



Fundamentals of International Business Transactions

The Free Trade Principle and the WTO Regime

Concept of International Trade Law (Public International Law Principles)

- **Territorial Sovereignty**
- **International Ordre Public**
- **Free Trade**
- **Free Competition**

International Ordre Public (IOP)

1. Basic

- The IOP is an instrument to ensure the consideration of universal public interests in national legal systems
- The content and application of the IOP are rather nebulous
- Accepted by most states of the world are a few basic principles, like free trade and unrestricted current payments

2. Consequences

- (1) Governmental law can be regarded as unenforceable if it violates international public policy
- (2) Regional trade customs can be regarded as inapplicable under the same prerequisites

Principle of Free Trade

1. Sources

- 1974 United Nations Charter of Economic Rights and Duties of States
- GATT 1994

2. UN Charter 1974

- emphasizes the right of a state freely to exercise its full permanent sovereignty over all its wealth, natural resources and economic activities, art. 2 (1)
 - confirming the notion that a concept of free international trade does not exist
- States: “every state has the right to engage in international trade”, art. 4, and “it is the duty of states to contribute to the development of international trade of goods”, art. 6
 - supporting an actually existing principle of free trade

The Principle of Free Trade in the GATT 1994

- **Most-Favoured-Nation Clause**
- MFN-Clause
- **National-Treatment Clause**
- NT-Clause
- **Anti-Dumping Clause**

Most-Favoured-Nation Clause, Art. I GATT 1994/1947

I. Essence

- a promise of non-discrimination against the commerce of the other contracting party
- a state promises to apply to another state and its citizens the most favourable import charges applicable to imported goods.

II. Text

“With respect to custom duties and charges of any kind imposed or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

National-Treatment Clause, Art. III GATT 1947/1994

1. Essence

- a form of non-discrimination
- it requires that once the goods have entered a market, they must be treated no less favorably than the equivalent domestically-produced goods.

2. Text

“The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and international quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.”

Anti-Dumping Clause, Art. VI GATT 1947/1994

1. Essence

- Dumping practices are condemned

2. Text

“The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, ...”

The GATT 1994 - Substantive Agreements

- The GATT 1994 includes 29 substantive agreements
- the probably most important agreements are:

1. Market Access

- members have undertaken to eliminate or reduce custom tariff rates or non-tariff measures
- each member has recorded its commitments to eliminate or reduce trade barriers in its respective list, called Schedule of Concessions

2. General Agreement on Trade in Services (GATS)

- Agreement with regard to the increasing international trade in services
- special issues arising in certain sectors, including: air transport services, financial services, maritime transport services and telecommunication

3. Agreement on Trade-Related Investment Measures (TRIMs)

- investment measures do not discriminate unfavourably against foreigners, eg local content requirements, trade-balancing requirements

4. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

- Protection of International Property under varying national standards

Free Trade Exemptions, Art. XX GATT 1994

“ ...nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;**
 - (b) necessary to protect human, animal or plant life or health;**
 - (c) relating to the importations or exportations of gold or silver;**
 - (d) ...**
 - (e) ...**
 - (f) imposed for the protection of national treasures of artistic, historic or archaeological value;**
 - (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;**
- ...”**

Free Trade Exemptions, Art. XX GATT 1994

“Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or**
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests**
 - (i) relating to fissionable materials or the materials from which they are derived;**
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;**
 - (iii) taken in time of war or other emergency in international relations; or ...”**

Russia's Membership in the WTO

➤ Current Dispute Settlement Proceedings

▪ Russia as Complainant

- **DS474: Anti-dumping measures on imports from Russia (protection against dumped imports)**
- **DS476: Energy Sector (“EU Third Energy Package”)**

▪ Russia as respondent

- **DS 462: Recycling fees on motor vehicles**
- **DS475: Measures on the importation on live pigs, pork and other pig products**
- **DS479: Anti-Dumping Duties on Light Commercial Vehicles**
- **DS485: Tariff treatment of certain agricultural products (palm oil, paper)**

Russia's Membership in the WTO

➤ Impacts for the Russian Economy

- **Market Access**
 - **Banks**
 - **Insurance Companies**
 - **Industry**
 - **Agriculture**
- **Modernization**
- **Competitiveness**
- **Foreign Investments?**
- **Protection of the domestic economy?**