

CHAPTER 9

CONCLUSION AND SUGGESTIONS

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We find that Trade as a whole is a very important aspect of any economy. Economy always gets the priority in any country. The word trade has now become synonymous with international trade and especially with the advance in information technology and telecom the world has become a very small place and trade can be easily meant to include international trade. The word trade can be understood in the best manner meaning a transaction by which all the concerned parties feel that they are in a win-win situation. Also that at present we are following a system of trade which is a combination of both the natural as well as the conceptual philosophies. In order to carry on trade more so in case of international trade, it is necessary to have the terms and conditions of the transaction to have binding effects upon the parties concerned. This will maximize the faith of the concerned parties on the transaction on hand. It is the aggregate of each such transaction which constitutes a trading system thus giving more security to the whole system of trading as well.

Globalisation is “**the**” happening thing today but it is not at all a new concept. We can define Globalization as the growing interdependence of countries resulting from the increasing integration of trade, finance, people, and ideas in one global marketplace, though there are many other definitions of this term and practically it is nearly impossible to clearly define the

term. Globalisation in trade means trade without any boundaries or barriers like tariffs etc. A truly globalised world would mean one huge market without any restrictions. The impact of globalisation on international trade goes to such an extent that people use these two words interchangeably. It affects every aspect of human life today including the sectors like Legal, Industrial, Financial, Economic, Political, Informational, Language, Competition, Ecological, Cultural, Social and Technical, just to name a few. If one has the eyes for it one can see the Golden touch of globalisation in every step of one's life. This is the extent of spread of globalisation.

A special focus on the impact of globalisation on labour and environment shows us that there are certain blots in the good name of globalisation. Also the recent financial meltdown in the US is an important pointer to show us that everything about globalisation is not 'Golden'. But overall we find that the concept of globalisation has far many positives as compared to the negatives.

The other important gift given by globalisation to the world of commercialism is the concept of "Free Trade" which saw to the development of "Free Trade Zones" (FTZ) the world over. These FTZs are a boon to the commercial world due to a regime of zero or negligible tariffs, least procedural formalities and tax exemptions, but they do have their negative impacts so must be use judiciously. India too has implemented its own version of the FTZs called the Special Economic Zones(SEZs).

Today in this highly competitive world trade has become too complex with numerous issues involved; out of these the most

important are legal issues as the degree of impact of such issues is direct and colossal on the transaction as a whole. This study has specially concentrated on the legal aspects involved in the regulation and governance of international trade. It provides the know-how of legalities involved and the regulations in place for international trade.

International Trade is governed by and under special global conventions on different issues like GATT, TRIPS, TRIMS etc. and bodies like WTO and UNCITRAL and each such convention and / or body deals with specific issue or issues pertinent to trade as a whole.

International commercial arbitration is the favoured mechanism for resolution of disputes in International Trade and is acceptable to the majority, but it has some lacunae which have been brought out and remedies are suggested along with the lacunae as under

- Not all countries of the world are signatories to such above mentioned conventions, which make Enforcement of the foreign award a major issue. This is a major problem and needs to be tackled as quickly as possible.
- The UNCITRAL Model Law just being a model, may or may not have been accepted as a whole even by the signatory nations, therefore domestic laws may be applying to certain aspects which creates a confusion while dealing with the dispute.
- Parties to the international contract are given the discretion to choose their own applicable laws and place

of arbitration, in the agreement itself, which at times creates confusion as to the laws which shall apply in the event of a dispute if the document and specially the arbitration clause is not drafted properly.

- Even the issue whether a dispute is arbitrable under the domestic laws of a country or not is a problem, as arbitrability of a dispute is a matter which concerns the domestic laws, in the event of the domestic laws of the countries of the disputant parties to not confer on this aspect, there is a major concern of the manner in which the dispute is to be settled.
- A court may set aside foreign arbitral awards on different grounds out of which the setting aside of the awards on the grounds of public policy is at times not truly fair.

Following issues arise keeping India into the perspective over and above the issues mentioned above:

- No limitation period is fixed for enforcement of foreign awards
- In order to be considered as a foreign award, (for the purposes of the Act) the same must fulfill two requirements. First it must deal with differences arising out of a legal relationship (whether contractual or not) considered as commercial under the laws in force in India. The second requirement is more significant and that is that the country where the award has been issued must be a country notified by the Indian Government to be a country to which the New York Convention applies. Only a few countries have been

notified so far and only awards rendered therein are recognised as foreign awards and enforceable as such in India.

- The other difference between the domestic and foreign award is that (unlike for domestic awards) there is no provision to set aside a foreign award. In relation to a foreign award, the Indian Courts may only enforce it or refuse to enforce it - they cannot set it aside. However the Supreme Court in the recent decision of *Venture Global Engineering v. Satyam Computer Services*¹ held that it is permissible to set aside a foreign award in India applying the provisions of Section 34 of Part I of the Act.

To sum up there is an idea of a different type of trade zone like the free trade zones in existence but with certain improvements to the issues brought out hereinabove, which would work as an ideal trade zone and make the relationship of trade a happy experience.

- There is a need of a system like that of **“Incentive Compatibility”** wherein the States which comply with the international trade law are given special status and benefits
- A law (may be on the line of the Model Law) applicable to all international trade throughout the world needs to be in force which also clarifies the above mentioned issues
 - Ambiguity in any provision needs to be clarified
 - International Trade transactions must mandatorily follow this new law and domestic laws must be used only for domestic purposes

¹ Judgment dated 10th January 2008, in C.A. No. 309 of 2008

- Awards declared by the international bodies must be honoured and enforced unless there is a real issue with the public policy of any specific nation, which should be brought in to the international forum which awarded on the dispute and that forum should have the right to modify its award if it deems fit
- Implementation of such a law needs to be done by a task force comprising of a number of appointees from each member State

Free Trade Zones, the “in-thing” today in the commercial world, are a new development hence the insight provided by this study for the Indian free trade zone i.e. special economic zone could be pretty helpful. Improvements on the same can be assessed by comparison with the Chinese Free Trade Zone model, as China has benefited immensely from this model. Hence, a study of this comparison will be of interest and use in the present context. This study will be helpful in assessing our position vis-à-vis other countries and the system of **“Incentive Compatibility: A New World Order”** could become a reality and solve the present issues regarding international trade.

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NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organisation
NFE	Net Foreign Exchange
OECD	Organization for economic cooperation and development
OED	Oxford English Dictionary
PIGS	Portugal, Iceland, Greece and Spain
PLT	Patent Law Treaty
RMI	Rights Management Information
SCCR	The Standing Committee On Copyright And Related Rights
SCP	Standing Committee on the Law of Patents
SCT	The Standing Committee On Trademarks, Industrial Designs And
SEZ	Special Economic Zone
SIA	Social Impact Assessment
SIAC	Singapore International Arbitration Centre
SPLT	Substantive Patent Law Treaty
STP	Software Technology Parks
TCE	Traditional Cultural Expressions
TK	Traditional Knowledge
TNCs	Transnational Companies
TRIMs	Agreement on Trade Related Investment Measures
TRIPS	Trade Related Aspects of Intellectual Property Rights
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNFCCC	United Nations Framework Convention on Climate Change
US	United States
VOIP	voice-over IP
WCT	WIPO Copyrights Treaty
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WIPO ECAF	WIPO Electronic Case Facility
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization
WW I	World War I