A Novel Framework and Effective Analysis on Implementing the International Business Law in the Trade and Investment

Ahmed Alyousef

Assistant professor of Law,
Princess Nourah Bint AbdulRahman University

Abstract
This paper focuses on proposing a novel framework for an effective implementation of the international business law based on the trading and investments strategies. This analysis explains the detailed relationship between international business laws, its factors with the trading and investment which are done internationally. A framework and s detailed analysis is performed in the area of international business law especially for the application of trade and investment. Various factors which improve the international trading and investment based on the international business law are analysed in detail. Factors such as the political, economical, socio-cultural, and technological, the legal have been discussed elaborately in order to improve the trade and investment strategies. This study incorporates the theory of business, and the international business law along with its impact on the trade and investment. Future research can be an analysis based on the entire system, business strategy, concept of investment, technology used in trading, trading model etc. which influence the business law and investment.
Keywords:
International business law, International Trading, Business, Economy, Investment.

1. Introduction

International trade and investment does not exist in a vacuum, nor do the treaties that set out the relevant rules. Any analysis of how trade and trade law can be reoriented towards achieving the common good should take account of the global and institutional settings in which TIAs operate, the complexity of international legal frameworks, and the multiple players involved, particularly the corporation. Cooperative action to address the issues for public health from TIAs requires effective structures and processes for global governance. Modifications to current arrangements are needed, as many of the major global organizations prioritize financial activity and economic growth, [2] while those focused on health and its determinants appear to have less power and are not coordinated [3]. Organizations such as the World Trade Organization and the World Bank appear to have emerged as stronger elements in global governance, compared to the United Nations, over the last 60 years. Such governance is increasingly complex, with many aspects and levels [4]. The World Health Organization (WHO) has not taken a major role in the formation of TIAs or their implementation (although it has had significant influence in relation to international law on access to pharmaceuticals) [5]. While WHO may be invited to contribute to WTO dispute procedures, it has no right to do so, as made clear in the WTO dispute rules [6]. These rules state that WTO may seek information from any source related to dispute settlement, and/or set up expert review panels, but these are advisory only.

The imbalance between economic and health priorities has been intensified by the trend away from multilateralism towards bilateral, regional and mega agreements (FTAs). 'Multilateralism' is a concept that has normative and political connotations, with some commitment to a rule based system, principles of universality, and governance by international organisations [7–10]. In this sense, multilateral agreements differ from regional or preferential trade agreements, even where such agreements have several parties [11, 12]. These bilateral and regional agreements are 'negotiated outside WTO auspices', may 'undermine developing country interests' [1] p.299 and hence may enforce present power imbalances. As Gostin noted, 'FTAs enable powerful countries to lock developing countries into agreements that could not be achieved during WTO negotiations'. This may, for instance, include stronger intellectual property protections than those in the equivalent WTO agreements [1].

1.1. Objectives of the Proposed Analysis

The main objects of the proposed analysis is as follows

(1) To have an insight into the international Business Law
(2) To know various substructures which are used to examine the international business law based on the trade and investment. This includes studying its operational characteristics and the working environment.
(3) To design an interface for evaluating the international business law in terms of the trade and investment.
(4) Modification of the current system in the international business law based on the proposed analysis.

Manuscript received January 5, 2026
Manuscript revised January 20, 2026
https://doi.org/10.22937/IJCSNS.2026.26.1.17

The paper is organized as follows; section 2 depicts the literature review focusing on various analysis done by earlier researchers, section 3 discussed the details about international business investment, its various phases and the modules along with its application, section 4 depicts the International Business Investment in detail., International trading is shown in section 5 along with its various factors which are influencing the international trade, The effects of international business law in trading and investment is shown in section 6 and the conclusion and future works are shown in section 7.

2. Literature review

The notion of a contract is an agreement known, oral or/and written, which is related to social business or trade. Author in [14] defines a contract as an agreement between two or more persons consisting of a promise or mutual promises which the law will enforce, or the performance of which the law in some way recognizes as a duty. 2 Black laws Dictionary made the interpretation of a contract as “An agreement between two or more persons which creates an obligation to do or not to do a particular thing”. Authors in [15] defined the contract as the agreement for an event in which there is a promise to another person or two people promise each other to do or not to do something.3 The development of contractual law in International trade is not released from human development with its trade activity thus the development of international trade cannot be separated from the development of contract law. Serebryakova et al., 2016 [16] stated that development of contract law divided on four phases 4 . First, international law embodied in lex mercatoria, second, international contract law in national law, third international contract law as a standard contract, fourth, international contract law in cyberspace.

In both WTO TIAs and non-WTO TIAs, the present processes of treaty development can inhibit the recognition of health and common good perspectives. This can present barriers even for developed countries in achieving desired outcomes, but the barriers are more acute for developing countries with small economies. There are a number of factors affecting smaller economies as they participate in TIAs, including limited human resources and technical capacity [8] p.22–23. There are also issues relating to procedural justice in the functioning of the WTO, such as the basic bargaining process itself, which is built on political and economic power [8] p.27 [17]. Current TIA dispute resolution mechanisms have particular problems for poorer countries [17]. The mechanisms require significant resources, including legal assistance, to have any chance of success. This has ‘important implications for the justice of the overall system’ [8]. The lack of transparent, open and consultative processes has been noted by a range of official bodies.

3. International Business Investment

FDI refers to investments made by investors to overseas enterprises in which the foreign investor has a long-term interest as well as substantial control in the resultant venture [6, 13]. FDIs can be developed in one of three ways. The foreign investor may choose to acquire interest in an already existing firm, either fully or in part. Generally speaking, this method involves forming a joint-venture. In other instances, foreign investors can establish new companies in the host country. This is known as greenfield investing. To determine what impact weak or strong protection of IPRs has on foreign investors’ decisions to invest abroad, it is important to look to the Dunning's OLI paradigm which explains activities of multinational corporations in terms of ownership (O), localization (L) and internalization advantages (I). Dunning's OLI paradigm maintains that foreign firms typically do not possess good information about the local business environment of countries in which they are planning to invest.

Another point is that FDIs take place when three sets of advantages are perceived by firms to exist simultaneously. The first set focuses upon the specific ownership advantages. The firm must generally have a unique ownership advantage, which could be based on ownership of a product or a production process offering competitive advantage. Examples include patents, trademarks, exclusive access to markets and resources, trade secrets, production technology, and management and general organisational abilities. Typically, however, the foreign investor’s ownership-specific advantages are sensitive to property rights protection in the host country; the success of a foreign investment is tied to the security of its intellectual and physical property in the host country.
The second set of advantages refers to the location-specific advantages as perceived by firms. These are the characteristics of host countries in terms of their economic environment or government policies. This set of advantages explains why a firm wishes to produce its goods in the host country. There must be some location advantages to justify a firm’s decision to locate in one place rather than another. This choice of location arises from natural differences between countries, including differences in endowment with natural resources, differences in input, production, transport costs, and cultural manifestations requiring adaptation of the product for specific markets. Oil companies, for example, must operate in particular locations where oil is available. Location specific advantages also arise from artificial differences,

particularly those related to government policies on, for example, tariffs, domestic corporate taxation, investment or tax regulation of foreign firms, profit repatriation or transfer pricing, royalties on extracted natural resources, anti-trust regulation, technology transfer requirements, intellectual property protection, and labour market regulation.

The third set of advantages relates to internalisation incentive advantages, all of which aim to reduce uncertainty and avoid transaction costs with potential licensees, controlling inputs, and protecting quality. Generally, it must be more advantageous for the investing firm to use its ownership-specific advantages in a foreign country, rather than selling such advantages to local companies. If only the first set (ownership-specific advantages) is met, firms will rely on exports, licensing, or the sale of patents, to service a foreign market. Given the existence of internalisation incentives, FDIs become the preferred mode of servicing foreign markets. It only applies, however, if location-specific advantages are present. There are three conditions necessary for FDIs to take place. Of these, however, locational advantages are the only ones that host governments can influence directly. One important reason for many firms to engage in FDIs relates to protecting their IPRs in the host country. Most firms will prefer foreign investment over licensing in the case of weak protection. Internalised foreign production helps firms to maintain direct control over their proprietary assets.

4.1. Advantages of International Business Investment:

Advantages of the investments for business can be categorised based on five determinant issues such as the organizational issue, Host country issue, Home country issue, Customer issue, and global issue are listed below:

(a) Organization Based

- Opportunity for expansion of business and the production across the globe leads to various opportunities to get low cost location and raw materials.
- The quality is improved due to access of better technology and access to skilled labours in other countries
- Expansion of business can be done in different countries in order to obtain flexibility in Product and also, it leads to an access to low cost investment fund.

(b) Host Country Based

- In this host country point of view, there is an increased investment from foreign companies which leads to the quality products/services to local people at competitive price.
- It also leads to increased wages of labors since latest technology has been implemented in almost all the fields.
- Foreign currency investment in the country reduces the higher tax and tariff collection from host country government

(c) Home Country Based

- This can create foreign earning opportunity for local companies
- It also produces various opportunities to invest in different countries for local firms
- Learning new methods in international locations and transferring it to home country leads to a monopoly of products and services having patents in the country in order to find huge market

(d) Customer Based

- The customer can access to quality standard products
- Competition between MNC's and local firms leads to quick delivery of products

(e) Global Market Based

The global point of view leads to an access to global technology, global talents, global investments, Cost-effective manufacturing opportunity, access to global market where prices are highest and access to international strategic alliances.

5. International trading

International trade is the exchange of commodities, products, services, capital between people and companies in different countries. International trade has existed for a long time, but trade has increased hugely in the past few hundred years and has a major impact on the economies of many countries [17]

5.1. Factors influencing international trade

Many various factors, such as political, economic, and practical factors can affect the growth of international trade. Exchange rates, competitiveness, growing globalization, tariffs and trade barriers, transportation costs, languages, cultures, various trade agreements affect companies by its decision to trade internationally. Political policies and other government concerns, such as the relationships between trading nations, are highly important to the growth of international trade. A politically stable nation with few policies restricting international trade will likely be able to expand its worldwide trade rapidly. Political instability, however, particularly when it leads to violence, can be a major barrier to trade growth. Many nations place steep tariffs on exports or imports from certain nations or industries for such reasons. While such tariffs can be used to protect fledgling industries or to place political pressure on some nations, their overall effect on international trade is often negative. One of the biggest stories of the past 20 years has been the successful integration of many developing countries into the global economy and their emergence as key players in international trade. Developing countries are diverse in the quality of their political and economic institutions but there are strong reasons to believe that “better” institutions give countries a competitive advantage and produce better trade outcomes. It is not clear, however, whether developing country growth will continue at the same rapid pace or taper off. Improving the quality of institutions would provide developing countries with a way of ensuring that growth continues [18]. The following are the various factors which influences the international trade.

5.2. Exchange rate

The exchange rate is the price of one currency in terms of another. Exchange rates fluctuate depending on the demand for a particular currency. If there is a high demand for a country's currency then its price will tend to rise. Because currencies fluctuate in price it can often be cheaper to buy goods in one country and sell them in another.

5.3. Competitiveness

In current environment, with growing interdependence between the markets and in increasing competition, it is more difficult to maintain current enterprise market position [19]. Competitiveness is a measure of the relative ability of different countries to provide different products or services. Competitiveness takes into account the efficiency, costs of employment, level of government regulation and the ease of doing business. Competitiveness affects international trade because the more competitive countries will tend to attain a higher level of global trade [16].

5.4. Globalization

Globalization is the term used to describe a general tendency for national economies to become more integrated with each other. This happens because of a combination of advanced communication technologies, logistic technologies, increased capital flows and reduction of trade barriers by national governments. Globalization is a general trend that has caused an increase in international trade over the last three or four decades [16].

6. Effects of International Business law in Trading and Investment

International Commercial Law is a body of legal rules, conventions, treaties, domestic legislation and commercial customs or usages that governs international commercial or business transactions. A transaction will qualify to be international if elements of more than one country are involved. A foreign direct investment (FDI) is an investment made by a firm or individual in one country into business interests located in another country. Generally, FDI takes place when an investor establishes foreign business operations or acquires foreign business assets in a foreign company.

The foreign investment inflows depend on the degree of transparency, the level of economic activity in the host country, the level of interest rates, inflation and exchange rate changes in the host country and on the level of openness of its trade regime. To put it more simply,

$FDI = f(T, Y, r, i, ER, TR, C)$
where,
T = transparency Y = economic growth r= interest rate i= inflation ER= exchange rate changes TR= openness of trade regime C = country

We expect transparency, economic growth, exchange rate stability and open trade regimes to be positively related to FDI. In contrast, we expect both interest rates and inflation to be inversely related to FDI.

7. Conclusion and future enhancements

International trade is the process of taking more decisions and involving all the stake holders’ for the process of expecting to get a good gain. *Investing* is the act of allocating funds to an asset or committing capital to an endeavour of a business. Investment is the process of allocating the money in a business. A novel framework, decisions and various other systematic analyses are necessary to make the decisions on investment more successful. In this work, an effective implementation of international business law is depicted along with its analysis based on the trade and investment strategies. These strategies are used by many international firms and the various factors which are affecting their business are discussed in detail. The main aim of this work is to have an insight on major factors of trade and investment strategies for a firm which affects the decisions on international business. Various frameworks used to analyse the trade and investment strategies in the international business are discussed. This analysis is done by studying the various factors such as the organisational, host country, home country, customer and the global market based etc. This framework is also used to identify the strength, weakness, opportunities, and challenges of trade and investment strategies in the international business.

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