
RESEARCH PAPER

Analysis of Afghanistan's Trade Laws in Light of International Instruments

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ABSTRACT

Being among the drivers of economic development, international trade will no doubt catalyze the rate of economic growth, promote trade exchange, and encourage investment. For a country like Afghanistan, which direly needs to develop economically and get properly positioned within the international trade system, there is no denying the need to align domestic laws with international frameworks and standards, especially those of the World Trade Organization. The current paper analyzes the legal framework of trade in Afghanistan, including the Constitution, the Commercial Code, the Law on Limited Liability Companies, and the Private Investment Law. It underlines that while these laws partially comply with the WTO principles, the effective use of the advantages of accession to the WTO requires deeper legal reforms, increased transparency, and abolition of non-tariff barriers. Key recommendations highlight the need for further harmonization of domestic law with international agreements, enhancing mechanisms for enforcement, fighting administrative corruption, and winning investor confidence. Success in Afghanistan's exploiting the WTO membership is contingent upon high political will, international cooperation, and effective support for legal and economic reforms. The realization of these objectives will ensure Afghanistan's sustainable economic development and its integration into world trade.

Keywords: International Trade, Afghanistan, World Trade Organization, Economic Development, Investment Attraction, Legal Reforms.

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INTRODUCTION

International trade is key to economic growth, as it enhances economic development through the growth of commercial exchanges and investment. In today's world, with growing interdependence, no country can achieve continuing economic growth on its own over a long period. For participation in the international market, a country must adopt and modify its legal and regulatory framework to conform to internationally accepted standards and practices. Being one of the developing countries in a very difficult political and economic situation, Afghanistan faced

every kind of barrier on its way to establishing a robust and competitive trade system. The country finally acceded to the WTO in 2016 and opened new avenues to pursue trade liberalization, international partnership, and legal reforms. On one side, membership in the WTO gave Afghanistan the chance to modernize its law on trade; and improve transparency, which is significant in increasing Afghan goods and services' access to new markets. However, far-reaching reforms depend on the realization of these benefits (Parsa Manush, 2024).

The opportunities created by membership in the WTO notwithstanding, Afghanistan still faces all the challenges such as incomplete harmonization of domestic trade laws with the WTO principles, lack of adequate legal infrastructure to implement those principles, generally weak institutional capacity, and administrative corruption. Additionally, the non-existence of a well-established modern trade culture seriously hampers Afghanistan's integration into the global trade networks. This research is intended to provide a comprehensive review of Afghanistan's trade laws against the benchmark of international instruments, especially in the context of its WTO membership. It looks at key legal frameworks like the Constitution, the Commercial Code, the Law on Limited Liability Companies, and the Private Investment Law, and it shows the extent to which Afghan trade regulations are in line with WTO principles (Manush & Mujadidi, 2024). It also provides the gaps and challenges that are being presented on this occasion, along with practical recommendations for reform. It does so by contributing to the broader discussion of legal prerequisites for Afghanistan to effectively participate in global trade and discusses how Afghanistan can use its membership in international trade organizations to foster legal and economic reforms. The findings have significant implications for policymakers, legal scholars, and stakeholders seeking to enhance Afghanistan's role in the global trade system and ensure its sustainable economic development.

LITERATURE REVIEW

During political and economic upheavals since its inception, Afghanistan's legal framework has drastically changed, as have the developments in trade policies and practices. However, on the other hand, literature continuously points out flaws in legal arrangements, intellectual property rights, and dispute resolution methods in comparison with international standards. The literature focuses on how certain WTO principles regarding non-discrimination and transparency establish a threshold for the specific legal reforms being called for. Numerous studies highlight the role of legal reforms in enabling better trade integration. Scholars agree that accession to the WTO may be a turning point for modernizing Afghan trade laws. Literature underlines the critical role capacity-building and institutional strengthening can play in overcoming challenges related to trade (Hashimy, 2021).

CONCEPTUAL AND THEORETICAL FRAMEWORK

The conceptual framework relates to the interaction that occurs between international trade law and national regulatory practices. The paper will dwell on how trade laws in Afghanistan can be made to be consistent with the principles that have been propounded by the WTO and other international trade instruments. The theoretical framework is based on the theories that support free trade, market liberalization, and the elimination of barriers to economic cooperation in

international trade. Analysis of the correlation between legal reform and trade growth is pursued herewith, using the role that adherence to international legal standards would play in keeping the economy stable and integrated within global markets.

RESEARCH METHODOLOGY

This research is a qualitative type of research in which a critical analysis of legal texts, official documents, and international trade agreements will be carried out. A legal comparative analysis approach will be used to assess the degree of harmonization between Afghan trade law and international instruments. These include the Afghan Constitution, Commercial Code, and Private Investment Law as primary legal materials supported by secondary sources like scholarly articles and reports from international trade bodies.

ANALYSIS OF AFGHANISTAN'S TRADE LAWS OVER ITS HISTORY, AFGHANISTAN HAS PASSED THROUGH SO

Many political and economic changes, and these have had a large number of serious impacts, such as deficiencies in legal and trade frameworks, resulting from the continuing wars and political crises during recent decades. Undoubtedly, weak trade laws and a legal system in Afghanistan will continue to undermine economic development and discourage foreign investments. Despite these challenges, Afghanistan's strategic geographic location provides immense opportunities for trade expansion and economic cooperation at the sub-regional, regional, and extra-regional levels. Furthermore, the trade regulations in the country remain underdeveloped and have not been aligned with international standards to this day. The Afghan laws do not consider issues like intellectual property rights, mechanisms for resolving dispute resolution in trade matters, and transparency in commercial contracts appropriately. This gap contributes to Afghanistan's inability to integrate into global markets and impairs its ability to capitalize on international trade partnerships (Barfield, 2022).

Afghanistan's accession to the WTO is a milestone toward addressing these challenges and modernizing its trade framework. Membership in the WTO offers an excellent opportunity for Afghanistan to bring its trade laws in line with global standards and to capitalize on benefits accruable from a liberalized trading system. Legal reforms needed to fully gain the benefits from WTO membership require comprehensive revisions within the laws regarding customs regulations, trade in services, intellectual property rights protection, and mechanisms of trade dispute resolution. In each of these critical areas, proper implementation cannot rely solely on mere legislative changes; it must, therefore, entail capacity-building activities, efficient regulation institutions, and transparently defined and predictable policy. Reforms like these can provide Afghanistan with a conducive environment for foreign investment, strengthen its position in international trade networks, and foster sustainable economic development. Strong political will, international cooperation, and the adoption of best practices in trade governance are the building blocks for such a process (Collins, 2011).

Harmonization of Afghanistan's Trade Laws with International Instruments

Accession of Afghanistan to the WTO, the most powerful international body governing world trade, provides a landmark opportunity for the harmonization of its laws relating to international trade. One of the cardinal principles of the WTO is the principle of non-discrimination, whereby member states are obliged to guarantee that their regulations on trade are equally and equitably applied to all trade partners, domestic and foreign alike. To be in line with this principle, Afghanistan needs to have legislation that enforces equal treatment for all parties to trade without discrimination. The other important area of harmonization of Afghanistan's trade laws with international standards is the effective settlement of trade disputes. The legal framework for the resolution of commercial disputes in Afghanistan is often complicated, time-consuming, and bureaucratic. These inefficiencies create uncertainty and undermine trust among both domestic and foreign traders (Hashimy & Magoge, 2021).

International instruments, such as those developed under the United Nations Commission on International Trade Law, are useful guidelines that can be enacted in Afghanistan to ease its dispute resolution processes. It is in this sense that Afghanistan will be in a position to create a more predictable and investor-friendly atmosphere by inserting transparent, efficient, and speedy mechanisms for resolving trade disputes. These efforts at best practice in trade dispute resolution, along with other legal reforms, are vital to enhancing Afghanistan's integration into the global trading system and inspiring investor confidence. Accomplishing these objectives requires serious commitments by the government to comprehensive legal reform, capacity-building programs, and extensive institutional support in its implementation.

A. Compatibility of the Afghan Constitution with International Trade Instruments

The Constitution of Afghanistan, as the fundamental legal framework governing the country's economic system, provides huge potential for alignment with international trade principles. Several constitutional provisions, notably Articles 10, 11, 13, and 14, provide important grounds for harmonization with the regulations of the WTO and other major international trade instruments. These provisions address key aspects of trade liberalization, encouragement of private sector investment, and market-based economic principles. Article 10 of the Afghan Constitution wholeheartedly advocates for a market economy and security of investment, showing complete harmony with the purposes of the General Agreement on Tariffs and Trade (GATT) and the basic tenets of the WTO. The reduction of trade barriers and the making of the economy transparent under this article can be called the very essential step toward compatibility with international trade laws (Lau, 2002).

In addition, Article 13, having as its goal the sustainable use of natural resources for economic development, may align with sustainable development goals included in international frameworks advanced by the United Nations Conference on Trade and Development UNCTAD. Some Afghani Constitutional provisions that allow state and semi-state enterprises also work against the alignment with the WTO's free competition principles. Such companies might give rise to monopolistic tendencies and anti-competitive practices not complimentary to the Agreement on Trade-Related Aspects of Intellectual Property Rights and other related trade instruments, in case

of no proper regulation. In solving the problem, there is a need to create policies that allow for fair competition without arbitrary state interference. Economic and regulatory policies can only be reinforced to reduce such risks (Aseeva, 2018).

Afghanistan may also be in a position to benefit from establishing a trade framework by adopting internationally recognized conventions and standards. For instance, the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the UN Convention on Contracts for the International Sale of Goods available under CISG provide highly effective legal tools for enforcing international contracts and resolving trade disputes. TFA also provides additional guidelines on reducing customs barriers and making trade processes more transparent to further place Afghanistan within the global supply chain.

Afghanistan still needs a complete framework to align it with international trade instruments to fully exploit such opportunities. Policymaking will need to be precisely and transparently developed to properly strike a balance between the government's role in the economy and guarantee free competition. Besides, Afghanistan's trade infrastructure and attraction of foreign investment will further be consolidated with effective engagement with key international trade organizations like the WTO, UNCITRAL, and WCO. It would not only make for a conformist stance on international trade but also create a path for achieving sustainable economic development (Johnson et al., 2019).

B. Afghan Commercial Law and Its Compatibility with International Trade Instruments

Afghan Commercial Law shows a high degree of compatibility with the WTO requirements as it provides extensive freedom to domestic and foreign entities to engage in trade activities. Article 4 of the Law has laid down distinct conditions for persons entering trade activities that conform to the WTO principle of non-discrimination between domestic and foreign actors. This provision has stated that any person who is above 18 years of age can engage in commercial activities unless other legal impediments exist. With such a positive alignment, there is still a need for further refinement in operational detail, particularly regarding transparency in the procedures of trade and the rights of foreign parties in specific situations. Greater transparency will lead to increased trust from foreign investors in Afghanistan's market (Maimbo, 2003).

Furthermore, Article 11 of the Afghan Commercial Law delineates the role of the state in commercial activities, whereby although the state may engage in trade, it does not consider itself a "merchant." This conceptual distinction carries with it some serious legal and practical implications and may or may not conflict with the principles of international trade, depending on how it is applied. Article 17 of GATT provides that in the international trade system, state-owned enterprises conduct business in such a way as not to disturb the principles of fair market competition. The Afghanistan practice may imply immunity from some legal liabilities and commitments in trade relations, whereby the state conducts commercial activities without being considered a merchant. While such an approach may be in the public interest in some instances, it creates problems from the point of view of free competition and economic transparency. In particular, in the context of international trade, not perceiving the state as an accountable actor in trade may lead to imbalances in economic exchange (Mastromatteo, 2017).

The Afghan regulations also involve the State-Owned Enterprises Law, which allows the creation and governing of state and semi-state enterprises. While such enterprises are nominally based on commercial patterns they may enjoy certain government-endowed advantages, like interest-free loans, tax breaks, or privileged access to resources, in application. Such a situation is at variance with the principle of free competition advocated for in the WTO and specific instruments like the SCM Agreement. To address these challenges, Afghanistan needs to enact statutes that regulate the activities of state-owned enterprises and reassure the private sector that such entities do not engage in unfair competitive practices. It is in this regard that a Competition Council can be set up to oversee the operations of both state and private entities with a view to ensuring a level playing field and, therefore, enabling the private sector to compete fairly with state enterprises (Charnovitz, 1991).

Law of International Goods Trade: Application and Analysis considering International Instruments The current law fully concurs with the principles of the WTO by recognizing the right to engage in foreign trade for both domestic and foreign natural and legal persons. Article 6, guaranteeing equal rights to engage in foreign trade for all individuals, both domestic and foreign, testifies to Afghanistan's adherence to the National Treatment principle and the Most-Favored-Nation principle. However, there are some challenges to the effective implementation of this law, which call for a review of administrative processes with increased transparency to reduce NTBs. These would facilitate smoother operations of foreign trade and meet international standards. The fact that this law has been aligned with WTO principles indicates the aspiration of Afghanistan to be integrated into the global trading system and to establish a non-discriminatory competition environment. However, full compliance with international obligations requires further measures on the issues of execution and enforcement. The major challenges facing this process include non-tariff barriers in the form of complicated customs procedures, the absence of modern trade infrastructure, and delays in document processing. These barriers not only raise the cost of trade but also pose a potential conflict with Afghanistan's commitments under the Trade Facilitation Agreement, which emphasizes the need to reduce administrative barriers, simplify customs procedures, and improve transparency at the heart of efficient trade in Afghanistan (Akbari, 2021).

GATT 1994 provides for the publication of trade laws and regulations in a manner that will enable the government to make the information available to the public. Based on this principle, Afghanistan needs to upgrade its legal and administrative systems. Publishing the rules of trade in several languages, easy access to information on trade-related matters, and updating legal frameworks would help build confidence for national and international traders and prevent potential legal ambiguity and misunderstanding (Kennedy, 2005).

C. Foreign Investment Law and Compliance with International Regulations

Afghanistan's legal framework, particularly the Private Investment Law, grants significant incentives to foreign investors. These include 100% ownership rights, tax exemptions, and the unrestricted transfer of capital and profits abroad. Such provisions not only align with the principles of the World Trade Organization (WTO) but also serve as crucial measures to attract foreign direct investment (FDI) and strengthen the country's economic landscape.

However, in practice, several challenges hinder the full implementation of these laws. Issues such as administrative corruption, insufficient legal and economic infrastructure, and political instability create barriers to effective enforcement. Addressing these obstacles requires the Afghan government to reinforce its regulatory and enforcement mechanisms to foster a more investor-friendly environment. Afghanistan's Foreign Trade Law, by incorporating fundamental WTO principles, provides a legal foundation for facilitating international trade. The law explicitly recognizes the right of both domestic and foreign individuals and legal entities to engage in trade, thereby embedding the principles of National Treatment and Most-Favored-Nation (MFN) status into its legal structure. Article 6 of the law, which guarantees equal opportunities for all traders, is a pivotal step toward ensuring WTO compliance and promoting a fair competitive market (Viñuales, 2012).

One of the major challenges in implementing this law is the lack of transparency in trade and administrative procedures. According to the General Agreement on Tariffs and Trade (GATT 1994), all trade-related regulations and procedures must be published transparently and made accessible to both domestic and international traders. In Afghanistan, the opacity of customs procedures and the complexity of administrative processes have led to increased trade costs and a climate of uncertainty. This not only risks non-compliance with WTO requirements but also discourages foreign investment.

Furthermore, the National Treatment and MFN principles, which are at the core of the WTO framework, necessitate a robust legal and institutional framework to prevent market discrimination. While Afghanistan's Foreign Trade Law ostensibly adheres to these principles, the presence of state-owned and semi-state-owned enterprises in certain sectors raises concerns about fair competition. The absence of adequate regulatory oversight increases the risk of monopolistic practices, restricting private sector participation. Strengthening regulatory institutions and implementing well-calibrated trade policies can help mitigate these challenges and promote a competitive business environment. Another significant barrier to Afghanistan's foreign trade is the prevalence of non-tariff barriers. Under the WTO's Trade Facilitation Agreement (TFA), member states are required to simplify customs procedures, facilitate the clearance of goods, and adopt modern trade technologies. However, Afghanistan faces persistent challenges, including bureaucratic corruption, weak transportation infrastructure, and the absence of a single-window trade system. Implementing the full provisions of the TFA—such as streamlining processes and enhancing electronic oversight—can play a fundamental role in reducing trade barriers and improving efficiency (Eliason, 2015).

Additionally, an effective dispute resolution mechanism is crucial for fostering a reliable trade environment. The WTO's Dispute Settlement Understanding (DSU) outlines transparent and impartial procedures for resolving trade disputes. In Afghanistan, the lack of structured mechanisms for commercial dispute resolution increases legal risks for both domestic and international traders. Establishing specialized commercial courts, training judges in trade law, and facilitating access to international arbitration could significantly reduce these risks and enhance trust in the country's legal system. By addressing these structural and regulatory challenges,

Afghanistan can create a more favourable investment climate, ensuring alignment with international trade norms and fostering sustainable economic growth (Jackson, 1997).

CONCLUSION

Since the sovereign powers of the State are divided into legislation and adjudication, their exercise by Parliament and the courts respectively entitles both the said organs of the State to be held as sovereigns. Because of limitations on the legislative power of Parliament with the courts to enforce those constraints, Dicey's traditional notion of parliamentary sovereignty has been supplanted. In the words of Lord Steyn writing in the House of Lords, "the classic account given by Dicey of the doctrine of supremacy of Parliament, pure and absolute it was, can now be seen to be out of place in the modern United Kingdom." (Jackson & others v. Her Majesty's Attorney General) Similarly, as far as Pakistan is concerned, Parliament's legislation is subject to judicial review by the constitutional courts placing it next to the Constitution. The courts in performing such judicial function have power in connection with legislation representing the setting of an institutional pragmatism in the country.

To conclude with the observations on Dicey's concept of parliamentary supremacy by Jawwad S. Khawaja, J., that there is no justification in our dispensation for muddying the crystal and undefiled waters of our constitutional stream with alien and antiquated 19th century Diceyan concepts of parliamentary supremacy as these concepts have currency even in their own native lands. (Azhar Siddique v. Federation of Pakistan) Therefore, the incantations relating to sovereignty of Parliament in Pakistan should not be pressed into service and since legislative and judicial sovereignties of the State are resided into two distinct institutions that is Parliament and the courts, bi-polar sovereignty be employed as it represents the underlying scheme of the Constitution in a preferable manner. This is where the matter must now end.

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