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# Legal Challenges of Internationalization of Food Distribution

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## Introduction

*Example of international trade significance of U.S. food exports: snack foods*

1993 U.S. exports doubled: \$530 million to \$1 billion

### European market

United Kingdom (largest country market) tripled \$11.2 million to \$34 million

Other E.U. countries quadrupled (e.g., France, Italy, Scandinavian countries) \$1.9 million to \$8 million

### Russia

1991 - \$0 exported, 1992 - \$3.1 million, 1993 - \$82 million

Third largest market for U.S. snack food exports behind Canada and Mexico

## Definition of International Trade

The movement of goods, services, capital, and people across national borders for commercial purposes.

Additional level of considerations because of international border, e.g., laws, language, culture, distance, time, etc.

"Legal challenges to internationalization of food distribution"

"Challenges" mean

- 1) overcoming obstacles and
- 2) taking advantage of opportunities.

Obstacles and opportunities addressed will relate to broad policies issues and individual company actions.

## Tariffs

*Traditional impediment to international trade, but now tariff reduction presents opportunities.*

GATT did well to reduce tariffs since World War II. Further reduction through GATT multilateral negotiations, regional agreements (e.g., NAFTA, Israeli/U.S. Free Trade Agreement, Caribbean Basin Initiative) and through country specific programs (e.g., Generalized System of Preferences).

Staged tariff reductions under NAFTA and GATT can be used for price planning and forecasting.

Industry petitions for accelerated tariff reduction or objections to accelerated tariff reduction can be filed by companies and industries.

### Country of origin

The good old days are gone. "Manufactured in U.S.A." does not mean "made in U.S.A."

Example: Asian spices, British additives, Mexican tomato paste, California fresh vegetables, Malaysian packaging, Hong Kong printed labels, mixed and finally packaged in Canada equals ? country of origin.

Trend towards hard, bright line, non-discretionary country of origin tests, e.g., NAFTA tariff shift and regional value content tests.

More at stake: 1) preferential duty savings and 2) penalties for false declaration.

### Nontariff Barriers ("NTBs")

*Trade phenomenon: tariffs go down, NTBs go up.*

NTBs are nontariff practices and procedures which impede the free flow of international trade into a country. Types and nature unlimited except by people's imagination.

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Food distribution a likely target for NTBs because of sovereign justifications of health, safety, welfare, and food security (i.e., political and economic stability)

Examples: 1) food safety, 2) packaging, 3) labeling

### *International trade regulation responses*

GATT code

Internationalization of standards (Codex)

Equivalency—slow in developing with regional trade agreements

Dispute resolution

Multilateral

Regional agreement

Government to government

Industry to industry consultations

### *Labeling*

Commercial languages of the world inadequate. Individual consumer language to be honored with stickers and special packaging.

### *Intellectual property protection*

Import country market protection of intellectual property rights (e.g., copyright, trademark, trade name, trade secret) necessary to preserve U.S. competitive advantage in intangible creativity.

### *Direct investment*

Foreign restrictions on U.S. or foreign ownership being reduced under GATT and NAFTA

### *Anti-dumping/Subsidies*

Clarified further under new GATT code amendments

Special agricultural considerations

### *Duty Drawback*

Established July 4, 1789 by first U.S. Congress to assist exporters.

Definition: Refund of 99 percent of imported duties on items subsequently exported.

Approximately \$400 million claimed in duty drawback; approximately \$3 billion went unclaimed.

Either exporters, manufacturers or importers can claim duty drawback.

Domestic goods can be substituted for import goods in exports where they are commercially interchangeable.

Drawback can be margin of profit for U.S. exporters.

### **ISO 9000**

Standards for audit of company operations to "define and document" operations and quality management of company.

Once feared as part of "Fortress Europe," it is now a marketing opportunity.

### **U.N. Convention on International Sales of Goods ("CISG")**

Fifty years of work and study after World War II to 1980 adoption of uniform set of rules governing contracts for international sales of goods accepted by traders from all legal traditions.

United States adopted in 1988.

Goal: "to facilitate agreements, not to dictate terms"

Covers *goods*—not stocks, investments, negotiable interests, and money.

Does not completely supplant domestic law, e.g., contract validity, third party ownership claims, death and injury liability.

Similar to Uniform Commercial Code Article 2 with significant differences (e.g., acceptability of certain oral contracts, right to reduce price on non-conforming goods without notice, determination of non-specified prices, and specific performance).

Know whether Convention is applicable, know differences from U.S. UCC, and contract knowledgeable.