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Submission date: 11-Dec-2018 03:19AM (UTC-0500)

Submission ID: 968065555

File name: International_Trade_Law_FINAL_EXAM_ref.docx (34.2K)

Word count: 4562

Character count: 24302

Running head: INTERNATIONAL TRADE LAW

International Trade Law

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1. Comparative Advantage

Comparative advantage in International Trade refers to where a country produces goods and services for a lower opportunity cost compared to other countries. Opportunity cost is used to measure the trade-off. A country with a comparative advantage may not be the best producer of the particular product but the fact that it has low opportunity cost for importers is an advantage. Comparative advantage can also be described with reference to relative productivity of a country.

A country can have a relative productivity advantage over other countries. For instance, the US may have a higher relative productivity advantage over France in cheese production. The question to ask in international trade is: how does a country compare to another in trade with regard to particular products and services? World output would increase if countries focus on producing only the goods and services they have a comparative advantage in over other countries.

2. Global Sourcing

Global sourcing refers to the process where companies, governments or individuals source for goods and services from the international markets outside their home countries. These goods include raw materials, finished goods and components. Through this, traders or local companies and governments can exploit the global efficiencies such as cheaper raw materials, low cost of labor, lower prices, tax breaks and other economic factors such as low trade tariffs. For example, China has lower cost of labor compared to many countries in the west; therefore, it makes sense to source many goods that require large scale production such as electronics and apparels at cheaper prices. The call centers operated in the Philippines is another good example of global sourcing. Europe and America source for Coffee and Tea from African countries such as Kenya.

Manufacturers of electronics such as phones, vehicles such as airplanes and chemical-based products such as fertilizers source for raw materials and some of the components from foreign countries to take advantage of the availability of such materials in those countries or the cheap prices offered.

3. Non-Tariff Trade Barriers

Non-tariff trade barriers are restrictions resulting from conditions, prohibitions, or market requirements that hinder import and export of goods. A non-tariff barrier can also be said to be any measure that hinders international trade other than custom tariffs. Non-Tariff Trade Barriers include regulations that dictate the manufacturing, handling or advertising of products; rules of origin which require proof of which country a product was produced in; and quotas that limit the amount of a particular good that can be sold in a market.

Non-tariff barriers can sometimes be more restrictive to trade than tariff barriers. Trade agreements involving countries and regions such as the Transatlantic Trade and Investment Partnership (TTIP) and Comprehensive Economic and Trade Agreement (CETA) usually focus on reducing the non-tariff barriers to international trade. Other non-tariff barriers that can be solved through such trade agreements include pre-shipment inspections where imports are checked further, rules for valuation of goods at customs and import licensing.

4. International Court of Justice/"World Court"

The International Court of Justice (ICJ) is the main judicial organ of The United Nations established in 1946 by the Charter of the UN. The World Court is located at the Peace Palace at

The Hague, Netherlands. The role of the court include to settle legal disputes presented to it by states, and to give advisory opinion on issues submitted to it by authorized UN organs and the specialized agencies. In international trade, disputes are bound to arise between countries trading with one another. Such disputes can be resolved by the ICJ which stands as the neutral body for participating countries.

Countries that voluntarily agree to participate in processes at the ICJ are obligated to comply with the judgements of the court. Through this, the ICJ solves disputes between countries including cases regarding international trade. The court hearings and judgements are guided and based on the international law. The ICJ has fifteen judges in total who are elected by the UN General Assembly and the Security Council.

9 5. International Monetary Fund (IMF)

The IMF is a United Nations specialized agency that was founded in 1944 at the Bretton Woods Conference. The purpose of forming the agency was to stabilize currency exchange rates, secure international monetary cooperation, and expand international liquidity. The Articles of Agreement that backed the formation of IMF was drafted by 44 representatives from participating countries. The IMF is like the supervisor of the international monetary system thus promotes economic growth, investments and world trade.

After the formation of the IMF, countries that have temporary-moderate balance of payment deficits are expected to finance those deficits by borrowing in foreign currencies from the IMF as opposed to using devaluations, exchange controls or deflationary economic policies that have chances of spreading their economic problems beyond their borders to other countries.

3 6. General Agreement on Tariffs and Trade

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The General Agreement on Tariff and Trade (GATT) is a set of multilateral trade agreements that are aimed at abolishing the quotas and reducing tariff duties among the trading nations. The GATT was signed by 23 countries in 1947 and ended up bringing on board 125 countries before
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being replaced by the World Trade Organization (WTO) in 1995.

GATT focused on agreements revolving around trade in goods and was designed to liberalize trade among member countries by reducing tariffs and eliminating quotas. All GATT member countries were expected to open their markets to allow other member countries to trade equally by removing trade discriminations. The GATT agreements reduced average tariffs associated with industrial goods from 40% to less than 5%. It helped expand international trade and expand the economy of the world.

7. Arbitration (as it relates to the resolution of international trade disputes).

Arbitration is a key dispute resolution mechanism in international trade. It is the process where trade disputes between contracting partners or among transnational parties are resolved via the use of arbitrators rather than court processes. In order for parties or countries involved in trade to use arbitration as a dispute resolution mechanism, it has to be included in the contract agreement of the parties as a clause stating arbitration will be used to resolve any disputes and not lawsuits. Such a decision is usually binding and all the parties are required to comply with it.

Arbitration is an effective way to resolve disputes in international trade. Court processes take long thus may hinder progressive international trade. Other than the agreement to arbitrate, other things that should be specified in the contract include the scope of disputes that should be

subjected to arbitration, the method of selecting arbitrators, the adoption of ad hoc or institutional arbitration rules, and the choice of arbitral seat.

8. Mediation (as it relates to the resolution of international trade disputes).

Mediation is a structured, dynamic and interactive process of dispute resolution where a neutral party is selected to help disputing parties resolve a conflict by using specialized negotiation and communication techniques. All the participants in mediation are required to actively participate. Mediation is primarily focused on harmonizing the needs, interests and rights of the disputing parties.

Mediation is considered as one of the leading alternative dispute resolution methods. Like arbitration, mediation can be used to resolve disputes arising from international trade. It has increased in popularity over the last 20 years. It provides to contracting parties a quick extrajudicial and cost-effective dispute resolution option which fosters a good environment for international trade.

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9. United Nations Convention on Contracts for the International Sale of Goods (CISG).

The CISG is a project of the United Nations Commission on International Trade Law (UNCITRAL). It is an international treaty that forms a uniform law to international trade. The CISG is considered ¹³ as the most successful attempt towards unification of a broad area in commercial law internationally. The aim of the treaty was to reduce barriers to international trade ³¹ by creating modern and even-handed substantive trade rules to govern the rights and obligations of the parties to international contracts for sale of goods.

The CISG provides a modern, fair and uniform regime for contracts thus creating a good environment for the international sale of goods. The treaty thus significantly contributes to international trade by reducing trade costs and ensuring certainty in commercial exchanges. Contracts for sale of goods forms the backbone of many countries, therefore a universal adoption of the CISG will positively influence international trade.

10. The Uniform Commercial Code (as it relates to the international sale/purchase of goods).

The Uniform Commercial Code (UCC) is a code that applies to sale of goods that includes property within the US. Established in 1952, the role of UCC is to ensure a uniform code for commercial contracts across all the 50 states of the US. The UCC is convenient and flexible thus encourages commerce inside the US. The code can be enforced in merchant-to-merchant contracts and merchant-to-non-merchant contracts.

The UCC extensively relies on general law that relates to the sale of goods thus general contract law is applicable except where the code displaces it. The CISG and the UCC both are appropriate in filling the gaps in any trade contract that does not specifically exclude either or both of them. CISG fills in for contracts between international trading parties while the UCC fills in for trade contracts made within the US.

11. The Doctrine of Commercial Impracticability (as it relates to the CISG and the UCC).

This doctrine covers areas in contracts where the performance is considered impracticable. In Common Law, contracts once signed must be performed absolutely by both parties to the contract. Every party to the contract is absolutely liable to perform their end of the contract. However, when a situation changes, or a contingency or an event occurs after the contract has been established but before performance that renders it impossible or impracticable to perform,

then the Doctrine of Commercial Impracticability is invoked. In that case performance is excused and the parties to the contract cease to be liable to perform the requirements of the contract. This doctrine is based on the theory that the contracting parties made their bargain having specific circumstances in mind and that the environment that would make it possible to perform the contract was upset thereafter.

The UCC acknowledges the Doctrine of Commercial Impracticability and has set minimum requirements that must be met for the excusal of performance in a contract for sale of goods. The Code excuses a seller in trade contract from a non-delivery or delay in delivery where performance became impracticable due to an occurrence or non-occurrence which was assumed by both parties at the time of entering the contract. Article 79 of the CISG excuses a party to a contract from performance where the non-performance was due to an impediment that was beyond the party's control. This is only as long as the said impediment was not foreseeable when entering the contract or avoidable thereafter. If the impediment was foreseen and ignored by the party or it was avoidable, then the doctrine is not applicable.

12. Bill of Lading

Bill of Lading (BOL) is a document used in shipping process that shows that the freight has been received by the carrier and has an obligation to deliver the freight in good condition to the mentioned consignee. The BOL also acts as a contract and a receipt. It is considered to be one of the most important documents in freight shipping because it fulfils three key purposes which include: acting as evidence of an existing contract between the carrier and the shipper; serves as transaction receipt; and it is a document of ownership or title of goods.

Freight shipping is an important aspect of international trade because many goods sourced from foreign markets are shipped to the buyers by freight. The information contained in the Bill of Lading is very critical because it directs the actions of the personnel all along the route of the freight shipment.

13. Electronic Data Interchange (as it relates to bills of lading, letters of credit and certificates of origin).

Electronic Data Interchange (EDI) is the transfer of business related data directly from one computer system to another in different organizations without or with minimal intervention of humans using widely accepted standards in structuring the transaction. In international trade, EDI is the technology used to electronically transmit shipping documents such as invoices, bills of lading, letters of credit or certificates of origin. The EDI therefore makes it possible for international traders to transact and share documents securely and faster thus saving time and secure shipment of their goods for instance in import and export.

14. Destination Contracts (as they relate to the risk of loss).

⁵ In a Destination Contract the seller of goods promises to deliver the specified goods to the buyer's specific destination. The contract can be used in transactions involving sale of goods and is governed by the Uniform Commercial Code (UCC). The risk of loss in this case is on the seller until the delivery to buyer's destination is complete. The seller loses liability for the goods once the delivery is complete. ²⁸

15. Shipment Contracts (as they relate to the risk of loss).

A shipment contract under the Uniform Commercial Code (UCC) is a way in which a buyer and a seller can contract to allocate the risk of loss between them so that if the goods are lost or damaged, neither the buyer nor the seller is held liable. In a shipment contract, the buyer in the contract bears the risk of loss for the goods or damage prior to receiving them. Here the seller's only duty is to deliver the goods to a universal carrier and arrange a proper delivery means to the seller. After the seller delivers the goods to the carrier, if any loss occurs, the buyer is liable for the loss.

16. The Warsaw Convention

The Warsaw Convention is a globally recognized convention regulating liability for air carriers crossing international boundaries. International trade involves the operation of air carriers because some goods are shipped via air. The Convention deals with the requirements regarding passenger ticketing and liability limitations for carriers in cases of damage, accidents or loss of baggage. The Warsaw Convention controls the right of recovery of air passengers in US courts for any physical injuries during international flights. The convention applies to all the passengers ticketed on international itineraries even if the plane crashes on the domestic part of a continuing international trip.

17. Freight Forwarders

A Freight Forwarder is a company or a person that helps organize for corporations or individuals to get goods from a producer or a manufacturer to the market, specific customer or a final point of distribution. Freight forwarders enter into a contract with one or more carriers to move the goods. The forwarder does not move the goods; rather, he plays the role of an expert in the logistics or shipment network. A freight forwarder is actually an intermediary between the

shipper and the various transportation service providers such as those that offer shipment by air, trucking and moving of goods by rail.

18. The Ocean Shipping Reform Act of 1998

The Ocean Shipping Reform Act (OSRA) of 1998 is a legislation passed by the Congress of the United States imposing new and updated regulations as regards the maritime shipping industry and the ones employed by it. The changes that were proposed by the OSRA affected bonding, licensing and tariffs and were implemented officially by the US Federal Maritime Commission. The new OSRA regulations apply to all the Ocean Transportation Intermediaries including Non-Vessel Operating Common Carriers (NVOCC) and Ocean Freight Forwarders (OFF).

19. Bill of Exchange

A bill of exchange is an unconditional order by one party, the drawer, to another party, the drawee, to pay a certain sum of money for payment of goods or services received. The payment can be required immediately for a sight bill or on a fixed date for a term bill. By signing the bill, a drawee converts it into a binding contract and check. In a business transaction or international trade, when goods are sold on credit to a buyer, the seller makes the bill and sends it to the buyer for acceptance containing the details such as address and names of the buyer and seller, maturity date of the bill, amount of the bill, and signature.

20. Letter of Credit

A letter of credit is a document backed by a bank that guarantees payment in a trade. The letter of credit is designed to provide security for the buyers and sellers in an international trade. If a

¹⁵ buyer fails to pay the seller, the bank that issued the letter of credit will pay the seller if he meets the requirements in the letter ³⁷ of credit. If the buyer pays a seller to deliver goods and the seller fails to deliver, the buyer can get paid his money using standby letter of credit.

21. Countertrade

Countertrade can be defined as a system of international trade that is used by governments to reduce trade imbalances between them and countries they have traded with. It is where the countries involve in an exchange of goods for goods directly or indirectly instead of currency to balance the trade imbalance.

22. The Smoot-Hawley Tariff Act of 1930

This is an Act for implementing protectionist trade policies that was sponsored by ²³ Representative Willis C. Hawley and Senator Reed Smoot. The Act increased the US tariffs on more than 20,000 goods making tariffs second highest in the US in 100 years. The Act led to retaliatory ²⁷ tariffs by American trading partners and resulted in reduced imports and exports by more than half during the period of the Depression.

23. The Reciprocal Trade Agreements Acts of 1934

The Act provided for negotiation of tariff agreements between separate nations mainly Latin America countries and the United States. It served as a reform that authorized the US President to negotiate with other nations to reduce tariffs in return for a reciprocal reduction in tariffs in the US.

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24. Fast-Track Negotiating Authority

The Fast-Track Negotiating Authority allowed US presidents to implement free trade agreements through negotiations with countries such as Chile and Australia and also negotiate additional bilateral deals with Panama, Peru, Columbia and South Korea. It was however suspended and hindered many bilateral trade deals.

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25. The Trading With The Enemy Act

The TWEA of 1917 is a US federal law that restricts trade with countries that are hostile to the US. The Act authorizes the president to restrict or oversee the restricting of particular type of trade or all trades with a country that is considered an enemy of the United States during a time of war.

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26. International Emergency Economic Powers

The IEEPA of 1977 is a federal law authorizing the United States Presidents to regulate commercial activities after declaring a national emergency in response to an unusual or extraordinary threat to the United States from a foreign source. The IEEPA records the wartime economic powers that are granted to the president under the Trading with the Enemy Act.

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27. The Import-Export Clause (of the United States Constitution).

The Import-Export Clause refers to the provision in the US constitution that prohibits states from taxing exports and imports. The US Supreme court has given a broader interpretation to this clause. Under the clause, the US States are allowed to tax imports provided the tax does not discriminate in favor of domestic goods.

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28. The ³⁰United States Court of International Trade

The court is formerly the United States Customs Court formed under Article III with full powers in Law and Equity. The court has a limited jurisdiction based on subject matter; which means it can only hear cases involving certain international trade and the custom law questions. For example, the court hears cases such as the one filed by the US Customs and Border Protection.

29. The ³World Trade Organization (WTO)

The WTO is a global membership organization that helps in promoting and managing free trade among member states. The WTO administers the existing multilateral agreements, enables members to get the Most Favored Nation Trading Status thus receive lowered tariffs for exports. The WTO also helps settle trade disputes arising from the trading member states. It also manages ongoing negotiations for new trade agreements.

30. Most Favored Nation Trade

In international trade, the ¹⁷Most Favored Nation Trade (MFN) refers to a status of treatment by one country to another. The MFN means that the country that receives ¹⁹the status must nominally receive an equal trade advantage as the most favored nation by the country that is granting the treatment. A country that receives a MFN status is not treated with less advantage as the other countries with MFN status by the promising country.

Long Essays

- ¹ What makes an import practice “unfair”? What remedies are available under United States law to protect domestic industries from unfair import?

Unfair Trade Practice is the use of various deceptive, unethical or fraudulent means to obtain business. A trade can be considered unfair if it involves misrepresentation, false advertising of a good, false gift offers, tied selling, deceptive pricing of goods and services, and non-compliance with existing standards and rules. For instance, when a business is manufacturing a product that is prohibited by law or under conditions that are prohibited, then that is an unfair trade. In international trade, import can be considered unfair if it discriminates the ³ products in the local market of the importing country. If the importation undermines the business of the manufacturers or sellers of the same product range that have been imported, then it can be considered as unfair.

In the United States, the unfair trade practices are covered in ²² Section 5(a) of Federal Trade Commission Act prohibiting such unfair or deceptive acts or practices that affect commerce. It applies to all the individuals engaged in commercial activities including import of goods from other countries or states.

The United States has provisions in the law concerning international trade such as ³ Section 337 of the Tariff Act of 1930 granting the US ³ International Trade Commission to investigate foreign exporters, manufacturers, and American importers for unfair trade practices. The ITC can temporarily prohibit any further imports of the goods allegedly involved in the unfair import trade.

2. ¹ What are the real economic impacts and long-term effects of trade sanctions? For example, assume that the United States imposes a tariff rate of one hundred percent on imported Japanese cars. How ¹ does such a measure affect the long-term health and competitiveness of the United States automobile industry?

Long-term trade sanctions will grossly affect trade between countries where one of the trading partners is sanctioned from trading in a particular product. Sanctions on trade will increase the cost of trading with a particular country thus lowering the volumes of goods traded between the countries. Such sanctions may also result to retaliatory sanctions by the other trading partners thus worsening the trade relationship between the countries.

If the United States imposes a tariff rate of one hundred percent on imported cars Japanese cars, it will be twice as expensive to import Japanese cars as it had been thus making them more expensive in US markets. Importers of Japanese cars in the United States will either reduce their volumes of import or cease to import Japanese cars totally because it may become unprofitable.

Such an import tariff may also trigger Japan lawmakers to push for a retaliatory trade tariff against the United States which may affect trade in other areas other than in automobiles. Sanctions are great hindrances to free trade and should be avoided in order to encourage international trade. Japan and the United States have a good trading relationship; such a tariff may weaken that relationship and extend to their trading partners where countries friendly to Japan may also retaliate against the United States and impose tariffs on products that US has no comparative advantage in producing.

3. Given the evidence about the ineffectiveness of labor and environmental side agreements to NAFTA, do you think they should be included in any expansion of NAFTA?

The United States, Canada and Mexico have ignored critically vital labor rights obligations in NAFTA thus the agreement seems to make no sense. The three countries have made the side agreements ineffective by not adhering to its provisions. The side agreements to NAFTA should not be included in an expansion of NAFTA because no country seems to be keen to follow or practice the agreements. The agreements can be reevaluated and renegotiated to come up with standardized agreements that can be implemented by the participating countries. The side agreements should therefore be annulled and a new side agreement that is implementable created or abandoned all-together and focus directed on the core NAFTA.

President Obama, during the presidential campaigns, promised to push Mexico and Canada to add the labor and environmental agreements into the NAFTA or else rally the US to exit the NAFTA agreement. This has never come to pass. Seemingly it was merely a campaign promise that was not to be implemented. Since the countries do not seem to be pushing or showing interest to implement the side agreements to NAFTA, the best way to go is to abandon it. After the enactment of the NAALC, Mexico, Canada and the US agreed to hold each other accountable for implementing the labor and environmental laws within their border but that hasn't shown any effectiveness.

4. Evaluate the current trade relationship ²⁰ between the European Union and the United States.

The US administration has in recent times focused attention on rebalancing its trade relationship and the trade agreements with the world. Rather than resolving the existing disputes via the formal arbitration process of the World Trade Organization, it has imposed unilateral ³ tariffs on a number of products. The US and the EU seems to be still in a trade war that may not end soon just as the one between the US and China. These are two of the largest bilateral partnerships for trade globally. The current trade relationship between the US and EU seems to favor the latter more than the former. In 2017 alone, the US had a trade deficit of \$151 billion for the EU. This is a sign that Europe is the one benefiting most in the current trade deficit. If the US was the one benefiting, the trade deficit would not be expanding that widely.

While this trade war between the US and Europe can be resolved, the two partners have not put enough effort in solving the dispute through the existing arbitration procedures. Although there are trade wars between the two countries and all look sour, the two countries both have significant investments in each other's economies forming more than half the world's GDB when combined. The US, for instance, has three times higher investment in EU than in all of Asia, while the EU has invested in the US about eight times its total investment in India and China. This shows a long-term trade relationship that is not about to break. In future we expect to see a better trade relationship between US and Europe than Europe and any other country or region of the world.

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