



# UNIT -4

## GLOBAL RULES, REGULATIONS AND BUSIENSS ETHICS

### Learning Outcomes

**By the end of this unit the learner will be able to:**

- ✓ Describe the complexities of doing business in a global context
- ✓ Discuss trends in global business

## Unit 4

# Global Rules, Regulations and Business Ethics

### International Regulations

#### Introduction

International trade and global commerce go hand-in-hand with an armful of legal and regulatory elements, as well as public policy, health and safety, and environmental issues that you will have to be knowledgeable about. An executive or company leader who is operating uninformed about these elements can be disastrous to global business, as well as damaging to domestic enterprise. Although the system can be challenging to navigate (hence the availability and development of multiple specialty areas involved in import and exportation), the regulations are intended to facilitate the flow of legal goods.

Policies, legal intricacies, and regulatory issues may seem to be at odds frequently, but they are created to protect the interests of an individual and the viability of business. Governments engaged and encouraging their own business environments come together to work within what we term “common ground.”

Let’s explore some of the common types of regulations that you may encounter.

#### Public-Trade Law

This area of law comprises the agreements between countries, and is different than that which governs private companies or individuals. International agreements establish the structure for cross-border trade and define the elements necessary to protect their own domestic markets doing trade with foreign exporters.

#### Trade Agreements

On January 1, 1994, Canada, the United States, and Mexico signed the **North American Free Trade Agreement** (NAFTA). This agreement includes measures to protect basic products as well as cultural industries, social services, and the Auto Pact. While NAFTA is frequently regarded as an excellent example of effectiveness and success for international trade agreements, it has some problems too. Allegations against the agreement include lost employment, reduced trade values, exposure to sensitive industry sectors, loss of sovereign independence, and risks associated with increased integration.

## Certificates of Origin

Administration and enforcement of NAFTA (as well as other agreements) works with a document called the **certificate of origin**. This document certifies that the goods being transported are as described in the documentation. A valid certificate of origin can be provided by a manufacturer or an exporter, and falsifying those certificates is subject to severe penalties. Customs services in member countries have powers of both verification and audit, with remedies available to assist manufacturers, exporters, and importers.

## Extraterritoriality and Fair Trade

### Extraterritoriality

**Extraterritoriality** is a practice adopted by some countries and regions – most notably the United States and the European Union – where those entities apply their own legal standards to affiliates or subsidiaries of domestic companies who are operating in foreign jurisdictions.

Typically, countries don't actually try to apply their laws across borders, but the United States and the EU frequently consider the effects that their domestic companies can have on their own economy because of their behaviors abroad. This includes such things as a **price cartel** implemented through subsidiaries, agents, or branch offices, even while the offenders are actually under the jurisdiction of the other country.

Staff Training Solutions

### Price Cartels

A **price cartel** is defined as an entity created through a formal agreement between a group of producers (of products or services), to control the supply available in an effort to regulate or manipulate prices. A cartel can be formed by a collection of businesses or countries. In the United States, cartels are illegal; however, you may be interested to note that OPEC (the Organization of Petroleum Exporting Countries) is the world's largest cartel, and that it is protected by foreign trade laws of the United States.

## The Role of the World Trade Organization

Fair trade is a concern internationally, of course, so there are entities such as the World Trade Organization (WTO) to assist companies involved in global business, and to protect the interests of countries involved in the import and export of goods. As of 2014, there were 160 member countries in the WTO and 29 observer countries. The WTO is a complex, sophisticated entity, in part because of its broad ambitious mandate, and in part because of the essential services it coordinates.

## Health and Environmental Regulations

### Evolving Issues

Health and environmental issues are becoming higher priorities in global trade. Related regulations impact businesses at many stages, including at home. Issues about sustainability and sustainable development are raised frequently, and the use of environmental impact assessments, requirements for land reclamation, and fair trade are common in the global business arena.

Changes – or perhaps they could be referred to as improvements – to the weight applied to health and the environmental issues can be attributed in large part to lobbying and political action, the influence of countries who join governing associations, public policy, and domestic regulations, all of which place pressure and importance on these issues.

### The Role of ECA's

Earlier, we discussed how governments have established what are known as **export credit agencies** (ECA's for short). They play a significant role in financing trade and international projects, and they are actively involved in health and environmental regulations as well. These agencies will classify projects in terms of risk, as well as social and environmental impact, and they will decline support for high-risk projects.

It is expected that ECA's will continue to be scrutinized closely by non-governmental organizations (as well as the public) since there have been agencies that either directly or indirectly (though not necessarily deliberately but perhaps through inattention) contributed to environmental damage, destruction, danger to communities, and funding of corruption or other undesirable activities.

### Getting the Right Advice: The Legal Bits

#### The Complexity of Global Legal Issues

If you get into some kind of a dispute in a trade transaction or contract domestically, you probably already have a sense of the complexities and time that go into reaching a resolution. When looking at international trade, things are instantly much more complicated.

If things go wrong, not only are you considering litigation internationally, you also will be considering the different trade agreements that apply, the legal remedies available in different countries, and so on.

For example, consider:

- ✓ Do you and the other party belong to the World Trade Organization?
- ✓ Are other associations involved?
- ✓ Are there unfair trade practices, currency issues, or other matters involved that are under legislative jurisdiction?

### **Considering the Remedies**

Litigation can be a costly undertaking, even when you win your case. Preparation costs alone can be staggering (in the tens of thousands of dollars), and it can take several years to resolve a case. You may also have to consider travel, translation, and many other issues. If you are at the other end of a litigation, then your defense costs can be staggering. Often times the potential for spiraling costs will encourage the affected parties to consider a settlement instead (wherein the parties negotiate an agreement to settle the issues without going to court).

In addition, there are remedies available through arbitration and mediation.

### **Mediation**

When a dispute is mediated, a neutral third party helps the two parties discuss the issue and attempt to settle the problem between themselves. The mediator's job is to make sure that both sides can air their grievances and come to agreement on resolution. A mediator has no vested interest in the outcome of the mediation. Unlike a court action, the mediation is non-binding (the parties are not bound by the mediator's decision if the mediator makes one).

In some agreements, especially long-term contracts or contracts with public bodies, there may be clauses included that outline a formal, set mediation process that both parties must follow before they can consider arbitration or litigation.

### **Arbitration or Litigation**

If a dispute cannot be settled through negotiation or mediation, the next step is for the claiming party to decide whether to arbitrate or litigate (sue).

Arbitration is a formal form of dispute resolution. In an arbitration, the disputing parties nominate a neutral third party, and they agree to be bound by the arbitrator's decision, no matter how they may feel about that decision personally. Although the process is similar to mediation at first glance, the big difference is that the arbitrator's decision is final, and it binds the parties to whatever that decision is.

To decide whether to arbitrate or take a step further and litigate the issue in court, the contract has to be reviewed. The global trend is to resolve issues outside of court, so if the contract contains a valid arbitration clause that addresses the problem(s) identified, it is expected that suing in court will not be an available remedy. However, sometimes issues arise that are not anticipated.

Over time, arbitration is becoming more popular in international trade issues. This makes sense when we consider that one of the parties involved would be operating in unfamiliar legal territory in terms of being sued in a different jurisdiction, with unfamiliar laws, procedures, and potential outcomes.

However, if one party claims that the other is not really interested in resolution, then arbitration or mediation won't be effective, so litigation may be the preferred route. (This would be an anticipated outcome in cases of fraud, for example.)

### **Where to Litigate**

If the plaintiff (the claiming party) decides to sue, they must first decide where. In international disputes, a plaintiff can either select the jurisdiction where they base their business (at home) or abroad, in the defendant's jurisdiction. When there are complex global transactions taking place and numerous defendants, there are a correspondingly larger number of possible jurisdictions.

### **Government Agencies**

In addition to court systems, remedies can also be provided by certain government agencies. For example, if there are charges of unfair trade practices, the Canadian International Trade Tribunal and the Canadian Competition Bureau are often involved with Canadian companies. In the United States, the International Trade Commission is an independent government agency that can make decisions on allegations of issues, including the infringement of US patents and trademarks.

### **Testing the Waters**

#### **Activity One: What's Best?**

**Discuss the relationship between arbitration and mediation. What is preferred for the quickest, least expensive solution? What would the circumstances need to be like to move the issue to litigation?**

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**Activity Two: Way to Go!**

You have just been promoted to the position of supply chain manager with your company. Congratulations! On your first day in the new position, you are reviewing the records for imported components when you note a discrepancy. Some of your components are imported from China, and other components come from Japan. When you receive them, your local teams manufacture them into smartphones. You notice, however, that the invoice amounts do not match the final numbers of imported parts, and you suspect that there is theft or some other problem going on.

**Assuming that your country is a member of the WTO, how will those regulations, in addition to your domestic laws, govern the steps that you take to resolve this issue?**

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**Activity Three: The Technical Question**

**Technology and the wide adoption of digital and virtual business models have contributed to a new legal jurisdiction: the Internet. Is the Internet simply the blending of national borders? Or does the Internet present a separate legal identity that needs specific attention and treatment? Are there legal and regulatory challenges that arise that are beyond the context of national legal jurisdictions?**

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## Beyond the Rules – Ethical Concerns

### The Ethical Conundrum

#### Introduction

Moving into the global marketplace exposes our managers and company leaders to unfamiliar cultural rules and practices. Although trade agreements and legal systems set boundaries for lawful behavior, they don't help much when it comes to ethical dilemmas or issues involving social responsibility.

#### Definitions

- ✓ **Ethics:** A moral obligation to determine right from wrong
- ✓ **Ethical behavior:** Personal behavior that follows principles of good conduct and morality
- ✓ **Ethical dilemma:** A situation where moral ideals and imperatives are in conflict. Often described as having no right or wrong answer, but instead the solution is the **most ethically defensible decision.**

#### Ethical Dilemmas

One of the issues we must face is that of the **ethical dilemma**. Ethical dilemmas can arise in a myriad of circumstances, and often where someone is faced with two clear choices, but neither one of them resolves a situation in a satisfactory way. The decision maker must review the options in view of all the available information, including facts, values, principles, and moral issues.

There is no clear formula or model for resolving an ethical dilemma, although there are guidelines that can be applied. And, of course, an issue may be an ethical dilemma to some and not to others. (The reality of child labor is one place that this arises.)

Questions to ask as you work through an ethical dilemma include:

- ✓ Is the proposed issue a legal one?
- ✓ Is the decision fair and balanced to all stakeholders involved?
- ✓ Does the proposed solution justify actions that must be taken?
- ✓ How will the proposed decision make me feel?
- ✓ What is the most ethically defensible decision I can put forward?

- ✓ How will I feel about the proposed decision when I discuss it with my family, company, and community?

Can we really be faced with ethical dilemmas on a regular basis? The simple answer is yes! Here are some real examples.

- ✓ When your job requires that you accept shipments for a local port authority and a foreign customs agent asks for a “tip” before releasing a shipment, you are being invited to participate in bribery and corruption.
- ✓ You are importing for a clothing company, and you hear that workers at the overseas manufacturer report unsafe work conditions, pay that is below minimum wage, 20-hour work days, and abuse by their supervisors.
- ✓ You work with a company that publishes textbooks for university students in multiple languages. You visit a university in a developing country, and discover that students are carrying around photocopies of your best-selling textbooks. When you speak with students, you discover that if they have to pay the \$100 cost per textbook, they could not afford university, but you know that citizens must be educated in order for this economy to flourish.

In addition to the examples already listed, ethical dilemmas can arise when a company finds itself dealing with partners who are involved with organized crime. Because organized crime can infiltrate operations at any level, and large crime operations are present all over the world, this is not unexpected and can have massive ramifications on the business.

**Test your knowledge**

**How can you avoid ethical dilemmas?**

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**How might you take action when you find yourself in the middle of something unexpected?**

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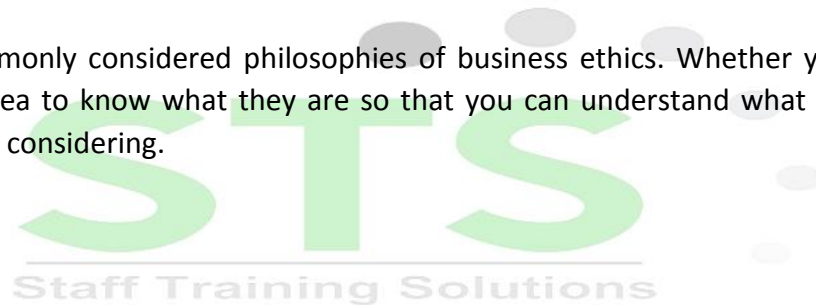
## Different Points of View

### Introduction

There are different philosophies of ethics. Your beliefs, identified company values, and the jurisdictions you work in will all factor into what applies to you.

There are four commonly considered philosophies of business ethics. Whether you follow one or the other, it's a good idea to know what they are so that you can understand what other companies and jurisdictions are also considering.

### The Friedman View



Described by its main supporter, Milton Friedman, this perspective says that while operating within the law, a company's only responsibility is to maximize profits. In this way, a company could move its pollution-generating operations to a country that does not have strict or expensive environmental protection laws. It could also move manufacturing to a country with lower minimum wage costs and where employees can be required to work more hours per week than they can domestically.

Although stakeholders and managers who appreciate the Friedman View would support these decisions, and argue that the company is meeting its duties by increasing profits, there are also plenty of people who disagree with this approach, since this position does not consider corporate social responsibility obligations.

### Cultural Relativist View

This perspective states that each company operating in another jurisdiction should adopt local ethics so that belief systems stay within a cultural context. Cultural relativism sees truth as relative, and positions arguments of what's right and wrong within a specific situation. This is the essence of the phrase, "When

in Rome, do as the Romans do.” So, for a company that operates where child labor is common practice, they too would hire child laborers. Many find this position of ethical reasoning intolerable.

### **Righteous Moralist View**

This position can also be difficult for people to accept because it states that a company should maintain its domestic ethics regardless of where it operates, mainly because proponents believe that their own views are superior to anyone else’s. In a negative light, local managers accustomed to bribing officials or suppliers in order to accomplish their goals may be required to stop, making doing business extremely difficult for them. In a positive light, a socially responsible company may start donating to local charities and building schools or water wells, even though these kind of projects are not commonly entertained by other companies operating in the same region.

### **Utilitarian View**

No matter what region it operates in, a company exercising a utilitarian view focuses on maximizing positive outcomes and minimizing negative outcomes. The utilitarian view implements the right behaviors to ensure the greatest good for the greatest number of people. So, where the righteous moralist manager is not allowed to bribe local officials, a utilitarian approach would support paying a bribe if more people will benefit than will be harmed by this action.

### **Conclusion**

It’s worth a mention here that when businesses develop guidelines and policies to support ethical behavior and social responsibility, issues will continue to arise on a regular basis, but managers will have methods to assist them in decision making.

### **Test your knowledge**

#### **Get the Product on Time**

You are the procurement manager for a clothing outlet that needs a new product line immediately so that you can compete against other retailers. The manufacturer you are working with is located in the midst of an emerging market that you’ve heard is part of an organized crime syndicate. You know that in order to get the clothing to your other markets, you will have to offer bribes to parties throughout the supply chain, and you do so.

This is an example of the \_\_\_\_\_ view.

### It's Oily

You own an oil and gas company and you want to drill in a protected area – a wildlife preserve that was set up about 25 years ago. You decide to proceed with the project because the economic benefits for this emerging market in Africa outweigh the costs of potential environmental risk. Which philosophy are you applying to make your decision?

This is an example of the \_\_\_\_\_ view.

### You've Invented It!

You've invented something brilliant and have several investors on board to help you. Although your intention was to build the products here at home, you've decided to move production to Mexico where labor is inexpensive. You know there will be bribes involved, but that also leads to faster production and allows the locals to earn a bit more money.

This is an example of the \_\_\_\_\_ view.

### Food Connects People

You've begun manufacturing in an emerging market where you know the current gross income is under \$1,000 per year per person. You will be paying employees the going rate, but you've also committed to build a community garden which will include irrigation and fencing (to keep out the local wildlife) as part of your desire to support the community you are moving into.

This is an example of the \_\_\_\_\_ view.

## Corporate Social Responsibility

### Defining Corporate Social Responsibility

When a company decides to do more than they are legally obligated or ethically bound to, and they actively balance their obligations with a desire to do more, we can say that they are practicing **Corporate Social Responsibility (CSR)**. This might mean that these companies take on giving to the poor, building schools/hospitals, or protecting the environment, as a few examples.

### The Three Levels

In a formal manner, CSR contains three elements or layers. First is **traditional philanthropy**, which may see a corporation donating money, or allowing employees to work on a social cause. Second is an element of **risk management**, where a company implements a code of conduct that it will apply in global operations, at the same time it agrees to operate with transparency. Thirdly is the element of **strategic CSR**, where a business incorporates social responsibility to create value and position them with a competitive advantage.

Organizations are cautioned against promoting themselves as having embraced CSR in their operations unless they have incorporated all three principles. Smart business leaders realize that the future acceptance of their companies will rely heavily on building relationships and their enterprise with a commitment to transparency and trust. They must also commit to supporting a healthy workforce and looking after the environment. These are not small undertakings.

### Test your knowledge

In the space below, list some local examples of corporate social responsibility.



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### Sustainability

#### Going Green

Protection and reclamation are no longer left to governments or non-government organizations. Concern and remediation are now expected, and many companies have taken on “green” (environmentally friendly) projects to reduce the effects they are having on the planet. These green initiatives have to be balanced with reducing or maintaining operating costs, as well as profit margins.

The idea of sustainability is that a business will meet its current needs and continue to develop without compromising the business itself, social needs, and natural environments for future generations. This is a serious shift in how some companies have traditionally done business, which could involve a casual attitude toward ethical behavior, human rights, and environmental protection.

Since the 1990's, corporations have adopted sustainability practices to demonstrate their commitment to the environment. Some of them have strict **sourcing requirements**, including companies like Loblaw in Canada, who commit to obtaining seafood only from sustainable sources.

**Carbon footprints** are another element of sustainability, and a hot topic as companies determine their impact on the environment. (A carbon footprint is the environmental impact of greenhouse gas, and is measured in units of carbon dioxide. A **primary footprint** includes direct carbon dioxide emissions from direct energy use and the burning of fossil fuels. These can be found in things like generating electricity, burning gasoline, and transportation. A **secondary footprint** includes carbon dioxide emissions from the entire lifecycle of a product, from manufacturing to breakdown.)

## Case Studies

Some great examples of sustainability can be seen in **hotel chains**, where they commit to conserving natural resources and reducing the environmental impact via practices like recycling, encouraging customers to use towels and bed linens more than once, composting, and locally sourced menus to reduce transportation impacts.

Clothing companies are also getting more active in sustainability. The clothing manufacturer **Timberland**, for example, labels its products with a score from 0 to 10, where a 0 means that producing and shipping a particular product required emissions of less than 2.5 kilograms of carbon dioxide. A score of 10 means the product contributed 100 kilograms of carbon dioxide. (In comparison, driving a car produces approximately 380 kilograms of carbon dioxide.)

In France, **Boisset Family Estates** has initiated a leading edge shift in wine packaging. They are France's third-largest winery, and have switched from using glass bottles to an aluminum coated paperboard (similar to containers that are used to package juice). After the cartons are filled, it takes just one truck to ship what used to take three trucks filled with glass wine bottles because they are rectangular and easy to pack. And, when the cartons are empty the results are even better: one truck can haul away the paperboard cartons, instead of what previously required 28 trucks to return the bottles to the winery, because of the shape and compactable nature of the modern packaging.

## Codes of Conduct

### The Evolution of the Code of Conduct

Many companies have codes of conduct, and indeed, they have been part of business for decades. Early codes of conduct often addressed rules for employees and company leaders to follow so that they could avoid conflicts of interest in their work. These have evolved over time to include terms that commit employees to behave ethically, follow the law, and manage safe workplace practices. Over time, codes of conduct have been enhanced to also include community and environmental issues.

### Developing a Code of Conduct

A code of conduct does not just have to include rules for behavior of employees within a company. They can be extended as a positive message for the public to see the intentions and priorities of an organization. They can also generate heavy scrutiny by the public, other companies, and watchdog agencies.

Codes of conduct can also be extended to suppliers. Ethical considerations can be included so that issues such as child labor can be addressed, human rights can be protected, and intellectual property guarded.

### Test your knowledge

Does your company have a code of conduct for employees, suppliers, and others?

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Does it need improvements in order to stand up?

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**Further Reading:**

