law, including custom, treaties, and international conventions; its basic concepts; and the role of intergovernmental organizations in developing international standards and legal codes, which become binding on the nations that adopt them. Many of these directly affect business

operations worldwide. Whether a problem is related to humanitarian issues such as the ethical treatment of labor in developing countries, laundering of drug money through the international banking system, setting standards for the protection of the world's oceans, or developing uniform rules for international sales contracts, international organizations can be useful in bringing individual nations to agreement on difficult issues. Many of the international codes address ethical issues facing businesses operating globally, such as corruption or child labor, and these, too, are examined. The chapter takes a comparative look at different legal systems, including the common law, civil law, and Islamic law systems, with a special emphasis on China and the Middle East. We examine several legal topics and see how culturally diverse countries in different regions of the world approach these subjects differently.

Chapter Three discusses how disputes are settled in an international business transaction, including both litigation and arbitration. It addresses issues of jurisdiction and procedural rules for litigating international cases. For instance, the chapter attempts to answer such questions as: If a company does business in a foreign country, can the company be sued there? If a buyer purchases goods from a foreign firm that does not regularly do business in the United States, under what circumstances can the buyer sue that firm in U.S. courts? If a product that is produced in one nation injures a consumer in another nation, where should the injured party's claim be heard? If a firm obtains a court judgment in one country, can the firm enforce it against the defendant's assets held in another country? Finally, because the costs and risks of foreign litigation are substantial, the chapter addresses what the parties can do in advance to provide an alternative to litigation should a dispute result.

Introduction to International Business

INTRODUCTION

Today most people agree that no business is purely domestic and that global competition and world events affect even the smallest local firms. The realities of the modern world make all business international. No longer can an economic or political change in one country occur without reverberations throughout world markets. A tsunami in Asia interrupts global supply chains and brings distant assembly lines to a halt. War in the Middle East brings international shipping to a crawl. Contagious disease in Hong Kong or Toronto slows international business travel. The failure of China to safeguard American copyrights on films or software results in the United States imposing retaliatory tariffs and affects the price of Chinese-made clothing in American stores. Terrorist attacks not only affect business operations worldwide but also affect the ability of managers to travel and live safely in foreign lands.

As countries lower entry barriers to foreign goods and services, more and more foreign goods now appear in local stores around the world. Brand names once recognized only at home are now global brand images. And giant multinational corporations now move people, money, and technology across national borders in the blink of an eye. Clearly, no firm can remain isolated from international forces for long. As you will see in this chapter, just as national economies have become more interdependent, and businesses more globalized, so too has business law become more international. Our goal in this chapter is to explain the forms of international business, to explore the risks of international business transactions, and to set the stage to learn how international business law can be a tool to help manage these risks.

FORMS OF INTERNATIONAL BUSINESS

This text classifies international business into three categories: (1) trade, (2) licensing of intellectual property, and (3) foreign direct investment. To the marketer,

these broad categories describe three ways a firm may enter a foreign market, or foreign market entry methods. To the international lawyer, they represent three forms of doing business in a foreign country and the legal relationship between parties to an international business transaction. Each form represents a different level of commitment to a foreign market, a different level of involvement in the life of a foreign country, and a different set of managerial challenges. Each form exposes firms to different sets of business and legal risks. Trade usually represents the least involvement, and thus the least political, economic, and legal risk; we buy or sell goods or services to others in foreign countries. A firm that wants to use its intellectual property worldwide must contract to let others distribute it, license it to users, and then protect it from infringement. However, the greatest risks come with owning and operating a foreign firm, perhaps a factory. This carries with it the obligations of corporate citizenship and means the complete involvement in all aspects of life in the foreign country—economic, political, social, cultural, and legal.

The three forms in international business are not mutually exclusive, and each can play a role in an international firm's strategy. One of the best examples is the vertically integrated firm that holds minority or majority ownership interest in other firms along the supply chain. One firm may be engaged in production of raw materials or component parts which are exported to an affiliated company in another country for final assembly. Still another company, owned by the same parent corporation may own the trademark for the product and have responsibility for global distribution. Here the production and marketing of a single product involves elements of trade, licensing, and investment. For firms just entering a new foreign market, the method of entry might depend on a host of considerations, including the sophistication of the firm, its overseas experience, the nature of its products or services, its commitment of capital resources, and the amount of risk it is willing to bear.

Trade

Trade is the import or export of goods and services across national borders, usually as part of an

exchange. **Exporting** is the shipment of goods out of a country or the rendering of services to a foreign buyer located in a foreign country. **Importing** is the entering of goods into the customs territory of a country or the receipt of services from a foreign provider. **Trade in services** refers to the providing of services to a customer or the operation of service companies in a foreign country. Examples can be found in transportation, package delivery, banking, insurance, securities brokerage, law, accounting, architecture, waste management, environmental engineering, software development, and management consulting.

Exporting. Exporting is often a firm's first step into international business. Compared to the other forms of international business, exporting is relatively uncomplicated. It may provide the inexperienced or smaller firm with an opportunity to reach new customers and to tap new markets. It usually requires only a modest capital investment, and the risks are generally manageable by most firms. It also permits a firm to explore its foreign market potential before venturing further. For many larger firms, including multinational corporations, exporting may be an important portion of their business operations. The U.S. aircraft industry, for example, relies heavily on exports for significant revenues.

Direct exporting refers to a type of exporting in which the exporter, often a manufacturer, assumes responsibility for most of the export functions, including marketing, export licensing, shipping, and collecting payment. Many firms engaged in direct exporting on a regular basis reach the point at which they must hire their own full-time export managers and international sales specialists. These people participate in making export marketing decisions, including product development, pricing, packaging, and labeling for export. They should take primary responsibility for dealing with foreign buyers, attending foreign trade shows, complying with government export and import regulations, shipping, and handling the movement of goods and money in the transaction. Many direct exporters use the services of foreign sales representatives or foreign distributors.

Foreign sales representatives are independent sales agents who solicit orders on behalf of their principals and receive compensation on a commission basis. They have the advantage of knowing the foreign market, having established customer loyalty, and carrying a range of complementary products. For instance, one agent may represent several different

manufacturers of U.S. sporting goods in Japan—one that makes baseball bats, another that makes gloves, and a third that makes baseballs.

Foreign distributors are independent firms, usually located in the country or region to which a firm is exporting, that purchase and take delivery of goods for resale to their customers. Exporters use foreign distributors when their products require service or a local supply of spare parts or if they are perishable or seasonal. Foreign distributors assume the risks of buying and warehousing goods in their markets and provide additional product support services. The distributor usually services the products they sell, thus relieving the exporter of that responsibility. They often train the end users of the products, extend credit to their customers, and bear responsibility for local advertising and promotion.

Companies that do not have the experience, personnel, or capital to tackle a foreign market alone use **indirect exporting**. They may be unable to locate foreign buyers or are not yet ready to handle the mechanics of a transaction on their own. By indirect exporting, the firm can use specialized intermediaries that can take on many of the export functions—marketing, sales, finance, and shipping. Two types of intermediaries include export trading companies and export management companies.

International Trading Companies. These are firms that specialize in all aspects of import/export transactions by either buying goods on their own accounts for resale or by acting as middlemen to bring other buyers and sellers together. Many trading companies handle particular types of goods, such as commodities, energy, minerals and metals, or general merchandise. They can be as small as one individual or a sprawling multinational corporation. They come from both developed and developing countries. They have extensive sales contacts overseas and experience in international finance, air and ocean shipping, preparing legal documents for import and export, and in dealing with customs authorities in many countries.

Japanese trading companies (called *sogo shosha*) are well known for their successes worldwide. Their early advantage over trading companies in the United States was their ability to bring together many competing producers in the Japanese market to take advantage of economies of scale in exporting. For example, a trading company might bring together several makers of competing large appliances and coordinate pricing and distribution in foreign countries. This proved to

be very effective for the Japanese. In the United States, until 1982, any collusion by competitors to fix prices and market jointly would have been considered a violation of the U.S. antitrust laws. In that year the U.S. Congress passed the *Export Trading Company Act*, giving American exporters the same competitive advantage as the Japanese. U.S. **export trading companies**, or ETCs, can apply for and receive certificates from the U.S. Department of Justice that waive the application of U.S. antitrust laws to their export activities. For example, it is illegal for two competing firms that manufacture similar products to agree to fix prices in the U.S. market. However, if both companies are members of an approved ETC, they may jointly establish export prices, enter into joint export marketing arrangements, allocate export territories, and do business in ways that would be illegal if

done with the U.S. market. The waiver is issued only if it is shown that the advantage will not lessen competition within the United States, or unreasonably affect domestic prices of the exported products.

There are many other advantages in selling through an ETC, such as teaming up to bid on large foreign projects, filling large and complex foreign orders, joint marketing of complementary or competing products, division of foreign territories by competing firms, sharing of marketing and distribution costs, and reducing rivalry between U.S. firms in dealing with foreign customers. The following case, *Tarbert Trading v. Cometals*, involves two trading companies that were apparently overly anxious to make the sale and a fraudulent **certificate of origin**—one of the most important legal documents used in import/export transactions.



Tarbert Trading, Ltd. v. Cometals, Inc.

663 F. Supp. 561 (1987) United States District Court (S.D.N.Y.)

BACKGROUND AND FACTS

Cometals, a New York commodities trading corporation, purchased 2000 tons of Kenyan red beans from Tarbert Trading, an English commodities trading company. The beans would be shipped from a warehouse in Rotterdam, the Netherlands. Cometals purchased the beans for “back to back” resale to a buyer in Colombia. However, the government of Colombia required a certificate of origin issued by a Chamber of Commerce showing that the beans were a product of the European Economic Community (EEC, now the European Union). Cometals requested that Tarbert supply such a certificate and Tarbert agreed. Employees of the two firms collaborated on the wording of the certificate even though they understood that Kenyan red beans originated in Africa. Later, Cometals refused the beans due to insect damage and Tarbert sued. Cometals maintained that the agreement should be declared void because Tarbert could not, except through fraud, have supplied an EEC certificate of origin for the beans. Tarbert later resold the beans to the original seller.

NEWMAN, SENIOR JUDGE

Concededly, both Tarbert and Cometals were cognizant of the fact that an EEC certificate of origin stating that the Kenyan beans were of the origin of an EEC member would be false and would be shown to third

persons. * * * Simply put, [Cometals] intended to deceive the Colombian customs officials with a false certificate as to the beans’ country-of-origin so that they would allow the importation of the beans by Cometals’ customer.

Irrespective of the rather incredible explanations of [Tarbert’s employees] as to what they understood to be the purport of the requested certificate of origin, they finally and grudgingly conceded that an EEC certificate stating that the goods were of the origin of an EEC member would be understood by anyone reading it to mean that the beans were grown in an EEC country and not simply shipped from such country. * * *

It is evident from the Kenyan origin of the beans that it would have been impossible for Tarbert to honestly obtain from a Chamber of Commerce and furnish Cometals with a bona fide EEC certificate of origin stating that the goods were of the origin of a member of the EEC since concededly Kenya is not an EEC member. Thus, the only way in which Tarbert could have complied with the agreement would have been to convince an official of a Chamber of Commerce to issue a fraudulent certificate or to obtain a forged certificate. Both acts are obviously illegal.

“No one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property

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by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes." [citations omitted] * * *

Plainly, enforcement of the agreement for either party would be contrary to public policy ...

Decision. The complaint and counterclaim were dismissed. Agreements that violate the law are void. In this case, an agreement calling for the delivery of a fraudulent certificate of origin is illegal and contrary to public policy.

Comment. Trading companies play an important role in world trade. While what happened here is obviously a rare case, it does give us an opportunity to introduce some of the documents required in international trade and to question the legal and ethical conduct of the parties. It also teaches us the importance of knowing more about the people we do business with.

Case Questions

1. Import/export transactions usually require much more documentation than domestic transactions.

These include detailed invoices, packing lists, shipping and insurance documents, and specialized certificates. In this case, a "certificate of origin" was required by the government of Columbia before the goods could be imported. Does it refer to the country from which the goods were shipped or where they were grown or made? Why do you think Columbia required a certificate of origin? What is its purpose?

2. Suppose that the beans had arrived in Columbia and were then stopped by Columbian customs authorities because of a fraudulent certificate. What do you think might have happened to the beans? What would the risk have been to Comets and Tarbert? What if the Columbian buyer had already paid for the beans?
3. Evaluate and discuss the conduct of Comets and Tarbert. Fraudulent documentation is not uncommon in international trade, especially when parties do not have a history of business together. What are the lessons to be learned by all parties?

Export Management Companies. Independent firms that assume a range of export-related responsibilities for manufacturers, producers, or other exporters are called **export management companies**, or EMCs. They might do as little as render advice and training on how to export, or they might assume full responsibility for the entire export sales process. Many EMCs specialize in specific industries, products, or foreign markets. Firms that cannot justify their own in-house export departments use EMCs. Foreign market research, establishing foreign channels of distribution, exhibiting goods at foreign trade shows, working with foreign sales agents, preparing documenting for export, and handling language translations and shipping arrangements are also among the services EMCs provide.

Successful Small Business Exporting. When we think of international business, usually the largest multinational corporations come to mind. It is true that the largest companies, those with more than 500 employees, still dominate the total share of U.S. export volume. Nevertheless, many small- and medium-sized U.S. exporters (less than 500 employees) do extremely well in foreign markets. According to the U.S.

Department of Commerce *Exporter Database*, for example, in 2010 there were more than 293,000 individual companies exporting goods from the United States. Ninety-eight percent of those were small- to medium-sized exporters, accounting for one-third of the total exports of goods. About one-quarter of those were manufacturers. The Department of Commerce points out that because the majority of companies ship only to one foreign country, this group as a whole could increase its export sales by entering additional foreign markets.

What does it take for a small business to be a successful exporter? First, most people agree that looking to foreign markets is not a panacea for a company's failures at home. Due to the time and resources necessary to enter a foreign market, a firm that is already failing at home will likely be unable to bear the cost of expansion and will probably repeat its same mistakes again. Second, experience shows that success or failure in entering a foreign market is often due to the commitment made to international business at a company's executive level. Many small companies that are new to exporting may lack the global view and commitment to foreign customers of a multinational corporation. In some cases they wrongly

look for new customers abroad only when the economy declines at home. But this has proven shortsighted. During the time needed to gear up for the export process, which can take months or years, the domestic economy may heat up again, domestic customers return, and the new-to-export firm may lose interest in its new-found foreign customers. Without a long-term commitment, foreign buyers view these firms as unreliable suppliers. Many small companies soon learn that entering international markets requires time, patience, and commitment. Third, many small companies learn too late that international business is not merely a distant extension of domestic business. It requires the company to adapt to a new social, cultural, political, and economic environment and to be prepared to meet new challenges. For example, it may have to adapt its products and services to the expectations of the foreign market, develop new channels of distribution, visit foreign customers, and comply with new legal regulations, and so on. Finally, one of the greatest mistakes made by small business exporters, especially “new-to-export” firms, is the failure to have an **export plan** (see Exhibit 1.1).

Licensing and Protection of Intellectual Property Rights

The *Intellectual Property Handbook* of the World Intellectual Property Organization broadly defines **intellectual property (IP)**, also called **intellectual property rights**, as “legal rights which result from intellectual activity in the industrial, scientific, literary, and artistic fields.” The most common forms are patents, trademarks, copyrights, and trade secrets. Patents have many different forms. In addition to the traditional patents on apparatus, they include methods for achieving a commercial objective, industrial designs, utility models, and geographical indications. The IP owner has the right to use, reproduce, distribute, and profit from its property, to license its use or distribution to others, and to protect it from unauthorized infringement. Firms with significant intellectual property assets must protect their legal rights in every country in which they plan to do business or even in which their patent, trademark, or copyright might be stolen, or infringed. Each country governs the recognition and protection of IP rights within its borders. In the

Exhibit 1.1

Components of an Export Plan

- Assessing the firm’s readiness for export markets and its willingness to commit financial resources, human resources, and production output to foreign customers
- Making a long-term commitment to exporting and to foreign customers on the part of senior management and executives
- Identifying foreign-market potential of the firm’s products, including economic, political, cultural, religious, and other factors
- Identifying the risks involved in exporting to that foreign market, including an evaluation of cost-effective shipping arrangements, banking arrangements for getting paid, and political risks
- Evaluating the legal aspects of the firm’s export plan for compliance with government rules and customs regulations, including identifying legal controls on exporting its products out of the United States as well as legal barriers to importing and selling its products in the foreign country, and whether there are any patents, copyrights, or trademarks that must be protected abroad
- Determining the export readiness and suitability of the firm’s products for the export market, including whether the products meet the quality standards, technical regulations, and foreign language requirements of foreign countries and whether any redesign, re-engineering, or relabeling of products is needed
- Identifying members of the “export team,” comprising management, outside advisors, and trade specialists from banking, shipping, and government
- Identifying possible financing arrangements to assist foreign buyers
- Establishing foreign market channels of distribution, including deciding whether to export directly to customers or indirectly through intermediaries, deciding whether to use a sales representative or foreign distributor, identifying potential buyers, and participating in foreign trade shows
- Re-evaluating the firm’s export performance over time, reconsidering its export plan, and determining whether the firm should increase its penetration of foreign markets beyond exporting

United States, IP law is almost entirely the province of federal law, although state law does apply in some areas not covered by federal law. A large body of state contract law and tort law also applies to many cases involving IP infringement. Most countries maintain a registration system for creating and protecting rights to patents, trademarks, and copyrights. Several important intellectual property treaties provide for streamlined procedures for mutually recognizing and enforcing IP rights. Many countries cooperate on IP policy and enforcement efforts.

International Licensing Agreements. IP is a valuable asset that can be transferred by the owner or holder to licensee through a grant of rights in that property, called a **license**. The license is usually part of a larger

business arrangement represented in a licensing agreement. **Licensing agreements** are contracts by which the holder of intellectual property will grant certain rights (the “license”) in that property to another party under specified conditions and for a specified time, in return for consideration, such as a fee or royalty or as a part of a larger business arrangement. Licenses can be either exclusive or nonexclusive, and frequently limit distribution to a certain geographical area, to certain uses, or to a certain period of time.

In the following case, *Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.*, the court was asked to resolve a conflict between two licensees of exclusive distribution rights to Russian films in the United States.



Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.

767 F. Supp. 2d 392 (2011) United States District Court (E.D.N.Y.)

BACKGROUND AND FACTS

Two Russian film studios [the studios] granted rights to produce and distribute DVD versions of their films to multiple licensees. Each licensee received different limited exclusive rights. Krupny Plan, which could distribute the films only in the original Russian language, sublicensed its rights to the films for home use in the United States and Canada to Close-Up, a New York corporation. Ruscico could distribute multilingual versions of the same films that were dubbed or subtitled and sublicensed its rights to its distributor in the United States, Image. At the time of licensing, none of the parties considered that a viewer of the subtitled films could simply turn off the subtitles and hear the film in any of several languages, including Russian. None of the agreements had a requirement that the films prevent the disabling of subtitles. Close-Up brought this action against Ruscico and Image for damages from copyright infringement, claiming that it is the “exclusive” U.S. licensee of the Russian-language-only versions of the films. The federal district court held for the defendants, and Close-Up appealed.

COGAN, DISTRICT JUDGE

The Copyright Act establishes that the “legal or beneficial owner of an exclusive right under a copyright” may bring suit for infringement under the act [citations omitted]. However, when this provision is

invoked by an exclusive licensee, the licensee may seek relief from infringement only for the rights that the licensee has been exclusively licensed by the copyright holder. Plaintiff has shown that ... it was the legal and beneficial licensee of the narrow right to reproduce and distribute *Russian-language-only* versions of the subject works. Therefore, even if plaintiff had a valid sublicense, plaintiff would still only have standing to sue for infringement of the narrow right to reproduce and distribute Russian-language-only DVDs... * * *

The evidence presented at trial proves that [the studios] elected to grant a “Russian language only” right to one licensee, and a separate “multilingual” right to another. The rights-holders did not consider sales of the multilingual DVDs manufactured by [the defendants] to violate the “Russian language only” license separately given to Krupny Plan. Instead, they considered the multilingual DVDs to be a distinct line of products, geared towards the separate non-Russian-speaking market. * * *

Plaintiff has failed to put forth any evidence that defendants ever produced or distributed works that infringed plaintiff’s limited rights in Russian-language-only DVDs ... Instead, the evidence shows that all of the DVDs produced and distributed by defendants were multilingual DVDs, which [the studios] viewed as being distinct from the Russian-language-only DVDs that they had authorized Krupny Plan to reproduce and

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distribute. Plaintiff thus has failed to make out a claim for copyright infringement against any of the defendants. * * *

Because there is no evidence that defendants reproduced or distributed DVD copies of the [films] that did not contain subtitles or dubbing in foreign languages, defendants' conduct was entirely within the scope of their rights ...

Plaintiff next argues that paragraph 1.2.1 [of defendants' license], which states that "[r]eproduction of the Films in the original language without the accompaniment of the picture by sound and/or subtitles in a foreign language is a violation of the present Agreement," should be interpreted to mean that production of DVDs that *could be watched* in Russian without subtitles or dubbing was a violation of the agreement. However, plaintiff reads too much into this provision, which explicitly states that its purpose was to ensure that the DVDs produced by [the defendants] would be "multilingual versions." In this context, it is clear that paragraph 1.2.1 simply forbade [the defendants] from producing DVD copies ... that did not include foreign subtitles or dubbing accompanying the films. Because all of the DVDs produced by defendants were multilingual versions that included subtitles in numerous foreign languages, defendants did not violate this

provision of the agreement by producing DVDs that did not contain a disabling feature. * * *

Decision. Judgment affirmed for the defendant. A licensee of a limited exclusive license may seek relief from infringement only for the exclusive rights received from the copyright holder. Here, the plaintiff received only the rights to reproduce or distribute Russian-language-only DVDs. Defendants, pursuant to their license, distributed only multilingual (dubbed) versions and versions with subtitles.

Case Questions

1. What are the "limited exclusive" rights granted to the licensees in this case?
2. What is the difference between the rights granted to the plaintiff and those granted to the defendants?
3. Do you agree or disagree with the court's interpretation of the license agreements?
4. What does this case tell you about negotiating and drafting a licensing agreement?

Case Comment

The district court's opinion was affirmed in *Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.*, 482 Fed. Appx. 602 (2d Cir. 2012).

International Organizations and IP. The most important international IP organization is the **World Intellectual Property Organization**, or **WIPO**, a specialized agency of the United Nations, headquartered at Geneva. It was established in 1967 and currently has 185 member countries. WIPO fosters government cooperation in developing IP policies and coordinates registrations in some IP areas. It administers an arbitration center to resolve IP disputes between private parties, such as individual inventors, corporations, and universities (including patent, trademark, industrial design, and domain name dispute resolution). Another organization, the **World Trade Organization** (WTO), helps member countries assure a more uniform application and enforcement of their national IP laws. Its Dispute Settlement Body is a forum for resolving IP disputes between governments.

Infringement, Piracy, or Counterfeiting. The term **infringement** refers to the violation of the IP rights of another, and often occurs in the unauthorized use, distribution, or appropriation of those rights. IP infringement is often referred to as piracy or counterfeiting.

Intellectual property rights are the reward for innovation. Without laws to protect IP, and without the ability to enforce those laws, innovation in the arts, sciences, and industry would be destroyed. Thus enforcement of IP rights is a worldwide effort. However, many countries find it difficult to prevent IP piracy. Some developing countries have even encouraged it because of the perceived financial gains to their economies. For example, a few developing countries have not protected pharmaceutical and chemical patents, believing that some products are so indispensable to the public that low-cost generic versions should be encouraged regardless of the IP rights of the inventor. Ecommerce and mobile technologies have magnified the problem, not just in the sale of goods, but in many areas, such as the retransmission of performances, sports events, and films. Reports of the Office of the U.S. Trade Representative highlight the lack of enforcement of IP laws in China, India, Indonesia, Russia, Ukraine, and Venezuela, and many others.

Transfer of Technology. The sharing of scientific information, technology, and manufacturing know-how

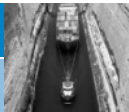
between firms, universities, or other institutions is known as the **transfer of technology**. It is important to building business alliances and is often accomplished through complex licensing agreements that include patent and other forms of intellectual property.

International Franchising. Franchising is a business arrangement that uses an agreement to license, control, and protect the use of the franchisor's patents, trademarks, copyrights, or business know-how, combined with a proven plan of business operation in return for royalties, fees, or commissions. The most common form of franchising is known as a business operations franchise and is usually used in retailing. Under a typical franchising agreement, the franchisee is allowed to use a trade name or trademark in offering goods or services to the public in return for a royalty based on a percentage of sales or other fee structure. The franchisee usually obtains the franchisor's rules for operating and managing the enterprise, along with the brand and other trademarks to attract customers. Franchising in the United States accounts for a large proportion of total retail sales. When American markets became saturated for franchise opportunities several decades ago, U.S. firms began looking for growth overseas. As in the United States, foreign franchising has been successful in fast-food retailing, hotels, car rental, automobile maintenance, educational courses, convenience stores, printing services, and real estate services, to name a few. U.S. firms have excelled in franchising overseas, making up the majority of new franchise operations worldwide. The prospects for future growth in foreign markets

are enormous, especially in China and the developing countries of Asia, the Middle East, and Latin America.

Some Legal Aspects of Franchising. Franchising is a good vehicle for entering a foreign market because the local franchisee provides capital investment, entrepreneurial commitment, and on-site management to deal with local issues, such as labor and employment. However, franchisors face many legal requirements. Franchising in the United States is regulated primarily by the Federal Trade Commission at the federal level, which requires the filing of extensive disclosure statements to protect prospective investors. Other countries have also enacted franchise disclosure laws. Some developing countries have restrictions on the amount of money the franchisor can remove from the country and others might have restrictions on importing supplies (ketchup, paper products, etc.) for the operation of the business. While these restrictions protect local suppliers, more progressive developing countries are now abandoning them because they recognize that foreign franchises bring high-quality consumer products and managerial talent to their countries. Having eliminated many of its restrictions on franchising in recent years, franchises in China today are governed by a 2007 law, and are subject to approval by the China Ministry of Commerce.

The following case, *Dayan v. McDonald's*, illustrates the difficulty in supervising the operations of a franchisee in a foreign country. Consider how any U.S. franchiser will allow its franchisees to adapt to the cultural environment in a foreign country while still providing the same consistent quality and service that is expected whenever anyone patronizes one of its establishments anywhere in the world.



Dayan v. McDonald's Corp.

125 Ill. App.3d 972, 466 N.E.2d 958 (1984) Appellate Court of Illinois

BACKGROUND AND FACTS

Dayan received an exclusive franchise to operate McDonald's restaurants in Paris, France. The franchise agreement required that the franchise meet all quality, service, and cleanliness (QSC) standards set by McDonald's. The agreement stated that the rationale for maintaining QSC standards was that a "departure of restaurants anywhere in the world from these standards impedes the successful operation of restaurants

throughout the world, and injures the value of [McDonald's] patents, trademarks, trade name, and property." Dayan agreed not to vary from QSC standards without prior written approval. After several years of quality and cleanliness violations, McDonald's sought to terminate the franchise. Dayan brought this action to enjoin the termination. The lower court found that good cause existed for the termination and Dayan appealed.

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