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THE INTERSECTION OF GLOBAL BUSINESS AND INTERNATIONAL LAWS

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Abstract
Today we are living in era of global economy where we are using goods that are manufactured in one country & packaged in another country. Businesses have cross boundaries of countries and expanded themselves across the world, in search of availability of raw materials, cheap labour, talent and market for their goods. However, doing business internationally is totally different than in domestic country. While doing business in other countries, people have to well aware of country's culture, people' behaviour, country's legal system, its political environment and economical conditions.

The legal system of every country is significantly important and different to international businesses. The Differences in legal systems can affect the attractiveness of a country as market or investment site. A country's law regulate business practices, defines business policies, rights and obligations involved in business transactions. As Jeremy Bentham have also gave the theory of Utilitarian, which reveals that law should change as per time and place for greatest happiness for greater number of people. The government of a country defines the legal framework within which firms do businesses. Although different countries have different laws and regulations, knowledge of common law, civil law, contract laws, and laws governing property rights, product safety and liability for a country helps business people to make business decisions. The paper will deal with detailed facts and research about the importance of international laws for business.

Keywords: International Trade ,GATT, WTO, Indian Trade Laws

Introduction

Today we are living in era of global economy where we are using goods that are manufactured in one country & packaged in another country. Businesses have cross boundaries of countries and expanded themselves across the world, in search of availability of raw materials, cheap labor, talent and market for their goods. However, doing business internationally is totally different than in domestic country. While doing business in other countries, people have to well aware of country's culture, people' behavior, country's legal system, its political environment and economical conditions.

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Understanding International Business

International business means the buying and selling of the goods and services across the border. These business activities may be of government or private enterprises. Here the national border are crossed by the enterprises to expand their business activities like manufacturing, mining, construction, agriculture, banking, insurance, health, education, transportation, communication and so on. A business enterprise who goes for international business has to take a very wide and long view before making any decision, it has to refer to social, political, historical, cultural, geographical, physical, ecological and economic aspects of the another country where it had to business. International business by its nature is a primary determinant of international trade, one of the results of the increasing success of international business ventures is globalization.

International Business is the process of focusing on the resources of the globe and objectives of the organisations on global business opportunities and threats. International business is defined as global trade of goods/services or investment.

Scope of International Business

The scope of international business is much broader involving international marketing, international investments, management of foreign exchange, procuring international finance from International Monetary Fund (IMF), World Bank, International Finance Corporation (IFC), International Development Association (IDA) etc., management of international human resources, management of cultural diversity, management of international production and logistics, international strategic management and the like.

According to International Monetary Fund (IMF), globalisation means "the growing economic interdependence of countries world wide through increasing volume and variety of cross-border transactions in goods and services and of international capital flows and also through the more rapid and widespread diffusion of technology"

Globalisation is a more advanced form of internationalisation of business that implies a degree of functional integration between internationally dispersed economic activities. It denotes the increased freedom and capacity of individuals and firms to undertake economic transactions with residents of other countries. Globalisation is the process of international integration arising from the interchange of world views, products, ideas, and other aspects of culture. Globalisation refers to processes that promote world-wide exchanges of national and cultural resources. Advancement in transportation and telecommunications infrastructure, including the rise of the internet, has further catalysedglobalisation of economic activities.

The idea of international business law is fairly easy to comprehend: It is the standardization of fundamental business practices worldwide. It is a function of increasing global interdependence. International business, by its very structure, transcends national states and is inherently lawless. Since World War II, steps have been taken to change this aspect of business and base it on standard practice.

History

Once the United States won the second World War, it sought to standardize business practices worldwide, especially in war-torn Europe. Legal standards were put in place by the American-dominated trading system that sought to create a global regime of free trade using the U.S. dollar as the base currency. Only a major international power such as the postwar U.S. could have made this trade regime work.

Function

International business law is a matter of self-interest. To have a single legal framework that governs international transactions saves money by simplifying the costs of compliance. If a firm had to modify its functioning based on each state's legal structure, the costs of doing business overseas would be very high. Having an international framework saves time and money.

Sources

International business law has several sources for basic legislation. Primarily, major financial institutions that back groups such as the International Monetary Fund and the World Bank are major legislators of basic business practices. In addition, regional organizations such as the European Union, the Arab League, and the Association of East Asian Nations are also sources of international law and practice in business. Powerful states such as the U.S., oil producing states and China also have a important role to play in shaping international business legislation. Ultimately, law in this case often becomes compromises among these power centers.

Features

The basic features of global business law concern protections for intellectual property, contract enforcement, environmental protection and labor standards. The goal here is to create uniform standards as much as possible. The European Union, for example, has standards on all of these areas that seek to create a uniform European code. This is to facilitate movements of goods and labor across national borders to cut the costs of doing business.

Effects

International business law, at its root, is about transcending the nation state as the only source of legal authority. While it is true that businesses must obey local laws, international law has made this adaption much easier. A state that does not implement basic international standards in areas such as eliminating tariffs or making banking practices transparent risks being left out of potentially lucrative global investment. The adoption of international legal standards of business tells the world that this government and this economy is ready to become part of the global community and receive the financial rewards for so doing.

Business today is truly international. International trade has existed since times immemorial. There are findings to indicate that international trade existed as long back as 2000 B. C. With increasing complexities and volumes in international trade, an urgent need for a uniform code for regulating these transactions was keenly felt.

The importance of international trade and a uniform code is more keenly felt in present day economy where domestic and foreign politics play their influencing role in conducting transnational business. International Law for business aims at providing the regulations required for execution of international transactions involving more than one nation. Every country has its own set of laws for regulating business. Therefore, it is apparent that every international business transaction has to comply with provisions of both domestic as well as international law.

In order to ensure performance of the transaction(s), parties enter into treaties/ agreement. These treaties are framed according to general practice and customs. The most significant aspect of international law is jurisdiction. Though it is not important for students to go for a detailed study of business law in each country, understanding the structure of the legal system in different countries helps in making a good comparative study.

Why do we need Law?

One should keep in mind that the base for law is a dispute. The judgment of a decided case becomes a referral point - known as a precedent. The reason behind this reference is to facilitate uniformity in deciding similar cases. It may be noted that precedents may be overruled if the judgment pronounced earlier is found to be erroneous.

Canada, the second largest country in the world framed its own constitution in l982 by the act of British Parliament. It has a bicameral parliament - House of Commons and a Senate. Canada follows the principle of legislative supremacy, giving importance to precedents. Cases, statutes, customs and royal prerogative are the sources of Canadian law. The judges for federal and provincial courts are selected by Governor-General of Canada. The legal system of Canada is primarily based on the common law tradition. By and large, the regulatory framework is uniformly applicable throughout Canada with the exception of the province of Quebec. Quebec has been given special rights to preserve its culture, language and governing institutions. Germany, the largest European country, follows the civil law tradition.

Of all the civil codes, the German Civil Code has had the widest influence in the development of laws in other countries like China, Japan and many Eastern and Central European countries. With the unification of the erstwhile two German nations, the political authority is divided between the federal government and the states. Matters of utmost importance like defence, foreign affairs, currency, nationality and intellectual property are exclusively looked into by the federal government. The Chancellor, the most powerful political figure, makes public policy and appoints heads of state. There is marked difference in the manner cases are resolved and the judiciary system that exists in Germany as compared to other countries. Two important codes play a significant role. They are the German Civil Code and the German Commercial Code. The civil code has 2300 sections divided into five parts with the first two covering legal and contractual obligations. The commercial code sets rules for doing business in Germany.

Saudi Arabia, an Islamic country, has a legal system that follows the Sharia – commandments of Prophet Mohammad. Unlike other countries, Saudi Arabian government has only two wings - the executive and judicial, and the King is the supreme authority. The regulations approved by the King are published in the official gazette. There are agencies to assist in regulating the administration of the Kingdom. The most important among them are the Supreme Commission on Labor Disputes, the Commissioner for the Settlement of Commercial Disputes and Board of Grievances. A well regulated country, Saudi Arabia strongly abides by the Holy Quran. As such students will note that unlike common law systems, charging of interest is prohibited among many other things. Dispute resolution normally results in damages or recession. Despite the difference in the regulatory structure, the importance of Saudi Arabia in present day economy is continually growing. Japan, is perhaps the only example of 'real development' in almost all areas.

Japan which was battered and ravaged during the World War II, is now among the most advanced counties of the world. A look at its legal system shows traces of the Tokugawa period influence of the German Civil Code and the American influence. Right from the early days, Japanese gave much importance to the Confucian system where the head of the family/village was the deciding authority. His word was rarely contested. The process of industrialization in the nineteenth century saw Japan draw up a Civil Code based on the German Civil Code This however, underwent a drastic change after the Second World War when the American influence separated the church and state and introduced a parliamentary system with a duly elected Prime Minister and a bicameral legislature. Despite, the American influence Japanese have a different outlook in matters of international trade. All contracts have the regular clauses. Yet, the Japanese treat an international transaction as an opportunity to develop personal ties and business relationships. They look for flexibility, amicable settlement of disputes and performance of contract in good faith.

China has for many hundreds of years been known for the superior quality of goods it produces and its ancient medical practice. Thus, international trade has been an integral part of Chinese economy. Very much like the Japanese Confucian attitude, the Chinese have deep faith in behaving in an honorable and ethical manner. Until recently, the attitude of Chinese towards practitioners of law has been discerning. Primarily because it has gone through a lawless period during the Cultural Revolution known as 'Dark Ages' in 1966 and the second revolution which started in 1976 with the death of Mao Zedong's. Today, China has a large, complex system of agencies, the most important among them being Ministry-of Foreign Economic Relations and Trade which renders guidance in matters related to foreign trade.

The governing statute for foreign trade is Foreign Economic Contract Law (FECL). According to FECL all contracts should be in writing, must express the real intent of the parties who must have legal contractual

capacity and the contract should not violate law or public policy. Before resorting to arbitration, Chinese prefer to settle disputes out of court through friendly consultations, which again reflects their reliance on traditional value of honorable and ethical behavior. European Community - The aftermath of the Second World War set the world leaders to think of a united Europe to achieve economic alliance and compatible political and legal setup. Thus, started the European community. The first step towards this was, building a common market between France and Germany for coal and steel through the European Coal and Steel Community (ECSC). The success of this led to signing of a number of treaties like the EURATOM, European Economic Community (EEC) and the Maastricht Treaty, all directed towards political and economic unity. To simplify the administration of ECSC, EURATOM and EEC, a merger treaty was subsequently signed. The European community has a well organized administrative set-up comprising of council of ministers, parliament, commission, courts of justice and auditors, and advisory committees. These community institutions have developed substantive laws- which prevail over individual country laws and create rights in individuals and businesses which are to be protected by national courts.

INTERNATIONAL TRADE - LEGAL FRAMEWORK

We have looked briefly into the various laws prevalent in different countries. Let us now concentrate on what will be the scenario if two or more nations wish to have trade relationships and the various regulations that one has to follow.

GATT:

The General Agreement on Tariffs and Trade popularly known as GATT attempts to promote multilateral fair trade and reduce trade barriers. Members of GATT reduce trade barriers by granting 'Most Favored Nation' (MFN) status and charging the lowest applicable tariff rates for imports from MFN. GATT provides for promotion of fair trade by prohibiting 'dumping' and 'unfair subsidies, bounties and grants'. Lack of adaptability of GATT, to regulate world trade has resulted in nations entering into a direct trade relationship like the North American Free Trade Agreement for example. In other cases some developed nations have come forward to help the less-developed countries by permitting duty free imports of certain items under the Generalized System of Preferences.

Regulation of Imports and Exports

Tariff or duty which is levied on imports is one of the important sources of income for a country. Tariff is levied based on the classification of products, its value which usually is the transaction value and its place of origin. The rate of duty levied on imported goods has significant impact on the domestic market for that product. To safeguard domestic interests some countries may resort to imposition of non-tariff barriers like adherence to strict quality standards in order to ensure safety to health and environment. Quotas and embargoes are the other forms of non-tariff barriers. On the other hand, countries wanting to promote exports may extend technical, market, and financial assistance and tax benefits to the exporters. To check undue assistance, GATT imposes countervailing duties on exports supported by unfair subsidies. The United States regulates its exports under the Export Administration Act of 1979. The primary objective being to protect its economy in case of short supply, to protect national security and to further its foreign policy objectives. The US has a complex regulatory structure for both imports and exports which includes the anti-boycott regulations.

Global Business Enterprises

Let us now look at another important aspect of international law relating to international or global business organizations. International business organizations often known as Multinational Enterprises (MNE) are organizations having business entities in two or more countries. These entities are so interlinked that one exercises significant influence over the other. MNE can adopt different channels for doing business. It may choose to do business either through its own firm or through agents and distributors. In the case of an agent and principal relationship, depending upon the country in which the agent would be operating, the terms and conditions are decided. Some countries provide for protective measures to safeguard against unfair termination of the agency. Distributors on the other hand buy goods for the purpose of selling them and offering after-sales and warranty services. Unlike in agency contracts, distributors cannot bind the manufacturer with their acts. Distributorship contracts are normally for a fairly lengthy period as they involve large investment on part of the distributor. Licensing of technology is another form of doing global business. Licensing agreement may: (i) permit manufacture of patented, trademarked or copyrighted product, or (ii) be a franchise arrangement. MNE may also choose to carry-on business in different countries by investing directly. This investment can be either by acquiring an existing company, opening a branch, establishing branches or starting a joint venture.

Regulation of Global Competition:

Competition may make businesses to resort to unfair, restrictive and monopolistic trade practices. Many developed as well as developing countries have adopted regulations to prevent such malpractices. For instance, the US has enacted antitrust laws – Sherman Act and Clayton Act. The European Community through Articles 85 and 86 of the Treaty of Rome also attempts at regulating unfair business competition. Japan too has antimonopoly law to prohibit unreasonable trade practices and abuse of

dominant market power. Regulations have also been passed to check hostile acquisitions and strategic alliances.

Protecting Business Property Rights

Inventions, creations, technological advancements when protected take the form of copyrights, patients, trademarks or trade secrets. These intellectual properties are assets of business enterprises, as they are essential for the success of businesses. Hence, the need to encourage their growth and also provide legal protection against misuse, theft, etc. Copyright law gives authors and artists the right to control the reproduction and performance of their work(s). The period of protection varies in each country. By and large, protection is granted to authors for theirs life plus 50 years, and for photographic and works of applied art for25 years. Patents provide exclusive right to manufacture or use an invention for a specific period of time. Patent laws are primarily territorial. However, there are a couple of international agreements to provide patent protection like the European Patent Convention and the Patent Co-operation Treaty. Lack of a universally accepted patent law hinders introduction of a product on a global basis. Trademark is any work, name, symbol, or device or any combination thereof adopted and used by manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others. Apart from protecting their intellectual property rights, business enterprises are faced with a more complex problem of dealing with piracy and counterfeit goods. Pirators and counterfeiters cause great harm as they deprive the owner of the protected work his share of royalty, the authorized dealer his profit and the buyer of quality product. The US government through an amendment of the Trade Act of 1974, attempts to counteract such practices under Section 301 of the said act. Another problem faced by business enterprises is the gray market, where legitimate goods are marketed through unauthorized channels. Protecting intellectual property rights do not prevent governments from expropriating such property for public use. The criteria for such expropriation should be that these properties are taken for public use and just 'compensation is paid for their acquisition.

The MNE as World Citizen

merely by their size, MNE have an edge over other corporations. Their ability to access capital helps in developing countries. They also possess the powers to exploit natural and human resources, demolish local economies and corrupting and controlling political figures. The United Nations Commission on Trade and Development (UNCTAD) has been making efforts for evolving a code of conduct for MNE to ensure their positive influence on the economy and avoid economic menace like the collapse of the Bank of Credit and Commerce International (BCCI) .the organization for Economic Co-operation and Development (OECD), has set guidelines to protect corporations in its member countries from MNE abruptly. Following the Bhopal disaster, varies governments have through treaties and conventions sought to adopt policies to reduce various polluting activities and protecting environment. Thus International Law for Business covers a whole gamut of business aspects with an international perspective.

Laws applicable to International Business

- Domestic Laws
- Foreign Laws of Host Country
- International Law
- Executive Agreements
- Treaties
- Customary International (Common) Law

World Trade Organization

In 1995, the World Trade Organization, a formal international organization to regulate trade, was established. It is the most important development in the history of international trade law.

The purposes and structure of the organization is governed by the Agreement Establishing The World Trade Organization, also known as the "Marrakesh Agreement". It does not specify the actual rules that govern international trade in specific areas. These are found in separate treaties, annexed to the Marrakesh Agreement.

Scope of WTO :

(a) provide framework for administration and implementation of agreements; (b) forum for further negotiations; (c) trade policy review mechanism;and (d) promote greater coherence among members economics policies

Principles of the WTO:

(a) principle of non-discrimination (most-favoured-nation treatment obligation and the national treatment obligation)
(b) market access (reduction of tariff and non-tariff barriers to trade)
(c) balancing trade liberalisation and other societal interests
(d) harmonisation of national regulation (TRIPS agreement, TBT agreement, SPS agreement)

The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy games. Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO:

1. Non-discrimination. It has two major components: the most favoured nation (MFN) rule, and the national treatment policy. Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these areas. The MFN rule requires that a

WTO member must apply the same conditions on all trade with other WTO members, i.e. a WTO member has to grant the most favourable conditions under which it allows trade in a certain product type to all other WTO members. "Grant someone a special favour and you have to do the same for all other WTO members." National treatment means that imported goods should be treated no less favourably than domestically produced goods (at least after the foreign goods have entered the market) and was introduced to tackle non-tariff barriers to trade (e.g. technical standards, security standards et al. discriminating against imported goods).

2. Reciprocity. It reflects both a desire to limit the scope of fr ee-riding that may arise because of the MFN rule, and a desire to obtain better access to foreign markets. A related point is that for a nation to negotiate, it is necessary that the gain from doing so be greater than the gain available from unilateral liberalization; reciprocal concessions intend to ensure that such gains will materialise
3. Binding and enforceable commitments. The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in a schedule (list) of concessions. These schedules establish "ceiling bindings": a country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. If satisfaction is not obtained, the complaining country may invoke the WTO dispute settlement procedures.
4. Transparency. The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the TradePolicy Review Mechanism (TPRM). The WTO system tries also to improve predictability and stability, discouraging the use of quotas and other measures used to set limits on quantities of imports.
5. Safety values. In specific circumstances, governments are able to restrict trade. The WTO's agreements permit members to take measures to protect not only the environment but also public health, animal health and plant health.

Dispute Settlement

The WTO's dispute-settlement system "is the result of the evolution of rules, procedures and practices developed over almost half a century under the GATT 1947". In 1994, the WTO members agreed on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) annexed to the "Final Act" signed in Marrakesh in 1994. Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as a "unique contribution to the stability of the global economy".WTO members have agreed that, if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally.

The operation of the WTO dispute settlement process involves case-specific panels appointed by the Dispute Settlement Body (DSB), the Appellate Body, The Director-General and the WTO Secretariat, arbitrators, and advisory experts.

The priority is to settle disputes, preferably through a mutually agreed solution, and provision has been made for the process to be conducted in an efficient and timely manner so that "If a case is adjudicated, it should normally take no more than one year for a panel ruling and no more than 16 months if the case is appealed... If the complainant deems the case urgent, consideration of the case should take even less time. WTO member nations are obliged to accept the process as exclusive and compulsory.

International Economic Law

A somewhat restrained definition of international economic law embraces trade, investment, services when they are involved in transactions that cross national borders, and those subjects that involve the establishment on national territory of economic activity of persons or firms originating from outside that territory.

There are two bifurcations of the subject of international economic law. One is the distinction between monetary and trade affairs. The other one is the distinction between international and domestic rules. However, domestic and international rules and legal institutions of economic affairs are inextricably intertwined and it is really not possible to understand the real operation of either of these sets of rules in isolation from the other.

The emphasis in international economic law is on treaties. In relative significance, international customary law lags behind treaties in International Economic Law, though it fulfills some important functions (see pg. 270).

In the absence of bilateral and multilateral treaty obligations to the contrary, international law does not ordain economic equality between States nor between their subjects.

Sometimes it is claimed that the principle of non-discrimination, often termed the Most-Favored Nation obligation, is a norm of customary international law. In addition, in

the international discourse of today there is often argument over whether there exists in international law some general obligation to assist developing countries in their efforts to make economic progress.

Economic Treaties The most important of these are the FCN (Friendship-Commerce-Navigation) treaties, the various treaties for the avoidance of multiple taxation, a long line of "commercial treaties" dealing with tariffs and customs matters (often superseded by modern multilateral agreements), and particular commercial treaties dealing with a specific product group (e.g. textiles or meat). More recently a number of bilateral treaties have been completed entitled "Economic Cooperation Agreements," often providing a loose framework for developing trade between market and nonmarket economies. In addition, a number of countries, including the U.S. have developed a program for negotiating bilateral investment treaties, called BITs. BITs focus on the problem of protecting their citizen investors who invest in foreign countries and also deal with some of the problems of the capital importing countries. Many bilateral treaties deal with taxation, and other more specialized subjects of economic regulation.

FCNs (Friendship – Commerce-Navigation Treaties)

The traditional FCN treaty is designed to establish an agreed framework within which mutually beneficial economic relations between two countries can take place, creating a basic accord governing day-to-day intercourse between them. It is bilateral, rather than multilateral. It's one of the most familiar in diplomatic relations. It sets forth the terms upon which trade and shipping are conducted, and governs the rights of individuals and firms from one State living, doing business, or owning property w/i the jurisdiction of the other State.

Today, greater emphasis is placed on the right of establishment and promotion of private foreign investment, as opposed to trade and shipping, which were the areas of greatest concern in negotiation of earlier FCN treaties.

BITs (Bilateral Investment Treaties)

One of the BIT's most important purposes was to counter the claim in the 1970s by developing countries that customary international law no longer required that expropriation be accompanied by prompt, adequate, and effective compensation, if indeed it ever had. The U.S. hoped to create a network of bilateral treaties embracing the prompt, adequate, and effective standard that would counter assertions that State practice no longer supported that standard.

A second purpose was to protect existing stocks of investment owned by U.S. nationals and companies in the territory of other States. A third purpose was to depoliticize investment disputes. The BITs were intended to establish legal remedies for investment disputes that would not necessitate the involvement of the investor's own government.

International Economic Organizations

OECD (Organization for Economic Cooperation and Development)

Its aims are to promote growth, full employment, trade "on a multilateral, nondiscriminatory basis" and financial stability. 24 countries are members.

UNCTAD (United Nations Conference on Trade and Development)

Its aims are to promote trade in the interest of development, to formulate principles and policies concerning such trade, to initiate multilateral trade agreements, and to act as a center for harmonizing governmental policies affecting the area. As of 1993, it had 171 members, each of which had an equally weighted vote.

The Bretton Woods System and World Economic Relations

The Bretton Woods System is comprised by the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD—World Bank), and World Trade Organization (WTO).

The first two are power-oriented institutions, i.e., each member country's voting power is determined by its share of quota.

The WTO is a consensus institution (1 vote per country).

IMF (International Monetary Fund)

The IMF was conceived to aid member countries with short-term balance of payments difficulties.

The organizational structure of the IMF is set out in its Articles of Agreement. The highest authority of the IMF is the Board of Governors, which consists of a Governor and Alternate Governor appointed by each member country.

Members' quotas in the IMF determine their subscription to the Fund, their drawing rights on the Fund under both regular and special facilities, and their share of SDRs; and they are closely related to their voting power.

IBRD (International Bank for Reconstruction and Development: World Bank)

Its aims are to promote growth, trade and balance of trade equilibrium of its members, "by facilitating the investment of capital for productive purposes" with its own loans at conventional rates of interest and guarantees for foreign investors, and by providing technical assistance.

Only those countries which are members of the IMF may join the World Bank.

The Legal Structure of the WTO/GATT System

Since 1947, the GATT was the principal international multilateral treaty for trade, although technically it was only in force "provisionally." In theory, the GATT did not establish an organization, although in practice GATT operated like one. The Uruguay Round results create a new and better defined international organization and treaty structure—a WTO—to carry forward GATT's work.

The GATT is a treaty which deals almost entirely with trade in products. The Uruguay Round for the first time has produced a comparable treaty for trade in services and a new treaty dealing with intellectual property.

GATT 1947 provides an important "code" of rules applying to government actions which regulate international trade. The basic purpose of the GATT is constrain governments from imposing or continuing a variety of measures which restrain or distort international trade. Such measures include tariffs, quotas, internal taxes and regulations which discriminate against imports, subsidy and dumping practices, state trading, as well as customs procedures and a plethora of other "non-tariff measures" which discourage trade.

The basic objective of the rules is to "liberalize trade" so that the market can work to achieve the policy goals outlined in chapter 1.

The GATT has a number of exceptions, such as those for national security, health and morals, safeguards or escape clauses (for temporary restraint of imports), free trade agreements, and the like, plus a "waiver" power.

The WTO annex 1A incorporates a document entitled GATT 1994, which is essentially GATT 1947 as amended and changed through the Uruguay Round, along with all the ancillary agreements pertaining to GATT 1947, as modified.

The Regulation of Dumping

Escape clause actions are taken for purposes of adjustment to imports, which come about through the natural application of liberal trade policies; whereas AD duties and CVD are designed to counteract foreign measures which are considered in some sense "unfair" or "market distorting."

Certain international trade practices are undesirable and should be regulated. The basic idea behind such rules is sometimes expressed as a desire to create a level playing field where the producers of the world all have an equal chance to compete.

Application of the major statutes on unfair trade practices, such as dumping and subsidization, is characterized, particularly in the U.S., by complex rules and proceedings and by extensive involvement of lawyers and courts.

International Rules on Dumping

GATT Article VI deals with both AD and CVD. However this article is relatively brief and says little about many of the procedural and substantive issues that arise in AD and CVD cases. Thus, in 1967, the Antidumping Code was signed.

One key fact about Article VI and GATT regulation of dumping is that the GATT does not forbid dumping; it only authorizes, as an exception to other GATT obligations, the imposition of AD duties to offset dumping if the dumping causes material injury to a domestic industry.

Conclusion:

Today the world has become a small place to live in and business or trade has acquired a different and very vast meaning than the limited meaning that it had in the past. Today trade encompasses almost every aspect of our lives and has its impact on everything that we do. One, therefore needs to examine "Trade" in depth and this study is an effort to perform this as one of the objectives. Trade has now become global and International Trade has now come in vogue, nowadays people are not happy or satisfied with domestic trade, import - export i.e. International Trade is of a much greater aspiration.

The world is getting a smaller and smaller planet now and looking to the speed at which distances are in effect lessening and International Trade is increasing by the minute, it is highly desired to examine the effects of Globalisation on such trade. One needs to understand whether there are only positive effects of Globalisation on International Trade or there are certain negatives as well.

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