BRINGING LAW AND ORDER TO INTERNATIONAL TRADE: ADMINISTRATIVE LAW PRINCIPLES AND WTO

ABSTRACT

Present article have made an analysis referring the WTO and application of administrative law in the function of the WTO. WTO as the transnational regulator of trade have evolved as the most significant part in the trade around the globe as the era only evidence the globalization of trade. Globalization of trade has impeded may challenges for various countries and to regulate the same, with consent of global business partners, world has evidence the emergence of WTO as the control device for trade and hence WTO came into effect. WTO itself has its own mechanism for administering various issues that have emerged internally and externally and hence it attracts principles of administrative law in action. Global administrative law has seen a recent developmental shift as world have felt its essence in the administration of various institutions that may be either state or non-state actors. Global administrative law also focuses on the fundamental principles that are need of any administrative system. Present article raises two points contending on the judicial review mechanism of the WTO and transparent that is followed in WTO and GATS/GAAT. Article proposes the replacement of Dispute Settlement Body’s functioning members as making it as the separate body having members distinct from the General council of WTO. Also a touch has been felt in the article relating it with the principles of transparency that are ought to be flowed at some points and defaulted at another point in the working of WTO.

KEY WORDS: Dispute Settlement Body, GAAT/GATS, Global Administrative Law, Transparency, WTO

1-INTRODUCTION

Administrative Law have presented as underdog compared with the constitutional law as less work have been explore in field of administrative law making lacking emergence of comparative administrative legal ideologies as was present in case of comparative constitutionalism. As administrative law is younger than constitutional law and therefore a global framing seems to be absent in relation to application of administrative law principles that are base of making relation between governments and international institutions. In the age materialization of legal principles globally, time has came to present the administrative inclusive on international level. Present administrative law is not a standing as mere regulatory principles for an individual nation but shaped itself in global packing that has been followed in various international mechanism setup across the world. Present article try to make an analysis on the administrative law and its implication on World trade Organization (hereinafter called as WTO). WTO is the principle trade regulatory body extending its functions from legislating, administering as well as adjudicating and for the reason there have to be principles followed that must inherit
some fundamental feature of ought to followed by any authority while following its daily business or conduct. Boundaries between states and international arena have shrunken by emergence of well insightful international principles and trade evidenced steep development as the globalization affected economies around the globe. WTO use to regulate all the trade related matters internationally so as preserve a condition of free trade and reducing tariff barriers across the world but on the other side a greater risk pertains to the weaker economies of several countries who are dominated by the stronger ones as result of participation of various economies on the same floor. WTO hence needs mechanism to rebuff and eliminate the discriminations and quandaries with assistance of general principles governing the administrative law. Administrative law is nothing more than a method of governance that authorities apply. There are as many as principles Rule-making powers, discretion, transparency adjudicatory powers, judicial review, fair play etc. but the current article only makes an overview upon the WTO setup in realm of administrative law.

2-WTO AND ITS ADMINISTRATIVE MACHINERY

WTO being an International institution have impact on international governance and hence many authors have attracted the inception of Global administrative law in force to meet challenges faced by WTO. The recent studies in inter-institutional global governance have initiated a scope for flourishing global administrative law in action. Global Administrative law in realm of WTO will focus on the measure smooth the governance and disciplining global trade as WTO is the concerned authority for same. The measure for making a global administrative law approach approved in case of WTO because of need of legitimacy in exercise of authority that the institutional actor seeks to perform. For scrutinizing application of administrative law in any system, one should be aware organizational setup of that institution that may be either state or non-state actors. WTO structures itself in various parts for its functioning as WTO works under two heads of the functioning, that is Ministerial Conference as head and General Council for its day to day functioning. It also include Trade Policy Review Body and Dispute Settlement Body in addition to several committees and councils to make decisions regarding General agreement on Tariff and Trade (GAAT), General agreement on Trade in Services (GATS), Trade related Aspects of Intellectual Property Rights etc. All these internal setups have been divided in to three spearheads of functions that are legislative, executive or administrative and judicial in nature. Ministerial conference bears function to legislate matters in WTO, General Council stand for executive functions and Dispute Settlement Body sits as the adjudicatory mechanism. There are many challenges to the WTO that warrant the need for a administrative law application in operation of WTO administration. This article in later part will deal with the two major problems that are traced in the WTO mechanism that need a bird eye’s watch that are two distinctive principles of administrative law i.e. transparency and accountability in WTO. Transparency, accountability and legitimacy are not one principles of administrative law of particular state, but have accomplished its suitable and effective status in global administrative law. In special reference to WTO as a transnational regulatory actor concerns over legitimacy and accountability have raised much quandaries and hence attracting re-conceptualization of changing their comportment of functioning. Reflections have proceeded toward the appearance of disaggregated form of governance over the bounded form of governance.

3-ADJUDICATION MECHANISM AND ADMINISTRATIVE LAW IN WTO

Judicial review emerged as one of the sacrosanct principle in any legal principle and separation of power has strengthened the principle by leaps and bounds. Although various principles of adjudication in administrative law differs as the change in laws of domestic and transnational perspective but more or less the basic spirit of the judicial review remains identical around sphere. Dispute Settlement Body serves as the rectifying authority that asserts the rules regarding the global trade administration in the realm of domestic administrations being disturbed by violation of those laws made in adherence to WTO mandates. Dispute Settlement Body serves as the quasi-judicial nature as it not only regards with the dispute settlement authority buy even as the regulation making body. The most stringent condition that needs to be reviewed is regarding the administrative nature of the Dispute Settlement Board that is the deems to be independent judicial authority under WTO but the mystification regarding involvement of general council of WTO is the major concerning element in the judicial hand of WTO. Taking the normal judicial working in domestic laws, we could see a separated judicial mechanism that is in consonance with the idea of separation of powers in government but seems to be absent in case of WTO. Judicial trend around the globe will evidence that an independent judiciary in place for any institution
either a state-actor or a non-state actor is present but
same seems to be absent in the scenario when focused on
the adjudicatory mechanism of the WTO that itself
involves the members of general council that sits as the
adjudicators in the WTO dispute Settlement Body. The
major questions that current article posses is the warrant
of a separate judicial branch of WTO as WTO not being a
domestic regulator but being a transnational regulator
and controller of trade across the globe is the main issue
in present case. WTO must ensure that a separate judicial
branch is endowed with the particular institution that will
fructify the intention connecting the formation of the WTO.

The major contention that emerges from the present
article signifies the importance of the judicial review that
is the major part of any administrative functionary and
hence it approves the contention warranting the separate
judicial authority for the WTO. Dispute Settlement Body
of WTO must have a specific article of association that
provides specific rules and obligations for the judicial
officers of WTO. This special and separate body that is
ought to be proposed by the current article must
endeavors to solve all the subject matter regarding the
dispute that lies in the present Dispute Settlement Body
jurisdiction area but it is pertinent to recognize the essence
of the proposed mechanism that sets just a specific
machinery for the dispute settlement body keeping
present actionable power as same according to current
structure.

Therefore the basic change in WTO Dispute
Settlement Body will have an impact on the present dispute
adjudication process as conferring it in consonance of the
administrative law that in present article emerged as the
global administrative law. Need for a transparent and
independent judiciary is the essence of any legal system
and when the system is on the international level posses
more significance of warranting the independent judiciary.

4-WTO AND GATT:
TRANSPARENCY CHECK

Transparency not only evolved from very deep
in administrative law but also makes the structural part
of administrative law so as to make it accountable before
public. Global administrative law plays not only in dealing
with principles of administrative law but also focus on the
various mechanism relating to transparency in general. Global
Administrative law deals with the principle of
transparency in the transnational arena of legal field.

Therefore we can say that various principles and
mechanisms of global administrative law functions to
promote transparency on global level. An example for
the same could be found out in the directives issued by
world bank to developing countries that include rules and
code of principles that intend to achieve greater goals to
maintain transparency and combat corruption for market
actors. Transparency is sometimes shown as negating
approach as the organizations on international level
sometimes fails to recognize the principle that may be
even stated as hallmark of administrative functioning of
any organization. Reduced On international arena
transparency is so important that many a times
organizations like World Trade Organizations have been
criticized for their insufficiency to maintain a transparency
in administrative functions. The need for accountability
in the international arena have focused and fascinated
the need to evolve transparency measures in functioning
of regulatory actors like WTO. In pursuant to article III
and IV of GATS, service supplier have enquiry or contact
points as the aftermath of Uruguay round so that
information can be easily disseminated between them.
This government to government transfer of information
have left the non-state players in distortion and
worthlessness of those provisions of GATS as the traders
are the only interested class who were to be facilitated by
the provisions of GATS. Forthcoming rules on GATS make
the provisions for providing a single phased licensing for
supplier application and its process and administration
in a purposeful manner. Also the draft rules have to seek
into maintaining the reasonableness in fees fixation. In
case authorities refuse to grant license to applicant the
authorities are required to give the decision in writing
and without delay in addition to mentioning the reason
for the disqualification on demand of applicant. All this
draft rules that are also called as disciplines on domestic
regulations are intended to create the transparency
regime in the context of WTO. Some provisions of the
WTO will be traced here to clarify that WTO main
instrumentalities have followed the basic transparency
principles that recognize duty to inform. Publication of
international Obligations are enumerated in Article II of
GAAT, Article XX of GATS and several trade agreements,
pagination of laws and regulations in article X of GAAT,
Article III of GATS and Article 63 of TRIPS, enquiry points
for trading partners in Article III of GATS, SPS, TBT in
addition to several provisions regarding issuance of
notification by WTO on various grounds that depends on
information provided by actors on its own behavior and
information provided by actors in other actor behavior.

Steve Charnovitz of Washington University Law
school have rightly advocated his opinion wherein he
argued about the malfunctioning of WTO with reference
to transparency in its own functioning but making some stringent rules laid down in transparency in national arena. Even in conventions by WTO that needed more transparency were devoid of same as was in case of Custom Convention and further negation of non-governmental organization involvement that would have been made more transparent provisions if were added in convention. Also the fundamental document in relation to trade in goods on global level is GATT (General Agreement on Trade and Tariff) shows an essence of transparency wherein Article X, 2 of GATT refers to the disclosure of government acts that affects other members, private persons and enterprise that shows a wider shelling of transparency in the document responsible for global trade. Whosoever may be the conditions in international arena but nonetheless future of administrative laws needs to be more transparency involved for dynamic state culture around the globe so as to imply smoother functioning of same.

5-CONCLUSION

Present article have made an analysis referring the WTO and application of administrative law in the function of the WTO. WTO as the transnational regulator of trade have evolved as the most significant part in the trade around the globe as the era only evidence the globalizations of trade. Globalization of trade has imputed may challenges for various countries and to regulate the same, with consent of global business partners, world has evidence the emergence of WTO as the control device for trade and hence WTO came into effect. WTO itself has its own mechanism for administering various issues that have emerged internally and externally and hence it attracts principles of administrative law in action. Global administrative law has seen a recent developmental shift as world have felt its essence in the administration of various institutions that may be either state or non-state actors. Global administrative law also focuses on the fundamental principles that are need of any administrative system. Present article raises two points contending on the judicial review mechanism of the WTO and transparent that is followed in WTO and GATS/GAAT. Article proposes the replacement of Dispute Settlement Body’s functioning members as making it as the separate body having members distinct from the General council of WTO. Also a touch has been felt in the article relating it with the principles of transparency that are ought to be flowed at some points and defaulted at another point in the working of WTO. Present article concludes with the point of conformity that present structure of WTO needs much alterations as well as embracement’s that will project toward a more comprehensive development regime in the global trade relations among the countries. WTO in needs certain revolutionize adjustment that will further ensure the international business on next level.

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