

U.S. Multinational Corporations & International Transactions

Taxation, Corruption, Global Mergers -- Global Competitiveness

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Question – What are the U.S. policy implications of *extraterritorial application of U.S. economic legislation on the competitiveness of U.S. multinational corporations* abroad?

- Will look at three current set of cases in the news and the U.S. regulations governing them -- international tax practices of U.S. multinationals, bribery by U.S. firms abroad, and global mergers (Chinese investment into the U.S.). Will have a quick review of *other related areas* of U.S. economic regulation of international transactions.²
- For overview -- Malawer, *Extraterritoriality of U.S. Economic Legislation* (2011) ([PowerPoint](#)) and "[Law & National Borders.](#)" [Financial Times](#) (May 2, 2011) (*multijurisdictional & extraterritoriality*).
- *Note* – "[Competitiveness of U.S. Multinationals, Jobs Abroad & Economic Globalization.](#)" [Wall Street Journal](#) (April 19, 2011).

INTERNATIONAL TAXATION (Worldwide Taxation).

Cases: GE & IBM international tax planning.

- "[G.E. Turns Tax Man Away Empty-Handed.](#)" [New York Times](#) (March 25, 2011).
- "[Global Strategies & IBM.](#)" [New York Times](#) (4.20.10).

Specific tax issues -- U.S. worldwide taxation system, tax deferral, tax havens & transfer-pricing.

Note on OECD – [OECD programs](#) (tax havens, model tax convention, taxation of bribery, exchange information and transfer-pricing guidelines). The OECD views taxation as integral to trade and investment and impacts economic development and transactional flows. The OECD produces model treaties and standards to be voluntarily adhere to by states that normally require adoption by states as international obligations and as national legislation. This involves both creating international obligations and "harmonizing" national legislation.

FOREIGN CORPORATE CORRUPTION.

Cases: IBM in China; H-P in Russia; BAE in Saudi.

- "[IBM Settles Bribery Charges.](#)" [Wall Street Journal](#) (March 20, 2011).
- "[BAE: Settles Corruption Charges.](#)" [New York Times](#) (Feb.6, 2010).
- "[U.S. Joins H-P Bribery Investigation.](#)" [Wall Street Journal](#) (4.16.10).
- "[Price of Global Business.](#)" [Washington Post](#) (3.24.11).
- [Corrupt Practices](#) (website U.S. Dept. of Justice).

¹ Authored in the 1980s the five-volume [FEDERAL REGULATION OF INTERNATIONAL BUSINESS](#) published by Georgetown University and the U.S. Chamber of Commerce.

² Among other areas of U.S. regulation that need to be examined are antitrust (global price-fixing), export controls (reexport controls), foreign boycotts, financial sanctions, trade sanctions, and securities legislation (disclosure, fraud and accounting provisions).

Note on international governance:

- [OECD Convention on Combating Bribery](#) (1999).
- [U.N. Convention against Corruption](#) (2005).
- [World Bank Corruption & Governance](#).
- [“New U.K. Bribery Act.”](#) Financial Times (2.23.11).

GLOBAL MERGERS (National Security Review).

Case: Huawei (Telecom), Chinese investment into the U.S. and national security reviews.

- **Huawei dropped** its bid to get approval from CFIUS for its prior acquisition of **3Leaf Systems**. Huawei is the world's second largest telecom company. CFIUS recommended against it and the President's action was pending. "[Huawei Drops U.S. Deal.](#)" [Wall Street Journal](#) (2.21.11).
- Huawei asked for an unusual formal investigation to clear its name. "[China Telecom Seeks Inquiry to Clear Name.](#)" [New York Times](#) (2.26.11).
- Beijing municipal government formed a new partnership with a foreign equity firm, as a mean of reducing national security concerns, to encourage foreign expansion of Chinese firms. "[Beijing Sets Up Fund for Outbound Investment.](#)" [Financial Times](#) (March 14, 2011).
- *See generally*, Malawer, [Global Mergers and National Security](#) (2006).
- [Committee on Foreign Investment in the U.S. \(CFIUS\)](#) (U.S. Dept. of Treasury website).
- [CRS Report on CFIUS & Homeland Security](#) (Feb. 2010).

NOTES ON OTHER AREAS OF EXTRATERRITORIAL REGULATION

- **Export Controls & Reexport Controls.**
 - The U.S. satellite industry has had a 40% decline in exports in 12 years because of too strict export controls. "[Strict Export Controls Cost Market Share.](#)" [Washington Post](#) (3.28.11).
 - "[Introduction to Export Controls.](#)" (Website of Bureau of Industry & Security, Commerce).
- **Global Antitrust (Price-fixing).**
 - Executives for Hitachi were indicted in global price-fixing for LCD panels sold to Dell. Previously Hitachi pleads guilty. "[Hitachi Executive Indicted for LCD Price-fixing.](#)" [DOJ Press Release](#) (Oct. 14, 2010).
 - [U.S. Dept. of Justice International Antitrust Program](#) (USDOJ 2010).
- **Trade Sanctions (Financial Sanctions).**
 - "[Office of Foreign Asset Control \(Treasury\) – Trade Sanctions.](#)" (U.S. Treasury website).
 - "[Libyan Assets Frozen -- \\$30 billion.](#)" [Washington Post](#) (March 23, 2011).
- **Trade Sanctions (Country Specific).**
 - [State Dept. – Trade and Economic Sanctions.](#) (U.S. State Dept. website),
- **Foreign Boycotts.**
 - [Antiboycott legislation \(Dept. of Commerce\).](#) (Dept. of Commerce website).
- **Corporate Governance.**
 - [Sarbanes-Oxley](#) (2002).
 - [Dodd-Frank](#) (2010).