International Trade Law and Maritime Trade

Dr. V. Balakista Reddy

Professor of Law & Registrar

Head, Centre for Aerospace & Defence Laws

NALSAR University of Law

Hyderabad

E-mail- balakista@gmail.com

Trade Regulations: An Overview

- What is Regulation?
- Giving of authoritative directions to bring about and maintain a desired degree of order
- Kinds or Venues of Trade Regulations
- 1. National
- 2. Bilateral
- 3. Regional and
- 4. Global or International Regulations

What is Int. Trade Law (ITL) ?

- ITL is not in the exclusive domain of Law. It comprises majorly of economics and politics and configuration of Int. actors like states and MNCs
- ITL is without any structure (amorphous) hence it cannot be pinpointed
- ITL deals with economic institutions like IMF, IBRD, GATT, WTO etc
- Though ITL is amorphous it is still necessary to study, because trade determines the status of power in Int. politics and determines national economic interests.

International Eco.& Trade Law

- Difficult to make distinction, however
- IEL covers issues like Markets, Interdependence, Role of State intervention and non intervention, Economic Development, BOP, PSNR, Nationalization and Expropriation – institutions --Bretton woods
- Issues in ITL includes Market Access, Tariff Regulations, Cross border Sale of Goods, Services, Capital, Labour, Dumping, Anti-Dumping, Subsidies, Counter vailing Measures. etc. Institutions include ITO, GATT, WTO

Definitions of Int. Eco.& Trade Law

- Ambiguity in scope and definitions
- Traditional View—ITL is all about economic activities of buying and selling, where the transactions crosses a border or Cross border Sale of Goods between States
- Modern View --- (1)Today cross border exchanges are not only limited to sale of goods, but also movement of capital, services, labour IPRs etc., .
- (2) Cross border Exchanges between the Subjects of International Law
- ITL is Branch of Public International Law
- Scope of the ITL Expanded Due to the Inclusion of New Subjects and new issues

Definitions of Int. Eco.& Trade Law

- 1. George Schwarzenberger "Int. Economic Law as a branch of PIL that encompasses such matters as the ownership and exploitation of natural resources the production & distribution of goods, invisible economic or financial transactions and currency and finance"
- 2. Prof. Ignaz Seidl-Hohenveldern " Int. Eco. Law consists of those rules of PIL which directly concern economic exchanges between the subjects of I.L

Relationship between IEL,ITL & IL

- Contribution of Int. Trade to IL
- Trade relations existed from ancient times
- Trade existed before nations states
- Economic exchanges existed between individuals
- Professor Cassese in his work IL in a Divided World states that “ Int. Eco. Relations are usually the hunting ground of few specialists, who often jealously hold for themselves key to the subject of Law & Economics

Similarities and Distinctions Between IEL,ITL&IL

- IL emerged through State Practice- ITL was not seen as state practice because mostly transactions used to happen between individuals
- ITL majorly developed on the basis of treaties- both bilateral and multilateral ---IL is based on state practice
- ITL based on the promotion of Individual economic exchanges and individual welfare---IL is based on state centric or state oriented i.e. relations between states or State welfare
- IL is based on the concept of State Sovereign i.e. political sovereignty ---ITL is based on economic sovereignty
- Territory and territorial borders are important to IL---ITL is about the getting rid of state and state borders
- IL promotes independence of states ---ITL promotes interdependence of states

Development of Trade Regulations: An Overview

- Trade Regulations in Ancient Times
- Trade in middle ages- Lex Mercatoria or law of merchants
- Trade between 18th to 20th centuries

  Theories – Laissez-faire or free trade

  Theory of protectionism – comparative advantage

  Colonialism and international trade
- Trade in the 20th century, world wars, rise and fall of socialism, division of worlds- first, second and third

Trade Regulations in Ancient Times

- Trade predates the nations states and it pre dates IL
- People have always brought and sold to others outside their family, their community, towns, cities or people who spoke different languages or people who lived thousand Kilometers away Ex: the Greeks of Ancient times, the Romans, the Italian city states
- Trade was linked to the development of IL
- Trade helped to development of cities, nation states on which Modern IL is based.
- To War, Trade was most frequent subject of inter-state relations

Trade Regulations Cont…

- Douglas Irwin in his book Against the Tide: An Intellectual History of Free Trade discussed the historical evolution of trade from Greek, Romans to Present times.
- Plato argued gains from division of Labour
- It is viewed that God has created the seas, geographic separation & diversity in endowments, in order to promote interaction through trade between regions.
- Trade Regulations through the imposition of tolls
- Agreements between kingdoms were existed Ex. A commercial treaty between the king of Egypt & Babylonican existed in 2500 B.C.

Negative views on Trade

- Earlier Merchants or traders regarded as an inferior class
- They have notions like foreign trade is a disturbance to domestic life and it encourages corruption and bad practices etc.

Trade Regulations in Middle Ages

- International Economic relations were dominated by the principle of Lex Mercatoria or Law of Merchants
- Origin is uncertain- 1. Middle ages in Italy 2. some urged that Romaine's period –Romans Jus Genetium – the body of law that regulated the economic relations ships between foreigner and Roman citizens
- What is Lex Mercatoria? A cosmopolitan merchant law is based on customs and applied to cross border disputes by the market tribunals of various European trade centers
- Why is Came? This law resulted from the efforts of the medieval trade community to over come the fragmentary and obsolete rules of Feudal and Roman Law which could not respond to the needs of the new local & Int. Commerce

Cont.,

- Merchants created a superior law which helped great expansion of Int, Commerce
- This law was regulated by Merchant Guilds
- Fairs used to happen every year
- Counsels and Consulates were also played important role in the development of Int. Trade
- Sea Transport also helped in this period
- Merchants have their own courts called “ Piepwoder Courts” which operated like Private Int. arbitration.

Trade Regulations in the Modern Period

- Mercantilism, Free Trade & Protectionism
- Mercantilism or wealth Formation Theory
- Trade expeditions Ex: Marco polo, Vascodegama, etc.,
- The Mercantilists encouraged exports & discouraged Imports, by way heavy taxes
- Promote the manufacturing of raw materials & discourage imported goods
- Export margins higher than import margins
- Role of Govts. Should restrict imports and encourage exports