

Research Paper



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EVOLUTION OF INTERNATIONAL TRADE WITH SPECIAL REFERENCE TO WTO, GATT, GATS

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ABSTRACT

Nowadays a large number of trade agreements exists in the world and it is just not possible to examine each of these agreements and hence it makes it necessary to take examine only samples of the trade agreements and study the relationship among them.

Prior to 1994, no multilateral or international organization dealt with the trade issues between the countries. For more than fifty years the international trading system functioned without an organization under the guidance of General Agreement on Tariffs and Trade for which the rules had been developed and respected. Prior to the establishment of the World Trade Organization (WTO), international regulation, trade was fundamentally structured within the General Agreement of Tariff and Trade (GATT) . Looking back to the evolution of international regulations of international trade and the institutional structures in the early nineteenth century free trade and less protectionism was witnessed but by the end of the nineteenth century most of the independent countries had moved from free trade to protectionist policies. The twentieth century witnessed developments in the international economic relations which led to the evolution of concepts, precepts and doctrines which were unique. This was not only to achieve order in international economic and trading relations but also in the establishments of international institutions. WTO, is one of the many agreements in the governance of international trading system which deals with international trading systems in several ways and plays the most important role which make it significant for WTO to maintain smooth and supportive relationship with other agreements. This paper provides a brief orientation or topography of GATT / WTO (the heart of the multilateral world trading regime), GATS as international background of trade through different international trade agreements. The objective of this article is to analysis the legal relationship between different trade agreement and to analysis the reasons for replacing of each agreement instead of other agreement.

KEY WORDS: WTO,GATT.GATS.RELATIONSHIP.TRADE

INTRODUCTION

Even before the approval of the International Trade Organization (ITO) Charter by the Havana Conference in March 1948, the GATT was completed in November, 1947. Later, the Havana Conference started on November 21, 1947 in which 56 nations except the

Soviet Union participated. After an extended debate on 'development issues', the Final Act, embodying the Charter for the International Trade Organization (ITO) was signed on March 24, 1948 by 53 countries but for unknown reasons three participatory countries did not sign the Act.



GATT remained as a *multilateral agreement among its contracting parties rather than a treaty among sovereign nations* until the formation of WTO on January 1, 1995. According to the approved text of GATT, multilateral decisions under GATT were to be taken by the 'CONTRACTING PARTIES' (referred in capital letters) which acted jointly and not by an individual organization. Thus the GATT was only a multilateral agreement and not an organization which operated under the umbrella of the ITO once it was established. But the ITO never came into being as the United States did not ratify the Charter.

THE PRINCIPLE OF NON-DISCRIMINATION

The principle of non-discrimination which is viewed as the corner stone of GATT is referred to in the preamble to the GATT which is augmented in two key provisions. Article I - which adopts the Most Favored Nation principle and Article III which adopts the principle of National Treatment.

The Most Favored Nation (MFN) principle

According to GATT any kind of charges or customs duties levied by one country on another member country, any benefit, gain, favor, advantage or protection granted by such country to product originating in any other country would be treated unconditionally like a product originating in the boundary of all other member countries. The tariff concessions may be negotiated among the two countries which are principle suppliers and purchasers of the products under consideration. In case either of the countries makes an obligatory tariff concession the same should be extended to all other member countries of the GATT without demanding *quid pro quos* for the concession extension even if it were not a part of the original negotiations. But the MFN principle might be subjected to significant exceptions.

The National Treatment principle

The MFN principle of GATT was intended to limit the favoritism by members among various foreign exporters. The Principle of National Treatment that was set out in Article III of the GATT looked into a different form of discrimination in which a member adopted internal or domestic policies that were designed to support domestic producers in comparison to foreign producers of the same product even the later was treated alike. The Article III states that the products of an area of one Contracting Party that are brought into the area

of another Contracting Party shall be given the same treatment without any favoritism as the products of national origin in all aspects of laws, regulations and factors affecting the internal sale. This means that once the border duties are paid as per the tariff schedule of the country by the foreign exporter no additional burden in the form of internal sales taxes or discrepancy in various regulations cannot be levied on foreign exporters as the same is not borne by the domestic producers. The applications of the National Treatment principle to a given situation is a source for a number of GATT panel decisions when difficult decisions arise on domestic law, regulations on administrative policy which appears to be neutral but has an impounding burden on foreign exporters.

The preface in the GATT is prepared on the basis of comparative cost advantage and free market keeping in mind that the GATT was meant that international economic and trade relations should be carried out with a view to raise the standards of living, providing full employment, a large and gradually growing volume of actual income and effective demand, increasing the full use of the resources of the world and at the same time increasing the production and exchange of goods. In order to carry out the objectives, joint and mutual arrangements were entered into which directed to the significant reduction of tariffs and other trade barriers and also abolition of discriminatory treatment in international commerce.

GATT Tariff Negotiations

The second objective of the GATT was to gradually reduce tariffs and other trade barriers. The methodology adopted by the contracting parties to achieve the objective was to negotiate reduction of tariffs and trade liberalization by using resourceful methods of Tariff Rounds among different GATT contracting parties on a regular basis. Totally there are eight rounds including the Uruguay Round.

URUQUAY ROUND

The Uruguay Round of Multilateral Trade Negotiations which was started in 1966 at Punta del Este concluded in 1993 after seven years of negotiations. Arthur Dunkel, Director General of GATT during the Uruguay Rounds was the author of the new proposals which led to the formation of WTO. The Dunkel Draft was the combination of several new proposals which emerged into different agreements on Agriculture, Trade related Investment Measures, Intellectual Property Rights, services, etc. The Uruguay Round was called 'final' as this was the last round of negotiations under

the old setup under the General Agreement on Tariffs and Trade (GATT, 1947) encompassing the Agriculture and Services into multilateral arrangement among others. (Srinivasan, 1998)

The 'new areas' of the Uruguay Round could be divided into two major groups namely, 'new economic areas' and 'old economic areas new to full, GATT regulation' (Evans, 1996). Agreements on services, trade related investment measures and Intellectual Property Rights were part of the first group while Agreements on textile and agriculture formed the second group. The developed countries supported the new economic areas against the wishes of the developing countries. The areas new to GATT regulation were encouraged by the developing countries and few developed countries joined them later.

The conclusion of the Uruguay Round on 15th December 1993 led to the Final Act on 15th April 1994 which embodied the results of the Uruguay Round of Multilateral Trade Negotiations into various agreements, declarations and decisions in the form of an Annexure which was unanimously approved at Marrakesh (Morocco). WTO – a permanent inter-governmental body which governed and regulated the international trade in goods and services came into existence on 1st January, 1995. The WTO was a more democratic set-up as compared to other multilateral bodies like The World Bank and The International Monetary Fund (IMF).

World Trade Organization (WTO): The Structural Dimensions

The World Trade Organization (WTO) which was established in January 1995 served as a conclusion of the international efforts of the past five decades to establish a real and accurate international trade organization which not only catered to the growing needs of international economic community that had faced extensive and gigantic multifaceted phenomena of protectionism, regionalism and interdependence but also to replace the aborted ITO of Havana Charter with a new international organization taking into account the weakness of the GATT which had served the cause of international trade not in a very efficient way. Thus, the WTO completed the unfinished agenda of ITO and strengthened the GATT 1947 which was accidentally established by GATT 1994.

The Objectives of the WTO as reflected in its Preamble 'in parenthesis' are:

- (a) That international economic relations should be conducted with a view to raising standards

of living, ensuring full employment and a large and steadily growing volume, of real income and effective demand;

- (b) Expanding the production of trade in goods and services;
- (c) While allowing for the optimal use of the world's resources in accordance with the objectives of sustainable development, seeking both to preserve the environment and to enhance the means of doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

Functions and Structure of WTO

WTO describes five functions. The first and broader function is to facilitate the implementation, administration and operation, enhance the objectives, Agreement and of the Multilateral Trade Agreements and at the same time provide a network for the implementation, administration and operation of the Plurilateral Agreements. The members of the WTO are under a direct obligation under Multilateral Agreements but under Pulilateral Agreements the obligations are subject to accession of the countries to the Agreements. The second function of WTO is of negotiating type. The WTO shall provide or may provide a forum for negotiations. WTO providing a forum is clearly meant for multilateral negotiations which are dealt within the Annexes to the Agreement on the subjects that are covered by the GATT and Uruguay Round. WTO may provide a forum for further negotiations concerning multilateral trade relations which may be decided by WTO Ministerial Conference. If such negotiations take place then WTO can provide a framework for putting their results into effect. The third and fourth functions of WTO is to control and monitor the arrangements in Annexes 2 and 3 for the Settlement of Disputes (Annex 2 – Understanding of Rules and Procedures Governing the Settlement of Disputes and Annex 2 – Trade Policy Review Mechanism) which might arise among members and for the review of trade policies. To conclude, the WTO has to match up and synchronize with the IMF and JBR for achieving greater consistency in global policy making.

Structure of WTO

The structure of WTO enabled with legal personality and legal capacity as an international organization, is large with a nucleus of Ministerial Conference and all WTO Members are its representatives who meet at least once in every two years. The General

Council composed of all WTO members is the principal decision and policy making body which meets as and when required.

The Ministerial Conference is empowered to take decisions on all matters under any of the MTA's in agreement with particular requirements in the Agreement establishing WTO and in related MTA's. The General Council, incorporated to manage the operation of the Agreement and Ministerial Decisions on a regular basis also discharges the functions of two important subsidiary bodies namely, the Dispute Settlement Body (DSB) and Trade Policy Review Mechanism (TPRM). Special councils and committees like Council for Trade in Goods, Council for Trade in Services and Council for Trade in Intellectual Property Rights (TRIPS) report to the General Council. These councils have the liberty to start subsidiary bodies and committees as may be required.

The principles of the World Trade

Unrestricted extension of the principle of non-discrimination and in compliance with this principle, any trade or tariff applied by a country to each Member State, to all trading partners, members is comprehensive. The only exception to this principle is the case of economic integration such as the customs union between several countries.

The General Agreement on Trade in Services (GATS)

The GATS emerged as a major outcome of the Uruguay Round to trade negotiations which has a complete set of multilateral rules of trade in services. The GATS provides successive rounds of negotiations under the umbrella of the WTO and aims at the progressive liberalization of the service trade.

GATS was the primary multilateral trade agreement to cover trade in services like Banking, Insurance, Information Technology, Telecom, Health, Education and many more. Under GATS 12 sectors and 161 sub-sectors of services have been taken care of which came into existence on 1st January 2000 though the agreement had already been signed on 15th April 1994.

The GATS is a Work-in-Progress process of gradually achieving greater levels of liberalization across the entire range of services including legal services. The commitment of the countries after the Uruguay Round was very low, but Australia and New Zealand provided a greater commitment in terms of market access.

Objective and Elements of the GATS :

The primary objective of GATS was to promote the gradual liberalization of trade in services in order to achieve economic growth for all developed countries and more development of the developing countries.

The GATS does this by applying to the services trade in the rules of the WTO with required modifications to account for the particular features and sensitivities of trade in services. The GATS provides a larger range of options to allow every government to follow its own national policy objectives based on its priorities.

The three essential elements of GATS are the following:

- General concepts, principles and rules that apply to measures affecting trade in services (including most favoured nation (MFN) and national treatment) and are contained in the framework text :
- Specific commitments, which list the sectors of each WTO Member country's national services market on which it has made commitments regarding access to its domestic markets by foreign services providers; and
- Annexes to the Agreement, which establish principles and rules for some specific services sectors.

All these three elements need to be read together to determine the exact scope of legal commitment of each WTO member.

The following reasons for complete trade agreement on services have been identified on the website of the WTO:

- Increasing economic importance of services production and trade as a result of technical progress, government retrenchment (privatization, commercialization of important services sectors), and Increased reliance on market forces in general.
- Role of services, in particular in infrastructural relevant areas (finance, communication, transport etc.) as determinants of overall economic efficiency.
- Positive Impact of multilateral access guarantees on inflows of investment, skills and expertise.
- Possibility to reap economies of scale and scope within an internationally open services environment.

Depending on the mode of supply, GATS developed various service categories to overcome the major problem in service trade which existed due to lack of suitable service definition because of its intangible nature.

- Mode 1-Cross-border trade: From the territory of one Member Into the territory of any other Member. A user in country A receives services from abroad through its telecommunications or postal Infrastructure. Such 'supplies may include consultancy or market research reports, telemedical advice, distance training, or architectural drawings.
- Mode 2-Consumption abroad: In the territory of one Member to the service consumer of any other Member nationals of country A have moved abroad as tourists, students, or patients to consume the respective services. .
- Mode 3-Commercial presence: By a service supplier of one Member, through commercial presence, in the territory of any other Member. The service is provided within country A, by a locally established affiliate, subsidiary, or representative office of a foreign-owned and foreign-controlled company (bank, hotel group, construction company etc)
- Mode 4-Presence of natural persons: By a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member. A foreign national provides a service within A as an independent supplier (e.g., consultant, health worker) or employee of a service supplier (e.g., consultancy firm, hospital, construction company).

• Relation of WTO and other trade agreements

A survey is made on the relationship between WTO agreements and other trade agreements. Usually there is a cordial relationship between WTO agreements and other trade agreements. The WTO bodies which are in charge of the enforcement of a WTO agreement co-operate with the international organizations like the IMF, the Organization for Economic Co-operation and Development (OECD) and the World Intellectual Property Organization (WIPO) in order to achieve the purpose of the WTO agreement under consideration. As will

be discussed further, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Technical Barriers to Trade (TBT) Agreement recognize and accept international standards drafted, considered and adopted by other international standards setting organizations such as the Codex Committee and the ISO (International Standards Organization) as the basis on which domestic standards must be formulated.

There still exists a disharmonious and at times a contradictory relationship between a WTO agreement and other international trade agreements. An example is the relationship between the SPS Agreement and the Cartagena Protocol under the United Nations Biodiversity Convention. In the former, the precautionary principle is recognized only in a limited way and, in the latter, it is recognized much more widely. If those two agreements are applied to the same subject-matter, there may be a conflict between these two agreements in the sense that what is approved by the Cartagena Protocol is prohibited by the SPS Agreement.

Few WTO agreements inflict disciplines which are traditionally regarded as domestic matters such as protection of life and health of human beings and maintenance of product safety. The requirement of the TBT Agreement is that the domestic standards should match with the international standards and the SPS Agreement states that Members SPS measures should also be in accordance with international standards. In some cases, the international standards not only control the "border measures" that deal with imports of products but also on measures that are applicable domestically in the Member's territory. The GATS and the TRIPS also impose disciplines on domestic regulations in services and intellectual properties. It is still a question to how far the WTO Agreements can reach to matters in domestic areas

The relationship between GATS and the GATT 1994 showed that there might exist a conflict between two WTO agreements. The GATS provides rules on trade in services and the GATT 1994 provides on trade in goods. At times there is no discrimination between trade in services and trade in goods. The GATT 1994 requires Members to liberalize and maintain free trade and restrictions are only exceptional. But in GATS, the Members are obligated to liberalize trade in service only

if they have made commitment to liberalize with a particular sector in services as sectors in trade in services still exist where Members have not made any commitments to liberalize. If both the GATS and the GATT 1994 apply to the same activity of a Member, that Member has not made a commitment to liberalize in that particular sector and yet the GATT 1994 requires that Member to liberalize trade, there can be a conflict of the right to maintain restriction under the GATS and the requirement to liberalize trade under the GATT 1994. This is the situation involved in Canada – Periodicals, has been referred later.

Thus conflict of rights and obligations among WTO agreement and that between WTO agreements cause not only hardship and injustice on Members but also cause instability and unpredictability in international trade in the world trading system.

Therefore, WTO Member need to consider this systemic problem, renegotiate some changes to WTO agreements and straighten out such inconsistencies.

CONCLUSION

The world today is very different and has changed a lot from that which existed at the time of drafting GATT and it is worthwhile to highlight these assumptions, to poke and probe at them a bit, even when no solutions are offered to the problems thus raised.

the reason of increasing of agreements is to overcome the some part of issues in international trade affairs ,each agreement which came to exist to cover new part of trade problems or lake of regulation although each institutions or agreements had its own objectives ,own policy and own scope however we know that in the globalizing economy and international trade relations many difference and new issues are linked together.

The reason for existence of new agreement is because of advancement of technology. Globalization and enter of trade to new area day by day ,where the previous agreement does not cover new issues. Also the increase of number of agreement does not mean ineffective of previous agreements ,but as supplementary and complementary they are working for each other.

So it does not mean those agreements or institutions could not help or overcome problems but as know international relation is very complex .its need to keep update and find new policies and solution for new area or issues.

In trade world to overcome all issues is impossible because every time trade confront with new area .For example when Ecommerce came into existence ,it cover many international and national trade problems but it also made trade confront many new issues which previously did not exist.

The GATS in its current position serves as the first step towards totally integrating services trade within the framework of WTO trade rules. GATS acts as a platform which aims at gradually achieving higher levels of liberalization and filling the gaps in its framework (domestic regulation) which were found at the end of the Uruguay Round.

WTO has unique role in international trade affairs because is it supported by very strong dispute settlement mechanism which it gives a power .

The development of domestic regulatory disciplines will undoubtedly be complemented by the procedures of liberalization in market access by legal services. It is not easy to foresee whether these disciplines would be particular to the legal profession. It is most likely that the WTO would extend and provide some common, high-level disciplines which would be applicable to all services sectors.

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