

FACULTY OF JURIDICAL SCIENCES

Lecture-1



INTRODUCTION

International Trade Law (ITL) is the law regulating international commerce. It has two aspects: public and private. The public aspect of ITL seeks to coordinate commercial policies of states; and it is a part of Public International Law. The private aspect of ITL governs international commercial transactions between the people belonging to different states. This is substantially covered under Private International Law. In addition, the bodies like the United Nations Commission on International Trade Law have been trying to develop standard laws on various aspects of transnational transactions and states are expected to incorporate them in their respective legal system. This process is known as unification of laws. In this module, only public aspects of ITL are covered.

The purpose of ITL has been to foster free trade among nations. Free trade in this context means that people should be free to buy and sell goods cutting across national frontiers. In other words, a person should be free to buy a product from anywhere in the world wherein he can get the best quality at the cheapest possible price. Similarly, he should be free to sell his product anywhere in the world at the highest possible price. In brief, it is the globalization of Article 301 of Indian Constitution: Trade, Commerce and intercourse shall be free throughout the territory of India

Before the emergence of modern state system in 17th century, trade was free and merchants moved all over the world to the extent they could buying and selling goods and incidentally spreading knowledge and culture. In this way, they were the harbingers of modern civilization. But once the organized state system came into existence, the governments started interfering into these commercial transactions. To start with, they began to levy tariffs on incoming goods mainly with a view to bolstering their revenues. With the ushering in of Industrial revolution, manufacturing became an important component of national economy. At that stage, states started using tariffs and other devices to protect national economy from foreign competitors. From that time onwards, free trade and protectionism moved side by side: one following the other like a shadow.

Thanks to the contributions of people like Adam Smith, the governments realized the value of free trade; and made conscious efforts to promote free trade. One can identify three distinct stages in the evolution of international free trade regime. To begin with, states started concluding bilateral treaties, with a view to mutually reducing tariffs with regard to certain specified goods which were of interest to them. Anglo-French Treaty of 1860 was the earliest bilateral treaty calling for a “tariff truce” and aiming at mutual tariff reductions. And this stage continued up to the end of Second World War

By the end of Second World War, having realized the limitations of bilateral approach, the states went for a multilateral approach for the first time. The General Agreement on Tariffs and Trade was the product of this approach. The principle of non-discrimination along with tariff reduction

became the basis for this new multilateral regime. The principle of non-discrimination means that states shall not discriminate between goods by reference to their places of origin.

Thanks to the emergence of multinational corporations and global production chains, national economies are being globalized. Modern digital technology made the integration of production at global level possible. The European Union, the North American Free Trade Area and the World Trade Organization represent the institutional manifestation of this new trend. Along with trade liberalization, these institutions have been pursuing the objective of developing global standards and thereby global governance for intellectual property rights, investment, labor rights, etc. There have been formidable obstacles on the way, but still the effort towards a global regime in trade, investment and related aspects such as technology is going on. Trans-Atlantic Trade and Investment Partnership (TTIP), Transpacific Partnership Agreement (TPPA) and Regional Comprehensive Economic Partnership (RCEP) represent this renewed effort. The basic idea seems to be that even if global consensus is not possible, let us try at substantial regional level.

Generally, international trade law includes the rules and customs governing trade between countries. International trade lawyers may focus on applying domestic laws to international trade, and applying treaty-based international law governing trade.

Two main areas of international trade on the domestic side include trade remedy work and export controls/sanctions. Trade remedies are tools used by the government to take corrective action against imports that are causing material injury to a domestic industry because of unfair foreign pricing and/or foreign government subsidies. An example of a trade remedy includes antidumping duties set forth by the International Trade Commission (“ITC”) in response to dumping this occurs when a foreign company sells a product in the U.S. that is below the price it sells for in its ‘home market’ and thus causes harm to the U.S. industry.

Export control laws govern the exportation of sensitive equipment, software, and technology for reasons related to foreign policy objectives and national security. Three U.S. government agencies have the authority to issue export licenses, including: Department of State; Department of Commerce; and Department of Treasury. Violations of export control laws can carry both civil and criminal penalties.

On the international treaty front, companies may need advice on the rules of the World Trade Organization (“WTO”), which is a formal international organization that regulates trade. Other relevant treaties include the North American Free Trade Agreement (“NAFTA”) and bilateral investment treaties.