

Enforceability of International Economic Law in the Context of National Power Differentials

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Abstract: Under the background of global politicisation and economisation, international trade has become the main mode of communication among countries. With the explosive growth of international trade volume, human society will face trade discrimination and inequality, so human beings have set up the International Trade Organisation (ITO), which supervises the process of international trade and formulates the relevant international economic laws in order to better guarantee the sustainability of the economic cycle and protect the rights and interests of the disadvantaged countries. However, as time goes by, we can see that in reality most developing or third world countries are still unable to defend their legitimate interests and are at a disadvantage in most transactions. So this study will be based on the difference in the strength of the different countries and the structural shortcomings of the Global Trade Organisation. This paper will analyse why disadvantaged countries are still unable to obtain equal opportunities for development in the international community, which now has a more comprehensive legal system.

Keywords: International economic law, enforceability, international trade, power

1. Introduction

International trade law and international economic law are integral components of the global framework governing trade relations among nations. Their primary objective is to establish rules and regulations that promote fairness in global trade. This essay explores the extent to which international trade law and international economic law contribute to fostering fairness in the international trading system. It examines key principles, mechanisms, and institutions within these legal frameworks and analyzes their impact on balancing the interests of different states, protecting vulnerable economies, and ensuring equitable access to markets.

However, from the current international social system, it is almost impossible to reach the equality of economic development, first of all, we can analyse from the perspective of the industrial chain, the trade status of different types of countries differ significantly, if the world's countries are divided into three categories, the first is developed countries, the second is developing countries close to the developed countries, and the third is the countries in urgent need of development, we can find that the developed countries have always occupied the dominant position in world trade, developing countries close to the developed countries can participate in a large number of international trade, through their own labour or manufacturing industries to maximize the benefits, while countries in urgent need of development can not get the same development [1]. It can be found that the developed

countries have been dominating the world trade, the developing countries close to the developed countries can participate in a large number of international trade, through their own labour force or manufacturing industry to maximize the benefits, but the countries in urgent need of development can not get the same opportunity for development, we can find that the developed countries and developing countries in the trade distribution of benefits with serious inequality

The biggest reason for this situation is twofold: one is that the developed countries, in order to safeguard their own capital gains and protect their own markets, raise tariffs on industries in which other developing countries have an advantage (e.g., agriculture, handicrafts, manufacturing, mining), thus creating trade barriers that further expose developing countries to huge losses in national trade. Another aspect is that because developed countries have the ability to control the global trading system, they force developing countries to lower or even eliminate their tariffs and reduce their own subsidies, which results in a massive influx of foreign companies into the markets of those developing countries, which leads to a squeeze on the local economy and an unsustainable growth of their industries. It can be seen that behind the expansion of global trade, the majority of developing countries, with the exception of a small number of developing countries close to developed countries, have not enjoyed the trade benefits of economic globalisation as predicted by economists.

2. Multilateral Trade Agreements and Non-discrimination

International trade law, particularly the World Trade Organization (WTO) agreements, play a vital role in promoting fairness through the principles of non-discrimination. The Most-Favored-Nation (MFN) principle ensures that no country receives discriminatory treatment, thereby fostering equal opportunities for all trading partners. Additionally, the National Treatment principle ensures that foreign and domestic goods and services are treated equally, reducing the risk of discriminatory practices.

These agreements are designed to ensure fair and equal treatment among member countries, regardless of their size or economic power. Non-discrimination is a fundamental principle of the global trading system and is primarily governed by two key principles: most-favored-nation (MFN) treatment and national treatment.

First is Most-Favored-Nation (MFN) Treatment, under the MFN principle, countries are required to extend the same favorable trade conditions and treatment to all other member countries. This means that if a country grants preferential treatment, such as lower tariffs or trade concessions, to one trading partner, it must also extend those benefits to all other member countries. The MFN principle prevents discrimination and ensures that no country is given unfair advantages over others.

Second should be National Treatment, the principle of national treatment requires countries to treat foreign goods, services, and intellectual property rights no less favorably than their domestic counterparts once they have entered the domestic market. In other words, foreign goods and services should not face discriminatory treatment in terms of regulations, taxes, or other measures that would put them at a disadvantage compared to domestic products. National treatment ensures that foreign businesses are not subject to unfair discrimination and have equal access to the domestic market.

2.1. Benefits of Non-discrimination in Trade

2.1.1. Fair Competition

Non-discrimination promotes fair competition among countries, enabling businesses to compete based on the quality and competitiveness of their goods and services rather than being impeded by discriminatory practices.

This also means that more countries can join the economic trading system, and economic globalisation can be considered a real achievement, after all, the ultimate purpose of economic

globalisation in the traditional sense is to give each country the opportunity to develop rapidly, not to colonise it with cultural or economic imperialism.

2.1.2. Market Access

Non-discrimination ensures that businesses have equal access to foreign markets, allowing them to expand their customer base and explore new opportunities in different countries without facing discriminatory barriers.

In order to ensure that there is no discrimination, countries have also introduced a number of policies, such as the Most Favoured Nation (MFN) policy. Under this principle, countries agree to treat all trading partners equally. If a country grants certain favorable treatment, such as lower tariffs or preferential regulations, to one trading partner, it must extend the same treatment to all other trading partners. This principle prevents discriminatory practices and promotes a level playing field for all businesses.

One notable example is the application of the MFN principle within the World Trade Organization (WTO). The WTO is an international organization that facilitates global trade and sets rules for member countries to follow. One of the fundamental principles of the WTO is non-discrimination, which includes the MFN principle. For instance, let's consider a hypothetical scenario involving three countries: Country X, Country Y, and Country Z. Suppose Country X has a trade agreement with Country Y that grants preferential treatment, such as lower tariffs, to specific goods imported from Country Y. Under the MFN principle, Country X is obligated to extend the same treatment to all WTO members, including Country Z. This means that any other WTO member, like Country Z, can enjoy the same benefits as Country Y in terms of lower tariffs on those specific goods [2].

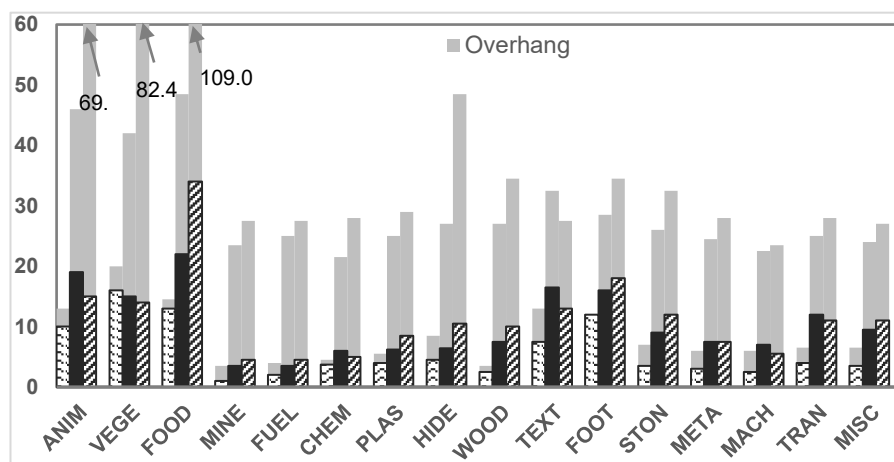


Figure 1: Average applied MFN tariffs in 2013 and tariff bindings [1].

Figure 1 shows a number of very clear patterns that illustrate the cross-sectoral variety in the amounts of imposed tariffs. First, high-income economies have average imposed MFN tariffs that are lower than emerging economies, which are then lower than poorer developing countries in practically all industries. Higher-income countries have lower tariffs than developing ones, sector by sector. Second, average MFN tariffs in sectors including agriculture (animals, vegetables, and food goods), textiles and apparel, and footwear are frequently higher across nation groups. Third, there is evidence of significant binding overhang in all sectors for emerging and developing countries, compared to relatively little overhang in any sector for high-income economies [3].

Although the ultimate goal of the MFN policy is to eliminate discrimination, there have been many negative consequences over the years of its implementation, and how to resolve this matter will be presented in the latter part of this paper.

2.1.3. Stability and Cooperation

Multilateral trade agreements based on non-discrimination foster stability and cooperation among countries. By establishing clear rules and dispute settlement mechanisms, they provide a framework for resolving trade disputes and preventing unilateral actions that could disrupt global trade flows.

In order to keep the stability of the economic law, many organization established clear rules, international commerce is governed by a system of clear rules and regulations established through multilateral trade agreements, such as those negotiated within the framework of the World commerce Organization (WTO). These guidelines provide participating nations a shared understanding, enhancing transparency and lowering ambiguity. With clear norms in place, nations may trade with more assurance knowing that their trading partners must abide by the established standards.

An illustration of a multinational trade agreement supervised by the WTO is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It sets out clear rules and regulations regarding intellectual property protection and enforcement in international trade. Under the TRIPS agreement, WTO member countries are required to establish minimum standards for intellectual property rights (IPRs), including patents, copyrights, trademarks, and trade secrets. The agreement ensures that these IPRs are protected and enforced uniformly across member countries, promoting fair trade and fostering innovation.

The case of "Canada - Pharmaceutical Patents" provides an example of how the TRIPS agreement has been invoked to address disputes related to intellectual property rights in the pharmaceutical sector. In this case, the European Union (EU) challenged Canada's regulations on the granting of patents for pharmaceutical products. The EU argued that Canada's regulations did not meet the requirements of the TRIPS agreement, specifically related to the protection of pharmaceutical patents [4].

The dispute centered around Canada's "early working" provision, which allowed generic drug manufacturers to begin producing and exporting patented pharmaceutical products before the expiry of the patent. The EU contended that this provision violated the TRIPS agreement's requirement for adequate patent protection. The matter was brought before the WTO's dispute settlement mechanism, and a panel was established to examine the case. The panel reviewed the relevant provisions of the TRIPS agreement and considered arguments from both parties.

Ultimately, the panel ruled that Canada's "early working" provision was inconsistent with its obligations under the TRIPS agreement. It concluded that the provision undermined the effective protection of pharmaceutical patents and did not provide adequate market exclusivity for patent holders.

As a result of the ruling, Canada was required to bring its regulations into conformity with the TRIPS agreement. This could involve amending its laws to provide stronger patent protection or removing the "early working" provision.

3. Gaps in Non-discrimination Policies in the Global Economy

Non-discrimination policies play a crucial role in promoting fairness and equal opportunities in the global economy. However, there are several gaps and challenges that exist in these policies, limiting their effectiveness in addressing discrimination.

These limitations are not limited to the degree of economic development of different countries, but rather to the fact that the limitations of international economic law can be affected by a variety of

factors, such as the power differentials between countries, the structural weaknesses of international trade organisations, and policy loopholes, which can affect the implementation of the final policy.

3.1. Enforcement and Compliance

While many countries have non-discrimination laws and policies in place, enforcement and compliance mechanisms can be weak or inadequate. In some cases, discriminatory practices go unaddressed due to a lack of resources, political will, or effective monitoring and reporting systems. This can lead to a gap between policy intentions and implementation on the ground.

The biggest part of problem will be developing countries, particularly those with limited resources and technical expertise, may face challenges in effectively enforcing and complying with international economic law. The implementation of complex legal obligations, meeting reporting requirements, and participating in dispute settlement proceedings can be burdensome. Insufficient capacity and resources can hinder their ability to fully engage in the international legal system.

Another problem will be a cultural factor, since for the international economic law, if the international organization put it into different cultural background countries, there will have differing interpretations and application. This can lead to inconsistent outcomes and uncertainty, as parties may have divergent understandings of their rights and obligations. Harmonizing interpretations and ensuring consistent application can be a challenge, particularly when legal systems and cultural contexts differ.

A great example of a developing country facing challenges in following international economic law is the case of Zimbabwe, Zimbabwe has faced economic difficulties and governance issues that have hindered its ability to fully comply with international economic law.

First reason is that Zimbabwe has been subject to various international sanctions imposed by the United States, European Union, and other countries. These sanctions have targeted specific individuals, entities, and sectors in response to human rights violations, governance concerns, and economic policies. Compliance with international economic law can be challenging for Zimbabwe when faced with such sanctions, which restrict its access to international markets and financial systems. Second reason should be debt crisis, Zimbabwe has faced significant debt challenges, including arrears to international financial institutions and other creditors. The country's limited financial resources and economic instability have made it difficult to meet its debt obligations and engage in international trade on equal terms. These financial constraints have impeded its ability to fully comply with international economic law, such as honoring contracts and fulfilling financial commitments [5].

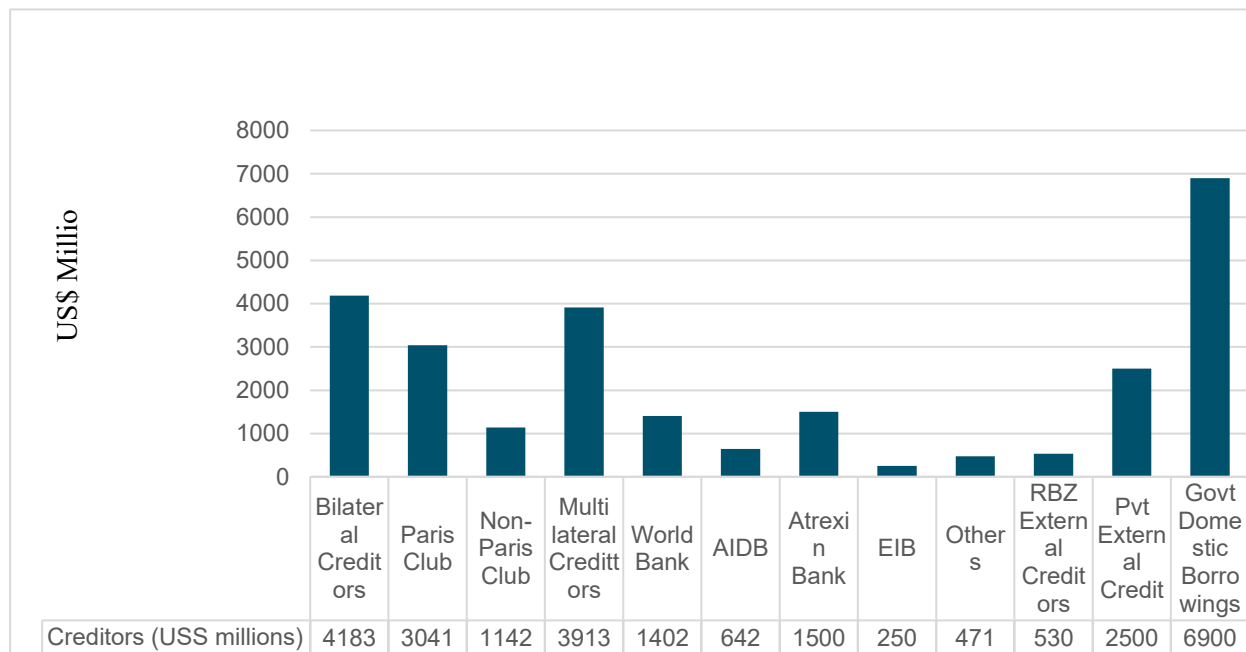


Figure 2: Zimbabwe's national debt.

Of course, these examples are only a few of the difficulties that Zimbabwe faces as a country. Figure 2 shows there are also many more obstacles (Governance and Rule of Law, Capacity Constraints etc.) that prevent Zimbabwe from integrating into the international economy or complying with the relevant laws. Meanwhile, more and more economists and NGOs are coming forward to denounce the uselessness and idealism of international economic law.

3.2. Global Supply Chains

Discrimination can be perpetuated through global supply chains, where workers may face unfair treatment, low wages, unsafe working conditions, or limited bargaining power. Non-discrimination policies may not adequately address these issues, particularly when they involve multinational corporations operating across borders. Ensuring that non-discrimination policies cover the entire supply chain and hold companies accountable for their actions is a significant challenge.

There are a lot of example can prove that, Nike, a multinational athletic footwear and apparel company, has faced scrutiny for its labor practices in the past. The company has been accused of utilizing sweatshop labor in its supply chain, particularly in countries like Indonesia and Vietnam. These allegations include low wages, long working hours, and unsafe working conditions in factories producing Nike products. Another example should be Shell, Royal Dutch Shell, a major oil and gas company, has faced criticism for its involvement in environmental exploitation. For instance, Shell has been accused of damaging ecosystems and disregarding the rights of indigenous communities in the Niger Delta region of Nigeria through oil spills and pollution. Last but not least, Apple Inc., a leading technology company, has been under scrutiny for its supply chain practices, particularly related to labor conditions. Reports have highlighted issues such as excessive working hours, low wages, and poor health and safety standards at some of its suppliers' factories in countries like China.

When we find that there are big problems in the production chain of so many famous multinational corporations, it is not difficult to conclude that in the context of economic globalisation, even if there are many laws to protect the interests of the economic community, there are still many loopholes in

the law, through which those multinational corporations can exploit their own labour force in order to maximise their profits.

4. Dispute Settlement Mechanisms

At a time when in recent years more and more economists and NGOs have raised the shortcomings and loopholes of international economic law, the World Trade Organisation has attempted to ensure fairness in world trade by changing some of its mechanisms.

First, international trade law provides dispute settlement mechanisms that contribute to fairness in global trade. The WTO's Dispute Settlement Understanding (DSU) offers a structured process for resolving trade disputes, ensuring that countries have a fair chance to present their case and receive impartial judgments. This mechanism helps address unfair trade practices, enhances legal certainty, and promotes stability in the international trading system [6].

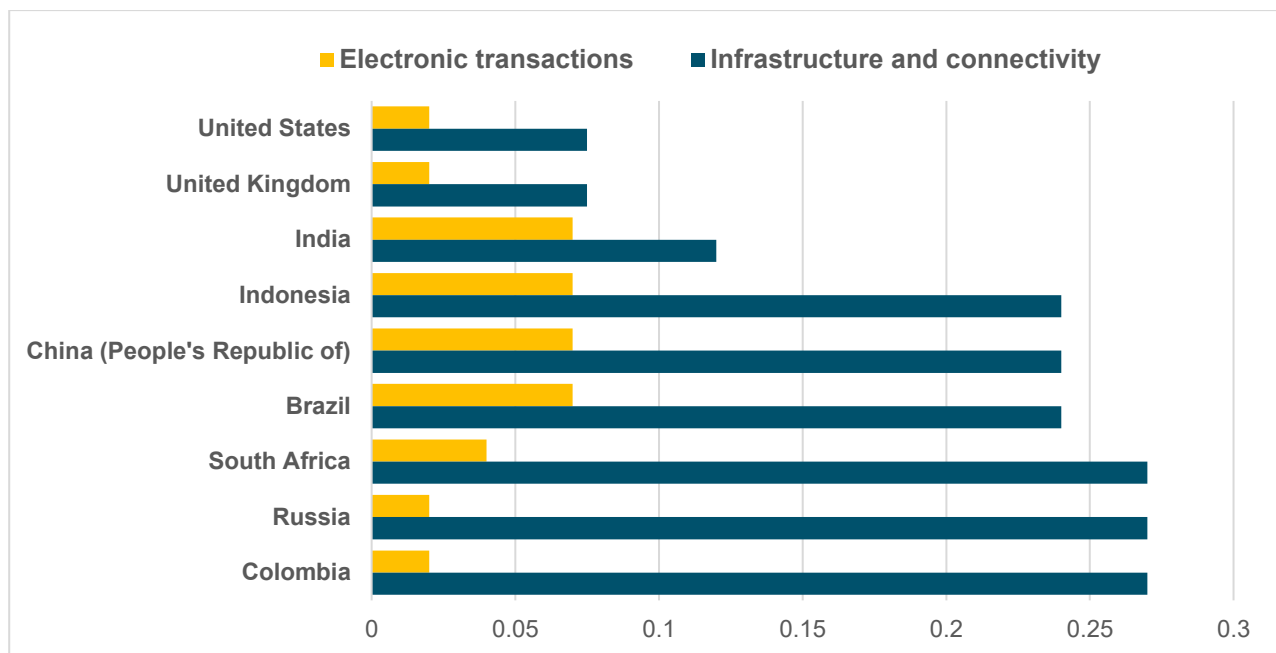


Figure 3: Digital Services Trade Restrictiveness for Selected Countries CRS.

Secondly, Figure 3 and Figure 4 show that with the increasing use of virtual platforms such as the Internet in modern society, transactions are also born with the emergence of more and more online transactions, which are accompanied by a lot of uncertainties and uncontrollability. Therefore, international trade organisations have also evolved with the times, preparing the Negotiations on E-Commerce and Digital Trade, WTO has recognized the growing importance of e-commerce and digital trade and has initiated negotiations on these issues. The aim is to develop new rules and frameworks that address the challenges and opportunities presented by the digital economy, including issues related to data flows, privacy, consumer protection, and intellectual property. These efforts aim to ensure fairness and inclusivity in the digital realm.

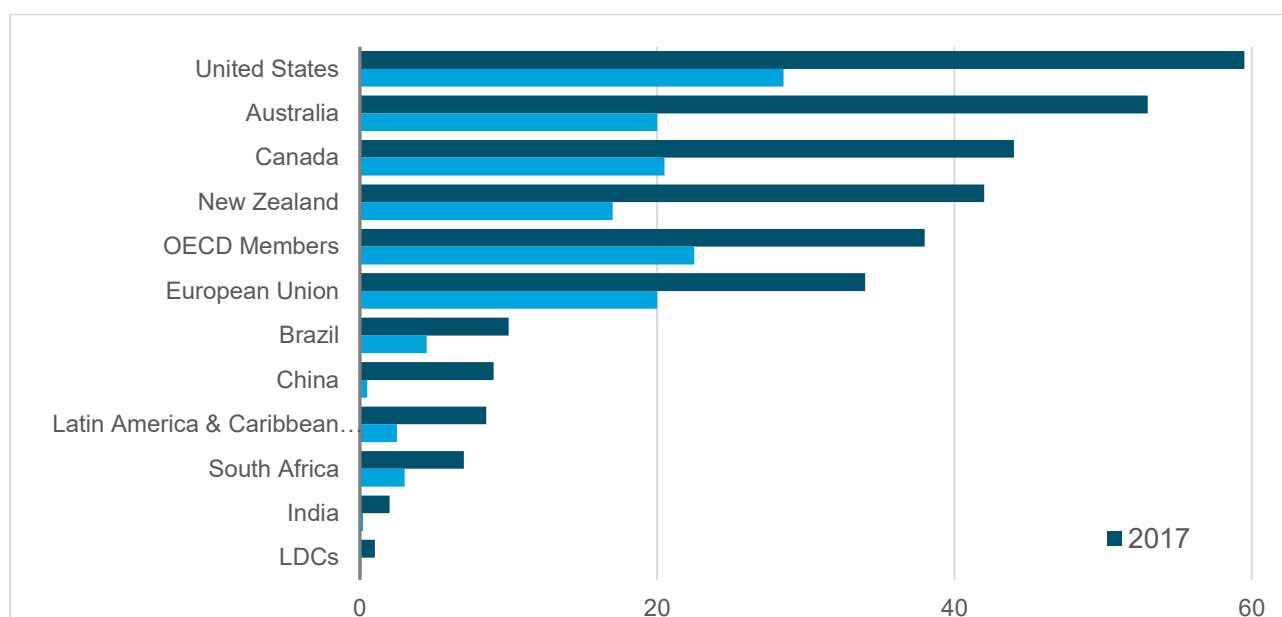


Figure 4: GDP Per Capita (Current US\$, Thousand), Selected WTO Members and Groups, 1005-2027.

As this paper mentioned earlier, many countries may not be able to implement it due to a number of factors, and the international economic organizations have understood this over the years of operation, so they have come up with the Special and Differential Treatment, the WTO recognizes the need to address the development challenges faced by developing countries. Special and Differential Treatment (S&DT) provisions allow developing countries to have more flexible obligations and longer transition periods to implement certain trade rules. The WTO has been working on improving and strengthening S&DT provisions to enhance the capacity of developing countries to participate in and benefit from the global trading system [7].

5. Addressing Power Asymmetries

International economic law recognizes the significance of addressing power asymmetries in global trade relations. Efforts such as the United Nations Conference on Trade and Development (UNCTAD) and regional trade agreements aim to enhance the capacity of developing countries to participate effectively in international trade negotiations. By providing technical assistance, capacity building, and fostering cooperation, these initiatives help level the playing field and promote fairness by empowering weaker economies.

The international platform and national government always encouraging and strengthening multilateral institutions such as the United Nations (UN), World Trade Organization (WTO), International Monetary Fund (IMF), and World Bank can help level the playing field by providing a forum for dialogue and negotiation among countries of different power levels. This can ensure that decisions are made collectively and take into account the interests of all members [8]. Another way is existing global governance institutions should be reformed to better reflect the changing global economic landscape. This can include giving emerging economies and developing countries a greater voice and voting power in decision-making processes. Reforms should also aim to enhance transparency, accountability, and inclusivity in these institutions [9].

Regional trade agreements also play a significant role in addressing power asymmetries. They always promoting fair trade practices can help address power asymmetries in international trade. This includes reducing trade barriers, addressing discriminatory practices, and ensuring a level playing field for all participants. International agreements and organizations like the WTO can play a crucial

role in setting and enforcing fair trade rules. These agreements are formed among a group of countries within a specific region and aim to promote economic integration and cooperation. Regional trade agreements often include provisions that assist developing countries in enhancing their trading capacity and competitiveness. These provisions may include special and differential treatment, technical assistance programs, and mechanisms for addressing trade-related concerns [10].

Most of the agreements in order to providing assistance and support to developing countries can help reduce power differentials. This can include financial aid, capacity building initiatives, technology transfer, and access to markets. By empowering developing countries, their ability to participate meaningfully in the global economy can be enhanced [11].

By providing technical assistance, capacity building, and fostering cooperation, initiatives such as UNCTAD and regional trade agreements help empower weaker economies. They enable developing countries to better understand and navigate complex trade rules and negotiate on more equal footing with more developed nations. This promotes fairness and inclusivity in global trade relations and contributes to sustainable development and poverty reduction [12].

6. Conclusion

International trade law and international economic law serve as essential instruments for promoting fairness in global trade. The principles of non-discrimination, dispute settlement mechanisms, special and differential treatment, safeguarding public policy objectives, and addressing power asymmetries all contribute to creating a more equitable and balanced international trading system. However, challenges remain, and ongoing efforts are necessary to ensure that these legal frameworks continue to evolve and adapt to the changing dynamics of the global economy, fostering fairness, inclusivity, and sustainable development for all nations. Currently available programmes include not only the promotion of regional integration, but also the strengthening of domestic institutions, the promotion of inclusive economic growth, and the involvement of civil society and non-State actors, among others. The ultimate aim of these is to guarantee relative fairness in economic transactions.

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