***Global Marketing***

**Chapter 5 The Political, Legal, and Regulatory Environments**

1) When Barack Obama was sworn in as the president of the United States, he inherited a situation that had confounded his predecessors for half a century. America's complex relationship with Cuba illustrates the impact the political, legal, and regulatory environments can have on international trade and global marketing activities.

Answer: TRUE

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2) In Europe, the individual EU countries are giving up the right to set their own product standards, and are making other sacrifices in exchange for improved market access.

Answer: TRUE

Page Ref: 137-138

3) Political risk is the possibility of a change in a country's political environment or government policy that would positively affect a company's ability to operate effectively and profitably.

Answer: FALSE

Page Ref: 138-139

4) It is estimated that 90 percent of the foreign cigarettes sold in China are smuggled in.

Answer: TRUE

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5) When cars cross borders from France to Switzerland or from France to Great Britain, they contain several bottles of wine, due to high excise and VAT can also encourage legal cross-border shopping.

Answer: TRUE

Page Ref: 142

6) It has been estimated that tax minimization of foreign companies doing business in the United Sates cost the government $3 billion each year.

Answer: TRUE

Page Ref: 142

7) The various forms of asset seizure represent the ultimate threat that a government can direct toward a company.

Answer: TRUE

Page Ref: 143

8) If a foreign company is taken over by the host country government and some form of compensation is paid, "confiscation" has occurred.

Answer: FALSE

Page Ref: 143

9) If a foreign company is taken over by the host country government and some form of compensation is paid, "expropriation" has occurred.

Answer: TRUE

Page Ref: 143

10) If a foreign country decides to take over banking business from private banks to benefit public and pays adequate payment then it is referred to as nationalization.

Answer: TRUE

Page Ref: 143

11) Nationalization, expropriation, and confiscation are approved by international law as a legitimate exercise of government power as long as the act satisfies a "public purpose."

Answer: FALSE

Page Ref: 144

12) When a foreign country expropriates an American corporation, the U.S. court can get involved in arbitration.

Answer: FALSE

Page Ref: 144

13) A 'civil-law country' is one in which the legal system reflects the structural concepts and principles of the Roman Empire in the sixth century.

Answer: TRUE

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14) Louisiana is the only state that has not fully adopted the Uniform Commercial Code (UCC) since its laws are heavily influenced by the French civil code.

Answer: TRUE

Page Ref: 146

15) India, Pakistan, Malaysia, Korea, and Japan have common-law jurisdictions.

Answer: FALSE

Page Ref: 147

16) "*Sharia*" and "*haram*" are important concepts in civil-code laws, which are commonly practiced in Middle Eastern countries.

Answer: FALSE

Page Ref: 147-148

17) The requirement that all restaurants declare that the meat is "*halal*" is based on Islamic Laws.

Answer: TRUE

Page Ref: 147-148

18) If a foreign company only has a sign board in any state in the United States then that company is subject to the jurisdiction of U.S. courts.

Answer: TRUE

Page Ref: 148

19) A trademark gives the inventor of a product the exclusive legal right to make, use, and sell an invention for a specific period of time.

Answer: FALSE

Page Ref: 148-149

20) To establish ownership of a written, recorded, performed, or filmed creative work, it is necessary to apply for and be granted a patent.

Answer: FALSE

Page Ref: 148-153

21) Patents and trademarks that are registered in the United States are protected in all countries of the world.

Answer: FALSE

Page Ref: 148-153

22) A patent is a distinctive motto that a manufacturer affixes to a particular product or package to distinguish it from goods produced by other manufacturers.

Answer: FALSE

Page Ref: 148-153

23) A U.S. company wishing to obtain foreign patent rights must apply to the Paris Union within one year of filing in the United States or risk a permanent loss of patent rights abroad.

Answer: TRUE

Page Ref: 148-153

24) The Patent Cooperation Treaty (PCT) requires companies to file separate applications in all signatory countries.

Answer: FALSE

Page Ref: 148-153

25) A company wishing to register a trademark in the European Union can only do so on a country-by-country basis.

Answer: FALSE

Page Ref: 148-153

26) Japan has recently promised to speed up patent examinations, eliminate challenges to patent submissions, and allow patent applications to be filed in English.

Answer: TRUE

Page Ref: 148-153

27) Under current U.S. patent laws, patents are valid for 20 years after the application filing date.

Answer: TRUE

Page Ref: 148-153

28) A recent rash of antitrust actions brought in the United States against foreign companies has raised concerns that the United States is violating international law as well as the sovereignty of other nations.

Answer: TRUE

Page Ref: 155

29) Microsoft is subject to U.S. antitrust laws no matter what country it is doing business in.

Answer: TRUE

Page Ref: 154-155

30) Procter & Gamble instigated a review of Colgate-Palmolive's 1995 acquisition of Brazil's Kolynos oral care company under antitrust laws since Colgate will have 79 percent of the market.

Answer: TRUE

Page Ref: 155

31) KLM and Northwest airlines won an exemption from antitrust rules in the United States and now share computer codes and set prices jointly.

Answer: TRUE

Page Ref: 156

32) Formation of a cartel like OPEC, consisting of oil-producing companies, would most likely be illegal in the United States.

Answer: TRUE

Page Ref: 156

33) Trade secrets are confidential information or knowledge that has commercial value and is not in the public domain, and for which steps have been taken to keep it secret.

Answer: TRUE

Page Ref: 157-158

34) A company hoping to protect its trade secrets from being stolen by a foreign company can seek relief under the TRIPs agreement if both companies do business in GATT signatory countries.

Answer: TRUE

Page Ref: 157-158

35) Finland ranks highest in bribery as listed by the Corruption Perceptions Index (CPI) by Transparency International in 2006.

Answer: FALSE

Page Ref: 158

36) If an American businessperson pays a Russian customs agent a $20 cash "processing fee" to avoid delay in leaving Russia, the American has violated the FCPA.

Answer: FALSE

Page Ref: 158-159

37) Bribery payments are considered a deductible business expense in many European countries.

Answer: TRUE

Page Ref: 159-160

38) In emerging countries, journalists may themselves become targets if they criticize the rich or powerful.

Answer: TRUE

Page Ref: 160

39) The United Nations Conference on International Trade Law (UNCITRAL) has also been a significant force in the area of arbitration.

Answer: TRUE

Page Ref: 161-162

40) The European Court of Justice, based in Luxembourg, is the European Union's highest legal authority.

Answer: TRUE

Page Ref: 163-164

41) Any company doing business outside the home country should first carefully study the \_\_\_\_\_\_\_\_ in the target country.

A) political culture

B) nationalization

C) political risk

D) jurisdiction

E) sovereignty

Answer: A

Page Ref: 137

42) Part of the functions offered by OPIC include:

A) distribution of oil to different countries of the world.

B) providing various types of political risk insurance to U.S. companies.

C) providing subsidies to large corporations.

D) collecting tax revenues to help social services.

E) collecting import duties from foreign companies.

Answer: B

Page Ref: 140-141

43) What does value added taxes (VAT) encourage in countries such as China?

A) They make trademarks and copyrights more valuable.

B) They result in cross-border shopping and smuggling.

C) They make it harder to bribe officials.

D) They protect companies from antitrust scrutiny.

E) Global companies refrain from offering bribes.

Answer: B

Page Ref: 141-142

44) After Fidel Castro took power in Cuba in 1959, his government seized control of American property without paying compensation. Coca-Cola, DuPont, Texaco, and dozens of other American companies have filed claims against Cuba seeking financial settlements. Which of the following terms most specificallydescribes the action Castro took against these companies?

A) nationalization

B) confiscation

C) expropriation

D) internationalization

E) deportation

Answer: B

Page Ref: 143-144

45) Located in The Hague, the International Court of Justice (ICJ) is the judicial arm of the:

A) United States.

B) European Union.

C) United Nations.

D) Netherlands.

E) United Kingdom.

Answer: C

Page Ref: 145

46) What type of international disputes would be taken before the International Court of Justice?

A) disputes between two nations

B) disputes between two companies

C) disputes between a company and a nation

D) disputes between a citizen of one country and a company from a different country

E) disputes between profit and non-profit organizations

Answer: A

Page Ref: 145-146

47) Which of the following is not an institution for arbitrating trade disputes?

A) American Arbitration Association

B) UN Conference on International Trade Law

C) International Chamber of Commerce

D) European Court of Justice

E) International Court of Justice

Answer: E

Page Ref: 145-146

48) The Uniform Commercial Code (UCC) is fully adopted by all U.S. states except:

A) Virginia.

B) North Dakota.

C) Wisconsin.

D) Louisiana.

E) Montana.

Answer: D

Page Ref: 146

49) Which of the following is not a common-law country?

A) India

B) Pakistan

C) Malaysia

D) Korea

E) Singapore

Answer: D

Page Ref: 146

50) In West Africa, Burkina Faso, the Ivory Coast and Senegal are former French colonies, while Nigeria, Sierra Leone, and Ghana are former British colonies. Based on this information, which of the following would be correct?

A) Burkina Faso, the Ivory Coast and Senegal are civil-code countries, while Nigeria, Sierra Leone, and Ghana are common-law countries

B) Burkina Faso, the Ivory Coast and Senegal are common-law countries, while Nigeria, Sierra Leone, and Ghana are civil-code countries.

C) In West Africa, Ivory Coast and Senegal are the only common-law countries

D) All the West African nations mentioned above are likely to be civil-code countries.

E) All the West African nations mentioned above are likely to be common-law countries

Answer: A

Page Ref: 146-147

51) Islamic law is a comprehensive code based in part on:

A) Anglo-Saxon common law.

B) Roman law and the Napoleonic Code.

C) the Uniform Commercial Code.

D) the Koran.

E) the French civil Code.

Answer: D

Page Ref: 147

52) Any Western country doing business in Malaysia or the Middle East should have understanding of:

A) the French civil Code.

B) Anglo-Saxon common law.

C) Islamic law.

D) the Uniform Commercial Code.

E) Roman law and the Napoleonic Code.

Answer: C

Page Ref: 147

53) In a recent case, Revlon sued United Overseas Limited (UOL) in U.S. District Court for the Southern District of New York for breach of contract. UOL countered by asking the court to dismiss the claim since they are not operating in that area. Revlon cited the presence of a UOL sign above the entrance to the offices of a New York company in which UOL had a 50 percent ownership. The court dismissed UOL's claim. This is an issue related with:

A) jurisdiction.

B) antitrust.

C) dilution of equity.

D) bribery and corruption.

E) intellectual property.

Answer: A

Page Ref: 148

54) In 2005, representatives from several wine regions in the United States and the EU signed a Joint Declaration to Protect Wine Place & Origin. In addition, a Wine Accord signed by the United States and EU bans the:

A) use of alcohol in public places.

B) purchase of wine from country of origin.

C) misuse of 16 place names by marketers of wine products that do not originate in those places.

D) misuse of labels which does not include the origin of ingredients.

E) use of word "champagne" on wine made in the United States.

Answer: C

Page Ref: 149

55) Engineers at a company in a developing country study an American computer chip design, copy it, and produce identical chips that are then sold to local computer makers. What form of intellectual property has been wrongly appropriated?

A) patent

B) copyright

C) trademark

D) trade secrets

E) technological

Answer: A

Page Ref: 148-153

56) In many developing countries, manufacturers "knock off" clothing by Calvin Klein, Tommy Hilfiger, and other designers. The unauthorized goods bear the designer's name, but are often of inferior quality and sell for lower prices than the real thing. What form of intellectual property has been wrongly appropriated?

A) patent

B) copyright

C) trademark

D) trade secrets

E) trade dress

Answer: C

Page Ref: 148-153

57) In many parts of the world, sales of unauthorized videos of Hollywood movies cost the movie studios billions of dollars. When illegal copies of movies are made, what form of intellectual property has been wrongly appropriated?

A) patent

B) copyright

C) trademark

D) trade secrets

E) down loading

Answer: B

Page Ref: 148-153

58) Which of the following would constitute a copyright violation?

A) manufacturing and selling illegal videocassette copies of "Spiderman 2"

B) manufacturing and selling illegal copies of Levi "501" jeans

C) printing and selling illegally copies of Harry Potter books

D) A, B, and C are copyright violations

E) A and B are copyright violations

Answer: D

Page Ref: 148-153

59) Harley-Davidson has applied for federal protection of an unusual form of intellectual property; the "soul- pleasing rumble" produced by its motorcycles. What type of protection is Harley-Davidson seeking?

A) copyright

B) trademark

C) license

D) patent

E) trade dress

Answer: B

Page Ref: 148-153

60) Only Sony can use the "Walkman" name on its line of personal stereos. This is because:

A) Sony has a patent on the Walkman.

B) "Walkman" is a registered Sony trademark.

C) Sony has copyrighted the Walkman name.

D) Sony's trade secrets are protected by international law.

E) Sony has an international business license.

Answer: B

Page Ref: 148-153

61) Which of the following statements is correct?

A) The Paris Convention protects patents, the Berne Convention protects copyrights.

B) The Paris Convention protects copyrights, the Berne Convention protects patents.

C) The Berne Convention and Paris Convention are different names for the same thing.

D) Neither the Berne Convention nor the Paris Convention is concerned with intellectual property.

E) The International Union for the Protection of Literary and Artistic Property is different from the Berne Convention.

Answer: A

Page Ref: 151-152

62) Which of the following is true about protection of computer software?

A) Copyright laws protect both the actual code and the idea embodied in the code.

B) Patent laws protect both the actual code and the idea embodied in the code.

C) Patent laws protect the actual code, while copyright laws protect the idea.

D) Copyright laws protect the actual code, while patent laws protect the idea.

E) License protects both the actual code and the idea embodied in the code.

Answer: D

Page Ref: 148-153

63) A company can obtain foreign patent protection in 100 countries by registering with which organization?

A) Frankfurt Union

B) London Union

C) Paris Union

D) Tokyo Union

E) Brussels Union

Answer: C

Page Ref: 151-152

64) In order to fight piracy in China, Budweiser Beer's approach includes:

A) printing labels in Chinese.

B) changing color of beer cans.

C) beer cans in China have fluted edges.

D) printing labels both in Chinese and English.

E) making beer very cheap in price in China.

Answer: C

Page Ref: 152

65) Which of the following is true about revised U.S. patent laws?

A) Patents are valid for 17 years after the patent is granted.

B) Patents are valid for 17 years after the patent is filed.

C) Patents are valid for 20 years after the patent is granted.

D) Patents are valid for 20 years after the filing date of the application.

E) Patents are valid as long as the product is manufactured.

Answer: D

Page Ref: 152

66) Which company has received the most U.S. patents in 2005 according to the U.S. Patent and Trademark Office?

A) Hewlett-Packard

B) Intel

C) Siemens

D) Toshiba

E) IBM

Answer: E

Page Ref: 153

67) Which of the following actions were approved both by the Antitrust Review in the EU as well as in the United States?

A) acquisition of Honeywell (U.S.) by GE (U.S.)

B) joint venture between music businesses of EMI group (Great Britain) and Time Warner (U.S.)

C) merger of Sony Music (Japan) and BMG (Germany)

D) merger of WorldCom (U.S.) and MCI (U.S.)

E) British Airways (U.K.) and American Airlines (U.S.)

Answer: C

Page Ref: 156

68) Nippon Paper Industries was found guilty in a U.S. court of conspiring with other Japanese companies to raise fax paper prices in the United States. The Japanese government denounced the U.S. indictment of Nippon Paper as a violation of international law and nation's sovereignty. This shows the importance of \_\_\_\_\_\_\_\_ issues in global marketing:

A) expropriation

B) bribery

C) intellectual property

D) licensing

E) antitrust

Answer: E

Page Ref: 154-155

69) A proposed merger between two Swiss-based global pharmaceutical companies, Ciba-Geigy AG and Sandoz AG, would be subject to review by regulators from which of the following?

A) European Commission antitrust

B) UN Conference on International Trade Law

C) International Chamber of Commerce

D) International Court of Justice

E) none of the above

Answer: A

Page Ref: 154-155

70) Consten, a French company, had exclusive rights to import and distribute German Grundig's electronic products into France. One of the competitors started bringing "parallel imports" into France illegally, importing Grundig product bought from a foreign supplier. Which of the following does not represent an action taken by different legal bodies?

A) Consten's complaint was upheld by two French courts.

B) the Paris Court of Appeals suspending the judgment of the French courts

C) The Paris Court of Appeal's judgment was based on pending a ruling by the European Commission.

D) The European Commission ruled against Consten on the grounds that territorial protection proved to be damaging to the Common Market.

E) The European Commission ruled that German Grundig was in violation of the laws of the Common Market.

Answer: E

Page Ref: 156

71) Which of the following best describes the legal basis for protection of trade secrets, patents, and copyrights in the United States?

A) Trade secrets, patents, and copyrights are protected by federal statutes.

B) Trade secrets, patents, and copyrights are protected by state law.

C) Trade secrets are protected by state law, while patents and copyrights are protected by federal statutes.

D) Trade secrets are protected by federal statutes, while patents and copyrights are protected by state law.

E) Trade secrets, patents, and copyrights are not protected by any laws.

Answer: C

Page Ref: 157-158

72) The U.S. Justice Department objected to a recent patent license agreement between S.C. Johnson & Sons and Bayer AG. The antitrust unit at the Justice department objected to:

A) the duration of the license.

B) the amount of royalties Johnson agreed to pay.

C) Bayer's attempts to circumvent FDA policies.

D) the exclusive nature of the license agreement.

E) the hostile arrangement between Bayer and Johnson.

Answer: D

Page Ref: 157-158

73) As part of their alliance relationship, Northwest Airlines and KLM Royal Dutch set air fare prices jointly and coordinate flight schedules. Normally, such behavior would be considered harmful to competition, but the U.S. government has granted the two airlines special exemptions from laws concerning:

A) intellectual property.

B) antitrust.

C) jurisdiction.

D) licensing.

E) arbitration.

Answer: B

Page Ref: 156-157

74) OPEC can be considered as a 'cartel' which is a group of separate companies that collectively:

A) set prices, control output, or take other actions to maximize profits.

B) dictates how other countries should used their products.

C) produces more products in order to beat the competition.

D) conducts activities that are considered illegal in United States.

E) works on forming a union against management of other companies.

Answer: A

Page Ref: 156

75) A proposed alliance between British Airways and American Airlines would be subject to review by antitrust regulators from which of the following?

A) the European Union only

B) the United States only

C) both the European Union and the United States antitrust

D) Great Britain and the United States only

E) the European Court of Justice only

Answer: C

Page Ref: 156-157

76) Transparency International compiles an annual report ranking countries in terms of a Corruption Perceptions Index (CPI). According to 2008 ranking the lowest ranked country is:

A) Haiti.

B) Iraq.

C) Sudan.

D) Somalia.

E) Chad.

Answer: D

Page Ref: 170

77) The United States has more lawyers than any other country in the world and is arguably the most litigious nation on earth. This is a reflection of:

A) the lack of class action lawsuits.

B) the low-context nature of the American culture.

C) the lack of spirit of confrontational competitiveness.

D) the fact that lawyers cannot undertake cases on contingency fee basis.

E) the fact that conflicts arise more in the United States.

Answer: B

Page Ref: 160-161

78) Which of the following is true of the arbitration framework created by the New York Convention?

A) Signatory countries can require parties to an arbitration agreement to actually use arbitration

B) Signatory countries recognize and can enforce arbitration judgments.

C) There are limited grounds for appealing arbitration decisions.

D) The grounds that are recognized are different than the typical appeals that are permitted in a court of law.

E) all of the above

Answer: E

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79) A company stands a better chance of having an international arbitration award upheld if its home country government has signed:

A) the Paris Convention.

B) the Prague Convention.

C) the New York Convention.

D) the Vienna Convention.

E) the Geneva Convention.

Answer: C

Page Ref: 161-162

80) A Russian businessperson flying from Moscow to the U.S. with a layover in Frankfurt discovers, at the last minute, that she must have a visa to enter Germany. The reason: EU regulations. Accordingly, she reroutes her connection to another major airport in a non-EU country where no visa is required for her to enter the country. What city should she connect through?

A) Barcelona

B) Paris

C) Amsterdam

D) Zurich

E) London

Answer: D

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81) The ultimate threat a foreign government can pose toward a company is seizing assets. South Korea nationalized Kia, the nation's number three automaker, in the wake of the Asian currency crisis. How does this nationalization differ from expropriation and confiscation?

Answer: Nationalization is generally broader in scope than expropriation. It occurs when the government takes control of some or all of the enterprises in a particular industry. This is recognized by international law as a legitimate exercise of government power, as long as the act satisfies a "public purpose" and is accompanied by "adequate payment." On the other hand, expropriation refers to governmental action to dispossess a foreign company or investor. Compensation is generally provided, although not often in a prompt, effective, and adequate manner. Also, it may not match with international standards. If no compensation is provided then it is referred to as confiscation. Confiscation is generally prohibited under international law and is considered as unfair practice.

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82) In Malaysia and Saudi Arabia it is common to see that restaurants have signs declaring that all food is "*Halal*." Also, it is seen that courts handle marriages, divorces, distribution of family assets, and business practices by the "*Sharia*." What are these tenets and how does it have an impact on international business.

Answer: The legal system in many Middle Eastern and some Far Eastern countries is identified with the laws of Islam. These laws are associated with "the one and only one God, the Almighty." In Islamic law, the *sharia* refers to a comprehensive code governing Muslim conduct in all areas of life, including business. The code is primarily derived from two sources. The first and foremost source is the Koran or the Holy Book that is a record of the revelations made to the Prophet Mohammed by Allah (God). The second source is the Hadith which is an interpretation of Koran based on the sayings and practices of Prophet Muhammad. In particular, the Hadith spells out the products and practices that are *Haram* (forbidden) compared to *Halal* (allowed). Any non-Muslim doing business in Islamic countries should be aware of the Islamic laws which has wide implications for commercial activities including advertisement and promotion.

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AACSB: Multicultural and Diversity

83) What are the differences between a patent, trademark, and a copyright? What do you understand by counterfeiting?

Answer: A patent is a formal legal document that gives an inventor the exclusive right to make, use, and sell an invention for a specified period of time. Typically this invention should be a new, novel and/or nonobvious creation. On the other hand a trademark is defined as a distinctive mark, motto, device, or emblem that a manufacturer affixes to a particular product or package to distinguish it from goods produced by other manufacturers. A copyright establishes ownership of a written, recorded, performed, or filmed creative work.

Counterfeiting is the unauthorized copying and production of a product. An associative counterfeit, or imitation, uses a product name that differs slightly from a well-known brand but is close enough that consumers will associate it with the genuine product. The worst form of counterfeiting is known as piracy, which is the unauthorized publication or reproduction of copyrighted work. Counterfeiting and piracy are particularly important in industries such as motion pictures, recorded music, computer software, and textbook publishing. The United States in particular has a vested interest in intellectual property protection worldwide since it is home to many companies which have patents, trademarks, and copyrighted materials.

Page Ref: 148-153

84) When a company invents a product or service, it should have a right to defend its creativity with intellectual patents. However, there are some countries like Italy and China where piracy and copyright violations are common. How can a corporation prevent this by having some built-in measures in products and services?

Answer: Individuals or companies sometimes find ways to exploit loopholes or other unique opportunities in patent, trademark, and copyrights. A company should take measures to protect itself from such piracy situations. For many of the technological products, certain codes can be built into the software program such that it is self-destructive or becomes inaccessible for those who would like to use piracy. One of the sure safe methods is to make the product or service of such a quality that it becomes very difficult or expensive for anyone to copy. One such example can be seen in the formulas of Coke and Pepsi beverages. The product has special features and it is distributed so cheaply such that there is no money left for the counterfeiters. Similarly, packages and containers can be made in such a way that it will become expensive or otherwise technologically impossible to copy. For example, in China, Budweiser cans have fluted edges that are difficult to manufacture. Thus there can be some inherent qualities or manufactured processes which can make it difficult, if not impossible, to duplicate.

Page Ref: 148-153

85) Nippon Paper Industries was found guilty in a U.S. court of conspiring with other Japanese companies to raise fax paper prices in the United States under the Antitrust laws. What are the implications of such a law and how does it affect international business?

Answer: Antitrust laws in the United States and other countries are designed to combat restrictive business practices and to encourage competition. Agencies such as the U.S. Federal Trade Commission, Japan's Fair Trade Commission, and the European Commission enforce antitrust laws. According to some legal experts, the pressures of global competition have resulted in an increased incidence of price-fixing and collusion among companies. The Sherman Act of 1890 prohibits certain restrictive business practices, including fixing prices, limiting production, allocating markets, or any other scheme designed to limit or avoid competition. The law applies to the activities of U.S. companies outside U.S. boundaries, as well as to foreign companies conducting business in the United States. Nippon Paper Industries was found guilty in a U.S. court of conspiring with other Japanese companies to raise fax paper prices in the United States. The Japanese government denounced the U.S. indictment as a violation of international law and Japan's sovereignty. A U.S. federal judge struck down the indictment, ruling that the Sherman Act does not apply to foreign conduct. However, a federal appeals court reversed the decision.

Page Ref: 154-155

86) For years Coca-Cola corporation did not enter India since the government wanted some kind of disclosure of their trade secrets. Why are the trade secrets so important and what happens if a licensee or a government gains access to the licensor's trade secret?

Answer: Trade secrets, like the formula of Coke, are confidential information or knowledge that has commercial value and is not in the public or government domain. Careful steps have to be taken by those who have access to these trade secrets. Trade secrets include manufacturing processes, formulas, designs, and customer lists. To prevent disclosure, the licensing of unpatented trade secrets should be linked to a confidentiality contract with everyone who has access to the protected information. In the United States, trade secrets are protected by state law rather than federal statute. The U.S. law provides trade secret liability against third parties that obtain confidential information through an intermediary. Remedies include damages and other forms of relief.

Page Ref: 157-158

87) In the United States, the Foreign Corrupt Practices Act (FCPA) is a legacy of the Watergate scandal during Richard Nixon's presidency. Administered by the Department of Justice and the Securities and Exchange Commission, the act is concerned with disclosure and prohibition. What is this law concerned with and why is it a subject of criticism by many?

Answer: The act concerns disclosure and prohibition. The disclosure part of the act required publicly held companies to institute internal accounting controls that would record all transactions. The prohibition part makes it a crime for U.S. corporations to bribe an official of a foreign government or political party to obtain or retain business. Payments to third parties were also prohibited when they can be channeled to some related official as a bribe. Some critics of the FCPA feel strongly that this act is a sort of regrettable display of moral imperialism. The problem is the extra-territorial extension and sovereignty of U.S. law. To impose U.S. laws, standards, values, and mores on American companies and citizens worldwide is considered wrong. A second criticism of the FCPA is that it puts U.S. companies in a difficult position *vis-à-vis* foreign competitors. It is perceived that the act adversely affects U.S. businesses overseas. Bribes offered by non-U.S. companies are considerable and can provide a competitive advantage to other companies.

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AACSB: Ethical Reasoning

88) What should a U.S. company do if competitors are willing to offer a bribe for business in a foreign country?

Answer: Managers have to realize the fact that bribery is a fact of life in world markets. It is not going to change overnight or based on how ethical the U.S. companies feel about their business. In fact, bribery payments are considered a deductible business expense in many European countries. Two alternative courses of action are possible. One is to ignore bribery and act as if it does not exist. This may be a very hard option. The other is to recognize the existence of bribery and evaluate its effect on the customer's purchase decision. In other words, treating it as just another element of the marketing mix. The overall value of a company's offer must be as good as, or better than, the competitor's overall offering, including bribe. If possible, a lower price, a better product, a better distribution system, or better advertisement/promotion can be undertaken to beat the competition. The best line of defense is to have a product or service that is superior to that of the competition, whether a bribe is included or not. Thus a bribe should not be a factor that will sway the purchase decision.

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AACSB: Ethical Reasoning

89) Some firms and lawyers inexperienced in the practice of international commercial arbitration consider arbitration clauses in a contract as "any other clause." This can be a gross misunderstanding of the clauses. Why are these clauses different and so significant?

Answer: The terms of every contract are vastly different and, therefore, no two arbitration clauses are the same. Also, the countries involved in the arbitration may be very different each time. For example, if an American firm and a Chinese firm are involved, the question of the place of arbitration and the language will become issues. Where will the arbitration take place? It cannot be Beijing or New York since it may not be agreeable to either parties. They may have to agree on a neutral venue such as Singapore or Geneva. Also, in what language the proceedings are conducted will be another problem to solve. Also, if the parties agree to a patent-licensing arrangement in the arbitration clause that the validity of the patent cannot be contested, the enforceability of such a provision can be a problem. Which country's laws will be used as the standard for invalidity will be another question? Courts in either country may not accept an arbitrator's decision in patent disputes, further complicating the situation. Therefore, care should be taken when drafting arbitration clauses.

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90) In most of the European Union countries, the influence of regulatory agencies is pervasive. What steps will be necessary of a corporation to protect business interest and advance new programs?

Answer: Executives of companies who would like to go global should realize that the influence of regulatory agencies worldwide is getting very pervasive. One way to understand the operation and legal aspects related to business environment is to have permanent representation of the company in the country. International companies such as McDonald's, Nike, and Toyota have several people representing their interests to the European Commission. Companies hire several lobbyists to represent their interests as well as to influence the direction of the regulatory process. U.S. law firms and consulting firms also have sharply increased in number and can be seen having offices in Brussels. This way they can gain insight into EU politics and have access to its policy makers. It may also be possible to hire local people as official representatives of the companies. It is estimated that currently there are 15,000 lobbyists in Brussels representing about 1,400 companies and nonprofit organizations from around the world.

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