

# International Trade Law

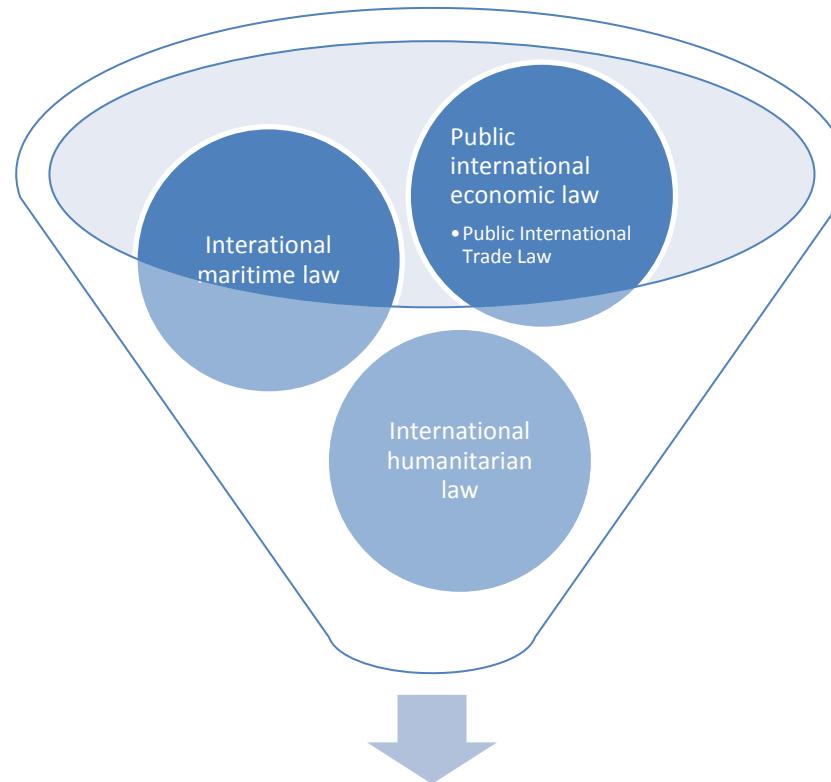
Module one (History and sources of international  
trade law)

Unit one (Sources of international trade law)

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# International trade law in international legal order



Public International Law

# Definition

Public International Law consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *Inter se*, as well as with some of their relations with persons, whether natural or juridical.

*Restatement (Third) by the American Law Institute of the Foreign Relations Law of the United States,*

# the concept of international public law

- specific actors
- specific sources
- ‘specific’ enforcement mechanism(s)

# Consequences of sovereignty doctrine

states are

- equal
- have ultimate jurisdiction over its territory
- subject to international law only when and to the extent they decide act in good faith

# UN draft declaration on rights and duties of states

## Article 1

Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government.

## Article 2

Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

## Article 3

Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

[...]

## Article 5

Every State has the right to equality in law with every other State.

[...]

Article 13 Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

- Independence
- Jurisdiction
- Equality
- Good faith

# Sources of international law

## Article 38 (Statute of International Court of Justice)

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

International agreements (conventions, pacts, covenants, treaties)

International custom

General principles of law

Subsidiary sources

- Judicial decisions
- Opinions of the legal doctrine

# Sources of international trade law

- Trade agreements
  - Multilateral
  - Plurilateral (inc. regional)
  - Bilateral
- Acts of international organizations
- International custom (customary law)
- General principles of law

# International trade agreements

- Legal risk limitation
- Encouragement of international trade
- Information about national policies
- Effect of international cooperation

World Trading System

# **WORLD TRADE ORGANIZATION SYSTEM**

# World Trade Organization law

Institutional Infrastructure	Agreement Establishing World Trade Organization		
General Rules	Goods	Services	Intellectual Property
General Agreements	General Agreement on Trade and Tariffs (GATT)	General Agreements on Trade in Services (GATS)	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
Additional regulations	Schedules of commitments (of each member state)	Schedules of commitments (of each member state)	
Dispute Settlement	Understanding on rules and procedures governing the settlement of disputes		
Transparency	Trade policy review mechanism		

# World Trade Organization Law in numbers

## One Agreement

### —SIX Annexes

- 1A Multilateral Agreements on Trade
  - Twenty agreements and understandings
- 1B General Agreement on Trade in Services
- 1C Trade-Related Aspects of Intellectual Property Rights
- 2 Dispute Settlement Mechanism
- 3 Trade Policy Review Mechanism
- 4 Plurilateral Trade Agreements

# Multilateral Agreements on Trade

- **GATT 1994** (must be read with **GATT 1947**),
  - Other duties and charges (GATT Art.II:I(b)), Understanding
  - State trading enterprises (GATT Art.XVII), Understanding
  - Balance-of-payments, Understanding
  - Regional trade agreements (GATT Art.XXIV)
  - Waivers of Obligations, Understanding
  - Concession withdrawal (GATT Art.XXVIII), Understanding
  - Marrakesh Protocol to the GATT 1994
- **Agriculture**
- **Sanitary and Phytosanitary Measures**
- **Textiles and Clothing** (this Agreement was terminated on 1 January 2005).
- **Technical Barriers to Trade**
- **Trade-Related Investment Measures (TRIMs)**
- **Anti-dumping** (Article VI of GATT 1994)
- **Customs valuation** (Article VII of GATT 1994)
- **Preshipment Inspection**
- **Rules of Origin**
- **Import Licensing**
- **Subsidies and Countervailing Measures**
- **Safeguards**

# One Agreement

## Six Annexes

- Twenty Multilateral agreements and understandings on trade
- 3600 pages

**Is this the whole picture?**

**No - but we'll end here ☺**

**THANK YOU FOR YOUR ATTENTION**