

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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Laws Relating to International Trade and Commerce

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ABSTRACT

Global company activities depend greatly on the application of international trade and commerce rules. These laws control how firms conduct themselves when engaging in international trade, as well as how goods and services are sold, as well as import and export rules, intellectual property rights, and investment laws. This research paper's goal is to give a summary of the rules governing international trade and commerce with an emphasis on how those laws affect businesses.

The research paper will begin with an introduction to the fundamental ideas governing global trade and commerce regulations, as well as the World Trade Organisation (WTO) and its function in policing global trade. The legal foundation for international trade, including the treaties, conventions, and agreements that control cross-border trade, will then be covered in the paper.

The following section of the paper will study the laws that control import and export operations, including trade restrictions, tariff laws, and customs regulations. The legal difficulties surrounding the protection of intellectual property rights, including patents, trademarks, and copyrights, will also be covered in this research.

The research paper will also examine the legal framework governing foreign investment, including foreign investors' rights and obligations, investment protection, and the resolving of conflicts between foreign investors and host governments. Global company activities depend greatly on the application of international trade and commerce rules. These laws control how firms conduct themselves when engaging in international trade, as well as how goods and services are sold, as well as import and export rules, intellectual property rights, and investment laws. The law that governs import and export activities will then be examined, including trade restrictions, tariff laws, and customs regulations. The legal difficulties surrounding the protection of intellectual property rights, including patents, trademarks, and copyrights, will also be covered in this paper. The regulations governing international trade and commerce, as well as their effects on businesses involved in international trade, will all be thoroughly explained in this research paper.

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I. INTRODUCTION

Global trade and commerce² are crucial elements of the economy because they enable nations to exchange products and services across boundaries and increase their competitiveness and economic growth. To promote justice, efficiency, and sustainability, several legal laws are in place to govern the complex world of international trade and commerce. The World Trade Organisation (WTO) agreements, bilateral and multilateral trade agreements, intellectual property rights³, and dispute resolution procedures are only a few of the important laws and regulations that control international trade and commerce that are briefly discussed in this research paper. The foundation of the world trade system is a set of laws and guidelines that have changed over time in response to shifting political and economic conditions. In addition to protecting intellectual property rights and promoting free trade, these rules and regulations also offer means for settling international conflicts. Businesses and governments⁴ that want to participate in international trade⁵ and commerce and handle the difficulties and opportunities of the contemporary globalised economy must have a solid understanding of the legal framework governing such activities.

II. PRINCIPLES OF INTERNATIONAL TRADE AND COMMERCE LAW

The principles of international trade and commerce law⁶ are designed to ensure that trade and commerce activities are conducted fairly, efficiently, and in a manner that benefits all parties involved. Some of the key principles of international trade and commerce law are discussed below.

1. Non-Discrimination:

One of the cornerstones of international trade and commerce law is the principle of non-discrimination⁷. According to this idea, all nations must treat imported goods and services

² 7.2 – globalization and international trade: *The Geography of Transport Systems* (2022) *The Geography of Transport Systems | The spatial organization of transportation and mobility*. Available at: <https://transportgeography.org/contents/chapter7/globalization-international-trade/> (Accessed: 30 May 2023).

³ *What's commercial law?: Upcounsel 2023* (no date) *UpCounsel*. Available at: <https://www.upcounsel.com/whats-commercial-law> (Accessed: 30 May 2023).

⁴ Lutkevich, B. (2021) *What is globalization? globalization explained*, *CIO*. Available at: <https://www.techtarget.com/searchcio/definition/globalization> (Accessed: 30 May 2023).

⁵ Cedeno, L. (2017) *Why is international trade important?*, *KnowsWhy.com*. Available at: <https://www.knowswwhy.com/why-is-international-trade-important/> (Accessed: 30 May 2023).

⁶ *Non-discrimination and the role of regulatory purpose in international trade and investment law* (no date) *IISD*. Available at: <https://www.iisd.org/itn/en/2017/03/13/non-discrimination-and-the-role-of-regulatory-purpose-in-international-trade-and-investment-law/> (Accessed: 30 May 2023).

⁷ *Non-discrimination and the role of regulatory purpose in international trade and investment law* (no date) *IISD*. Available at: <https://www.iisd.org/itn/en/2017/03/13/non-discrimination-and-the-role-of-regulatory-purpose-in-international-trade-and-investment-law/> (Accessed: 30 May 2023).

equally with native ones. Most-favoured-nation (MFN) and national treatment are two ways that non-discrimination might be practised. Countries must treat all of their trading partners equally under MFN. For instance, a nation must cut its tariffs for a particular product for all of its trading partners if it does so for one trading partner. Foreign and domestic goods and services must be treated equally under the principle of national treatment⁸. For instance, if a nation levies a tax on a certain item, it must levied the same charge on both domestic and imported copies of the item.

2. Free Trade:

According to the free trade theory, trade restrictions like tariffs, quotas, and subsidies should be eliminated. Free trade aims to advance economic competitiveness and efficiency, which may result in lower consumer costs and faster economic growth. Free trade, however, can also result in social and environmental problems and employment losses in particular areas.

3. Intellectual property rights

A crucial aspect of international trade and industry law is intellectual property rights (IPR). IPR, such as patents, trademarks, and copyrights, protect the works produced by people and businesses. IPR are crucial for fostering innovation and creativity since they give creators the sole right to use their works for a set period of time.

4. Dispute Resolution

International trade and commerce legislation must include dispute resolution. International trade and commerce can result in disagreements between nations, businesses, or people. To settle these issues amicably and quickly is the aim of dispute resolution. One of the key organisations in charge of resolving disputes in cross-border trade and commerce is the World Trade Organisation (WTO).

III. INSTITUTIONS OF INTERNATIONAL TRADE AND COMMERCE LAW

(A) World Trade Organization

International trade and commerce are governed by the World Trade Organisation (WTO), an intergovernmental body. The 164 nations that are currently a part of the WTO were founded in 1995. The main duties of the WTO are:

- managing and enforcing trade agreements under the WTO

⁸ *Non-discrimination in Global Trade* (no date) *Hinrich Foundation*. Available at: <https://www.hinrichfoundation.com/research/tradevistas/wto/non-discrimination-in-trade/> (Accessed: 30 May 2023).

- the establishment of a trade negotiation forum
- keeping an eye on national trade policies.
- Providing developing countries with technical support and training

(B) International Monetary Fund

The International Monetary Fund (IMF) is a global organisation that supports economic expansion, stable exchange rates, and global monetary cooperation. There are currently 190 nations that are members of the IMF, which was founded in 1944. The main duties of the IMF are:

- giving money to members whose nations are having balance of payments issues.
- keeping track on world economic trends.
- providing member nations with technical help and training.

(C) International Chamber of Commerce:

The International Chamber of Commerce (ICC) is the world's largest business organization.

IV. SCHOOL OF JURISPRUDENCE

According to the positivist school of jurisprudence,⁹ international trade laws are often obeyed. According to positivism, morality and justice are two different concepts from law, which is viewed as a system of rules made by the state. International agencies like the World Trade Organisation (WTO) implement regulations governing international trade that were established through international treaties and agreements. Positivist jurisprudence places less emphasis on underlying moral or just principles and more emphasis on the laws themselves. This method is appropriate for international commerce law¹⁰, which is primarily concerned with developing a set of guidelines that regulate the exchange of commodities and services across international boundaries. For instance, the WTO is more focused on upholding these regulations than it is on evaluating specific trade practises from a moral or ethical standpoint. It is crucial to remember that there are other schools of thought in law, such as legal realism and natural law, which may also be pertinent to international trade law. According to natural law, there are underlying moral and just principles to the law, and these principles ought to be taken into consideration while

⁹ Law, Justice and morality - legal method (2022) Legal PaathShala. Available at: <https://legalpaathshala.com/law-justice-and-morality/> (Accessed: 30 May 2023).

¹⁰ More, H. (2020) *Schools of International Law: Naturalists, positivists, and eclectic theories, The Fact Factor*. Available at: https://thefactfactor.com/facts/law/civil_law/public-international-law/schools-of-international-law/14905/ (Accessed: 30 May 2023).

interpreting and applying legal provisions. On the other hand, legal realism emphasises how social and economic variables shape the law and may be useful for comprehending the political and economic¹¹ environment in which international trade regulation.

(A) Positivist School of Law

A legal doctrine known as positivism believes that the law is a body of regulations produced by the state that are separate from morality, ethics, or natural law. Positivism emphasises the role of legal authority in establishing and upholding legal laws, as opposed to moral or ethical considerations. Modern legal systems all around the world have been significantly influenced by this school of thoughts are developed and implemented. positivism first appeared in the 19th century. Jeremy Bentham, who promoted the idea that the law should be founded on precise and definite rules rather than nebulous and abstract concepts, was one of the main protagonists in the development of positivism. The common law systems of England and the United States, as well as the civil law systems of Europe, were all affected by the theories of Jeremy Bentham. Positivism is predicated on the idea that morality, ethics, and natural law are all distinct from the laws that the state has constructed. Positive theory holds that the state's sovereign power grants laws their legitimacy, and that state institutions like the judiciary, police, and administrative agencies are responsible for upholding the law. The principles of positivism include the following:

- i. A set of laws made by the state is referred to as the law: Positivists hold that the state creates the law through¹² legislation, executive orders, or court rulings. The state's sovereign power gives laws their legitimacy, and state institutions are responsible for upholding the law.
- ii. Legal norms are separate from morality and ethics, according to positivists, who also contend that moral or ethical concerns should not be used to guide legal decisions. Positivism contends that rather than being founded on nebulous, abstract concepts, legal laws should instead be based on precise, measurable standards.
- iii. Positivists contend that social conventions—rather than natural law or a divinely enacted code—serve as the foundation for legal principles. A society's social and economic situations are reflected in its laws, which are developed through the political process.

¹¹ *International Trade* (2023) *Wikipedia*. Available at: https://en.wikipedia.org/wiki/International_trade (Accessed: 30 May 2023).

¹² *Law: Meaning, features, sources and types of law* (2014) *Your Article Library*. Available at: <https://www.yourarticlelibrary.com/essay/law-essay/law-meaning-features-sources-and-types-of-law/40363> (Accessed: 30 May 2023).

- iv. Legal decisions are based on legal authority: Positivists contend that rather than moral or ethical considerations, legal judgements should be based on legal authority. State institutions implement the law, which derives from the sovereign power of the state¹³.

Criticism for Positivist Theory

Positivism has come under fire for failing to take into account the larger social and economic environment in which legal regulations are made and upheld, as well as for its narrow focus on legal authority. Critics contend that positivism fails to address concerns of justice and fairness and ignores the influence of morality and ethics on the development of the law.

Additionally, some detractors contend that positivism ignores the social and economic factors that can affect legal outcomes because it is overly predicated on legal principles. For instance, some legal realists contend that rather than just legal principles, judicial decisions are impacted by elements including social class, economic interests, and political ideology.

V. EVOLUTION OF THE LAWS OVER THE YEARS

- **Mercantilism:** From the 16th through the 18th century, mercantilism dominated economic thought and placed a strong emphasis on building riches through a positive trade balance. As a result, colonialism flourished and European countries began to utilise the resources found in the colonies.
- **Industrialization:** During the 18th and 19th centuries, the Industrial Revolution resulted in significant modifications to global trade patterns, with industrialised nations acquiring raw resources while exporting produced commodities.
- **Protectionism:** To shield native sectors from foreign competition, many nations implemented protectionist measures in the early 20th century, such as tariffs and quotas.
- **Post-World War II:** After the Second World War, the Bretton Woods system was founded, which prompted the development of organisations like the World Bank and the International Monetary Fund (IMF). The General Agreement on Tariffs and Trade (GATT), which subsequently became the World Trade Organisation (WTO), was also established during this time.
- **Globalisation:** The development of globalisation and the expansion of worldwide trade occurred in the second half of the 20th century as a result of advances in communication

¹³ Ibid.

and transportation technologies. Emerging economies like China and India were significant actors in international trade during this time.

- **Digital Age:** The development of e-commerce and digital trade during the twenty-first century has given rise to both new opportunities and difficulties for global trade. Concerns concerning privacy, security, and intellectual property rights have also increased with the expansion of digital trade.

(A) Evolution over the years

As economic, political, and social circumstances throughout the world changed over time, so did rules governing international trade and business. Some of the key developments in the development of these laws include the following:

- **Bilateral and multilateral trade agreements¹⁴** development Bilateral agreements predominated in the early 20th century when it came to governing international trade. The General Agreement on Tariffs and Trade (GATT), which was established in 1947, is an example of the multilateral accords trend that emerged following World War II. The World Trade Organisation (WTO), which has since become the main platform for negotiating and upholding international trade agreements, later took over for GATT in 1995.
- **Integration of Developing Nations:** In recent years, the integration of developing nations into the world economy has received more attention. The motivation for this has been the idea that by engaging more in global trade and business, these nations' economies may expand and thrive. Due to this, there has been a move towards giving developing nations preferred status in international trade agreements through initiatives like preferential trade agreements and technical aid programmes.
- **The Protection of Intellectual Property Rights in International Trade and Commerce:** With the expansion of the global knowledge economy, the protection of intellectual property rights has come under more and more scrutiny. As a result, accords like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which outlines basic requirements for the protection and enforcement of intellectual property rights, have been negotiated.

¹⁴ *Role of WTO in International Trade* (2022) *iPleaders*. Available at: <https://blog.ipleaders.in/role-of-wto-in-international-trade/> (Accessed: 30 May 2023).

- **The Development of Dispute Resolution Mechanisms** The importance of creating efficient dispute resolution processes has increased as the number of international trade disputes has risen. One of the most notable examples of this development is the WTO's dispute settlement process, which has been utilised to settle a variety of trade and business-related problems.
- **The Effect of Technological Advances:** Particularly in areas like e-commerce and digital trade, technological advancements have had a considerable impact on international trade and commerce rules. As a result, new legal frameworks and regulations have been created to control these developing sectors of trade and industry.

VI. IMPACT OF LEGAL TRADITIONS AND CULTURE ON INTERNATIONAL TRADE

The interpretation and application of laws governing international trade and commerce can be significantly impacted by cultural differences and legal traditions. Different cultural perspectives on specific business practises may differ, which may have an impact on how regulations are viewed and applied. The interpretation and application of trade and commerce legislation can also be influenced by legal traditions like common law, civil law, and Islamic law. For instance, cultural variations can influence how parties interpret a contract's provisions. Oral agreements may be just as legally binding as written agreements in some cultures, while written agreements may be more significant in others. The interpretation and application of laws governing international trade and commerce may also be influenced by legal traditions. For instance, civil law systems rely more on codified laws than common law systems, which primarily rely on court precedent. On the other side, Islamic law takes into account religious beliefs while making decisions. Due to these various legal systems, trade and commerce rules may be interpreted differently, which may have an effect on how disputes turn out. Additionally, the legal and regulatory systems in various nations can differ greatly, which may affect how well trade and commerce laws are enforced. For instance, insufficient enforcement procedures or a higher risk of corruption may exist in some nations, which might make it challenging to uphold trade and commerce-related legislation. International organisations like the World Trade Organisation (WTO) attempt to create and implement international trade regulations that can be consistently implemented across various legal and cultural contexts in order to overcome these issues. The interpretation and application of trade and commerce rules can nevertheless be impacted by cultural and legal variations, notwithstanding these attempts.

VII. CONCLUSION

In conclusion, international law is crucial in regulating interstate trade and commerce.

International trade has been liberalised thanks to the creation of multilateral trade agreements and organisations like the WTO, which has boosted economic growth and development globally. The promotion of trade and the defence of significant interests like the environment and human rights have been balanced by international laws and regulations. The implementation of laws governing international trade and commerce still faces difficulties, notably in areas like dispute resolution and the inclusion of emerging nations in the global economy. In order to ensure that legal structures and frameworks continue to function as effective means of regulating trade and commerce, continual efforts must be made to modify and update them in light of technological improvements and geopolitical concerns. It is crucial to comprehend these differences and engage in constructive discussion across nations since cultural and legal traditions can have an impact on how international trade and commerce regulations are interpreted and applied. Among the major factors that have influenced the development of these laws are the introduction of multilateral trade agreements, the emphasis on trade liberalisation, the integration of emerging nations, and the expansion of dispute resolution systems. The expansion of e-commerce and digital trade necessitated the establishment of new legal frameworks, which has had a considerable impact on international trade and commerce legislation. Overall, the shaping of the world economy and the promotion of sustainable economic growth and development will be greatly influenced by the continuous development and evolution of international trade and commerce regulations. It will necessitate constant coordination and cooperation between nations, as well as a dedication to making sure that international laws and regulations are efficient, open, and inclusive for all parties. Globally speaking, regulations governing international trade and commerce are essential for fostering economic growth and development as well as serving as a framework for resolving disputes and guaranteeing fair competition. These rules will need to adapt and change as the global economy develops in order to meet the shifting demands and problems of the global society.
