

## THE ROLE OF PRIVATE INTERNATIONAL LAW IN SHAPING THE LEGAL LANDSCAPE OF GLOBAL VALUE CHAINS (GVCs)

Taufik Siregar<sup>a</sup>, Lailan Tawila Berampu<sup>b</sup>

<sup>a</sup>Universitas Medan Area, Indonesia

<sup>b</sup>Universitas Riau, Indonesia

[lailantawilaberampu@lecturer.unri.ac.id](mailto:lailantawilaberampu@lecturer.unri.ac.id)

### ABSTRACT

Global Value Chains (GVC) are operational units in the economic production system. The development of GVCs during the twentieth and twenty-first centuries has generated extraordinary competitive advantages and wealth while connecting individuals, companies, and economies in various parts of the world (investment and alternative settlement solutions). However, GVCs are also a major cause of environmental destruction, carbon emissions and human rights violations which are here in after referred to as global production 'externalities' which are not covered by existing regulations and laws. Legal guarantees will also simplify the business contracts underlying all activities conducted by GVC, such as enhanced procurement from vendors, extended credit to suppliers for equipment rentals and purchases, and amplified sales of semi-finished goods, final goods, and services to other partners along the value chain. This article examines the role of Private International Law (PIL) to map GVCs onto specific beliefs. The analysis findings indicate that PIL, which concentrates on singular entities, is inadequate for incorporating a methodical legal framework for GVCs, which are collective entities. The shortage of a coherent approach of PIL supports global production externalities. However, despite this the growing operationalization of GVC law provides a functional analysis to understand, systematize, constrain and cultivate the role of PIL as a fundamental aspect of transnational law in regulating production on a global scale related to GVCs.

**Keywords:** Global Value Chain, Private International Law

### INTRODUCTION

Global Value Chain (GVC) has become the basis for operational activities in international economic activities. GVC has been centrally regulated but its production network is fragmented both organizationally and geographically. The development of GVC makes production entities more efficient. GVC also results in the creation keunggulan kompetitif of a tremendous competitive advantage while connecting individuals, companies, and economies around the world (Salminen & Rajavuori 2021).

However, if organizations along the chain do not have adequate infrastructure to deal with the problem of outsourcing production, GVC can become a major cause of environmental damage and environmental destruction, excessive carbon emissions and human or labor rights violations. Hence, to overcome these problems, the legislation regarding the occurrence and the necessity for understanding the dynamics of GVC is growing rapidly. (Salminen & Rajavuori 2021).

From perspektif legal perspective, a GVC is a mix of things that secara strukturalare structurally separate entities and formed through equity ownership (e.g. groups of companies) or contractual relationships (e.g. supply chains) but, are centrally regulated by the companies that are the main actors. Through GVCs, such collective entities are often spread across multiple jurisdictions. Based on this, it is not only limiting companies and contracts, but also limiting the jurisdiction that separates the main companies from the production structure .

This article explores the interdependence of the Global Value Chain (GVC) from a legal standpoint by examining the individual entities that constitute the GVC as a whole, governed by prominent corporations across different jurisdictions. The objective is for the author to grasp the concept of GVC capitalism. This analysis is conducted through the lens of Private International Law (PIL), which is the legal discipline that examines and elucidates the regulations and principles involved in resolving transnational legal conflicts.. In assessing the role of the PIL in shaping the GVC legal landscape, there is an argument that the technical rules that define the applicable forum, the applicable law, and the enforceability of judgments are crucial in correlating the various actors and jurisdictions that underlie the global production network. The PIL therefore gives the GVC most of its transnational legal structure. However, the constitutive process is still largely ignored both in the development of GVC theory and in perspektifthe emerging legal perspective.

Another issue that causes the importance of PIL to GVC is the importance of international agreements to strengthen and guarantee foreign investors ' confidence in the commercial dispute resolution mechanism between companies, so that investors feel more comfortable that business contracts will be carried out and penalties will also be imposed on the host country where investors invest (Malesky&Milner, 2020). Legal guarantees play a crucial role in facilitating the various business contracts that form the foundation of Global Value Chain (GVC) activities. These guarantees not only promote increased purchases from vendors but also enable suppliers to obtain increased credit for equipment leasing and purchase. Furthermore, they contribute to the growth of downstream sales, encompassing semi-finished goods, finished goods, and various goods and services, to other partners along the value chain. It is worth noting that several studies (Nunn, 2007; Antras, 2015; Alfaro, Chor, Antras, & Conconi, 2019) have emphasized the significance of these legal guarantees in the context of GVC activities. Moreover, in many host countries, foreign investors often express concerns regarding the capacity, incorruptibility, and independence of domestic courts. This skepticism is highlighted in studies conducted by Staats & Biglaiser (2012), Lee, Biglaiser, & Staats (2014), and Xu (2020). These doubts surrounding the judicial system can potentially hinder foreign investment and impede the smooth functioning of GVC activities within these countries.

Several countries have attempted to enhance investor confidence by offering alternative methods of resolving disputes through commercial arbitration facilities. These methods include the option to draft contracts in a foreign language and select foreign arbitration panels (Lynch & Lynch, 2003; Mistelis, 2004; Sperry, 2010; Hale, 2015). While there is some quantitative evidence suggesting that the implementation of non-judicial procedures has attracted foreign investment, particularly in countries with inadequate legal institutions (Myburgh & Paniagua, 2016), doubts still persist regarding the commitment of domestic entities to enforce binding commercial arbitration procedures. These doubts stem from concerns about local corruption and political affiliations (Leubuscher, 2003).. In addition, many countries have the right to override arbitration decisions that are contrary to national law (Mistelis, 2004). The cases also show that what is essential in PIL is the possibilities of how PIL is able to cope with new organizational structures such as GVCs, and their adverse economic, social and environmental impacts.

## **METHOD, DATA, AND ANALYSIS**

The methods in this article are structured as follows; Section 3.1 describes the structure of the GVC. Section 3.2 general ambiguities regarding the points of relationship between GVC and PIL, which underline the substantive and procedural challenges of PIL to transnational GVC litigation. Section 3.3 some opportunities to address the challenges of PIL at GVC, section 3.4 concludes with an argument for the need to develop PIL relationships and new forms of production, such as GVC and also beyond GVC.

## **RESULT AND DISCUSSION**

### **3.1 GVC Structure**

Although most of the literature on Globalization in the 1970s and 1980s emphasized the role of transnational manufacturing companies as the main agents of globalization, the development of science has increasingly realized that GSC is increasingly important (Berampu et al, 2019). GVC represents a intricate and ever-changing economic network where production activity transcends at least one boundary. On one side, GVC is distinguished by unparalleled global specialization, while on the other side, it showcases unparalleled coordination among fragmented entities to accomplish various objectives. These objectives include ensuring stability in supply and distribution, maintaining product quality, adhering to target market standards, achieving timely production, managing costs effectively, and conducting research and development throughout the production life cycle. Consequently, GVC is perceived as a production structure that is highly fragmented but centrally coordinated. The dimensions and indicators of GVC are as follows (Berampu et al, 2023). (1) input and output structure (2) geographical scope (transportation infrastructure improvements) (3) governance (standards compliance) (4) upgrading (movement towards more sophisticated markets) (5) institutional context local (local regulations) (6) stakeholders (mapping the role of stakeholders in the chain).

According to Berampu (2023), although analytical approaches better understand how GVCs develop and function, it turns out that there are still many differences that need to be explored regarding local and global externalities. GVC facilitates the integration of production stages for goods and services across different dimensions such as time and space, encompassing economic, social, and political implications. The outcomes of this interconnection differ depending on the distinct amalgamation of value chain positions and connections, production stages, geographical locations, and product types present in each specific industry. The literature so far has attempted to study the economic impact of GVC through familiar indicators that are generally described as follows: (1) competitiveness, (2) Economic Development, (3) Labor impact, and (4) trade costs.

The coordinated operation of the GVC became contrasted with the operations of the current legal conceptualization (Sobel&Eller,2017) traditionally economic organization and production are considered to be built on individual entities such as companies, supply agreements, or labor contracts. For this reason, the legal institutions of each of these entities, as well as regulations regarding the social and environmental impacts of the resulting economic organization, are considered to have been addressed locally. But in a GVC, the main focus is a collection of interconnected and structured entities whose governance is carried out by the main company.

### **3.2 Legal Relations and Externalities in GVC**

The distinction between the operational and legal framework of the global value chain (GVC) becomes evident when considering the social and environmental consequences resulting from coordinated global production (Salminen, 2019). An actor within a GVC who causes an externality can be seen as an individual entity responsible for the harm inflicted. Conversely, the leading company can be held accountable for organizing and governing the GVC in a manner that enables other actors to generate externalities. The paradox of assigning responsibility for external impacts to GVCs is the underlying cause of their formation and the detrimental social and environmental effects they entail. Therefore, the enhanced efficiency of the GVC, which is fragmented yet partially coordinated, relies on regulatory arbitration rules (Salminen, 2019).

Companies have historically used the fragmentation of organizations, either through contracts or corporate forms, as a means to maintain control over their responsibilities and transfer the burden of social and environmental costs onto the local community. This becomes an even greater concern when

companies outsource production to jurisdictions with weaker regulations or enforcement mechanisms. Economists have acknowledged for a long time that without formal contract execution, businesses are forced to rely on informal methods, such as local media or social organizations, to publicly shame vendors who refuse to sign contracts or customers who fail to make payments. However, this approach is likely to discourage foreign investors from engaging in business activities within the host country.

Trust in courts and judges allows companies to expand into new territories and partners, meaning in the belief that those companies that breach contracts will get punished (Beazer & Blake, 2018). However, there are many enforcement difficulties in many developing countries, so convincing investors about contract enforcement is quite difficult (Yu & Walsh, 2010). This is because the judiciary in developing countries is not considered independent (Ríos-Figueroa & Staton, 2014). This is especially the case in non-democratic regimes where judges are appointed by the ruling regime and often have close ties to national leaders as party members of that regime or through personal relationships with state leaders (Chen & Xu, 2019; Xu, 2020).

Developing nations are showing an increasing interest in utilizing domestic solutions, commonly referred to as commercial arbitration, to resolve disputes through the legal system. The establishment of arbitration centers in numerous countries has been made possible by the Model Law introduced by the United Commission on International Trade Law (UNCITRAL) in 1985 and subsequently revised in 2006. This Model Law outlines the general procedures for resolving commercial disputes through arbitration (Myburgh & Paniagua, 2016). By enforcing this law, business partners can clearly define the disputed matters in their contracts and agree to resolve them in an arbitration court.

Arbitration is widely regarded as a superior method for resolving commercial disputes in the business world. This is due to its personalized approach, efficiency in terms of time and cost, and relative ease compared to domestic court proceedings. Scholars such as Mistelis (2004), Hale (2015), and Alschner (2017) have supported this viewpoint. In business contracts, parties may specify that disputes should be resolved through domestic arbitration or foreign arbitration, with mediation taking place in the host country. When parties agree to settle a dispute in an international forum, it is referred to as International Commercial Arbitration (ICA). The significance of commercial arbitration in facilitating the growth of Global Value Chains (GVCs) has been highlighted by international law theorists such as Lynch and Lynch (2003), Mistelis (2004), and Sperry (2010). Myburgh and Paniagua (2016) have conducted one of the few quantitative analyses on this subject. Their findings revealed that countries that ratified the Convention on the recognition and enforcement of foreign arbitral decisions of 1958 and implemented laws based on the UNCITRAL Model of law experienced a greater influx of foreign investment. Additionally, it is worth noting that the positive impact of commercial arbitration on GVCs is most pronounced in countries with weak legal institutions.

### **3.3 PIL on GVC**

A field of law known as Private International Law (PIL) encompasses a wide range of national, transnational, and international regulations and procedures. These regulations and procedures are designed to determine the applicable forum, applicable law, and enforceability of decisions in disputes involving parties from different jurisdictions or subject to different laws. PIL serves as a means of connecting actors involved in transnational disputes to specific jurisdictions and laws, thereby offering various legal frameworks and structures within the Global Value Chain (GVC). The constitutive process of PIL involves three key elements.

The PIL first ensures that litigation is calibrated by considering procedural parameters associated with the relevant forum, including the burden of proof, the availability of financial resources, and the distribution of costs. Secondly, by establishing substantive laws or statutes pertaining to the specific issues involved in the litigation, the PIL also sets forth applicable parameters such as safety



obligations, health regulations, occupational safety standards, and the quantification of damages. Lastly, the PIL governs the implementation of decisions, evaluations, and awards by determining the methods and locations for their enforcement.

The PIL plays a crucial role in furnishing the necessary insights to the organization and management of the Global Value Chain (GVC) regarding the feasibility of utilizing PIL for the efficient formulation of contracts that encompass the entire value chain. Additionally, it aids in regulating the obligations arising from social or environmental externalities. Although there are constitutive elements in the pill, it is still difficult to conceptualize GVC against the pill. Although the impact of the pill on transnational economic organizations and global production has, historically, been recognized. However, PIL remains calibrated to individual entities, and not to collective entities and is not centrally managed like GVC. To illustrate the current operational arrangements of GVCs in PIL, the authors reviewed transnational tort litigation focused on key companies from two key PIL framework perspectives.

### *3.3.1 Global Value Chains in Private International Law: Perspectives of Transnational Tort Litigation*

The regulation of complex regulatory rules at the National, transnational, and international levels is governed by the PIL (Torreman, 2017). One of the most renowned frameworks of the PIL is the EU system, which is based on the Brussels regime for applicable law and the Rome regime for applicable law (European Parliament of The Council, 2007). According to the current Brussels regime, the accused must be prosecuted in the jurisdiction of their place of origin. Similarly, under the current Rome regime, the main rule in tort claims is the application of the *lex loci Damni*, which refers to the law applied at the place where the damage occurred (Calster, 2008).

A number of common law jurisdictions employ a regulatory framework that is more adaptable in comparison to the predominant system in the European Union. Typically, the plaintiff selects the prevailing forum when initiating a legal action, but this can be altered through the application of the *forum non conveniens* doctrine if a more suitable forum is accessible elsewhere. The influence of the Private International Law (PIL) framework on the legal structure of Global Value Chains (GVCs) is apparent in cross-border litigation stemming from insufficient governance of crucial companies within the value chain. The inadequate governance of the value chain includes equity and contract-based governance. For example, (1) in the case of *Doe v Walmart*, employees of Walmart's foreign suppliers sued Walmart located in California over Walmart California's alleged lack of responsibility to protect such foreign employees from economic and physical harm caused by such supplier companies. (2) in the case of *Begum v Maran (UK) Ltd* a relative of a deceased employee sued a British ship broker who outsourced ship breaking, through an intermediary, to a dangerous ship breaking site in Bangladesh. (3) In the cases of *Das v George Weston* and *Jabir v KiK*, a buyer in Canada and Germany faced lawsuits from a total of 32 supplier employees from Bangladesh and Pakistan. The employees alleged that the buyer failed to effectively regulate safety measures at the supplier's plant located in Arica (4). Similarly, in the cases of *Arica v Boliden* and *Trafigura*, 34 individuals from Chile and Ivory Coast respectively filed lawsuits against companies in Sweden and the UK. These individuals claimed that the companies displayed insufficient governance in managing outsourced toxic waste (5). Furthermore, in the cases of *Milieudefensie v Shell*, *Okpabi v Shell*, and *Lungowe v Vedanta*, 35 Nigerian and 37 Zambian nationals respectively sued the parent company in the Netherlands and the United Kingdom. The basis for these lawsuits was the environmental damage caused by inadequate governance at the company's subsidiaries..

There are four primary trends that are relevant to GVC as observed from the development of transnational case law. Firstly, each case highlights the inclination to pursue legal action against leading companies due to insufficient governance and the negative social or environmental impacts on

corporate value chains. This aligns with the inherent structure of the GVC, where the main company holds dominance in making decisions regarding the organization and production processes. Generally, each case arises from the main company's failure to adequately regulate its value chain or its decision to outsource production in a detrimental manner. However, this does not exclude the possibility of a case involving a subsidiary or a supplier's subsidiary. On the contrary, in certain instances, litigation is initiated simultaneously against both the main company and the subsidiaries or suppliers directly associated with the aggrieved party.

Second, with respect to applicable jurisdiction, the plaintiff is faced with two options: 'country of origin' jurisdiction on the GVC principal and 'host country' jurisdiction on subsidiaries or suppliers. Under EU law in Brussels, a leading company cannot refuse to be tried in the forum of origin, but such leading companies can refuse to contest jurisdiction, for example by the way the company states that the plaintiff in suing the company involved is only to divert the case to the 'actual' case i.e. the defendant is local subsidiary or supplier, of the host country forum.

Third, regulations in determining applicable law may alter the outcome of GVC litigation by granting special privileges to the laws of the home state or host country. Under Rome law in the EU, the general rules of the *lex loci Damni* make the various cases to be judged on the substantive law of the host jurisdiction. the application of the laws of the host country can change the main parameters of a case to the detriment of the plaintiff, for example, the very restrictive statute of limitations of the host country or lead to the rejection of the claim. fourth and last, some forums and substantive laws recognize more claims related to value chain governance than other laws. In the past, the *Falien Tort Claims Act* was seen as a possibility, which led to some litigation with weak ties to the U.S. being diverted to the Federal forum 46.

### *3.3.2 Incompatibility of Global Value Chain Concepts: A Civil International Law Perspective*

The root cause of the discrepancy between the PIL and the GVC is that the PIL framework currently in place is tailored to individual entities rather than collectives: the PIL structure distinguishes between several defendants (in fact) associated with the 'country of origin' and analyzes the jurisdiction and laws applicable to each country separately. Whereas GVC is essentially a collective entity regulated by leading companies. In transnational disputes, this gap becomes increasingly complex with centralized regulation of the GVC by the authorizers based on national laws over a wider area (Paul, 2008) from the perspective of litigation of transnational lawsuits arising from value chain externalities, such gaps often prevent victims from having the opportunity to challenge the inadequate value chain governance practices of leading companies.

The fundamental difference between collective and non-collective entities raises some fundamental questions of applicable jurisdiction. If a collective entity, such as a GVC, is formed from several independent entities but the losses are charged to those collective entities, then the applicable law will determine which entity should be chosen to govern as a whole? Another question is if a collective entity is spread across multiple jurisdictions, does the applicable jurisdiction and the applicable law have to be done simultaneously?

### *3.4 Calibration of International Civil Law with Global Value Chains*

There are multiple potential methods available for aligning PIL focused on individual entities and GVC, which is a centrally coordinated unit of collective production. One option is to consolidate the GVC into a single entity. Despite the increasing utilization of value chain-based concepts in national and regional laws, it is not feasible to regulate GVCs as independent legal entities in the PIL (Eller, 2020). Contracts and corporations are universally acknowledged legal constructs, but collective entities formed through various contracts and corporations face challenges in achieving universal

recognition. In contrast, dominant companies exercising de facto controls can establish a comprehensive framework that emphasizes new corporate governance at the core of forum determinations and applicable law.

The governance of global value chains (GVCs) becomes more challenging when using the PIL framework, particularly in relation to the home state forum and applicable law. However, it is the leading companies that play a crucial role in coordinating GVCs across different organizational and jurisdictional boundaries, thereby assuming responsibility for regulating or not regulating global production. Recognizing this significant aspect of GVCs, considering various approaches to recalibrate the PIL becomes possible without the need for introducing new organizational form changes (Dam, 2011).

With respect to the applicable jurisdiction, there are several arguments that are important to focus on the main companies that are in the forum of origin such as: good enforcement of decisions, procedural advantages related to the forum of origin, or corruption in the host country, however, from a GVC perspective, the operational logic, organizational structure, and governance performed by the leader's company becomes more important than a consideration of whether substantive justice is available or not.

If practices against key corporate governance are the primary cause of negative externalities throughout the key corporate value chain, then opposing the impact of those practices on one of the subsidiaries or suppliers can shift the focus of the problem away from its root cause. Similarly, if inadequate governance practices are not remedied immediately, then the main company can freely use arbitration rules to address the challenges it faces in one jurisdiction and continue its operations in another

According to the PIL on applicable jurisdiction, the EU Brussels regime permits claims against major companies based on jurisdiction in their home country. On the other hand, under the rules of common law, the focus is more on determining the appropriate forum based on various parameters. In both cases, the selection of the forum is not driven by practical considerations or key corporate governance realities, but rather by other arguments. For instance, it raises the question of whether using common law, which emphasizes proper courts and substantive justice, is a suitable and rational approach to identifying jurisdiction. Similarly, using the EU regime in Brussels, which allows major companies to be prosecuted in their home country forum, is also based on legal certainty and protecting the accused. However, both approaches fail to consider the structural and organizational principles underlying the Global Value Chain (GVC). Therefore, using common law or the EU regime in Brussels may not be reasonable when dealing with collective production. The demands are rooted in the perspective of the GVC centered on major companies.

Most home state laws are closely linked to corporate governance efforts from a GVC perspective. For instance, the EU regime in Rome has a contractual exception to the main rule of *lex loci Damni*. However, in the field of Private International Law (PIL), there is a strong tradition of focusing on the law of the host country as the appropriate law to determine fair punishment for damages caused by the host country. This can be seen in the main rules of the *lex loci Damni* issued by the EU Rome regime. Another example is the American (Second) restatement of the presumption on territorial conflicts act.

A third alternative that takes into account the laws of the home country and the host country is reflected in the 'omnipresence', the free choice between the laws of the home country and the host country for the plaintiffs as contained in Article of the European Union Rome on environmental damage, and various approaches that provide the plaintiffs with the benefits of better'.

Therefore, even if the GVC perspective is centered on the leader company, there are two strong perspectives: (1) the underlying perspective of choosing the laws of the home state, (2) and the perspective of applying the laws of the host state. But the most good is the reflective balance between the two perspectives. If the host country's regulations are in accordance with social, environmental and other standards, then an approach through the perspective of the host state's legislation will have a positive impact. However, it does not hurt to consider the approach to the legislation of the country of origin as the operational standard that best suits the main company. The next question is how can these alternatives be managed and which approach is better for the plaintiff, or are there other approaches?

There is no easy answer to the question regarding jurisdiction and applicable law with respect to GVC. Each of the above approaches has weaknesses, which PIL is expected to be able to overcome various problems that will have an impact on the development of GVC. Issues related to the location of GVC governance in the home state of the main company would seem logical if referring to the PIL which focuses on the home country forum.

To overcome this, it is best for the main GVC company to balance the laws of the home country and the host country together as it seems necessary. But although the European Parliament resolution seeks to balance the laws of the home country and the host country, there is still criticism. This is due to the use of home state laws, limited by the notion of mandatory rules that GVC home state laws must override. Despite strong criticism of the measure, GVC's explicit approach would be a step further in pill enforcement.

The main problem with PIL systems today is that they are calibrated for individual entities. This has led to the application of the pill being very different in different forums on GVC related cases. The lack of alignment between the PIL and the GVC suggests that there is a systematic slowdown in responses to GVC responsibilities. Ultimately, however, the lack of alignment of the pill to GVC is not a problem specifically related to GVC science or theory, but, more broadly, is due to a lack of reflexivity in the development of pill theory towards new forms of production.

## **CONCLUSION**

This paper has examined PIL from the perspective of global production referred to as GVC. Based on previous studies that basically the implementation of PIL rules, principles, and doctrines in transnational litigation is related to adverse social or environmental impacts derived from GVC. This article highlights the fundamental discrepancy between the PIL framework and the GVC in that the PIL focuses on individual entities, while the GVC is a centrally coordinated unit of collective production.

Although GVCs are increasingly being legally reported in both national regulations and private law, the use of PIL against the conceptualization of GVCs in their economic and practical realities is still largely immune to the law. Nevertheless, the potential for change is increasingly showing progress.

As the understanding of GVC capitalism becomes more apparent and the advanced technologies utilized by leading companies in organizing their value chains become more widely recognized, there is a hope that PIL rules and principles can also evolve to better comprehend the logic of GVC operations. The existing PIL frameworks, such as the EU regime in Brussels, to some extent, enable major companies to be prosecuted in their home jurisdictions. This framework proposes a more diverse comprehension of GVCs in terms of substantive law and explicitly acknowledges and adjusts the role of PIL in GVC governance.

Additionally, a greater reliance on private governance of a contractual nature may offer an opportunity to structure the GVC within the framework of PIL. If successful, this recalibration would



help alleviate the practical issues associated with GVC and also transform the foundation of PIL more broadly. By employing an analytical perspective on key corporate governance, the GVC-calibrated PIL can also contribute to internalizing certain existing companies, rather than solely focusing on the widespread externalities of global production that are at the core of the transnational tort litigation discussed in this article. However, it is important to note that the recalibration of PIL with GVC will inevitably disrupt the current parochial system, leading to challenges related to the political division of jurisdiction and regulations. The need to comply with national regulations, including the increasing mandatory provisions, requires companies to have a thorough understanding of regulations in both the private sector and the host country, which is the main company's country of origin.

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