

INTRODUCTION TO INTERNATIONAL BUSINESS LAW

Containers
at port in
Manila, PI



- *ALL BUSINESS IS INTERNATIONAL*
 - Economic Interdependence
 - Globalization

Israeli
children with
American
Superhero
backpacks





Alexandria 2002 ↑
← Hong Kong at Night

Rio de Janeiro,
Brazil ⇒

Chinese goods on
way to US ↓



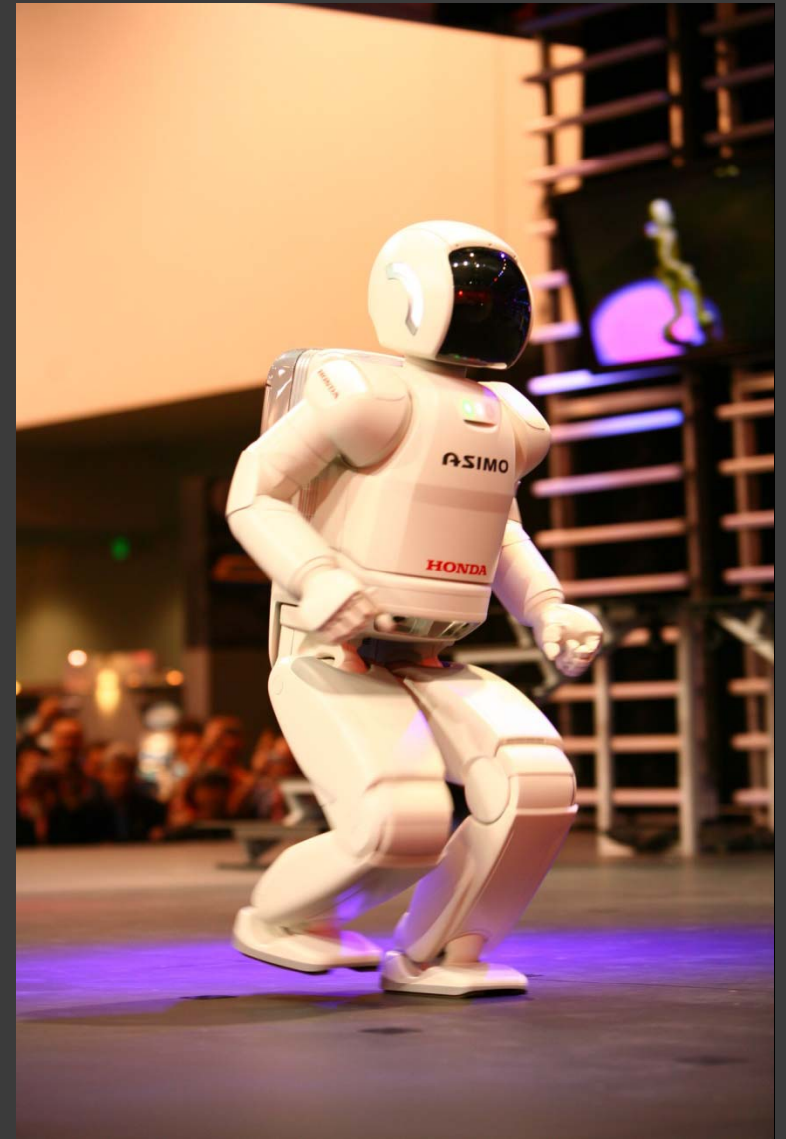
Embara Indian who performed
for US tourists on a cruise
ship→

Jeweler, Egypt ↓



Japanese robot
(ASIMO at 2007 Consumer
Electronics Show) →

Cloned Pig, Taiwan ↓



German Navy Ship
Lutgens saluting US
Navy ship after 9/11 →

Port of Wilmington ↓



Globalization

- Affects business formation, contracts and negotiations, logistics, etc.
- Affects how you do business abroad

Modern
Shanghai ⇒



International Law

- ◎ Public International Law
 - formed by international customs, treaties, and organizations
 - governs relations among nations
- ◎ Private International Law
 - national laws (laws of a particular nation) related to international issues that affect private citizens



Afghani Women in Front of UN Sign

Sources of International Law

- ◎ The sources of international law are:
 - International Customs
 - Treaties and International Agreements
 - Including regional treaties (NAFTA, EU, ASEAN, Mercosur)
 - International Organizations and Conferences
 - National Laws

Basic Principles and Doctrines of Int'l Law

- ◎ Important principles and doctrines applied in the interest of maintaining harmonious relations among nations include:
 - Act of State Doctrine
 - Doctrine of Sovereign Immunity
 - Doctrine of Comity



Act of State Doctrine

- ⦿ Judicial branch of one country will not examine validity of public acts committed by recognized foreign government within its own territory
- ⦿ Thus nations may:
 - Expropriate: occurs when host government interferes with foreign investor's fundamental ownership rights
 - Confiscate

H.J. Heinz forced to sell tomato processing plant under threat of Venezuelan expropriation

The image shows the iconic Heinz logo, which consists of the word "Heinz" in a white, cursive script font. The logo is set against a red, rounded rectangular background that has a slightly distressed or textured appearance. The entire logo is centered within a white rectangular area.

Doctrine of Sovereign Immunity

- ⦿ Exempts foreign nations from jurisdiction in U.S. courts
- ⦿ Foreign Sovereign Immunities Act expanded jurisdiction of U.S. courts for creditors of foreign governments
- ⦿ Note: sovereign immunity also prevents a citizen from suing a government!
 - Theoretically...see Peterson v Iran

Principle of Comity

- One nation defers and gives effect to laws and judicial decrees of another nation, as long as those laws and judicial decrees are consistent with the law and public policy of accommodating nation



Lisbon

International Law & Business

- ◎ International law applies to business to the extent it affects
 - business organization and development,
 - ways of doing business in foreign states, and
 - ways of doing business domestically with foreign trading partners

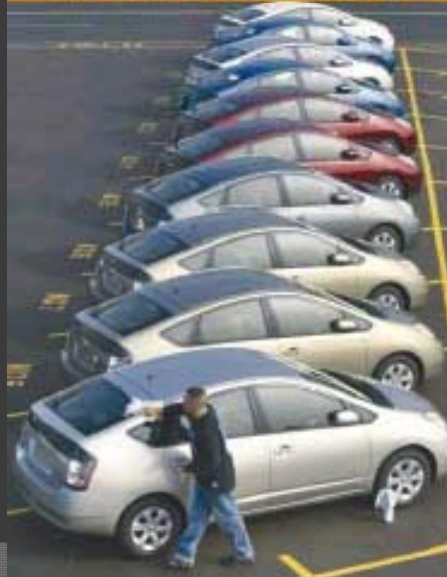


Textile plant in Sri Lanka;
contractor for major US lingerie
firms

Impact of Treaties on Business

- ◎ Treaties impact private individual rights because state's obligation becomes a citizen's obligation
 - E.g., Convention on Global Warming

SOME COMPANIES ARE ALREADY MAKING CHANGES ...



AMERICAN ELECTRIC POWER Is investing in renewable energy projects in Chile, exploring ways to burn coal more cleanly, and testing methods to sequester carbon.

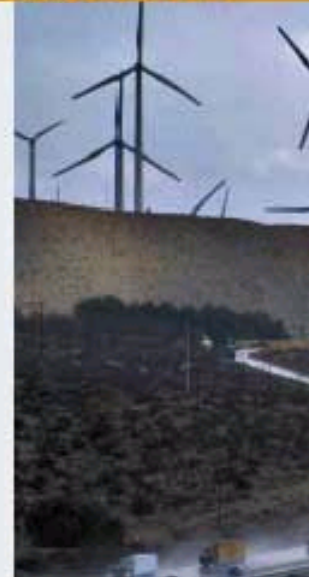
FLORIDA POWER & LIGHT Invested in 42 wind facilities and energy efficiency, eliminating the need to build 10 power plants.

GENERAL ELECTRIC Purchased Enron's wind business and a solar energy company; doing research on earth-friendly hydrogen and lower-emission jet engines and locomotives.

GENERAL MOTORS Developing hydrogen-powered cars that don't emit CO₂.

INTEL Researching chemicals, for use on chip production lines, that don't contribute to greenhouse effect; developing ultra energy-efficient chips.

TOYOTA The world leader in hybrid gas-electric cars that deliver superior fuel efficiency.



GATT

- ◎ General Agreement on Tariffs and Trade is primary treaty affecting U.S. business
 - Initiated after WWII
 - Goal: reduce & eliminate trade barriers
 - US signed in 1994, with 124 other nations
- ◎ GATT created [World Trade Organization](#) (WTO) to resolve trade disputes
 - Currently (8/07): 151 members

WTO

- WTO's decision record causes concern about impact of trade on environment & human rights
- WTO working on General Agreement on Trade in Services

Protesting Trade Issues –
Washington, DC



CISG

- ◎ U.N. Convention on the International Sale of Goods (1980)
- ◎ Automatically applies to international sales transactions of businesses within signatory nations unless they opt out
- ◎ Similar to the U.S. Uniform Commercial Code (UCC), but:
 - writing not required, mirror image acceptance, additional remedies for breach of contract

Forms of International Business

Trade

Foreign Direct Investment

Technology Transfer & Licensing

Walmart in
Shenzhen,
China



- **Importing:** Process of buying goods from foreign supplier and entering them into customs territory of different nation

Chinese workers making “Navajo” jewelry for US market



- Exporting: Shipment of goods or rendering of services to a foreign buyer located in a foreign country

German Monopoly board



Trade

Relatively uncomplicated process that can give comparative advantage

- Advantage exists if costs of production & price received for goods allow goods to be sold at higher price in foreign country than domestic market



Truck en route to market,
Central Africa

Trade Trends

US trade stats

US merchandise imports accounts for 1/5 of world trade

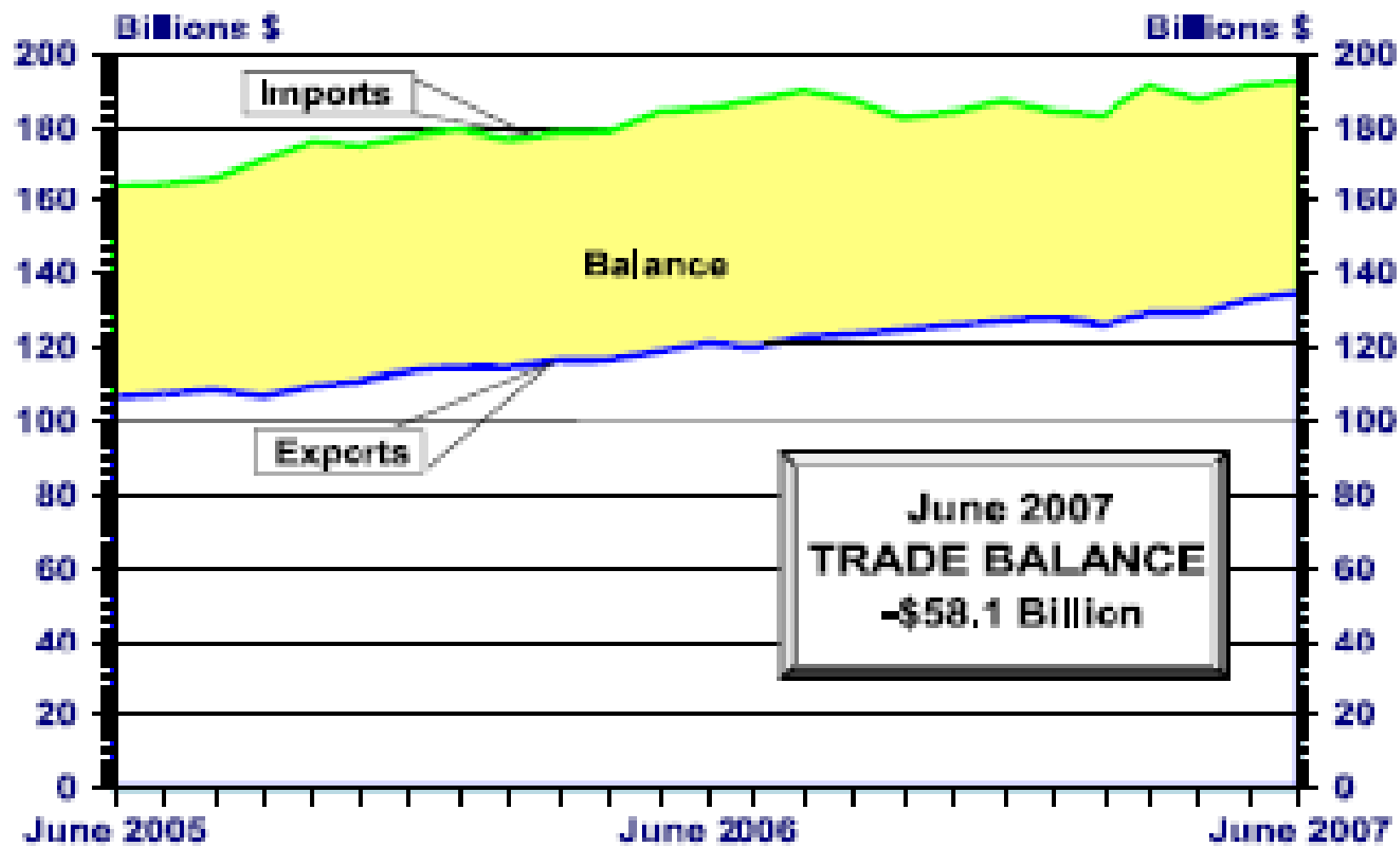
World's 2nd largest exporter (Germany is 1st, 7% above US)

Imports, primarily from Canada & China, exceed exports, primarily to Canada & Mexico

Global trade in services increasing

about 20% of global trade and 60% of global output

U.S. International Trade in Goods and Services



U.S. Department of Commerce, 8/14/2007

FOREIGN DIRECT INVESTMENT

Refers to ownership and active control of ongoing business concerns

investment in mfg, mining, farming, assembly operations, and other forms of production

Provides greatest involvement & risk

expropriation or obstacles to repatriation of funds, for example

Foreign Direct Investment

Forms of Multinational Enterprises (MNEs):

Wholly owned foreign subsidiary

Joint venture

Acquisition

Port in
Bremerhaven,
Germany



TECHNOLOGY TRANSFER

Definition: exchange of technology and manufacturing knowledge between firms in differing nations through licensing agreements or franchising

Sprite On Fire
advertisement



Technology Transfer

Technology transfer is an "easy" method of entry into international market

Technology transfer agreements incorporate transfer of intellectual property rights
Trademark, patent, or copyright

Most nations closely regulate technology transfers

Intellectual Property Transfer

- Agreement or contract by which holder of intellectual property grants certain rights in that property to a foreign entity under specified conditions for a specified time

e.g., right to manufacture product pursuant to patent, right to use trade mark or image, right to distribute artwork or book



Licensing

Licensing: applied in manufacturing context

Licensor grants licensee right to: (a) manufacture products in accordance with a patent, (b) produce or apply a trade name, trade image, or trademark to products, or (c) publish, print, or otherwise produce art or literary works under a copyright

Nike plant in
Viet Nam



Franchising

Franchising (business operations context):

Franchisor grants franchisee right to use a trade name, trade image, trademark, copyrights, and patents (in sum, business know-how) in exchange for royalty payments to franchisor

Bangkok
McDonald's



copyright 2001 ph1g@nat.edu

Intellectual Property Piracy

Intellectual Property contributed more than US \$1 *trillion* to global commerce in 1998 (*The Economist*)

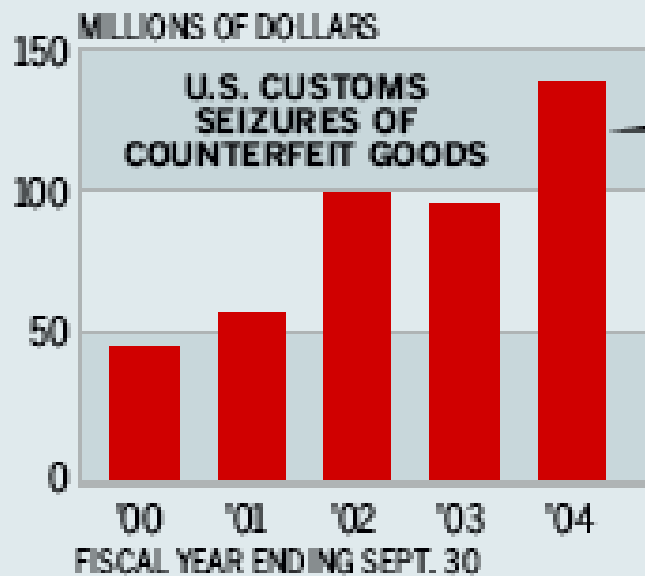
For every \$2 worth of software purchased legitimately, \$1 worth was obtained illegally
(Business Software Alliance, Piracy Study, 7/04)

World software piracy losses of \$29 billion in 2004
(CNN, 7/04)



Intellectual Property Piracy

GROWING MENACE



Data: Dept. of Homeland Security, BW estimate

LIKELY LESS THAN 5% OF TOTAL COUNTERFEITS ENTERING THE U.S. ANNUALLY



Counterfeits in China

Intellectual Property Piracy

Approximately 600,000 copies of movies are downloaded daily (Motion Picture Assoc., 8/04)

Counterfeits make up 10% of global market in medicines (World Health Organization 2004)

Pirates staged 445 attacks in 2003, killing at least 21 people (The Independent, 3/04, UK)



Indian merchant with black market circuit boards

LETTER OF CREDIT

- Primary financial device used in int'l business transactions to reduce risk
- Involves buyer's and seller's banks and supporting associated banking institutions

German
Bank



REGULATION OF ACTIVITIES

- ◎ Nations impose laws and controls to restrict or facilitate international business
 - Investing
 - Marketing and Sales
 - Production
 - Export and Import Controls: Quotas, Tariffs and Anti-Dumping Rules
- ◎ Influenced by International Organizations and Agreements: World Trade Org., European Union, regional agreements (e.g., NAFTA)

U.S. Trade Controls

- ◎ U.S. has substantial export controls, e.g.,
 - Export Administration Act of 1985
 - Permits federal govt to restrict exports if they endanger national security, harm foreign policy goals, or drain scarce materials
 - Controlled Commodities List limits what may be exported; license required and may be denied
 - Arms Export Control Act
 - President may create 2nd list of controlled goods related to military weaponry

U.S. Trade Controls

- ◎ U.S. also has substantial import controls
 - Tariffs or Duties
 - A tax imposed on goods when they enter a country
 - Customs officials “classify” the goods, then impose duty based on classification
 - Example: Marubeni America v. U.S. (Pathfinder)
- ◎ Websites for trade regs: <http://ia.ita.doc.gov/>
and <http://www.trade.gov/td/tic/>

Non-Tariff Barriers

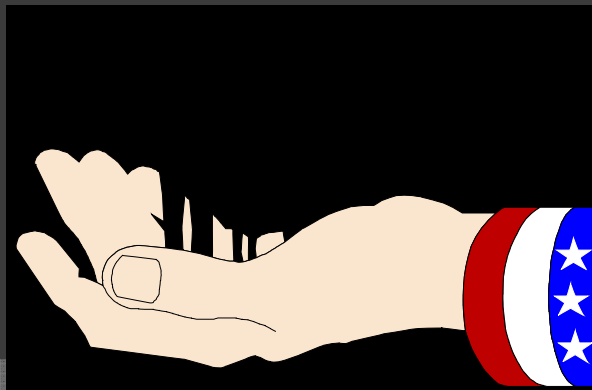
- ◎ Non-tariff trade barriers are non-monetary methods of limiting imports
 - Quotas: limiting the amount of a particular good
 - Import ban: preventing a particular good or particular nation's imports (e.g., Cuba)
 - Requirements for ingredients, manufacturing, etc.
 - E.g., Japan requires "kimono guards" on imported US autos
 - E.g., the "tuna-dolphin" dispute was centered on a US attempt to prevent importation of certain ingredients (tuna caught "on dolphin") in canned tuna

Applicability of U.S. Law Abroad

- ◎ U.S. antitrust laws and the Foreign Corrupt Practices Act apply to the activities of U.S. firms and individuals even when they are acting abroad
- ◎ Foreign persons and governments can sue under U.S. antitrust laws and the Alien Tort Claims Act in U.S. courts

Applicability of U.S. Law Abroad

- Generally, U.S. firms must abide by U.S. anti-discrimination law, even in foreign activities, unless doing so would require them to violate laws of the foreign country
- This is the “long arm” of US law



DISPUTE SETTLEMENT

- ◎ Options for resolution of international contract disputes are like civil disputes in the United States
 - Litigation or Alternate Dispute Resolution, including Arbitration or Mediation
- ◎ Primary problems in international business disputes relate to jurisdiction, discovery, enforceability, and collections

RISKY BUSINESS

- ⦿ Doing business abroad can be complicated and costly
 - Requires risk management
- ⦿ Before doing business overseas:
 - Perform a risk assessment (political risk, contractual and transaction risk, currency and exchange rate risks)
 - Develop appropriate strategy
 - Develop crisis management plan
 - Insure for risk!



Barcelona McDonald's
damaged in protest of
Iraq war

Managing Risk

- In strategic planning:
 - Consider problems of distance, communication, cultural differences, relevant laws
 - Retain professional assistance (government agencies, attorneys, brokers, bankers) when appropriate!
 - Prepare for ethical issues



Discussion

- ① How does international sale alter methods of doing business?
- ① Compare: US firm importing textiles from China vs. CA firm buying textiles from NC firm



Discussion

- ① How would selling goods in a nonmarket economy differ from selling in a market economy?
- ① What if a dispute arises?

Mali market



NEXT

- ① Legal Systems
- ① Private International Law

