Legal Environment of Business - Notes

Chapter 24 - International Law

- International trade
  - In 1992, the United States exported $448 billion worth of goods and services.
  - In 1997, just five years later, that figure had swelled to over $930 billion.
  - That is a 110% increase in five years!
  - Now, the United States exports more than $800 billion worth of goods and an additional $330 billion worth of services.
- Actors in international law
  - The United Nations
    - The UN Charter sets out the organization's governance, which includes the Secretariat, General Assembly, and the Security Council.
    - Work is done through Specialized Agencies:
    - International Labor Organization (ILO), World Health Organization (WHO), and the UN Educational, Scientific, and Cultural Organization (UNESCO)
    - Agencies operating under the UN's umbrella:
    - The World Bank, the International Monetary Fund (IMF), the World Intellectual Property Organization (WIPO), and the UN Commission on International Trade Law (UNCITRAL)
  - The International Court of Justice
    - Only has jurisdiction over states that have agreed to be bound by its decisions
    - No enforcement power
  - International Chamber of Commerce
    - Purpose is to facilitate international business
    - Does not make law; instead it proposes rules whose adoption is voluntary
  - The European Union
    - One of world's most powerful associations, with a population of nearly half a billion people
  - Sovereign Nations
- The world's legal systems
  - Common Law
    - Use of an adversarial process of dispute resolution presided over by an impartial judge
    - Stare decisis

            - Use of a jury to determine fact
    - Civil Law
        - Law found primarily in statute books or codes
    - Islamic Law (shari'a)
        - Based on the Koran and the teachings and actions of the Prophet Muhammed
- Multinational Enterprises (MNE)
    - A multinational enterprise is a corporation that does business in several countries simultaneously
    - Each of the top ten MNEs earns greater annual revenue than the gross national product (GNP) of 2/3 of the world's nations! Over 200 MNEs have annual sales exceeding one billion dollars.
    - Many MNEs have more available cash than the majority of nations.
    - The power represented in this cash means that international regulations are vital.
- Sources of law
    - Treaties
    - Custom and general principles of law
    - Application of US law abroad
        - Extraterritoriality
- General Agreement on Trade and Tariffs (GATT)
    - History of GATT
        - GATT is an international treaty which dates back to the 1940's, with its most recent version signed by 126 nations in 1994.
        - In the 1940's, tariffs on industrial goods averaged about 40% ; this figure is now about 4%.
        - The latest round of cuts should drop tariffs to about 3.7% and create more categories of duty-free goods.
        - Even with the perceived benefits, opponents claim that the US will not be able to compete with countries that have under-paid workers.
    - World Trade Organization
        - The WTO is an international 'court' created by GATT to stimulate international commerce and to hear complaints about violations.
        - A panel of judges will review WTO decisions, and recommend withdrawal from the WTO if excess unfounded decisions are made against the US.
    - Issues raised by and addressed by GATT
        - GATT opponents fear environmental problems due to uncontrolled growth in developing nations.

        - Child labor is not adequately limited by GATT.
        - GATT increases protection for intellectual property.
- Trade Regulation -- Export controls
    - Export Administration Act of 1985
        - This act balances the need for free trade with important requirements of national security.
        - Allows the federal government to restrict exports if they endanger national security, harm foreign policy goals or drain scarce materials.
    - Controlled Commodities List
        - Made by the Secretary of Commerce; lists restricted items, which may not be exported without a license.
    - Arms Export Control Act
        - Permits the president to make a second list of controlled items, all related to military weaponry.
- Trade Regulation -- Import Controls
    - Tariffs
        - A duty (tax) imposed on goods entering a country.
        - Tariff is calculated based on classification and valuation of the item being imported.
    - Duties for Dumping and Subsidizing
        - Dumping is selling goods in a foreign market for less than normal price to drive out local competition.
        - The US Department of Commerce will impose a dumping duty when they suspect that the low prices are intended to harm American companies.
        - Subsidized goods are those for which the home government has given a benefit (such as low taxes).
        - Subsidized goods are charged a countervailing duty to equalize the prices.
- Trade Regulation -- Import controls/nontariff barriers
    - Quotas
        - A quota is a limit on the quantity of a particular good that may enter a nation.
        - Quotas may grow a certain percentage per year, or stay the same.
    - Import Ban
        - An import ban means that certain goods are flatly prohibited.
- Regional agreements
    - The European Union (EU) – 25 countries of Europe

    - Sets standards for tariffs, dumping, subsidies, antitrust, and transportation.
    - Most of the members have adopted a common currency, called the Euro.
  - North American Free Trade Agreement (NAFTA) -- Mexico, Canada, USA
    - Eliminates almost all trade barriers between the three member nations.
  - Association of South-East Asian Nations (ASEAN) -- 10 Asian countries
    - ASEAN seeks to eliminate tariffs, accelerate economic growth, and promote peace and stability in the region.
  - Mercosur -- 4 South American countries
    - Eliminated almost all trade barriers between the nations and established a broad social agenda focusing on education, labor, culture, the environment, justice and consumer protection.
- International Sales Agreement
  - Direct Sales -- domestic manufacturer to foreign store
    - Must decide which of three potentially conflicting laws will govern the transaction.
    - The United Nations Convention on Contracts for the International Sale of Goods (CISG) governs contracts between two parties from two signatory countries, unless they specifically opt out.
    - Must also decide where disputes will be settled and in what language and currency the transactions will take place.
    - Parties may require a letter of credit, which is a bank's guarantee of payment.
  - Indirect Sales -- through a distributor in the foreign country
    - Choice of law, legal forum, language and currency are the same as with direct sales.
    - Must also determine if your distributor will be an exclusive dealer, meaning they will not carry any competing lines of goods.
    - You may have to agree to let them be the exclusive distributorship, and not let any competing distributors sell your goods.
    - Be careful not to violate antitrust laws!
  - In the event of a conflict, international comity requires one court to respect the other legal system and decline to hear a suit if it would more logically be resolved in the other country.
  - Licensing -- giving a foreign company rights to produce your product
    - Be certain that the country you are dealing with will honor your patents or trademarks.
- Antitrust Law

- European Antitrust Law, from the Treaty of Rome, outlaws any agreement, contract, or discussion that distorts competition within EU countries.
- American Antitrust Law, from the Sherman Act, controls anticompetitive conduct that harms the American market.
- In short it usually applies

➔ Investing Abroad
  - Repatriation of Profits -- some countries allow profits made by foreign investors to be taken back home; others do not.
  - Expropriation -- in some cases, private businesses can be bought (for a fair price) by the government without consent.
  - Most nations respect the principle of sovereign immunity in which courts of one nation lack the jurisdiction (power) to hear suits against foreign governments.
    - In the United States, the Foreign Sovereign Immunities Act (FSIA) states that American courts cannot hear cases against a foreign country, even in expropriation cases.
    - There are three exceptions: when the country waives this protection, when the suit is over commercial activity, and when the foreign country has illegally confiscated property which has ended up in the United States.
    - Non-commercial tort and terrorism exceptions.
  - Act of State Doctrine
    - Requires an American court to abstain from any case in which a court order would interfere with the ability of the president or Congress to conduct foreign affairs.
    - Comity: Courts of justice in one country will, out of comity, enforce the laws of another country, when by such enforcement they will not violate their laws or inflict an injury on someone of their own citizens
  - Investment insurance is often a wise business expenditure when investing abroad.
    - In 1971, Congress established the Overseas Private Investment Corporation (OPIC) to insure U.S. investors against overseas losses due to political violence and expropriation.
  - Foreign Corrupt Practices Act -- makes it illegal for an American business person to give "anything of value" to a foreign official in order to influence an official decision.
    - In many countries, bribery is commonplace (but foreign bribery is still against the FCPA).