Indiana Journal of Global Legal Studies

Volume 1 | Issue 1 Article 5

Fall 1993

Globalization of Markets and Its Impact on Domestic Institutions

S. Tamer Cavusgil
Michigan State University

Globalization of Markets and Its Impact on Domestic Institutions

S. TAMER CAVUSGIL*

Globalization of markets is one of the most fascinating developments of this century. Its impact on economic transactions, processes, institutions, and players is dramatic and wide ranging. It challenges established norms and behavior and requires different mindsets. Yet, it creates opportunities for the well prepared participants who can be proactive and visionary.[1]

Globalization of markets involves the growing interdependency among the economies of the world; multinational nature of sourcing, manufacturing, trading, and investment activities; increasing frequency of cross-border transactions and financing; and heightened intensity of competition among a larger number of players.[2] This phenomenon has been fueled by advances in communication and transportation technologies, the spread of economic growth and wealth around the world, the loosening of barriers to trade, and the formation of regional economic blocs.[3] Development of new technologies and the proliferation of new products also contributes to the globalization of markets. Simply consider the following industries which came into existence only in the last decade: medical imaging, biotechnology, composite materials, robotics, and process innovations. Gaining momentum since the end of World War II, the globalization of markets has led to the formation of irreversible economic linkages among countries. It has also shifted the focus away from the nation-state, and more toward industry and the individual enterprise.

---

* Professor of Marketing and International Business and Executive Director, International Business Centers, Michigan State University. For Correspondence, S. Tamer Cavusgil, International Business Centers, 6 Kellogg Center, Michigan State University, East Lansing, MI 48824-1022, Phone:(517)353-4336, FAX:(517)336-1009.

1. *See, e.g.*, Theodore Levitt, *The Globalization of Markets*, Harv. Bus. Rev., May-June 1983, at 92; KENICHI OHMAE, THE BORDERLESS WORLD: POWER AND STRATEGY IN THE INTERLINKED ECONOMY (1990); COMPETITION IN GLOBAL INDUSTRIES (MICHAEL E. PORTER ED., 1986); LESTER THUROW, HEAD TO HEAD: THE COMING ECONOMIC BATTLE AMONG JAPAN, EUROPE, AND AMERICA (1992).

2. Thomas Hout et al., *How Global Companies Win Out*, Harv. Bus. Rev., Sept.-Oct. 1982, at 98; COMPETITION IN GLOBAL INDUSTRIES, *supra* note 1, at 18.

3. Arnoldo C. Hax, *Building the Firm of the Future*, SLOAN MANAGEMENT REVIEW, Spring 1989, at 75; Levitt, *supra* note 1, at 93.

Globalization of markets is best reflected in the "internationalization" of business transactions. This means that one or more aspects of economic activity carries an international character. One of the parties to the transaction may be a foreign partner; the transaction may involve a foreign currency; financing may involve foreign lenders; technology may originate from a foreign partner; and so on.

It is possible to identify at least five dimensions or facets of the globalization of markets. First is the fluid nature of manufacturing and sourcing activities. Today, business activity flows freely to places best equipped to perform it most economically and efficiently.[4] This is especially apparent in the case of the service industry. Many U.S. customers may not recognize that when they phone their software company, the consultant who responds at the other end of the line may be an employee in Dublin, Ireland. Similarly, a hotel reservationist may be responding from Jamaica and an insurance claim processor from the Philippines.

Second, competition for customers and markets has intensified significantly as a result of globalization.[5] Whereas only a handful of multinational companies dominated international trade a couple of decades ago, today companies from all parts of the world are participating in worldwide business. Companies from practically every nation are jockeying for positions in various industries.

Third, the types of international business transactions have proliferated. In the past, much of international business activity was in the form of export-import and foreign direct investment. Today, transactions are varied and more complex: contract manufacturing, franchise operations, countertrade, turnkey construction, technology transfers, international strategic alliances, and more.

Fourth, technology spreads freely and rapidly between markets and players. Technological leadership does not provide a monopolistic advantage for very long. Companies must capitalize on their discoveries quickly, before others match them.

Fifth, borrowing-financing activity has become worldwide as well. Businesses finance their growth and expansion through international capital

---

4. *See* THUROW, *supra* note 1, at 27-66.

5. *See* COMPETITION IN GLOBAL INDUSTRIES, *supra* note 1, at 1-11; THUROW, *supra* note 1.

markets. As such, they are able to take advantage of varying interest rates and currency markets by tapping a wide variety of funding sources.

The implications of the increasingly global nature of market transactions are many. In a fundamental sense, it makes the distinction between domestic and international redundant and superficial. It threatens those players that confine themselves to a narrow set of opportunities and it rewards those that can envision and operate in a larger space.[6] Those enterprises that learn to operate in a more complex, uncertain environment are more likely to succeed.

As transactions gain international character, they have a drastic impact on firm performance and industry structure. On one hand, global linkages may shorten product life cycles, create intense price pressures, displace manufacturing, outdate technology or design, or simply cause sales and profitability declines. On the other hand, global exchange may lead to new growth opportunities, new sources of know-how and production inputs, new product ideas, or partnerships which cause synergy and new sources of competitive advantage. Entire industries, if caught unprepared, can be lost to competitors due to the realities of global competition. In the United States, we have all observed the decline of industries such as steel, textiles, shoes, tires, and electronics. Many other lesser-known industries have faced near extinction: musical instruments, motorcycles, and outboard engines, to name a few.[7]

Globalization raises many practical issues and concerns for the individual business enterprise. What sorts of guidelines and input should guide product design? How desirable are knowledge-sharing agreements? Joint development of technology and know-how? What are ideal features of international business partners? How should management monitor competitive activity? How can competitive advantages be created and sustained? What degree of attachment is optimal to alternative sourcing and production locations around the world? Management has to grapple with these and many other similar questions on an ongoing basis. In most

---

6. *See* Hax, *supra* note 3, at 75-77.

7. *See generally* THUROW, *supra* note 1, at 153-201 (arguing that the United States must increase investment in education, research and development, and capital investment if it ever hopes to regain these industries).

industries, this is not a matter of choice but of necessity. No one line of business or industry is totally immune from international competition. In truly global industries, competition is among a relatively few dominant companies around the world. Examples are earth-moving equipment, automobiles, pharmaceuticals, consumer electronics, tires, telecommunications, and medical equipment.

In addition to implying a different nature of economic transactions and a diverse set of players, globalization of markets causes the individual firm to understand and operate within a more complex political, legal-regulatory, and cultural framework. While the transactions are fundamentally the same, the context is quite different, and often, overwhelming for managers. To operate successfully in less familiar environments, managers must develop a sufficient understanding of the government sector, regulatory framework, and the cultural idiosyncracies of the markets where they wish to do business. Although there are strong forces toward standardization or "homogenization" of customer segments across different countries, the political, legal, and social environments exhibit significant variations. Not only will the manager need to develop knowledge of such country-to-country differences, but must also understand the interplay among such factors.[8]

The remainder of this essay is organized as follows. First, fundamental shifts in international business operations emerging from globalization are highlighted, and the implications of these trends for the legal profession are described. Next, the discussion turns to the impact of globalization on domestic institutions. Several major influences are offered. Third, a dual challenge for the legal community is identified: (a) strategic and integrative contributions of legal professionals to management practice; and (b) the need to prepare well-rounded, contemporary managers by the educational community. Finally, those legal issues in international business operations which require legal expertise are outlined.

---

8. CHRISTOPHER A. BARTLETT & SUMANTRA GHOSHAL, MANAGING ACROSS BORDERS: THE TRANSNATIONAL SOLUTION 8-10 (1989); EDWARD T. HALL & MILDRED R. HALL, UNDERSTANDING CULTURAL DIFFERENCES (1990); MICHAEL E. PORTER, COMPETITIVE STRATEGY, 275-98 (1980).

I. FUNDAMENTAL SHIFTS IN INTERNATIONAL BUSINESS

A. From Nation State to Individual Enterprise

As global economic linkages intensify, the focus of attention among researchers and public policy makers has shifted from trade relationships among nations to activities of the individual enterprise. This reflects a pragmatic desire to enhance firm performance in international markets more than abandoned interests in national trade and investment flows. It results from an intellectual curiosity to better understand and impact successful firm practices.[9]

Such a shift in orientation requires greater attention from the legal professionals of the structure, strategy, and operations of the individual firm. Globalization challenges the legal professional to contribute to the global competitiveness of the individual enterprise through a better understanding of the business strategy-performance relationship. It also calls for greater input on the part of legal professionals in formulating strategic directions for the enterprise.

B. From Nation-Based Advantages to Firm-Based Competencies and Assets

In today's global competition, critical sources of competitive advantage are often firm specific.[10] These include such factors as the quality of management and leadership, ability to innovate and commercialize new products, ability to pinpoint and respond to emerging opportunities, and ability to organize monetary and human resources.[11] While country-specific advantages such as factor endowments or trade infrastructure are still important, their impact appears to be relatively more uniform across

9. *See generally* PORTER, *supra* note 8 (discussing the effect of global competition on corporate strategy). For a detailed study of the interaction between corporate structures and business success, see generally STRATEGY, STRUCTURE, PERFORMANCE: THE STRATEGIC PLANNING IMPERATIVE (HANS B. THORELLI, ED. 1977) (debating the role of environment on corporate strategy and structure).

10. *See generally* Jay Barney, *Firm Resources and Sustained Competitive Advantage*, 17 J. MANAGEMENT 99, 99-103 (examining the link between firm resources and sustained competitive advantage).

11. PORTER, *supra* note 8, at 278.

different countries. Also, it has become more difficult for public policy makers to formulate industrial or trade policies which impact all industries similarly. The same policy measure may have a differential impact on companies from different industries. These new realities of competition imply that legal professionals must develop a comprehensive understanding of firm assets and competencies. These include "soft" factors such as information management, technology, and intellectual property. The legal profession will be under growing pressure to value, promote, and protect intangible assets such as customer franchise, know-how, creativity, and corporate culture.[12]

C. *From Anchored Operations to Flexible Operations*

A great advantage of multinational operations is the flexibility the firm gains in terms of sourcing and manufacturing. In the extreme case of the "stateless" organization, there is no "home market" to pledge allegiance.[13] The firm is free to market, produce, and source wherever it wishes, responding to low-cost, low-tax, and favorable infrastructure environments. Such flexibility allows it to better respond to opportunities and variations among national markets. This mode of international operations confounds the issue of territory and jurisdiction for international trade lawyers. It implies that they will need new definitions of legal jurisdiction. It also challenges them to design organizational and legal entities that are optimal under a broadened set of environmental variables.

D. *From Transactions to Relationships*

The focus of management attention is rapidly moving away from an emphasis on transactions to relationships among firms.[14] Management has

---

12. *See, e.g.*, JOHN P. KOTTER AND JAMES L. HESKETT, CORPORATE CULTURE AND PERFORMANCE (1992).

13. *See, e.g.*, KENICHI OHMAE, TRIAD POWER: THE COMING SHAPE OF GLOBAL COMPETITION (1985).

14. *See, e.g.*, Hakan Hakanssan & Jan Johanson, *Industrial Functions of Business Relationships*, 5 ADVANCES IN INTERNATIONAL MARKETING 13 (Jai Press, Ltd., 1993); Jan Johanson & Lars Hallen, *International Business Relationships and Industrial Networks*, *in* 3 ADVANCES IN INTERNATIONAL MARKETING xiii (Jai Press Ltd., 1989).

discovered that consummating transactions is a relatively simple task which can be mastered. However, successful transactions do not necessarily lead to lasting relationships among business partners. The interface between international business partners (e.g., buyer-seller, manufacturer-distributor, franchisor-franchisee, licensor-licensee) should be carefully nurtured and maintained. Relationships may take a long time to establish in international business. Once established, however, they can be very fruitful. Legal agreements and contracts are not sufficient in maintaining harmonious and fruitful relationships among business partners. If they would like to remain central to international business operations, legal professionals will need to be sensitive to relationship building. Loose arrangements among companies, such as international strategic alliances, will be another challenge. Often, these will be non-equity based forms of collaboration, and will not involve new legal entities. Even then, legal professionals will need to be involved in the monitoring of these partnerships to ensure smooth relationships. In the case of international strategic alliances, legal arrangements among the partners are likely to be project based. A sensitive issue that will arise is the ownership of the fruits of collaboration (i.e., patents, know-how, and other types of intellectual property).

E. From Competition to Cooperation

While free markets always implied competition among firms, today there are good reasons for companies to collaborate.[15] Motivations to cooperate include the high risks and high costs associated with international business ventures. By pooling resources, companies can create synergistic alliances for research and development, design, manufacturing, or marketing.[16] Joint efforts are sometimes urged by host governments. Newer forms of collaboration, in contrast to traditional joint ventures, do not involve equity investments by partners. Rather, partnerships are project based and for limited terms. Companies from often distant parts of the world form

---

15. *See, e.g.*, HANS B. THORELLI AND S. TAMER CAVUSGIL, INTERNATIONAL MARKETING STRATEGY (3rd ed., 1990); FAROK J. CONTRACTOR AND PETER LORANGE, COOPERATIVE STRATEGIES IN INTERNATIONAL BUSINESS 99-108 (1988).

16. Kathryn Rudie Harrigan, *Strategic Alliances: Their New Role in Global Competition*, 22 COLUM. J. WORLD BUS., at 67-69 (1987).

strategic alliances to accomplish specific goals, such as development of new technology, cross-licensing, or joint marketing. Successful international companies thrive on the basis of networks of collaborators. Relationships established with foreign agents/distributors, licensees/franchisees, support service providers, and the like, add strength to international operations. In the age of collaboration, the legal profession needs to shift its attention to the formation and maintenance of partnerships. It needs to assume a proactive role in defining the parameters of successful collaboration. How should these ventures be structured? How should disclosure of proprietary knowledge be protected? What should be done by the partners to prevent conflicts and divorce?

F. From Market Diversity to Market Homogenization

There are strong indicators that, at least in the Triad regions (North America, Western Europe, and Japan), a convergence of lifestyles, consumer preferences, and media habits is underway.[17] Segments of consumers exhibit remarkable similarities across national markets. Homogenization of markets appears to be especially strong in more conspicuous consumer products. It is facilitated by increasing standards of living, transnational media, and stepped up multinational company activity.

Market homogenization opens up new opportunities for firms in terms of product standardization, economies of scale in manufacturing, and simultaneous market entry. For the legal profession, it implies a more favorable environment for harmonization of product standards, advertising regulations, and legal processes. This is one area where legal professionals can be proactive, promoting greater harmonization of trade and contract laws. Indeed, diverse and complex legal environments are a major deterrent to international business. As trade and investment activities become more important in a country, government tends to proliferate the regulations. These relate to import laws, local content requirements, product approval procedures, labeling regulations, price controls, and a multitude of other issues. With integration of markets, the opportunity arises to simplify and

---

17. *See, e.g.*, OHMAE, *supra* note 1.

rationalize the regulatory environment in an attempt to reduce the cost of doing business across national boundaries.

G. From Multilateral to Bilateral Trade Relationships

A key macro-level trend of the past two decades has been the establishment of bilateral arrangements in trade. Countries have resorted to two party negotiations in order to resolve trade interests. This does not mean an abandonment of the multilateral General Agreement on Tariffs and Trade (GATT) process. Rather, it results from governments' desires to quickly resolve trade issues which they consider specific to a bilateral relationship. A further departure from the GATT norms is, of course, the formation of regional economic blocs. Economic unions such as the European Community[18] or the North American Free Trade Area[19] represent special arrangements which meet the interests of only the member nations. Bilateral relationships may, in fact, enhance the chances of resolution in international trade conflicts. They may also enable trade lawyers to be more effective in resolving conflicts.

II. IMPACT OF GLOBALIZATION ON DOMESTIC INSTITUTIONS

No industry has escaped the impact of globalization. Some have been hit hard, for example; automobiles, chemicals, electronics, steel, textiles, and tires. Others, such as food and beverages, paper, pharmaceuticals, and industrial machinery and equipment, have fared better. An ongoing restructuring was put in motion as a result of the globalization of markets. Downsizing, consolidation, and reconfiguration are common terms used to describe the current state of affairs in all industries.

At the firm level, managers have come to recognize that constant productivity improvement is the only durable solution to remaining economically viable. Those companies that operate in global industries find that they must achieve "world class" status. This implies that they must

18. The European Community includes France, Germany, United Kingdom, Italy, Belgium, Netherlands, Luxembourg, Denmark, Ireland, Spain, Portugal, and Greece.
19. The North American Free Trade Area includes Canada, the United States, and Mexico.

benchmark against the best of their competition, wherever they are located. Benchmarking refers to the process of identifying, learning, and implementing the best practices of world class organizations.[20] Practices in various areas of company activity are targeted: order filling, customer service, manufacturing processes, and human resource management. Managers study the best practices of leading companies, not necessarily those in the same line of business, and then try to implement them in their own organizations. There are now consortia of firms who agree to facilitate benchmarking studies at each other's facilities.

The new realities of the global marketplace have prompted business organizations to be constantly in search of enhanced productivity and new sources of competitive advantage. Such efforts to critically examine one's capabilities can be classified into several thrusts, discussed below.

A. Managing the Value Adding Activities

A useful way of critically examining a company's strengths and weaknesses is to focus on its value chain.[21] A company's value chain is an interdependent system or network of activities, connected by linkages. Figure 1 illustrates one way of depicting a company's value-adding activities. Major functions/processes which add value to company offerings include technology development, product design, manufacturing, marketing, distribution, and sales. Each incorporates several sub-functions. For example, the manufacturing area implies choices with respect to such things as capacity, location, procurement of inputs, and integration. Managers are required to look at each critical value-adding activity and ask two fundamental questions: (1) Is this a function where we have core competence (i.e., a sustainable advantage vis-à-vis competitors); and (2) if not, should we externalize the function (i.e., farm it out or contract it out) if an external organization can perform it more economically than we can? This process of soul-searching has led companies to alter their traditional

---

20. *See, e.g.*, Otis Port & Geoffrey Smith, *Beg, Borrow and Benchmark*, BUS. WK., Nov. 30, 1992, at 74; Jeremy Main, *How to Steal the Best Ideas Around*, FORTUNE, Oct. 19, 1992, at 102-06.

21. Michael E. Porter, *in Competition in Global Industries: A Conceptual Framework*, IN COMPETITION IN GLOBAL INDUSTRIES, *supra* note 1, at 15, 20-22.

activities in fundamental ways. Activities are rearranged and reconfigured in search of greater value for customers, but not always in a smooth and painless manner.

Figure 1: Firm's Value Chain

Technology →	Product Design →	Manufacturing →	Marketing/ → Sales	Logistics →	Customer → Service
Key Issues:					
· Source · Sophistication · Patents · Product/process choices	· Function · Physical characteristics · Aesthetics · Quality	· Integration · Technology · Raw materials · Capacity · Location · Procurement	· Prices · Advertising · Promotion · Sales Force · Package · Brand	· Channels · Integration · Inventory · Warehousing · Transport	· Warranty · Speed · Captive/ independent · Prices

B. Total Quality Management

Not unrelated to the desire to streamline and increase the efficiency of value-adding processes is the attempt to enhance product-service appeal. Total quality management (TQM) refers to a management philosophy which emphasizes customer service and employee teamwork to improve product service.[22] While some consider it a trendy management tool, it is a strong force driving companies toward ever higher standards of product-service quality. There are indications that law firms are also adopting TQM principles. Among other things, law firms are attempting to improve the accuracy, timing, and format of bills, and are urging lawyers to manage their time better.

C. Innovation and Time to Market

Another type of race in today's business organizations refers to the ongoing process of product and process innovations in order to create or sustain competitive advantages. Firms attempt new discoveries in order to respond to: (a) new technologies; (b) shifting buyer needs; (c) new industry segments; (d) changing input costs; and (e) new government regulations. In

---

22. *The Cracks in Quality*, ECONOMIST, April 18, 1992, at 67-68; *TQM Finds a Natural Home in Environmental Management*, 39 BUS. INT'L 397 (1991).

addition to the capacity to innovate, the speed with which these innovations can be converted to tangible products/services, and then commercialized, can be a great competitive advantage. Globalization of markets mandates efficiency not only in the process of creative discoveries, but also in the process of taking the product to market. "Early mover" advantages[23] are especially important in technology-intensive industries.

D. Networks and Alliances

A fundamental consequence of globalization of markets is the need to establish productive partnerships with other organizations at home and abroad. The costs, complexities, and risks associated with business ventures drive companies toward collaboration with partners. Partners may include overseas distributors or agents, contract manufacturers, trading companies, freight forwarders, and even competitors. Partnerships are established to seek synergy in all value-adding activities including manufacturing, research and development, and marketing.

III. KEY CHALLENGE FOR THE LEGAL PROFESSION

In the age of globalization, perhaps the most important contribution the legal profession can make is to assist managers in the achievement of sustainable competitive advantage. As those who guide a business enterprise search for sources of competitive advantage, their efforts can be facilitated greatly by legal professionals. It is best if legal and management professionals can work as a team in avoiding and resolving conflict. These professionals bring different perspectives to decision-making—suitable decisions can be achieved with joint decision-making. Each business enterprise will need to formulate creative mechanisms to enable a team approach to decision-making.

The role that can be fulfilled by legal professionals is both strategic and integrative. The *strategic contribution* will be guidance in shaping the future courses of action for the enterprise. How should the firm be

23. Roger A. Kerin et al., *First Mover Advantage: A Synthesis, Conceptual Framework, and Research Propositions*, J. MARKETING, Oct. 1992, at 33-52.

interacting with its external partners (e.g., suppliers, buyers, competitors, and regulators)? How should it position itself within its industry? How should it choose its target markets? What new sources of competitive advantage should it pursue? How should it configure its global procurement, manufacturing, and marketing operations, and coordinate them? These are areas where legal professionals could provide input to guide company action.

The *integrative contribution* arises because of the need to blend traditional managerial functions with legal perspectives and expertise. Today's managerial problems are multifaceted, requiring a multiplicity of expertise. The challenge then is to formulate solutions which result from a creative marriage of managerial and legal perspectives. In practical terms, it implies teamwork, interdisciplinary problem solving, and cross-cutting management style. In philosophical terms, it means that legal expertise should no longer be treated as a "specialty," to be tapped occasionally, and maybe even as a last resort. Rather, it should be integrated into the mainstream activities of the enterprise. This view of the business enterprise attempts to benefit from both managerial and legal considerations in strategic decisions; it abandons the current practice of isolating the legal professional in the organization.

Time will tell whether the new business organization will rise up to these challenges. If legal professionals can successfully assume the strategic and integrative roles in the business organization, they will be considered proactive, progressive players. Most importantly, they will be able to make a substantial positive contribution to the competitiveness of their enterprises.

IV. KEY CHALLENGE FOR EDUCATORS

Perhaps the most fundamental lesson from the globalization of markets is that the education and skills of the work force and managers will end up being the dominant competitive weapon. The new breed of managers will be well-rounded individuals who are willing to experiment and not be obsessed by the management process. They need to develop an appreciation for multiple perspectives and tap a diverse set of expertise in resolving business problems.

To create this new breed of managers, the higher education system needs to consider the benefits of integrated, interdisciplinary education. Business schools should no longer produce logistics or accounting specialists. Language departments should no longer train just linguists. Schools of international relations should no longer produce comparative government experts. Rather, we need graduates blessed with a broad-based foundation of knowledge and skills in a variety of disciplines.

In other words, the educational community should gear up to meet the challenge for the profession articulated above—the strategic and integrative contributions to management of business enterprises. In the short-term this may imply greater appreciation of legal perspectives for business students, and greater appreciation of management perspectives for commercial law students. More drastic reorganizations are needed for longer-term solutions, however. We may see innovative, exemplary programs which effectively blend management, legal, and other expertise.

V. LEGAL ISSUES IN INTERNATIONAL BUSINESS OPERATIONS

Participation in cross-border transactions poses some unique legal concerns for companies. The legal profession will need to pay continued attention to these management issues. These issues are outlined below.

A. Legal Agreements and Conflict Resolution in International Business Transactions

Firms continue to grapple with the issue of how they should formalize relationships with their international partners. How should sales, distributor-licensing contracts be structured? How detailed should they be? What are the mechanisms for satisfactory conflict resolution?

B. Intellectual Property Protection

This perennial problem is a concern for most technology-intensive firms. International partners continue to have their own interpretations of the rights and obligations associated with technology transfer. Practical mechanisms for ensuring protection are absent.

C. *Standards and Product Liability*

Legal systems for product liability exhibit great variations from country to country. However, as far as process standards are concerned, the ISO 9000[24] guidelines appear to move companies toward more uniform systems. Simplification and harmonization of legal processes will be a high priority for international trade lawyers. Harmonization is needed in the areas of technical, health and safety standards, inspection and approval procedures, labeling and packaging regulations, advertising regulations, and product liability regulations.

D. *Organizational Forms for International Operations*

Firms also require guidance in setting up foreign operations that are consistent with legal and tax objectives. Multinational operations necessitate production, sourcing, and marketing activities in multiple markets. Coordination of business activities in diverse environments becomes a real task. Legal professionals can be helpful in identifying locations and legal arrangements that would minimize tax and other obligations for the multinational company.

E. *Transfer Pricing*

Valuation of intra-corporate transfers to achieve tax and strategic objectives continues to be a problem for most multinational corporations.[25] The prices at which units of the same company sell to each other have a far-reaching effect on the company's success because they influence everything from foreign subsidiary performance to executive compensation to tax obligations. Transfer prices continue to be monitored by host governments. Accounting standards which are in conflict with local regulations will be subject to close scrutiny.

---

24. ISO refers to International Standards Organization's quality standards series.

25. *See, e.g.*, S. Tamer Cavusgil, *Pricing for Global Markets*, *in* MARKETING STRATEGIES FOR GLOBAL GROWTH AND COMPETITIVENESS 57, 66-70 (Bus. Int'l Corp, 1990).

F. Gray Market Channels

Distribution of products by unauthorized channels is an ongoing concern for multinationals.[26] Wherever significant price variations exist between countries, sometimes exacerbated by exchange rate fluctuations, gray market brokers establish parallel distribution channels. A constant source of friction between authorized and unauthorized distributors, gray marketing activity has always been challenged in the courts—with no consistent ruling. While the 1988 Supreme Court decision in *K-mart Corp. v. Cartier, Inc., et al.* permitted continued gray market imports, companies will continue to challenge this issue in the future.

G. Dumping

Unfair pricing of imports has been a common dilemma for firms that compete with foreign suppliers in the domestic markets. As before, determination of what is a reasonable price is a substantial challenge. The legal profession will continue to be involved in dumping suits initiated by domestic manufacturers. Effectiveness of such appeals will depend upon their ability to generate convincing evidence of deliberate underpricing.

H. International Business Ethics

For many years the U.S. business community has argued that the Foreign Corrupt Practices Act (FCPA) creates a competitive disadvantage in international operations. While different administrations have pursued so called violations with varying vigor, the FCPA is still a concern for U.S. business executives. The principal problem arises from the vagueness of the original legislation. The FCPA failed to define bribery in precise terms and also overlooked the difference between voluntary payments and extortion. Since its enactment in 1977, many aspects of the FCPA require clarification.

---

26. *See e.g.*, S. Tamer Cavusgil & Ed Sikora, *How Multinationals Can Counter Gray Market Imports*, COLUM. J. WORLD BUS., Winter 1988, at 75-85; K-mart Corp. v. Cartier, Inc., et al., 486 U.S. 281 (1988).

I. Environmental Impact

Multinational companies will be under tremendous scrutiny for the potentially damaging impact to their host country environments. Creative strategies are needed in this area in order to avoid such problems. Host countries, environmental, and citizens groups have become extremely vocal in recent years about the harmful impact of business activity on the environment. In Germany, for example, strict regulations have been introduced for recycling. Unlike the United States, the burden of recycling packages, containers, and shipping materials has been placed on the manufacturer and the distributor—not the consumer.

VI. CONCLUSION

The legal profession must be prepared to advise companies on these and similar challenges. There is a larger role for legal professionals to play than just responding to the problems of business executives. What can be done by the legal profession to proactively prepare U.S. firms to be better global competitors? How can firms be helped in their quest for competitive advantage? What legal-regulatory reforms are necessary? How can legal perspectives be integrated into the decision-making processes of managers? These and similar questions beg immediate attention from international trade law professionals.