

Chapter I

An Overview of International Trade and Law

Highlights of this chapter

This chapter first defines international trade, introduces the different classifications of international trade, reviews the history of international trade, and explores the various theories to support free international trade, so as to help the students form a rough and broad vision of international trade. This chapter then goes into defining international trade law, describing the objects (relationships) regulated by international trade law and discussing their subjects, legal natures, and Sources of law and finally introduces the theoretical structure of international trade law and the structure of this textbook.

Section 1 Introduction to International Trade

1. Essentials of international trade

1.1 Definition and characteristics of international trade

International trade is the exchange of goods, services, and technologies across national borders or territories. It is the exchange of goods, services, and technologies among nations of the world. Compared with domestic trade, international trade has the following characteristics.

(1) International trade involves much more complicated contexts. In international trade, the transaction might be conducted in foreign languages and governed by foreign laws, international conventions, or international usages and practices. When trading with foreigners, numerous cultural and legal differences must be considered. Before exporting to other countries, the exporter must first examine the laws, regulations, cultures, customs, taboos, and value orientations of those countries. In international trade, foreign currency transactions might be necessary and exchange

rate variation can affect the interest of the parties significantly.

(2) International trade involves far more difficulties and risks. Due to the complicated context, international trade generally involves far more difficulties than domestic trade^①. For example, it is more difficult to find suitable suppliers or potential customers, to get necessary governmental approvals, and to go through required formalities. International trade always involves more political risks, such as war and expropriation or confiscation, as well as commercial risks, such as bankruptcy of the seller or the buyer, exchange rate fluctuation and loss of or damage to the goods in transportation.

1.2 Classification of international trade

In accordance with different criteria, international trade can be classified into different categories.

1.2.1 Import trade, export trade, and transit trade

According to the direction of the flow of goods, services, and technologies, international trade may be divided into export trade, import trade, and transit trade. Import trade means bringing goods or services into a country, especially across its national border, from a foreign country. Export trade means shipping goods or services out of a country to a foreign country. An import in the receiving country is an export from the sending country. The seller of such goods and services based in the country of export is referred to as the exporter, whereas the buyer based in another country is referred to as the importer. Where the products of country A are sold and transported to country B through country C, it is referred to as transit trade from the standpoint of the transit country C, while it is ordinary import trade from the perspective of country B.

1.2.2 Visible trade and invisible trade

According to the subject matter being traded, international trade can be either visible trade or invisible trade. Visible trade refers to trade in goods which are always visible, such as machinery, equipment, mineral products, or grains. Invisible trade refers to trade in services and technologies, which are always invisible. In the absence of comprehensive international rules on transactions of trade in services and technologies, this textbook only covers laws on trade in goods.

1.2.3 Bilateral trade and multilateral trade

In accordance with the number of countries involved, international trade can be divided into bilateral trade and multilateral trade. Bilateral trade has narrow and broad connotations. In the narrow sense, it refers to trade between two countries on the basis of a bilateral clearing agreement. In bilateral trade under this definition, one country pays for goods imported from the other country by exporting goods of the same value reciprocally. It usually occurs between countries suffering from foreign exchange shortage and strict foreign exchange control. By

① Due to the international character, international trade bears physical risks, financial risks, legal risks, and political risks. See Simone Lamont-Black, *Understanding International Trade Law*, China Renmin University Press, 2010, p.34.

contrast, the broad definition is widely adopted in daily economic practice: in common usage, bilateral trade simply refers to all trade exchanges between any two sovereign countries without strict restrictions on clearing modes. Multilateral trade means trade among three or more countries on the basis of multilateral clearing agreements. In the context of economic globalization, multilateral trade is much more popular.

1.2.4 Barter trade and cash-liquidation trade

In accordance with the method of liquidation, international trade can be either barter trade or cash-liquidation trade. Barter trade is trade by exchanging one commodity for another, without using a medium of exchange, such as money. It is usually bilateral, but may be multilateral, i.e., mediated through a trade exchange. As a replacement for money as the method of exchange, barter is used in times of monetary crisis, such as when the currency may be either unstable or simply unavailable for conducting commerce. Cash-settlement trade, also called free liquidation trade, is trade liquidated by using freely-convertible international currencies, where the seller and the buyer negotiate the price and payment in accordance with the price level in international markets and then the buyer pays the seller in the agreed currency.

2. History of international trade

Since Adam Smith extolled the virtues of the division of labor and David Ricardo explained the comparative advantage of trading with other countries, the world has become increasingly economically integrated. International trade has expanded, and trade agreements have increased in complexity. While the trend over the last few hundred years has been towards greater openness and more liberalized trade, the path has not always been straight. Since the entry into the force of GATT 1947, there has been a dual trend of increasing multilateral trade as well as more local and regional trade arrangements.

2.1 From mercantilism to multilateral trade liberalization

The doctrine of mercantilism dominated the trade policies of the major European countries for most of the sixteenth century through to the end of the eighteenth century. According to mercantilists, the key objective of trade was to obtain a favorable balance of trade, under which the value of exports should exceed the value of imports. The mercantilist trade policy discouraged trade agreements between nations since all governments tended to assist local industry by using tariffs and quotas on imports as well as by prohibiting the export of tools, capital equipment, skilled labor, or anything that might help foreign nations compete with domestic production of goods.

One of the best examples of mercantilist trade policy during this time was the British Navigation Act 1651. Under this Act, foreign ships were prohibited from taking part in coastal trade in England and all imports from continental Europe were required to be carried by either

British ships or ships that were registered in the country where the goods were produced.

The whole doctrine of mercantilism was attacked in the writings of Adam Smith and David Ricardo, both of whom stressed the desirability of imports and stated that exports were just the necessary cost of acquiring them. Their theories gained increasing influence and helped to ignite the trend led by Great Britain towards more liberalized trade.

In 1823, the Reciprocity of Duties Act was passed, which greatly aided the British people to carry out trade and made permissible the reciprocal removal of import duties under bilateral trade agreements with other nations. In 1846, the Corn Laws, which had imposed restrictions on grain imports, were repealed. By 1850, most protectionist policies on British imports had been dropped. Furthermore, the Cobden-Chevalier Treaty between Britain and France enacted significant reciprocal tariff reductions and included a most favored nation (MFN) clause. This treaty helped spark a number of MFN treaties throughout the rest of Europe, initiating the growth of multilateral trade liberalization.

2.2 The deterioration of multilateral trade

The trend toward more liberalized multilateral trade had soon begun to slow down by the late nineteenth century, with the world economy suffering a severe depression in 1873. Lasting until 1877, the depression served to increase pressure for greater domestic protection and dampen any previous momentum to access foreign markets.

Italy instituted a moderate set of tariffs in 1878 with more severe tariffs to follow in 1887. In 1879, Germany reverted to more protectionist policies with its “iron and rye” tariff, and France followed with its Méline tariff in 1892. Only Great Britain, out of all the major Western European powers, maintained its adherence to free-trade policies. As for the U.S., it never took part in the trade liberalization that had been sweeping across Europe during the first half of the nineteenth century. But during the latter half of the century, protectionism significantly increased with the raising of duties during the Civil War and then the ultra-protectionist McKinley Tariff Act 1890^①.

However, all of these protectionist measures were mild compared to the earlier mercantilist period and in spite of the anti-free trade environment, including a number of isolated trade wars, international trade flows continued to grow. But if international trade continued to expand despite numerous hurdles, the First World War would prove to be fatal for the trade liberalization that had begun in the early nineteenth century. Rising nationalism and weak post-war economies following the war served to disrupt world trade and dismantle the trading networks that had characterized the previous century. The new wave of protectionist trade barriers moved the newly formed League of Nations to organize the First World Economic Conference in 1927 in order to outline a multilateral

① Due to its highly protectionist nature, the McKinley Tariff was amended in 1892 by a further tariff act, the Wilson-Gorman Tariff, which sought to reduce the tariff in response to public opposition.

trade agreement. Yet, the agreement had little effect as the onset of the Great Depression initiated a new wave of protectionism. The economic insecurity and extreme nationalism of the period created the conditions for the outbreak of the Second World War.

2.3 Regionalism and Multilateralism

With the U.S. and U.K. emerging from the Second World War as the two great economic superpowers, the two countries felt the need to engineer a plan for a more cooperative and open international system. The International Monetary Fund (IMF), World Bank, and International Trade Organization (ITO) arose out of the Bretton Woods Conference in 1944. While the IMF and World Bank would play pivotal roles in the new international framework, the ITO failed to materialize, and its plan to oversee the development of a non-discriminatory multilateral trading system was taken up by the General Agreement on Tariffs and Trade (GATT), established in 1947.

While the GATT was designed to encourage the reduction of tariffs amongst contracting parties and thereby provided a foundation for the expansion of multilateral trade, the period that followed saw increasing waves of more regional trade agreements. In less than five years after the establishment of the GATT, Europe launched a program of regional economic integration through the creation of the European Coal and Steel Community in 1951, which eventually evolved into what we know today as the European Union (EU). Serving to spark numerous other regional trade agreements in Africa, the Caribbean, Central and South America, Europe's regionalism also helped push the GATT agenda forward as other countries looked for further tariff reductions to compete with the preferential trade that European partnership engendered. The push for regionalism was likely due to a growing need for countries to go beyond the GATT provisions, and at a much quicker pace.

Following the break-up of the Soviet Union, the EU pushed to form trade agreements with some Central and Eastern European nations, and in the mid-1990s, established some bilateral trade agreements with Middle Eastern countries. The US also pursued its own trade negotiations, forming an agreement with Israel in 1985 as well as the trilateral North American Free Trade Agreement (NAFTA) with Mexico and Canada in the early 1990s. Many other significant regional agreements also took off in South America, Africa, and Asia.

In 1995, the World Trade Organization (WTO) succeeded the GATT as the global supervisor of world trade liberalization, following the conclusion of the Uruguay Round. Whereas the focus of GATT had been primarily reserved for goods, the WTO went much further by including policies on services, intellectual property, and investment. While the WTO seeks to extend the multilateral trade initiatives of the GATT, recent trade negotiations appear to be ushering in a stage of "multilateralizing regionalism". The Transatlantic Trade and Investment Partnership (TTIP), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Regional Comprehensive Economic Partnership (RCEP) comprise a significant portion of

global GDP and world trade, suggesting that regionalism may be evolving into a broader and more multilateral framework.

3. Theories of international trade

Over time, economists have developed various theories to explain the mechanisms of international trade. The major early theories are categorized as classical theories, which are country-based. By the mid-twentieth century, the theories began to shift to explaining trade from a firm, rather than a country, perspective. These theories are referred to as modern and firm-based or company-based theories.

3.1 Classical trade theories

3.1.1 Mercantilism

Developed in the sixteenth century, mercantilism was one of the earliest efforts to develop an economic theory. This theory stated that a country's wealth was determined by the amount of its gold and silver holdings. In the simplest sense, mercantilists believed that a country should increase its holdings of gold and silver by promoting exports and discouraging imports. In other words, if people in other countries buy more from you (exports) than they sell to you (imports), then they have to pay you the difference in gold and silver. The objective of each country was to have a trade surplus, or a situation where the value of exports was greater than the value of imports, and to avoid a trade deficit, or a situation where the value of imports was greater than the value of exports.

Although mercantilism is one of the oldest trade theories, it remains part of modern thinking. Countries such as Japan, Singapore, and even Germany still favor exports and discourage imports through a form of neo-mercantilism in which the countries promote a combination of protectionist policies, restrictions, and domestic-industry subsidies. Nearly every country, at one point or another, has adopted some form of protectionist policy to guard key industries in its economy.

3.1.2 Absolute Advantage Theory

In 1776, Adam Smith questioned the mercantilism theory in *An Inquiry into the Nature and Causes of the Wealth of Nations*. He argued that it was impossible for all nations to become rich simultaneously by following mercantilism because the export of one nation was the import of another nation. He offered a new trade theory called absolute advantage, which focused on the ability of a country to produce a good more efficiently than another country.

Smith reasoned that trade between countries shouldn't be regulated or restricted by government policy or intervention. He stated that trade should flow naturally according to market forces. In a hypothetical two-country world, if Country A could produce goods more cheaply or faster (or both) than Country B, then Country A had the advantage and could focus on specializing in producing the/those goods. Similarly, if Country B was better at producing another

kind of goods, it could focus on specialization as well. By specialization, the two countries would generate higher efficiency, because their labor force would become more skilled by doing the same tasks. Production would also become more efficient, because there would be an incentive to create faster and better production methods to increase the specialization.

For example, England commits 80 hours of labor to produce one unit of cloth and 100 hours of labor to produce one unit of wine, while Portugal commits 90 hours to produce one unit of wine and 120 hours of labor to produce one unit of cloth (see Figure 1.) In such a case, England is able to produce one unit of cloth with fewer hours of labor, so it has an absolute advantage in the production of cloth; Portugal is able to produce one unit of wine with fewer hours of labor, so it has an absolute advantage in the production of wine.

Country	Cloth	Wine
England	80	100
Portugal	120	90

Figure 1 Hours of work necessary to produce one unit of goods

If the two countries specialize in producing the good for which they have the absolute advantage, and if they exchange part of the good with each other, both of the two countries can end up with more of each good than they would have in the absence of trade. In the absence of trade, each country produces one unit of cloth and one unit of wine, i.e., a combined total production of 2 units of cloth and 2 units of wine. If England commits all of its labor ($80 + 100$) for the production of cloth, it can produce 2.25 units of cloth. If Portugal commits all of its labor ($90 + 120$) for the production of wine, it can produce 2.33 units of wine (see Figure 2.) The combined total production is now 2.25 units of cloth and 2.33 units of wine, which is greater than the total production before specialization. Assuming free trade, this will lead to cheaper prices for both goods for both countries.

Country	Cloth	Wine
England	$80 + 100$	0
Portugal	0	$90 + 120$

Figure 2 Hours of work to commit after the specialization

Smith's theory reasoned that with increased efficiency, people in both countries would benefit and trade should be encouraged.

3.1.3 Comparative Advantage Theory

The challenge to the absolute advantage theory was that some countries might be better at producing both goods and have an advantage in many areas. In contrast, another country might not have any useful absolute advantages. To answer this challenge, David Ricardo introduced comparative advantage theory in 1817.

Ricardo reasoned that even if Country A had an absolute advantage in the production of both products, specialization and trade could still occur between the two countries. Comparative advantage occurs when a country cannot produce a product more efficiently than the other country, but it can produce one product better and more efficiently than another product. In a famous example, Ricardo considers a world economy consisting of two countries, Portugal and England, which produce two goods of identical quality. In Portugal, the more efficient country, it is possible to produce both wine and cloth with less labor than it would take to produce the same quantities in England. However, the relative costs of producing those two goods differ between the countries.

In this example, England could commit 100 hours of labor to produce one unit of cloth or produce 5/6 units of wine. Meanwhile, in comparison, Portugal could commit 90 hours of labor to produce one unit of cloth or produce 9/8 units of wine (see Figure 3.) So, Portugal possesses an absolute advantage in producing both cloth and wine, and England has a comparative advantage in producing cloth.

Country	Cloth	Wine
England	100	120
Portugal	90	80

Figure 3 Hours of work necessary to produce one unit of goods

In the absence of trade, England requires 220 hours of work to both produce and consume one unit each of cloth and wine while Portugal requires 170 hours of work to produce and consume the same quantities. England is more efficient at producing cloth than wine, and Portugal is more efficient at producing wine than cloth. If each country specializes in the good for which it has a comparative advantage, then the global production of both goods increases, for England can spend 220 labor hours to produce 2.2 units of cloth while Portugal can spend 170 hours to produce 2.125 units of wine. Moreover, if both countries specialize in the above manner and England trades a unit of its cloth for 5/6 to 9/8 units of Portugal's wine, then both countries can consume at least a unit each of cloth and wine, with 0 to 0.2 units of cloth and 0 to 0.125 units of wine remaining in each respective country to be consumed or exported. Consequently, both England and Portugal can consume more wine and cloth under free trade than in autarky.

3.1.4 Heckscher-Ohlin Theory (Factor Endowments Theory)

In the early 1900s, two Swedish economists, Eli Heckscher and his student, Bertil Ohlin, focused their attention on how a country could gain comparative advantage by producing products that utilized factors that were in abundance in the country. Their theory is called Heckscher-Ohlin Theorem, Heckscher-Ohlin Model, Factor Endowments Theory, or Factor Proportions Theory.

The Heckscher-Ohlin Theorem states that a country will export goods that use its abundant factors intensively and import goods that use its scarce factors intensively. The critical assumption

of the Heckscher-Ohlin Model is that the two countries are identical, except for the difference in resource endowments. It also implies that the aggregate preferences are the same. The relative abundance in capital will cause the capital-abundant country to produce the capital-intensive goods more cheaply than the labor-abundant country and vice versa.

Initially, when the countries are not trading, the price of the capital-intensive goods in the capital-abundant country will be bid down relative to the price of the goods in the other country, while the price of the labor-intensive goods in the labor-abundant country will be bid down relative to the price of the goods in the other country. Once trade is allowed, profit-seeking firms will move their products to markets that have (temporary) higher prices. As a result, the capital-abundant country will export the capital-intensive goods, and the labor-abundant country will export the labor-intensive goods. Suppose there are two countries: Country A and Country B. Country A is a capital-abundant country, that is, it has a lot of capital (e.g., machinery, equipment, etc.) but relatively little labor force; Country B is a labor-abundant country, that is, it has a lot of labor but relatively little capital. Countries A and B respectively produce two kinds of goods: automobiles and clothing. Cars are a capital-intensive goods because the production requires a lot of machinery and equipment. Clothing is labor-intensive because it requires a lot of labor.

According to the Heckscher-Ohlin Theorem, Country A (the capital-rich country) will mainly export cars because it has a comparative advantage in producing cars and lower production costs. Country B (the country with abundant labor) will mainly export clothing because it has a comparative advantage in producing clothing and lower production costs. As a result, Country A exports cars to Country B and Country B exports clothing to Country A. In this way, both countries can take advantage of their comparative advantages and thus benefit from international trade.

3.1.5 Leontief Paradox

In the early 1950s, Russian-born American economist Wassily W. Leontief studied the U.S. economy closely and noted that the United States was abundant in capital and, therefore, should export more capital-intensive goods. However, his research using actual data showed the opposite: The United States was importing more capital-intensive goods. According to the Factor Proportions Theory, the United States should have been importing labor-intensive goods, but instead it was actually exporting them. His analysis became known as the Leontief Paradox because it was the reverse of what was expected by the Factor Proportions Theory.

This paradox has sparked extensive discussion and research, with many people trying to explain the situation. For example, the U.S. workforce may be more efficient and skilled than that of other countries, and thus more competitive in the international marketplace. High-skilled labor can actually be seen as a kind of “capital” compared to low-skilled labor, so that the labor-intensive goods exported by the United States are actually “skill-intensive” goods.

The leontief paradox poses an important challenge to international trade theory, prompting

economists to further study and improve Heckscher-Ohlin Model and other trade theories. This paradox suggests that actual economic phenomena can be more complex than simple theoretical predictions, and multiple factors must be considered to explain trade patterns between countries.

It remains clear that international trade is complex and impacted by numerous and often-changing factors. Trade cannot be explained neatly by one single theory, and more importantly, our understanding of international trade theories continues to evolve.

3.2 Modern trade theories

The classical country-based trade theories couldn't adequately address the expansion of either multinational companies (MNCs) or intra-industry trade. With the growth of MNCs and expansion of intra-industry trade, the modern firm-based theories emerged and evolved after the Second World War.

3.2.1 Country Similarity Theory

Swedish economist Steffan Linder developed the Country Similarity Theory in 1961, as he tried to explain the concept of intra-industry trade. Linder's theory proposed that consumers in countries that are in the same or similar stage of development would have similar preferences. In his firm-based theory, Linder suggested that companies first produce for domestic consumption. When they explore exporting, companies often find that markets that look similar to their domestic ones, in terms of customer preferences, offer the most potential for success. This theory then states that most trade in manufactured goods will be between countries with similar per capita incomes, and intra-industry trade will be common.

3.2.2 Product Life Cycle Theory

Raymond Vernon, a Harvard Business School professor, developed the Product Life Cycle Theory in the 1960s. This theory, originating in the field of marketing, stated that a product life cycle has three distinct stages: new product, maturing product, and standardized product. It assumed that production of the new product would occur completely in the home country of its innovation. In the 1960s, this was a useful theory to explain the manufacturing success of the U.S. The U.S. manufacturing was the dominant producer in many industries after World War II.

3.2.3 Global Strategic Rivalry Theory

Global Strategic Rivalry Theory emerged in the 1980s and was based on the work of economists Paul Krugman and Kelvin Lancaster. This theory focused on MNCs and their efforts to gain a competitive advantage over other global firms in their industries. Firms will encounter global competition in their industries and in order to prosper, they must develop competitive advantages. The critical ways that firms can obtain a sustainable competitive advantage are called the barriers to entry for that industry. The barriers to entry refer to the obstacles a new firm may face when trying to enter an industry or a new market. The barriers to entry that corporations

may seek to utilize include research and development, ownership of intellectual property rights, economies of scale, unique business processes or methods, extensive industrial experience, and control over resources or preferential access to raw materials.

3.2.4 National Competitive Advantage Theory

In the continuing evolution of international trade theories, Michael Porter of Harvard Business School developed a new model to explain national competitive advantage in the 1990s. His theory stated that a nation's competitiveness in an industry depends on the capacity of the industry to innovate and upgrade. It focused on explaining why some nations are more competitive in certain industries. To explain his theory, Porter identified four determinants that he linked together. The four determinants are local market resources and capabilities, local market demand conditions, local suppliers and complementary industries, and local firm characteristics.

Section 2 Introduction to International Trade Law

1. International law and international trade law

1.1 International law

International law is the set of rules generally regarded and accepted as binding in relations between states. It serves as a framework for the practice of stable and organized international relations. International law differs from state-based legal systems in that it is primarily applicable to countries rather than to private citizens. In a broad sense, the term international law can refer to the following three distinct legal disciplines.

1.1.1 Public international law

Public international law concerns the structure and conduct of sovereign states, analogous entities, such as the Holy See, and intergovernmental organizations. In its most general sense, public international law “consists of rules and principles of general application dealing with the conduct of states and of intergovernmental organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical.” It includes treaty law, law of the sea, international criminal law, law of war, international humanitarian law, international human rights law, etc.

1.1.2 Private international law

Private international law, or conflict of laws, concerns relations across different legal jurisdictions between persons, and sometimes also companies, corporations, and other legal entities. Private

international law is distinguished from public international law because it governs conflicts between private persons rather than states or other international bodies. It concerns the questions of which jurisdiction should be permitted to hear a legal dispute between private parties, and which jurisdiction's law should be applied, therefore raising issues of international law.

1.1.3 International economic law

International economic law is an increasingly seminal field of international law that involves the regulation and conduct of states, international organizations, and private firms operating in the international economic arena. International economic law encompasses a broad range of disciplines touching public international law, private international law, and domestic law applicable to international business transactions. International trade law is a branch of international economic law.

1.2 International trade law

Different scholars define the term of international trade law differently. For example, some scholars define international trade law as a series of laws and rules regulating trade relations and other relevant relations between countries, international organizations, and certain specific regions. Some scholars define this term as the body of rules and norms that govern the exchange of goods, technologies and services, as well as incidental related transactions. Some scholars define it as the law regulating the global exchange of goods and services between nations and private sectors. According to Wikipedia, international trade law includes the appropriate rules and customs for handling trade between countries.

In this textbook, the author regards international trade law as a branch of international economic law and defines it in a comprehensive and three-dimensional sense. From the authors' point of view, international trade law refers to the body of rules and norms regulating the relationship between traders from different countries, the relationship between relevant national governments and international traders, and the relationship between different states taking place in international trade.

2. Objects and subjects of international trade law

According to the above three-dimensional definition, international trade law regulates the following three different relationships. The subjects or parties and the legal nature of these relationships are different and distinctive.

2.1 International trade transaction relationship

The international trade transaction relationship refers to the relationship between private persons with their place of business in different countries or regions (i.e., international traders) taking place in international trade in goods, international trade in service, international technology

transfer, international carriage of goods, cargo insurance for international carriage, international payment, etc. This kind of relationship is based upon the contract between the parties involved. For example, Company A with its place of business in one country, the buyer, contracts with Company B with its place of business in another country, the seller, to purchase certain goods from the latter. To complete this contract, the buyer or the seller, depending upon the trade term used in their contract, has to contract with a carrier for the transportation of the goods and with an insurer for insurance of the goods during transportation. To fulfill the payment of the contract price, the buyer and the seller may make use of the service and have contractual relationship with banks.

The parties to this kind of relationship are private persons, and they are equal in legal status, even in cases where governmental entities and international organizations participate in this relationship as a special private person. The law regulating this kind of international trade relationship is private law in nature, which is a part of international business law. In this textbook, it is referred to as international trade transaction law.

2.2 International trade administration relationship

International trade administration relationship refers to the relationship between the national governments or governmental entities who administer foreign trade activities taking place in their territories and international traders. In every country, the government administers and controls foreign trade and adopts various foreign trade policies and legal rules to encourage exports and discourage imports. For example, to export goods, the seller may have to apply for export license or export quota from the governmental entity of the exporting country, go through customs formalities for export and pay export duties. Similarly, to import goods, the buyer may have to apply for import license or import quota from the governmental entity of the importing country, go through customs formalities for import and pay import duties and administrative fees. In such cases, a legal relationship is formed between the government or its entities and the foreign traders.

One party to this kind of relationship is the national government or its entities, which are public administrators. The other party is international private traders, which are those subject to administration. So, the parties to this sort of relationship are unequal in legal status. The law regulating this kind of international trade relationship is domestic public law or administrative law in nature, which is a part of foreign-related economic administrative law in China. In this textbook, the authors refer to it as international trade administration law.

2.3 International trade coordination relationship

International trade coordination relationship refers to the relationship between different states formed in coordinating their international trade policies, such as the relationship under free trade agreements or within the WTO system. Because every state wants to export more than it imports

and adopts various protectionist policies, cutthroat competition distorts international trade, and the welfare of the whole world is reduced. In such a case, various bilateral and multilateral agreements are concluded between different countries to coordinate their foreign trade policies and liberalize international trade. Thus, a coordination relationship between member states is formed under such agreement.

The parties to this kind of relationship are all sovereign states or their governments, or analogous entities. They are equal in legal status. The law regulating this kind of international trade relationship is public international law in nature. In this textbook, it is referred to as international trade coordination law.

Now it is clear that international trade law is an amalgamation of international law and domestic law, as well as a hybrid of public (economic) law and private (business) law.

3. Sources of international trade law

Article 38 of the Statute of the International Court of Justice lists the sources of international law. In hierarchical order, they are: (1) international conventions and treaties; (2) international customs or general practice; (3) general principles of law recognized by civilized nations; (4) judicial decisions and scholarly writings. Some of them are also sources of international trade law. However, the sources of international trade law are much broader than this list since it is an amalgamation of international law and domestic law.

3.1 Sources of international trade transaction law

3.1.1 Domestic sources

Every state has civil or commercial law to regulate business or commercial transactions, including transactions in international trade. It is necessary that international trade transactions be governed by the civil or commercial laws of the relevant countries. Therefore, civil or commercial laws of the relevant states are the basic sources of international trade transaction law. In China, they include *the General Provisions of the Civil Code*, the Contract Part of the Civil Code, and various judicial interpretations promulgated by the Supreme People's Court.

An international trade transaction necessarily relates to two or more states, so the laws of two or more states may apply to the same transaction, and thus conflict of laws occurs. If a case relating to a contract of international trade is brought before a national court, the court will apply the rules of conflict of *lex fori* to determine which state's laws shall apply. So, the conflict-of-law rules are another important source of international trade transaction law. In China, it is *the Law of the Application of Laws for Foreign-Related Civil Relations* and the *Judicial Interpretations of the Supreme People's Court*.

3.1.2 International sources

To overcome the conflicts of the laws of different states and the uncertainties of applying the

law of conflict of laws, the international community has been endeavoring to develop uniform rules on international trade transactions. There are two different international legal sources for international trade transactions.

(1) International trade customs and usages

International trade customs and usages mean the general rules and practices in international trade activities that have become generally adopted through unvarying habits and common use. They stem from the tradition of law merchant or the *lex mercatoria* in the history of international trade. In fact, each branch of industry has developed its own practices and usages, which are adapted to the needs of the sector.

In nature, international trade customs and usages are not laws themselves. But if they are properly incorporated into the contract, they have binding force on all parties to the contract. In certain circumstances, unless otherwise agreed by the parties in their contract, a usage in the trade in which the parties are engaged or a usage of trade of which they know or have reason to know gives meaning to or supplements their contract.

International commercial practices and usages used to be oral rather than in writing. Years later, some non-governmental organizations, mainly the International Chamber of Commerce (ICC), compiled some of them into written rules. The most well-known compiled international trade usages are International Rules for the Interpretation of Trade Terms (Incoterms), UCP 600, URC 522, etc. These international trade usages will be introduced in detail in the forthcoming chapters.

(2) International treaties and conventions

Legally, treaties are binding agreements between two or more states and conventions are binding agreements between states sponsored by international organizations, such as the United Nations.

In the past decades, under the sponsorship of the United Nations, the United Nations Commission on International Trade Law (UNCITRAL), and other international organizations, some international conventions regulating international trade transactions have been concluded, among which the most important ones are the United Nations Convention on Contracts for the International Sale of Goods (CISG 1980), International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague Rules, 1924), United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules), United Nations Convention on International Multimodal Transport of Goods, Convention for the Unification of Certain Rules Relating to International Carriage by Air, and Convention Concerning International Carriage of Goods by Rail (CIM as abbreviated from its French name).

These conventions set out the rights and obligations of the parties to international trade transactions, and regulate the relationships between natural persons involved in international trade, instead of relationships between states. So, these conventions are private law instruments

in nature and can be enforced and applied directly in the national courts of contracting states to settle disputes between international traders.

3.2 Sources of international trade administration law

Article 1 (1) of the Charter of Economic Rights and Duties of States expressly provides: “Every state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.” To exercise its sovereignty, every state has enacted and maintained various laws to regulate and control international trade activities taking place in its territory or relating to it.

While sovereign states retain exclusive authority to administer domestic foreign trade activities, domestic law constitutes the primary and direct source of international trade administration law. Multilateral and regional trade agreements such as WTO rules and FTAs serve as indirect but binding normative sources which oblige member states to align their domestic trade administration regulations with international obligations and restrict arbitrary trade restrictive measures.

Domestic laws governing international trade include foreign trade law, customs law, tariff law, foreign exchange administration law.

3.3 Sources of international trade coordination law

To liberalize international trade and promote economic development, states must sit down and negotiate to coordinate their trade policies. Thus, Article 4 of the Charter of Economic Rights and Duties of States provides: “Every state has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No state shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic cooperation, every state is free to choose the forms of organization of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic cooperation.”

Historically, treaties on international trade were bilateral treaties, regulating only the trade relationship between two states. Now there are more and more multilateral treaties and conventions on international trade, and the agreements within the WTO system, and various free trade agreements, such as NAFTA (now superseded by the USMCA) and the China-ASEAN Free Trade Area (CAFTA), are typical examples. In addition, decisions and resolutions relating to international trade adopted by the UN, the WTO and other international economic organizations are also sources of international trade coordination law.

Unlike international conventions regulating international trade transaction relationships, treaties and conventions regulating international trade coordination relationships set out rights and obligations for member states, having binding force only on member states.

These treaties and conventions are public international law in nature and cannot be applied directly in national courts of member states in settling disputes between private international traders.

Exercises

1. Explain the definition and different types of international trade.
2. Explain the various theories on international trade and their main ideas.
3. Describe the historical development of international trade.
4. Explain the three different dimensions of international trade law and their logical relationship.
5. Explain the three different relationships regulated by international trade law and their features.