MENDEL UNIVERSITY IN BRNO

International Trade Law

Teaching text

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1 Introduction / Libor Kyncl

As (Chipman, 2006) states based on previous authors (such as Edgeworth, 1894),[1] "*what distinguishes international from domestic trade is the greater prevalence of barriers (both natural and artificial) to trade and factor movements in the former; different currencies; and (perhaps most important) autonomous governments…"*[2] The international trade is affected by the institutions of the states, while "*good institutions are the necessary infrastructures that may allow economies to resist and respond to the impulses coming from the international system*"[3] according to (Belloc, 2006). These institutions are helping the states to somehow react on shocks that are appearing (be them negative or positive).

The question stated by (Edgeworth, 1894) is whether *„the advantage of the home country is increased by an increase in the supply of foreign articles, in the sense that the foreigner is willing to give a greater quantity of those articles in exchange for any the same quantity of native produce."*[4] He is also giving an answer for that: *„Upon the general principle that a cheap market is advantageous to the buyer, the home country is benefited…*"[5]

As it is obvious from the aforementioned foreign literature and the Eurostat statistics, the international trade is increasing the number of potential clients for businesses – thus increasing also the volume of trade – the European Union of 27 Member States after 1 February 2020, according to Eurostat had 447,70 million inhabitants on 1st January 2020.[6] The United Kingdom had 67,02 million inhabitants on the same date. Along with other states that are somehow closely economically interconnected with the internal market or the customs union of the EU (Iceland 0,36 million, Lichtenstein 0,03 million, Norway 5,36 million, Switzerland 8,60 million, Montenegro 0,62 million, North Macedonia 2,07 million, Albania 2,84 million,

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[1] EDGEWORTH, Francis Ysidro. The Theory of International Values I. History of Economic Thought Articles, 1894, vol. 4, 35-50. Accessible at: www.repec.org.
[2] CHIPMAN, John Somerset. The Theory of International Trade: Volume 1. Economists of the twentieth century. Cheltenham: Edward Elgar Publishing, 2008. ISBN 1781959528. p. 183.
[3] BELLOC, Marianna. Institutions and international trade: A reconsideration of comparative advantage. Journal of Economic surveys. 2006. 20.1: pp. 3-26. p. 21.
[4] EDGEWORTH, Francis Ysidro. The Theory of International Values I. History of Economic Thought Articles, 1894, vol. 4, 35-50. Accessible at: www.repec.org. p. 38.
[5] EDGEWORTH, Francis Ysidro. The Theory of International Values I. History of Economic Thought Articles, 1894, vol. 4, 35-50. Accessible at: www.repec.org. p. 38.
[6] EUROSTAT. First population estimates EU population in 2020: almost 448 million More deaths than births. Accessible at: https://ec.europa.eu/eurostat/documents/2995521/11081093/3-10072020-AP-EN.pdf/d2f799bf-4412-05cc-a357-7b49b93615f1.

Serbia 6,92 million, Turkey 83,15 million), there were additional 176,97 million inhabitants (including the UK), in total 624,67 million inhabitants on the internal market. If we compare inhabitants connected to the EU internal market with the number of inhabitants living just in the Czech Republic where this book has been created – 10,69 million inhabitants – it is approximately 58 times bigger market than with just the Czech Republic.

The European Union („EU“) is currently the most advanced economic union of high degree cooperation on the internal market in the world. There are more economic unions around the world, including free trade areas, customs unions and unions with some liberalized parts of the market. All these unions use various types of methods how to solve the specific issues of economic cooperation in general in different conditions, culture, economic and social values.

The European Union applies one of the available sets of methods for so-called good governance. It is not the only attitude or paradigm, but so far, the European leaders believe that this paradigm is the most effective one. This could be mentioned although every attitude has its disadvantages. And also, it is obvious that some principles are the general ones, others are region-specific and could be applied only in Europe.

European Union values are embodied in art. 2 of the Treaty on the European Union practically affect the important parameters which are connected with the quality of life. Thus the European Union is acting practically very stringently to achieve the optimum not only for consumers but also for businesses and their interests. The EU respects the economic freedoms of individuals and corporations and enforces them.

The authors would like to express their opinion that orientation of the Czech Republic's business subjects on the international trade is the best option they could select – of course realistically dealing with the risks brought for them by the international system and international markets and be attentive on the risks that potential foreign business partners could bear for them. The authors are trying to describe some of these issues and risks in this text.

Sources:

- BELLOC, Marianna. Institutions and international trade: A reconsideration of comparative advantage. Journal of Economic Surveys. 2006. 20.1: pp. 3-26.
- EDGEWORTH, Francis Ysidro. The Theory of International Values I. History of Economic Thought Articles, 1894, vol. 4, 35-50. Accessible at: www.repec.org.

- EUROSTAT. First population estimates EU population in 2020: almost 448 million More deaths than births. Accessible at: https://ec.europa.eu/eurostat/documents/2995521/11081093/3-10072020-AP-EN.pdf/d2f799bf-4412-05cc-a357-7b49b93615f1.
- CHIPMAN, John Somerset. The Theory of International Trade: Volume 1. Economists of the twentieth century. Cheltenham: Edward Elgar Publishing, 2008. ISBN 1781959528. p. 183.

2 The goal of the publication and the methodology / Libor Kyncl

The goal of this publication is to provide the study material for students of the MOPA International Trade Law (in English) course ("MOPA") at the Mendel University in Brno, Faculty of Business and Economics and possible connected/continuing courses in the mentioned area.

This study book also includes the cited parts that have already been published provided with comments of the authors.

The publication is using the methods of analysis, description, synthesis and comparison along with the historical method. The analysis shall be used for the decomposition of the reality on smaller objects. The description shall include the explanation of new ideas for students, while at the same time discussing some historical connections with the historical method and formulating some comparison of existing examples or general concepts and cases. The synthesis will be used for simplification purposes and to summarize all parts of the book.

The objective of the MOPA course is to explain the principles of international trade law (especially with inter-state regulation of international trade in WTO and EU and also with the regulation of international business transactions at the level of contract-based obligation relations and alternative dispute resolution), the rules for entrepreneurial activities, business corporations and application of international trade law in an international environment. The objective also involves explaining the specific issues of the international business legal environment in the EU (e.g., Regulation Brussels I bis, Regulation Rome I, Regulation Rome II).

The course therefore critically analyses the main spheres of the European Union and its member states in the context of the World Trade Organization with its instruments that affect the trading policies, trading conditions and trading practices.

One of the main spheres where the EU exercises its global influence are common commercial policy, external relations and foreign policy. Its actions are existing in the context of the global actors and global documents, both the documents provided by the states and by the non-state actors.

The course explores which tools the EU has developed in these policies, how they are being applied and what is their impact.

It is also important to emphasize that the study book should be used only along with the following sources that are key for the studying of international trade law and may be available during the exams or tests in the International Trade Law course (applicable in 2020, for current applicability please consult the syllabus of the course).

Sources:

- World Trade Organization - Home page - Global trade (wto.org). Accessible at: http://www.wto.org.
- WTO | official documents and legal texts. Accessible at: https://www.wto.org/english/docs_e/legal_e/legal_e.htm.
    - For locating WTO conventions and documents such as GATT 1947, GATT 1994, GATS, TRIPS, …
- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) | United Nations Commission On International Trade Law. Accessible at: https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg.
    - For locating CISG convention (Vienna convention, **do not mistake with Vienna Convention on the Law of Treaties – a different treaty**)
- Trade - European Commission (europa.eu). Accessible at: http://trade.ec.europa.eu.
- EU law - EUR-Lex (europa.eu). Accessible at: https://eur-lex.europa.eu/homepage.html?locale=en.
    - For locating EU regulations such as Rome I regulation, Rome II regulation, Brussels I bis Regulation, …
- Treaties currently in force - EUR-Lex (europa.eu). Accessible at: https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html.
    - For locating EU treaties, i.e., mainly the Treaty on the European Union, the Treaty on the Functioning of the European Union.
- Free Incoterms® 2020 introduction - ICC - International Chamber of Commerce (iccwbo.org). Accessible at: https://iccwbo.org/publication/incoterms-2020-introduction/.
    - For locating INCOTERMS documents.

- FIDIC | Watermarked Contracts and Agreements Collection (English only) electronic version | International Federation of Consulting Engineers. Accessible at: https://fidic.org/books/watermarked-contracts-and-agreements-collection-english-only-electronic-version (only paid versions)
    - For locating FIDIC documents.

Some of these documents may be uploaded in your document server as they are available for such use under the Czech law as the official texts under the Berne Convention. We would still like to recommend you not to limit your studies only to the materials that are therein uploaded but to make sure that you have obtained all the resources for practical learning.

The law is often not just about the knowledge but also about an ability to apply the knowledge you have at your disposal but do not remember it right away.

3 International Trade Law and Private International Law

3.1 Structure of the Chapter / Libor Kyncl

- *International Trade Law, its Levels of Regulation / Libor Kyncl*
- *Public International Law Affecting Business Activities, International Treaties / Ondřej Pavelek*
- *Private International Law in General and in Business Activities / Libor Kyncl*
- *International Business Transactions, Connected Contractual Types in International Trade (e.g., Work, Franchising, Receivables, Insurance, Payments, Transportation) / Libor Kyncl*

3.2 International Trade Law, its Levels of Regulation / Libor Kyncl

(Poláček, 2017, p. 29) defines the international trade law as a purpose-built set of legal norms that are coming from different legal sectors and of various origin (international, European Union and intra-state i.e., national).

Levels of regulation:

1. Public international (trade) law
2. National law
3. Regional international law, such as the law of the European Union
4. Private international (trade) law
5. International customs

There are different levels of a legal regulation in the area of international trade law. The first area involves the state level of regulation of the public international law which includes also the regulation of international organizations. The second area is an area of private legal relationships are regulated by the local (national) legal regulation of public law and in some asects of private law. The third area contain regional international law, such as the Law of the European Union – the acts of states in the regional international law are de facto part of public international law, the decisions of the European Union indicate that the EU Law needs to be differentiated from the international law in general, so it is put into a special category. The fourth area involves private legal relationships regulated by private international law. The last area are international customs which are explained in the chapter on public international law.

3.2.1 Sources of international trade law include:

1. International treaties/conventions that are providing the following four types of treatment to the signatory states and their businesses:
    a. most favoured nation treatment
    b. national treatment
    c. reciprocal treatment
    d. preferential treatment
2. general principles of law,
3. international customs regarding for example liability of state or immunities of state,
4. national law through its private international law.

3.2.2 Global intergovernmental institutions

Global state-level institutions which affect international trade law include:

1. World Trade Organization (WTO, 1994) - https://www.wto.org
2. United Nations (UN, 1945) - https://www.un.org/
3. International Institute for the Unification of Private Law (UNIDROIT, 1926) - https://www.unidroit.org
4. The Hague Conference on Private International Law (HCCH, 1893) - https://www.hcch.net/

One of the important international inter-governmental organizations is the United Nations Commission on International Trade Law (UNCITRAL). It was established by the General assembly of the United Nations in December 1966 and has continued and its activities and facilitating the international trade and creating model laws in the areas that are relevant for UN member states.

Second UN entity in international trade is the United Nations conference on trade and development (UNCTAD) that was established by the General assembly of the United Nations in 1964. Its activities involved the setting up of the generalized system of preferences GSP which was later taken over by GATT and now WTO.

More details are contained in the relevant presentation (Introduction) contained in the document server of the course, please include them as the key source for learning this chapter.

3.2.3 National Legal Regulation

In the Czech Republic, the relevant legal for the national law is the Act no. 91/2012 Sb. from 25th January 2012 governing private international law as amended. It has started to be applicable since 1st January 2014 along with a new Civil Code no. 89/2012 Sb. as amended which is also an important source for international trade law in the area of substantive norms (covering the substance of the contracts and/or torts = non-contractual obligations).

Each state has its specific legal regulation in the area of administrative law, financial law, procedural law and of course civil and commercial law. These legal acts affect both the import into the country and export out of the country as well as the transit through that country. The impact of this National legal regulation it's different for different countries and it is highly risky to expect that the legal regulation in the foreign country will be the same as the regular regulation in a domestic country of a business. The important part of the business analysis before through and also after the expansion to a different country should be the analysis of the national law and so-called legal compliance with it.

Each state has more or less its liberty and freedom to decide which legal regulation it wishes to adopt according to its own of procedures called public choice according to the defined public interests. (Farber, Frickey, 2010, p. 12 – 14). It is up to the citizens of the state to decide which legal regime shall be applied in the country. And therefore, it is usually that the national legal regulations differ very much between different countries of destination.

On the other hand, every state is liable for upholding own legal regime it has set in the legal system.

The businesses need to be prepared to react on specific conditions in different states, sometimes they need to adapt prices or limit their supply for that state because the price which is acceptable for citizens and residents of one state it's completely unacceptable for us citizens and residents of a different state.

Example:

A very practical example could be taken from the evolution of the economic systems of the Czech Republic and Slovakia after the dissolution of Czechoslovakia at the end of 1992. Both economies have been extremely similar and the differences gradually started to appear from

the beginning of 1993 along with the different legal system, different legal and economic culture and different organizational cultures of the businesses in both states.

3.2.4 Export Compliance

On the other hand, each state around the world has some requirement in so-called export compliance that are requiring the exporter to do something, to omit something or to pay something. Some requirements are general ones such as the requirements for the prevention of the abuse of the economic and financial system for money laundering, terrorism financing or bribery. Some areas of export compliance are much more specialized, such as veterinary requirements, phytosanitary requirements, consumer protection requirements, security requirements - therefore the latter group of specialized requirements differ very much for different sectors of the economy and different types of goods or commodities.

More details are contained in the relevant presentation (Export Compliance) contained in the document server of the course, please include them as the key source for learning this chapter.

3.2.5 Regional Level of International Trade Law

The primary regional international organization on the regional level of international trade law for the authors of this book as the citizens and residents of the Czech Republic is:

- European Union (EU) – https://europa.eu/

The key parts of its regulation in the international trade are contained in a separated chapter.

The regional level of other international trade law regulatory actors involves e.g., following actors (ordered by alphabet):

- Agreement between the United States of America, the United Mexican States, and Canada (USMCA or CUSMA, formerly NAFTA) - https://can-mex-usa-sec.org/[7]
- Association of Southeast Asian Nations (ASEAN) – https://asean.org/

[7] Full text of agreement available in: Protocol Replacing the North American Free Trade Agreement with the Agreement Between Canada, the United States of America and the United Mexican States. Accessible at: https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf.

- Council of Europe (CoE) – https://www.coe.int[8]
- Economic Community of West African States (ECOWAS) – http://www.ecowas.int
- Eurasian Economic Union (EAEU) – http://www.eaeunion.org/?lang=en
- Mercado Común del Sur (MERCOSUR) – https://www.mercosur.int/en/

There are additional regional international organizations, the author recommends the students to read an available encyclopaedia for their current list. Some of them have practically stopped existing, such as the COMECON (Council for Mutual Economic Assistance) in the Eastern Europe and Asia which was practically dismantled by the decision of its members in 1991.[9]

3.2.6 Lex Mercatoria

Lex Mercatoria denotes the private resources in the international law for example through the activities of chambers of commerce (e.g. ICC creating INCOTERMS), professional associations (e.g. FIDIC) or via activities of private civic associations or pro-bono companies that very often prepare private model contracts or contract drafts, generalized forms for businesses and methodologies for concluding and executing the contract. It is up to the contract parties to decide whether they will conclude this pre-made contract in its original text or whether they make some modifications according to their needs.

One of the subjects affecting international trade law includes namely the International Chamber of Commerce in Paris ("ICC") which was founded in 1919 and has its objective in the development of an open world economy focus on international commercial exchanges what is specific activities in promoting international trade services and investment, market economy system with free and fair competition and fostering economic growth of both developed and developing countries. (Iccwbo.org, 2017)

The global business organizations in the private sense are active but are not inter-governmental. The example includes local and regional chambers of commerce, associations of businesses and non-governmental organizations having an impact on international trade law through soft law.

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[8] Author's note: Although the Council of Europe is primarily aimed at human rights, democracy and rule of law as three main focus areas, it is having substantial effects and achievements in many areas in connection to the trading and economy, such as: a) protection of human rights in the area of enterprise and property rights (individual who is a majority shareholder of a company is also a human being), data protection, cybercrime, internet governance, counterfeiting of medical products, anti-money laundering and corruption reports, migration issues, quality of some products etc. Vide full list of conventions administered by the Council of Europe: Council of Europe Treaty Office. Full list (coe.int). Accessible at: https://www.coe.int/en/web/conventions/full-list.

[9] Comecon | international organization | Britannica. Accessible at: https://www.britannica.com/topic/Comecon.

Since 1970, the world economic forum is being organized in Davos in Switzerland where the current worldwide issues are discussed across the types of actors.

Questions:

1) Define the contents of international trade law and its role in the system of legal regulation.
2) What are the actors of the international trade law?
3) Explain the levels of the regulation in the international trade law and elaborate on the view of specific actors on these levels.

Sources:

- Association of Southeast Asian Nations. Accessible at: https://asean.org/.
- Comecon | international organization | Britannica. Accessible at: https://www.britannica.com/topic/Comecon.
- Council of Europe. Accessible at: https://www.coe.int.
- Council of Europe Treaty Office. Full list (coe.int). Accessible at: https://www.coe.int/en/web/conventions/full-list.
- Economic Community of West African States. Accessible at: http://www.ecowas.int
- Eurasian Economic Union. Accessible at: http://www.eaeunion.org/?lang=en
- European Union. Accessible at: https://europa.eu/
- FARBER, Daniel A., FRICKEY, Philip P. Law and Public Choice: A Critical Introduction. Chicago: University of Chicago Press, 2010. ISBN 0226238113.
- International Institute for the Unification of Private Law. Accessible at: https://www.unidroit.org
- Mercado Común del Sur. Accessible at: https://www.mercosur.int/en/
- POLÁČEK, B. Právo mezinárodního obchodu. 1. vyd. Praha: Wolters Kluwer, 2017. ISBN 978-80-7552-770-7.
- Protocol Replacing the North American Free Trade Agreement with the Agreement Between Canada, the United States of America and the United Mexican States. Accessible at: https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf.
- ROZEHNALOVÁ, Naděžda. Právo mezinárodního obchodu. 3., aktualiz. a dopl. vyd. Praha: Wolters Kluwer Česká republika, 2010. ISBN 978-80-7357-562-5.

- The Hague Conference on Private International Law. Accessible at: https://www.hcch.net/.
- United Nations. Welcome to the United Nations. Accessible at: https://www.un.org/.
- World Trade Organization (WTO, 1994) - https://www.wto.org

3.3 Public International Law Affecting Business Activities, International Treaties / Ondřej Pavelek

Public international law fundamentally regulates international trade. States and international organizations, in particular through international agreements concluded between specific states. An example of such an international agreement could be the General Agreement between the Government of the Czech Republic and the Government of the Kingdom of Saudi Arabia, which regulates the mutual trade of the two countries. The Czech Republic, including the treaties in which the Czech Republic operates, has concluded hundreds of international treaties regulating various areas.

The basic source of public international law is an international treaty. The source of public international law can be international custom or general principles of law. Soft law is also important (Rozehnalová, 2010, pp. 33-34).

An international agreement is defined differently by different authors and can be divided according to different criteria. There are bilateral and multilateral agreements, as well as agreements concluded between states or between the state by an international organization or according to the area they regulate (international trade, transport, energy, consular area, copyright, etc.) or according to whether they are open, semi-open or concluded in terms of the possibility of joining them. In the Czech Republic, the division according to whether it is an international presidential, governmental or departmental agreement is also significant.[10]

International treaties in principle bind the subjects of public international law, which are the state and international organizations. An international agreement in the sense of public international law is, for example, an agreement between the Czech Republic and the Slovak Republic, but not an agreement between a Czech and an Austrian entrepreneur.

An international agreement has the following defining features:

[10] More about the division of individual international agreements: https://www.mzv.cz/jnp/cz/vyhledavani_smluv/index$45924.html

1. Expression of the will of the parties, i.e., subjects of public international law - the state and international organizations

2. The expression of the will also include legal effects.

3. Legal regime - in the case of private international law, the parties may, with a few exceptions, determine the legal regime themselves; in the case of public international law, a contract is not subject to the legal regime of national law (Týč, 2010, p. 23).

3.3.1 The structure of an international treaties

International treaties, like national contracts, have a different structure that corresponds to what the parties have agreed. The introduction part of the contract is called the preamble, in which the parties communicate the purpose of the contract as such. The preamble is of great importance for the interpretation of a specific international treaty, especially in the so-called teleological interpretation. The second part usually consists of the text of the contract, i.e., the specific rights and obligations that the entities have agreed. The third part then contains the so-called final provisions, which regulate in particular the entry into force of the contract. Annexes can also be a part of an international agreement (Týč, 2010, p. 24).

To better illustrate the structure outlined, we present this example at the United Nations Convention on Contracts for the International Sale of Goods:

Preamble:

„Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order… "

Rights and obligations

„Article 14 (1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price. "

Final provisions

"This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981. "

A key international treaty governing international contract law is the Vienna Convention on the Law of Treaties, which regulates certain institutes related to international treaties between states. This convention then, for example, defines the concept of ratification, a contracting state, a power of attorney, the process of concluding treaties, including the eligibility to conclude a treaty or a reservation. Article 26 then formulates the key principles of public international law, which is the so-called pacta sunt servanda, i.e., that every valid contract is binding on the parties and must be fulfilled by them in good faith. It also contains general rules for the interpretation of treaties, etc. For the study of international treaties, it is appropriate to begin by analysing the text of this treaty.

3.3.2 Principles of international treaties and their interpretation

1. Pacta sunt servanda and good faith - in accordance with Article 26 of the Vienna Convention, any valid contract is binding on the parties and must be performed by them in good faith. We could then characterize good faith as a ban on interpreting the treaty in a direction that would lead to abuse or conduct contrary to international law.

2. The contract must be interpreted in good faith, in accordance with the usual meaning given to the terms in the contract in their overall context, and also having regard to the object and purpose of the contract (Article 31 of the Vienna Convention)

3. Obligations vis-à-vis third countries - Neither obligations nor rights arise from a treaty to a third state without its consent (Article 34)

4. Amendment and modification of contracts - The contract may be amended by agreement between the parties. Such an agreement is subject to the rules laid down in the contract unless the contract provides otherwise (Article 39).

5. Exclusion of retroactive effect of contracts - Unless the contract expresses or otherwise indicates otherwise, the provisions of the contract shall not bind the contracting party in respect of any act or fact which occurred for that party before the date on which the contract entered into force for it, or it is any situation that has disappeared by that day (Týč, 2010, pp. 28 - 29).

3.3.3 Subjects of international law

The subjects of public international law are states and international organizations.

The state can act in several roles - the legislator and the businessman. The state creates standards both at the national level and at the international level (Rozehnalová, 2010, p. 43-51).

International organizations - it is a community of states that was created for a specific purpose. International organizations can be distinguished according to whether they operate globally or regionally or whether they operate in one economic area or in more (Rozehnalová, 2010, p. 51). An example of a global organization is the United Nations, while a regional organization is the EU. An organization focusing on a specific segment is, for example, the Oil Exporting Organization or the World Health Organization.

Selected international organizations affecting international trade are:[11]

- **World Trade Organization**, **The International Institute for the Unification of Private Law** (UNIDROIT) - *Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives*[12],
- **The United Nations Commission on International Trade** (UNCITRAL) – *The United Nations Commission on International Trade Law (UNCITRAL) (established in 1966) is a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and unification of the law of international trade,*[13]
- **The International Chamber of Commerce** (ICC)[14] or
- **Hague Conference on Private International Law**.

Questions:

1) What subjects of public international law do you know?
2) What are the characteristics of an international agreement?
3) Which major international organizations affecting international trade do you know?

Sources:

- ROZEHNALOVÁ, Naděžda. Právo mezinárodního obchodu. 3., aktualiz. a dopl. vyd. Praha: Wolters Kluwer Česká republika, 2010. ISBN 978-80-7357-562-5.
- Pamela Hyatt. The role of international organizations in international business law. Original article: http://www.tradeready.ca/2017/topics/researchdevelopment/role-international-organizations-international-business-law/

11 http://www.tradeready.ca/2017/topics/researchdevelopment/role-international-organizations-international-business-law/
12 https://www.unidroit.org/about-unidroit/overview
13 https://uncitral.un.org/en/about/faq/mandate_composition/history
14 https://iccwbo.org/about-us/who-we-are/

- The International Institute for the Unification of Private Law. Official website. https://www.unidroit.org/about-unidroit/overview
- UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW. Official website: https://uncitral.un.org/en
- International chamber of commerce. Official website: https://iccwbo.org/about-us/who-we-are/

3.4 Private International Law in General and in Business Activities / Libor Kyncl

Private International Law is defined by (Funková In: Rozehnalová, 2015, p. 23) as "*a part of domestic law of each country. That is why we usually talk about Czech Private International Law... Private International Law is a special branch of jurisprudence which deals with private law questions including some kind of foreign element.*"[15]

The main principle of the private international law is the respect to human rights of other citizens or residents of a different state that are carrying rights connected with their personal status to any country which they visit, both personally and electronically. Tobias Asser and Alfred Hermann Fried obtained the Nobel Peace Prize in 1911 for their activities regarding private international law.[16]

Recommended resource for watching on private international law is a video on Hague Conference on Private International Law (since 1893): Hague Conference on Private International Law. HCCH | HCCH Video. Accessible at: https://www.hcch.net/en/about/hcch-video.

The private international law is forming an important part of international trade law, as it was already mentioned in the part on the structure – along with public international law, relevant parts of national legal system and lex mercatoria. The private international law involves the states' regulation on the trading subjects using CISG treaty discussed below, Brussels I bis

[15] FUNKOVÁ, Hana. Introduction – What is Private International Law? In: ROZEHNALOVÁ, Naděžda, DRLIČKOVÁ, Klára et al. Czech private international law. 1st edition. Brno : Masaryk University, Faculty of Law, 2015. 313 p. Publications of Masaryk University; theoretical series, edition Scientia, file No. 544. ISBN 978-80-210-8122-2. p. 23.
[16] Nobel Prize Outreach AB. The Nobel Peace Prize 1911 (nobelprize.org). Accessible at: https://www.nobelprize.org/prizes/peace/1911/summary/.

Regulation, Rome I Regulation, Rome II Regulation and mechanisms on dispute resolution using international disputes by courts, international arbitration and international mediation.

3.4.1 Collision and Direct Method in Regulation of Private Law Relations with International Element

In the international trade law, there exist two different methods of regulation which are applied on private law relations with an international element:

1. Direct method and
2. Collision method.

The direct method is used in the situation when there are substantive law provisions contained in the legal act and legal norm (such as the Vienna Convention - CISG) that specifically grant rights or set duties and obligations to contract parties (e.g. in contract on sale in CISG). They are so called direct rules. The direct method of regulation is only applicable to international economic relations although on first sight their regulation could seem similar to the legal regulation by the national law. There has to be an international consensus on some question before the norm with direct method could be adopted (for example, in the CISG the states have specifically excepted the areas of transfer of ownership rights – property rights because there was not a sufficient consensus, so transfer of ownership rights still needs to be solved by collision method). Sometimes, direct rules for relationships with international element could be contained in the national law but most often they appear in international treaties. There are outer limits of regulation (different contracts than contract on sale for CISG convention) and inner limits of regulation which are loopholes in the legal regulation. e.g. rate for late payment interest rates which are part of CISG but are not specifically set in the convention.

Collision method is applied when there is no direct regulation (legal norms with the direct method of regulation) on the matter / issue. For the regulation of substantive law regarding relations with the international element, i.e. in private international law, the collision method is probably more frequent than the direct method. In the private regulation of domestic citizens in national law, the collision method is usually not used at all. The collision method could be found in international convention or treaties (such as Rome I Convention on the Law applicable to contractual obligations as amended, predecessing Rome I Regulation), in the EU Law (e.g. Rome I Regulation, Rome II Regulation etc.). Usually the collision method is primarily using the optional choice of law (which very often happens but is not obligatory) based on the autonomy of wills of all actors. Sometimes parties want to select lex Mercatoria as the legal system instead of a legal system, but it is not allowed – with some exceptions. Parties also need to choose legal system as the whole.

Inside the text applying the collision method, there is no direct granting of right and no setting duties, they are regulated by the substantive norms of the governing law selected according to the boundary determinant.[17]

Example:	2) **Collision method** is visible in the Rome I Regulation, e.g. its art. 4 section 1 letter a): "*To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 …, the law governing the contract shall be determined as follows:* *(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence…*".[18]
1) **Direct method** is used e.g. in the Vienna Convention CISG, such as its art. 30: "*The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention."*	

Example of the Choice of Law:
The contract shall be governed by the provisions of Czech Republic's law.

Example of the Forum Selection:
Disputes arising between contracting parties will be decided by the courts of the Czech Republic.

Questions:

1) Explain the methods of regulation in private international law.
2) What is the collision method of legal regulation in the private international law?
3) What is the direct method of legal regulation in the private international law?

[17] In Czech, a boundary determinant is „hraniční určovatel".
[18] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.

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- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.
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3.5 International Business Transactions, Connected Contractual Types in International Trade (e.g., Work, Franchising, Receivables, Insurance, Payments, Transportation) / Libor Kyncl

The businesses are using different types of contracts for their business activities in their country of origin and also for their expansion into surrounding countries and other more distant markets.

An important question for businesses finalizing the contract in international trade is which type of payment to select. With business to consumer contracts, it is usual that the business selects the form of the contract and practically formulates all the text because it is either the form-based contract or the Waze business to consumer contracts is this usual that the business selects the form of the contract and practically formulate all the tax because it is either the form-based contract or e-shop based contract. With some of the contracts be to be that is business to business, both parties could really negotiate about the specific formulation of the contract and

namely about the conditions of the contract in general. The authors would like to recommend to readers to make sure that they do not simply accept the first offer just because it was offered by a large company or buy some trustworthy entity.

It is very cautious to make sure that the contract is synallagmatic that means more or less giving a similarly beneficial position to each party. For some businesses, it could be very useful in the short term to leave no contractual operating space for the second party and to set all the conditions the best for themselves. In the long term, the aforementioned strategy. usually doesn't work because the consumers will sooner or later notice that the contract is beneficial only for the seller and find a second alternative, BH for the same product or for the different product which could be exchanged for the first one. The positions of companies depend on their organizational culture and on chorus on external illegal social and economy car conditions in vehicle in the society and economy.

3.5.1 Value Added Taxation of Transactions

According to the national legal systems, the corporations could be deemed unreliable subject because of the involvement in the illegal activities in one of the countries or worse because of the involvement in the criminal activities in one of the countries. The example is a status of the unreliable VAT payer ("nespolehlivý plátce DPH" in the Czech Republic) according to EU VAT directives. Another example is the lack of competence to participate in public procurement because of the criminal conviction of the economic operator according to art. 57 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC as amended.

Value-added tax (VAT) is a general indirect tax in Texas all goods and services in the economy with some exceptions – One of the most important exceptions is involving the financial services, it is also including some types of public transportation, some public services and specifically a numerate it good where the state decided that they will be either I removed from the object of taxation or that they will be exempt from taxation. Value-added tax is counted by all entities in the supplier at Shane's who is the fact that each entity pays the input VAT to its suppliers while being able to deduct the VAT pay it from its VAT on the output. The tax base on the output minus the tax base on the input equals so-called value-added. Under normal circumstances, the enterprise pays the value-added tax from that value add it to the financial offices of the state where the taxable income or delivery happened.

The disadvantage of value added tax in the international trade is that the tax subjects have to pay VAT even in the case when they have not yet obtained a payment. For example, in the Czech Republic and the deadline for submission of the tax return for VAT and for the payment of VAT is on 25th of the month following the end of the month or the end of the quarter of the year-these are the text several periods of the VAT.

The VAT is payable in the country of destination in the case of intra- union export that is by the buyer. The seller requests the deduction of the VAT paid in the country of the export. This mechanism is highly enabling the swift trading and export/import between the member states of the European Union. On the other hand, VAT is highly risky for the potentially fraudulent transactions that happened since 1950s or 60s when the value added tax systems thought it to be introduced in the European economic community is countries. Similar mechanism works also for export outside the European union where the seller needs to certify that the goods were really explored it across the external border. Only after this certification the exporter is able to receive back the VAT paid before.

There are also differences between the professional business to business trading inside the EU where this system is applied and between the consumer buying the goods in the different member state of the EU and carrying these goods across the border. The latter example of business-to-consumer transaction involves the payment of the value added tax in the country of origin which is different from a business-to-business transaction where the importer pays the VAT in the country of import.

The tax rates of VAT among different EU member states are usually different. The EU VAT directive 2006/112/EC[19] requires the U member states to adopt a basic VAT rate and allows the states to have some already used VAT rates such as the Czech Republic house or one already used VAT rate as the Czech Republic had in the past the goods and services which are live right during used rights are specifically limited by the VAT directive.

According to the principles of the rule of law based on the European treated under human rights of these decisions should be based on the proper legal procedure such as the criminal procedure

[19] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02006L0112-20201126&from=EN.

against the corporations with the independent court or based on the independent decision of contracting authorities which should not be politically motivated. It is obvious that these rules are not always respected in all countries and therefore businesses should be ready to defend themselves in front of the national courts and eventually in front of the European Court of Human Rights in Strasbourg ("ECHR").

The modes of transportation are discussed into a greater detail in the chapter of this course book regarding the INCOTERMS. Nevertheless, the general legal regulations such as CISG that is where I convention and contains more of the options regarding the carriage I have a good in aids art. 31 to 34 which are containing the delivery rules for both date and place of delivery. The parties to the sales contract I need to make sure that both date and place are obvious from the text of their contract or from any other form of communication which have been used for concluding the contract, such as electronic order in the information system (e.g., SAP). The various amounts of ordering may end very often do include the electronic invoices such as the ISDOC invoicing[20] (based on an XML format) or sending invoices in formats such as PDF or Excel and are expected to be compliant with the European norm for electronica invoicing EN 16931-1:2017.

The electronic invoicing or the standard invoicing is closely connected with the payment of the price for the goods or services. Besides the payment for the goods, also the payment procedures also involve the payment in the opposite direction from the buyer to the seller in the case of contract avoidance or in the case of the discount provided exposed based on the lack of quality the late delivery or under other circumstances that the parties have contracted.

Any time when the parties conclude contracts it is important to differentiate three legal issues important with the contract number one concluding of the contract which is assessed based on the governing law of the contract number to the future possibility to Birdy evidence that the contract was concluded and that the transaction was executive and number three the registering of the payments based on the legal requirements.

All the way in the convention is simply expecting that the payments will take place in a cash form, it is not usual in the area transactions done worldwide. Absolute majority of transactions is executives based on cashless transactions either pre-paid by the buyer on the banking account

[20] ICT Unie. ISDOC. Accessible at: http://www.isdoc.org/index.php?l=2.

of the seller or a paid ex post based on the invoice of the seller which is issued and sent to the buyer along with the goods.

The modern instruments also offer the options of the documentary payments which are also regulated by international conventions, such as United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)[21] or United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988).[22]

It is important to understand the actions of the parties which are imperative as the fulfilment of their duties to one of the in wall of legal orders such as the legal order of the country of origin or the legal order of the country of destination, alternatively including the European Union legal order, if the destination state is its member state.

The businesses also need to understand that these imperative requirements may offer them more options and it is up today or economic model to select which option is the best for them. The different economic models of business also offer different options for their consumers and a have a different impact on the reputation of the business in relevant states.

The main principle of the private international law is the principle of dispositiveness. It is up to the party switch contract or transaction they will conclude and whether they want or do not want to do some action. It is different from the position of states and federations dead half day or competencies and in their competencies and their legal order it is specifically said what the bodies of the state are required to do. Individuals and corporations are free to do whatever they want and what is not illegal even in the case where in that specific option is not mentioned in the text of the law. On the contrary the specific option needs to be allowed for the state to do some activity. Somewhere in between, there are the duties for the state organizations who are businesses and are owned by the state or the federation.

It is important for the parties to the contract to conclude a risk analysis of the transaction and to include the macroeconomic and micro economic risks in their Analysis. The risk analysis involve the commercial risks including market risk, the systematic risk, cargo risks, political risks of domestic nature and of the foreign nature, the credit risk And foreign exchange

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[21] United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995) | United Nations Commission On International Trade Law. Accessible at: https://uncitral.un.org/en/texts/payments/conventions/independent_guarantees.

[22] United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988) | United Nations Commission On International Trade Law. Accessible at: https://uncitral.un.org/en/texts/payments/conventions/bills_of_exchange.

fluctuations risks which are especially relevant for countries like the Czech Republic that do not use the come on European currency Euro and foreign exchange fluctuations risks which are especially relevant for countries like the Czech Republic that do not use the common European currency Euro.

One of the documents which are important for the transactions both inside the state and in the international trade is an invoice or invoice/tax document. Invoice is generally a request for payment sent by the payor, the recipient of the payment, asking the payee to conduct that payment. So usually, the seller sends the invoice to the buyer requesting him to pay in the sad time limit.

Given the form of the transaction it is recommended for the parties to include the manual how to deal with the risks in the text of the contract. It is usually said: As detailed the contract will be that easy the solution for issues will happen.

If we cite Ingvar Kamprad, the founder of IKEA,[23] the businesses need to build around their customers. Kamprad who has already died have upheld this principle throughout all his life. Some companies are unfortunately leaving some of the main principles of day or founders after the death of the founders, and the author subjectively believes that IKEA may be the case. A very important part in building around your customers yes successful dealing with customers claims in the business procedure-such as dealing with faulty goods during the consumer claim term which is two years in the Czech Republic. During the first six months from the purchase, there is a legal construct that the faulty goods had already existed in the moment of selling the goods. Although it is obvious that dealing with consumer claims in the way that refunds the consumer his or her money costs the business some amount of money. But the business, on the other hand, saves the working time of workers who do not need to spend working time on dealing with unsuccessful consumer claim in the value of for example 100 crowns for half an hour which also cost 100 check crowns. In the case of a quick money refund, the business spends more money on refunds but saves money on employees because the employees in charge of consumer claims could do much more beneficial activities. Sometimes, economists may conclude that optimization of profit means to save as much as possible and lower costs on customer satisfaction care. The companies are decreasing the amounts and costs which they have reserved for the consumer refunds believing that now they save money. But this negative

[23] MURTHY, Murali. The ACE Principle. Victoria: FriesenPress, 2012. ISBN 1460202872. p. 168 – 170.

effect on unsatisfied angry customer (who tells thousands of other customers) slightly brings much higher costs due to reputational risks. And this effectivity in costs on consumer satisfaction is not what the author believes that Ingvar Kamprad had in mind, it's the exact opposite.

The methods of the expansion into the new market depend on the difference between the domestic state of the origin and the new state for the expansion. The expansion is much easier in the European Union where there are the internal market liberties, here especially the free movement of persons that allows freedom of establishment. That is defined in article 49TFEU. This article limits the administrative and legal obstacles for creating a new company in the different member states of the European Union. Up to a certain extent, these rules are applicable in the European economic area, i.e., in Norway, Iceland and Liechtenstein and partially even in Switzerland.

The expansion into different countries so-called third countries outside the European Union is rather more complicated and usually requires more administrative and legal costs. For the free movement of capital and payments, the EU law stipulates that there may be no restrictions on the movement of capital and payments besides the exceptions across the external border of the European Union. On the contrary, this principle does not apply for the free movement of persons. Therefore, in the expansion of a business into a third state, there may be restrictions by the European Union law, by the domestic law and by the law of the country of destination.

As it is discussed in the chapter about the General Agreement on trade and tariffs (GATT) and on General agreement on trade in services (GATS) with the regulation of the world trade organization, some restrictions could be removed by the membership of the country of destination in the world trade organization-because the European Union member states are the members of the WTO individually and the European Union is also representing them in this organization based on the common commercial policy.

3.5.2 Selected Usual Contractual Types in International Trade

Distribution contract is a contract sure type it has been created for establishing a local distributor/representative of a company or importer into a second country. Of course, the distribution contract could be used even in the intra-state trade but, in this book, we discuss the forms which are connected with international trading. The important part of the distribution contract involves the setting off Gigi's of the manufacture or importer and the duties of the distributor. The distribution of certain goods and commodities is usually paid by the

manufacturer or importer because the local distributor provides service for the manufacturer or importer (of course it is not obligatory and depends on the business model).

Contract on a commercial agency is a specific contract regulated in the Czech Republic in the section 2483 of the civil code and is containing the obligation of the commercial agent to facilitate the conclusion of certain types of business transactions I want to be half of the principal (The letter naming the represented business, such as the foreign your business from abroad). The second option is that under this contract the commercial agent negotiates the business transactions in the name of the principal and on the account of the principal. In both options, the commercial agent is being paid the commission by the principal while the legal system expects that the contract is concluded for long term with a commercial agent as the independent enterprise and is it must be concluded in the written form.

The most often appearing contract types is a Sales Contract, in the international trade law named also the purchase contract or the contract on sales. **Sales contract** allows the application of the Vienna Convention (CISG) which is discussed in the separated chapter. CISG could be applied only for B2B contracts, i.e., between two businesses. The sales contract between business and consumer does not allow the application of CISG but also requires the application of consumer protection.

Example:

In general, sales contract transfers the property rights to the immovable property – e.g. houses, land and flats; but most often it applies to the transfer of goods – e.g. CD-ROMs in boxes, movable property – e.g. historical statue sold from previous owners, or for the transfer of digital content – i.e. music sold on the internet multimedia portals.

The contract for work is aimed at creating the work which is carried out independently.

Labour contract in the Czech Republic is generally regulated according to the Czech Labour Code. As it has been discussed in different courses, the quantity of mobile workers is increasing

The franchise contract is not defined as a specific contractual type in some of the legal systems such as in the Czech Republic. Although some legal documents specifically link to franchising contract, such as Rome I regulation in its article 4 section 1 letter d).[24]

The insurance contract is strictly separated from the sales contract because it is a contract between an insurance company and a policyholder to protect the property, life or health of the insured by the insurance policy. An insured and a policyholder could be the same person but, at the same time, it is allowed to be two different persons. A policyholder pays insurance premiums while

In the **international carriage contract**, there could be different rights adopted regarding loading goods on the carrier vehicle and unloading goods from the carrier vehicle. It is important to assess who will be liable for the risks on goods and the damage cost during loading or unloading. This does not mean necessarily that is a liable person oh well do the activity itself, it could be done by a carrier. But for parties of the sales contract, the carrier is a third person and the contact with the carrier needs to be a liability of one of the parties. Carriage contract involves either carriage (transportation) of persons or carriage of things. In the Czech law, it is covered by Civil Code in its sections 2550 – 2554 for a contract on the carriage of persons and by sections 2555 – 2571 for a contract on the carriage of things.[25]

3.5.3 Note Regarding B2C Contracts

Therefore, the Rome I regulation needs to be applied for B2C sales contracts for assessing the governing law of the contract and to be able to assess the rights and obligations stipulated in the contract for all parties.

Questions:

1) What are the differences between a sales contract and a distribution contract in general?
2) How could you explain the duties of the parties in the franchising contracts?
3) Which contract do they need for simple transfer of ownership rights to goods?

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[24] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Accessible at: EUR-Lex - 02008R0593-20080724 - EN - EUR-Lex (europa.eu) - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.

[25] Czech Republic: Act no. 89/2012 Sb., Civil Code as amended. Accessible at: https://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf.

4) Which related contracts do companies use while working to safeguard the completing the trade which has been concluded by the sales contract?
5) Which contract do they need for transporting the goods?
6) Which contract do they need for insuring the damage on goods?
7) Which contract do they need in order to set up their local representative for solving the consumer care and consumer complaints' procedure?

Sources:

- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02006L0112-20201126&from=EN.
- Czech Republic: Act no. 89/2012 Sb., Civil Code as amended. Accessible at: https://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf.
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- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995) | United Nations Commission On International Trade Law. Accessible at: https://uncitral.un.org/en/texts/payments/conventions/independent_guarantees.
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4 Selected Issues of International Trade Law - Global Framework and Legal Documents

4.1 Structure of the Chapter / Libor Kyncl

- *World Trade Organization, Legal Foundation, Bodies, Activities and Impact on Evolution of International Trade / Ondřej Pavelek*
- *GATT 1994 / Ondřej Pavelek*
- *GATS / Ondřej Pavelek*
- *TRIPS / Libor Kyncl*
- *Anti-dumping instruments of WTO and EU / Ondřej Pavelek*
- *Anti-subsidies instruments of WTO and EU / Ondřej Pavelek*
- *WTO Dispute Resolution in Practical Examples / Ondřej Pavelek*
- *Contract on International Sales of Goods and its direct legal regulation (CISG – Vienna Convention) / Ondřej Pavelek*

4.2 World Trade Organization, Legal Foundation, Bodies, Activities and Impact on Evolution of International Trade / Ondřej Pavelek

The international trading system changed significantly after World War II. It was related to the new world order, which was affected by the so-called Cold War. The agreements adopted within the so-called Bretton Woods system had a great influence on the organization of international trade and the international financial market (Rozehnalová, 2010, p. 62). The Bretton Woods agreements were the first successful attempt to create a system in which member states controlled their economic relations. The aim was to promote the international trade (Dormael, 1978, p. 2). The goal of the Bretton Woods agreements was to create a new system and organizations. One of the reasons for the failure of the global crisis in the 1920s and 1930s was also the lack of cooperation between states within the international platform. Notable actors

were John Maynard Keynes, an adviser to the British Treasury, and Harry Dexter White, the chief international economist at the Treasury Department (Ghizoni, 2013).[26]

Under the Bretton Woods system, three organizations have emerged - the International Monetary Fund, the International Bank for Reconstruction and Development, and the GATT. Based on this system, multilateral agreements and international organizations started to have a great influence (Rozehnalová, 2010, pp. 62-63).

The International Monetary Fund was established in 1944. The goals and purpose of this organization were formulated in the Articles of Agreement of the International Monetary Fund as follows:

The purposes of the International Monetary Fund are:

- *(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.*
- *(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.*
- *(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.*
- *(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.*
- *(v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.*
- *(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.*

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.

The World Bank was also founded in 1944. The goals of this organization were formulated as follows:

The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

[26] Sandra Kollen Ghizoni. Creation of the Bretton Woods System. Available at: https://www.federalreservehistory.org/essays/bretton_woods_created

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

For international trade law, the General Agreement on Tariffs and Trade (GATT) was the most important. The agreement was signed by 23 states in 1947 and entered into force in 1948. Several negotiations preceded it, and the activities of the GATT were regulated differently in negotiations called rounds - depending on the place where the rounds took place. States were interested in reducing tariffs and overall liberalization of international trade.[27] The main objective of the agreement was to reduce tariffs and provide the most-favoured-nation regime, and the agreement as such was fundamentally affected by the number of exceptions required by individual states (Rozehnalová, 2010, p. 64).

The fact that negotiations on the liberalization of international trade have not been easy is evidenced in particular by the number of rounds. From the beginning, it was clear that the negotiations mainly concerned customs duties, but later also non-tariff barriers. Of these, the most important is the so-called Uruguay rounds, on which the WTO was founded.

4.2.1 GATT trade rounds[28]

Year	Place/name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13

[27] https://www.wto.org/english/tratop_e/gatt_e/clash_gatt_negotiators_e.htm
[28] https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm#rounds

1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, "framework" agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

4.2.2 Establishment of the WTO

Negotiations have shown that an agreement in the form of GATT alone is not enough. The creation of an international organization with permanent members and a clear structure seemed more appropriate. The scope of activities of the WTO has also expanded. While the GATT focused mainly on trade in goods, the WTO has also focused on other areas of activity - services and intellectual property law (Rozehnalová, 2010, p. 66). The establishment of the WTO was the result of negotiations within the so-called Uruguay Round, which lasted from 1986 to 1994.[29] The Uruguay Round brought the biggest reform, but the consensus was not easily reached. It was a very ambitious meeting, attended by almost 100 countries (Croome, 1996, p. 2).[30]

The WTO was established on January 1, 1995. The seat of this organization is Geneva. Each member state then has its representation in this organization, the so-called permanent mission.[31] Under Article VII, the *WTO shall have legal personality, and shall be accorded by each of its*

[29] https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm
[30] John Croome. Reshaping the World Trading System: A History of the Uruguay Round, DIANE Publishing, 1996 - Business & Economics - 392 pages.
[31] https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm

Members such legal capacity as may be necessary for the exercise of its functions of the Agreement establishing the World Trade Organization.

4.2.3 Agreements establishing the WTO and structure

The structure of the international treaties governing the WTO is as follows:

Umbrella[32]	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
Basic principles	GATT	GATS	TRIPS
Additional details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
Dispute settlement	DISPUTE SETTLEMENT		
Transparency	TRADE POLICY REVIEWS		

The basic agreement is Agreement Establishing the World Trade Organization. Following Article 1 of this Agreement, the WTO *shall provide the common institutional framework for conducting trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement*.

The basic principles are then contained in the General Agreement on Tariffs and Trade (GATT) (for goods), the General Agreement on Trade in Services (GATS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS).[33]

[32] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm
[33] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm

The Agreement Establishing the World Trade Organization contains a direct list of individual Annexes. There is a basic list of WTO treaties to get more insight into where the WTO operates.[34]

Annex 1:

- ANNEX 1A: Multilateral Agreements on Trade in Goods
  - GATT 1994
  - Agriculture
  - Sanitary and Phytosanitary Measures
  - Textiles 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
  - Trade facilitation

- ANNEX 1B: General Agreement on Trade in Services and Annexes
- ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2:

- Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3:

- Trade Policy Review Mechanism

ANNEX 4

- Plurilateral Trade Agreements Agreement on Trade in Civil Aircraft Agreement on Government Procurement International Dairy Agreement International Bovine Meat Agreement

4.2.4 Functions and principles of the WTO

The basic function of the WTO is to fulfil the above-mentioned agreements, which aim to liberalize international trade. This is to be done in particular through the negotiations taking

[34] https://www.wto.org/english/docs_e/legal_e/legal_e.htm#services

place on the WTO platform. Besides, it is also important in the context of dispute resolution and cooperation with other organizations, especially with the IMF, WB, or. with organizations such as the EU (Rozehnalová, 2010, pp. 67-68).

The functions of the WTO are defined in Article 2 of the Agreement Establishing the World Trade Organization as follows:

> *1. The WTO shall facilitate* ***the implementation, administration and operation****,* ***and further the objectives, of this Agreement and of the Multilateral Trade Agreements****, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.*
>
> *2. The WTO shall* ***provide the forum for negotiations*** *among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.*
>
> *3. …*
>
> *4. The WTO shall administer the* ***Trade Policy Review Mechanism****…*
>
> *5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the* ***International Monetary Fund*** *and with the* ***International Bank for Reconstruction and Development*** *and its affiliated agencies.*

The basic principles of the WTO include:

a) the principle of non-discrimination enshrined in the basic agreements. Under this principle, different treatment of different states is thus prohibited. If a state has a lower duty vis-à-vis another WTO member, this may generally be considered discriminatory; however, exceptions are allowed.

b) Striving for trade liberalization through negotiations. The WTO believes that, through negotiations, I can negotiate lower barriers that will lead to the liberalization of international trade.

c) Predictability and transparency - The WTO is based on the principle that stability and predictability lead to the promotion of investment, job creation, and the improvement of the functioning of competition.

d) Promoting fair competition - The WTO seeks to establish rules that will lead to open and fair competition in all areas – e.g., agriculture, intellectual property, services.

e) Economic development and reforms - most WTO members are developing countries and the WTO seeks to develop them through the liberalization of international trade.[35]

4.2.5 WTO bodies and structure

The Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to make decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement (article IV (1) of the Agreement establishing the World Trade Organization).

The General Council is composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities (Article IV, paragraphs 2 to 4).

In addition to the above, there are also working bodies that deal with individual areas of trade.

There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS

[35] https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions. The Council for Trade in Goods, the Council for Trade in Services, and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Administration and technical matters are provided by the Secretariat of the WTO headed by a Director-General. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service, and term of the office of the Director-General (Article VI of the Agreement establishing the World Trade Organization).

4.2.6 WTO decision - making

WTO decision-making takes place through several processes. The decision-making process is governed by Article IX of the Agreement establishing the World Trade Organization. The first voting procedure is to reach a consensus. If no agreement is reached, a vote shall take place, with each member having one vote. The position of the EU is remarkable; the EU has some votes that correspond to the number of EU members that are members of the WTO.

The Ministerial Conference and the General Council have the exclusive authority to adopt interpretations of this Agreement and the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority based on a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members (Art. IX (2) of the Agreement establishing the World Trade Organization).

In exceptional circumstances, the Ministerial Conference may decide to waive an obligation required on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths4 of the Members unless otherwise provided for in this paragraph (Art. IX (3) of the Agreement establishing the World Trade Organization).

4.2.7 Accession to the WTO

All the states may accede to the WTO under Article XII of the Agreement establishing the World Trade Organization. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

4.2.8 WTO budget

The WTO budget is made up of national contributions. The total budget in 2020 was CHF 195,500,000. The Czech Republic contributed 1,405,645 CHF, which corresponds to 0.719%. The largest contributor is the USA with an amount of CHF 22,855,905, which corresponds to 11,691% of the total budget.[36]

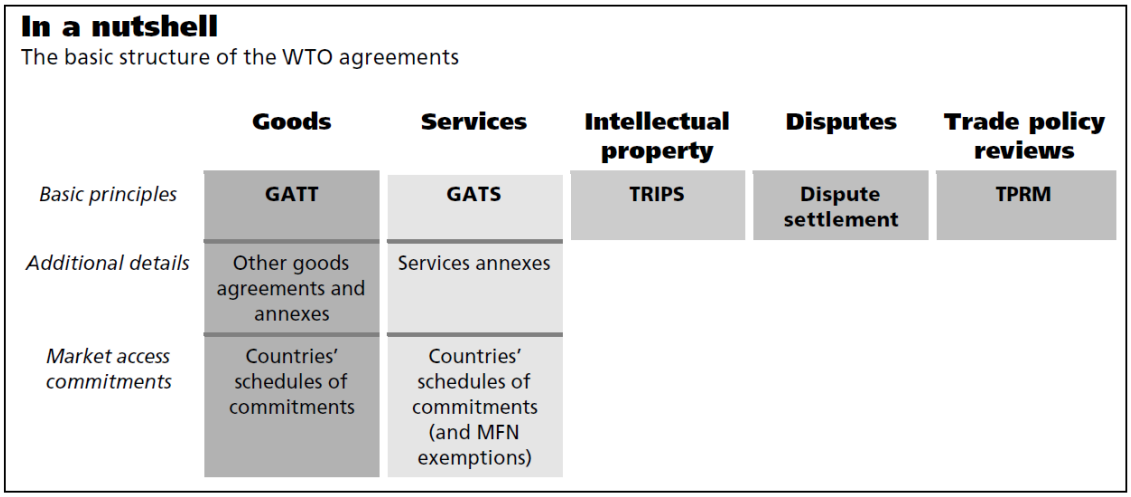
Questions:

1) Describe the individual negotiating rounds? What was it about?
2) Describe the course and outcome of the so-called Uruguay Round.
3) What WTO bodies do you know?

[36] https://www.wto.org/english/thewto_e/secre_e/budget_e/budget2020_member_contribution_e.pdf

4.3 GATT 1994 / Ondřej Pavelek

As all mentioned, the legal basis of the WTO consists of many treaties that regulate several diverse areas. For better orientation, we present the following system prepared directly by the WTO:



Source: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf

One of the most important legislative acts is GATT 1994 (The General Agreement on Tariffs and Trade 1994), which is defined as an agreement containing the following documents, including explanatory notes:

- GATT 1947 (no longer valid, but serves as an explanation for other contracts)
- Other duties and charges (GATT Art. II: l (b)),
- State trading enterprises (GATT Art. XVII),
- Balance-of-payments,
- Regional trade agreements (GATT Art. XXIV)
- Waivers of Obligations,
- Concession withdrawal (GATT Art. XXVIII),
- Marrakesh Protocol to the GATT 1994[37]

[37] https://www.wto.org/english/docs_e/legal_e/legal_e.htm#GATT94

GATT 1994 is based on the following principles already mentioned:

- most-favoured-nation
- reduction and binding of national tariffs
- national treatment
- prohibition - subject to defined exceptions - of protective measures other than tariffs

"Most-favored nation" can be defined in accordance with Article 1 of the GATT as follows: "if one GATT (now WTO) signatory grants to another country "more favourable treatment"(such as a reduction in the customs duty payable on imports of a particular product), it must immediately and unconditionally give the same treatment to imports from all signatories. This is, in fact, the principle of non-discrimination against goods imported from abroad. However, there are exceptions to this rule.[38]

Tariff reductions and bindings. In accordance with this principle, members undertake to reduce customs duties and other charges to help to improve international trade as far as possible.[39]

National treatment is a fundamental principle formulated in Article III of the GATT and must be interpreted by the principle of the most favoured nation. The essence of this principle is that imported products should be treated in the same way as domestic products. In other words, if a product has crossed the border and paid all duties and other charges, it must be treated in the same way as domestic products. The difference between domestic and foreign should be given only by borders.[40]

Tariffs preferred complements the above-mentioned principle of national treatment by stating that border controls should be limited by the creation of a single instrument of import duties.[41]

Transparency is a fundamental principle of the functioning of the whole WTO.[42]

GATT has admitted the creation of regional trading arrangements. The essence is the creation of regional agreements in which countries have agreed to reduce trade barriers. States thus

[38] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 3.
[39] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 3.
[40] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 3.
[41] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 3.
[42] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 3.

prefer trade between these states of the agreement. Balance-of-Payments Provisions is another provision of the GATT agreement that allows trade restrictions to be imposed on countries in a difficult balance of payments.[43]

Questions:

1) Define GATT 1994 and its meaning.
2) What are the basic principles formulated in GATT 1994?
3) Define the principle of most-favoured-nation.

4.4 GATS / Ondřej Pavelek

The General Agreement on Trade in Services (GATS) was signed in 1994. The conclusion of this agreement was one of the results of the Uruguay round. The objectives of this agreement were similar to those of trade in goods, as discussed above. The subject of this agreement is legal regulation of international trade in services, all in compliance with the basic principles of the WTO, such as the prohibition of discrimination. The reason for regulation is also the fact that a large part of the human population is employed in services and the growing interest in providing services.[44]

States expressed interest in *establishing a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries*.

States have deliberately agreed on the broadest possible definition of services to achieve the widest possible application of the treaty (Munin, 2010, p. 75).[45] The Service is described in Article 1 of the General Agreement on Trade in Services so that *trade in services is defined as the supply of a service from the territory of one Member into the territory of any other Member; in the territory of one Member to the service consumer of any other Member; by a service supplier of one Member, through commercial presence in the territory of any other Member; by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member*.

[43] The WTO agreements series: https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf, s. 5-11.
[44] https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm
[45] Nellie Munin. Legal Guide to GATS. Kluwer Law International B.V., 1. 1. 2010. 494 pp., p. 75.

The treaty does not apply to "services supplied in the exercise of governmental authority". Following Article 1 (3)/ c) it is then such services which are supplied neither on a commercial basis nor in competition with one or more service suppliers.

Government contracts are thus excluded from the scope of GATS.[46] These selected services - Movement of Natural Persons Supplying Services Under the Agreement, Air Transport Services, Financial Services Maritime Transport Services, Telecommunications - are subject to different regimes, which are enshrined directly in the treaty.

International trade in services is also based on the above two principles: Most-Favored-Nation Treatment and Transparency.

The MFN principle also prevents discrimination against services provided from abroad.

> *1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.*
>
> *2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.*
>
> *3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.*

However, these principles are supplemented by specific commitments:

- Market Access - under Article XVI, each State *shall grant the service provider of another State the same conditions for the provision of the service.*

- National Treatment

Questions:

1) Why did states agree to regulate the provision of services in the international environment?
2) How is a service defined in the GATS sense and what are the exceptions to this definition?

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46 https://www.mpo.cz/cz/zahranicni-obchod/spolecna-obchodni-politika-eu/svetova-obchodni-organizace/sluzby-ve-wto--7878/

3) How would you define Most-Favored-Nation Treatment in services?

4.5 TRIPS / Libor Kyncl

Trade-Related Intellectual Property Rights (TRIPS) has reacted on the situation regarding the abuse of intellectual property in numerous jurisdictions. While it has been concluded in the framework of the World Trade Organization, it is also closely connected with the application practice of the World Intellectual Property Organization. In the 1990s, the Uruguay round has concluded that the protection of intellectual property in the previous years have not been sufficient for facilitating economic growth through knowledge and development.

The TRIPS convention specifically covers the following intellectual property rights:[47]

A. Copyright and Related Rights
B. Trademarks
C. Geographical Indications
D. Industrial Designs
E. Patents
F. Layout-Designs (Topographies) of Integrated Circuits
G. Protection of Undisclosed Information.

All these types of property rights are regulated in three main areas:

- Standards,
- Enforcement,
- Dispute Settlement.

Specific regulation of TRIPS includes:

- Civil and Administrative Procedures and Remedies
- Border Measures and special requirements

It also regulates (and substantially limits) so called exclusive licenses with the control of Anti-Competitive Practices in Contractual Licencesin its signatory states. These exclusive licenses may also include a part of public procurement contracts which allow only a single economic operator to provide some service to the state due to intellectual property reasons.

[47] World Trade Organization. WTO | intellectual property (TRIPS) - agreement text - contents. Accessible at: https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm.

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4.5.1 TRIPS and Other International Agreements

The rights related to copyright also include right regarding the audio-visual performances although they are not specifically required to be protected by the TRIPS (because the Beijing Treaty on Audiovisual Performances has been signed yet in 2012).[48]

Berne Convention is a traditional but still highly relevant convention concluded in the year of 1886 which is a basic international legal act covering the copyright in substantial parts of the world.[49] TRIPS requires the signatory states to implement parts of Berne Convention.

Similar way, TRIPS requires signatory states to implement parts of the Paris Convention for the Protection of Industrial Property of 1883.[50] The Paris convention coverage to do industrial intellectual property rights such as inventions covered by patents, industrial designs, etc.

The third international convention is IPIC Treaty (the Treaty on Intellectual Property in Respect of Integrated Circuits)[51] regulating Layout-Designs (Topographies) of Integrated Circuits.

4.5.2 Registration Principle with Industrial Property

The industrial intellectual property rights are generated based on the registration principle which means that each state has its own register of patents or a register of industrial designs or registers register of topographies of the integrated circuits.

These registers are administered by the local industrial intellectual property authority, as in the Czech Republic **Industrial Property Office**,[52] which reviews each application for registration that is submitted by the enterprises or even by the individual scientists or scientific entities. This registration usually takes time and your ring that procedure the description of the invention industrial design or topography is published. The reason of the publication is the protection of the rights of the right holder such as business or scientific entity that are then able to conclude

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[48] World Intellectual Property Organization. WIPO Beijing Treaty on Audiovisual Performances. Accessible at: https://www.wipo.int/beijing_treaty/en/.
[49] Berne Convention for the Protection of Literary and Artistic Works of 1886 as amended in 1979. Accessible at: https://wipolex.wipo.int/en/text/283693.
[50] Paris Convention for the Protection of Industrial Property (wipo.int). 1883. Accessible at: https://www.wipo.int/treaties/en/ip/paris/.
[51] World Intellectual Property Organization. Treaty on Intellectual Property in Respect of Integrated Circuits (wipo.int). Accessible at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_202.pdf.
[52] Industrial Property Office | Homepage (upv.cz). Accessible at: https://upv.cz/en.html.

license contracts with other economic operators wishing to use the intellectual property which has been registered at the authority.

Although the representation of the entity at the industrial intellectual property authority could be the part of the general legal services by the attorney at law, very often the right holders or future right holders are represented by the patent a representative who is generally a technical expert able to understand the technical issues that may be harder for lawyers or economists in general.

4.5.3 Copyright and Term of Protection

In the European Union, copyright protection does not require any registration. There were some exceptions but the copyright directives I have removed most of them. Therefore, the book, the speech, and the article, the artistic work, all of them are assessed as the general concept of the literary work are protected according to the Berne convention. This protection does not require the documentary form of the work, that means even the oral speeches are protected as such which actually facilitates for example the scientific cooperation.

It is important to understand that there may be a term of protection for intellectual property rights, as regulated by art. 12, 18, 26, 33 and 38 TRIPS.[53]

There are minimum terms of the protection which are set by the TRIPS treaty and also the terms for the protection which are stipulated by the legal act in a specific country.

For example, the Czech Republic protects the copyright and related rights up to 70 years after the death of the author,[54] although the TRIPS convention requires the TRIPS member such as the Czech Republic to protect his or her rights only up to 50 years from the end of the year of the authorized publicationor of failure of authorized publication, according to art. 12 of TRIPS convention.

4.5.4 Rights to Computer Programs

The important part of the intellectual property rights which are specific in their form exist in **the rights to computer programs**, regulated by art. 10 of TRIPS convention. By the copyright directive of the European Union, the article 10 of TRIPS convention is used because the right of the third persons to make copies for their own personal purposes (!) which are not limited

[53] World Trade Organization. WTO | intellectual property (TRIPS) - agreement text - contents. Accessible at: https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm.
[54] Vide § 27 Czech Republic: Act no. 121/2000 Sb., Copyright Act as amended.

for general literary works according to the Berne Convention, the same right is rather strictly limited for the computer programs in the same convention that is linked by TRIPS. The computer program needs to be able to copy itself into the operating memory or cash of the computer to be practically able to execute it and to be operated on the computer – this copying cannot be forbidden completely for the computer programs – because they would not be able to be executed by the computer.

Other types of computer programs copying are strictly limited with some specific legal licenses which have been made note inside the framework of TRIPS convention by the member states (e.g. Czech Copyright Act of 2000 is newer than TRIPS Convention).

In decision making of the court of justice of the European Union, so-called used software has been allowed to be transferred based on the doctrine of exhaustion of rights.

Citation from Judgment of the Court (Grand Chamber) of 3 July 2012 in Case C-128/11, REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 3 February 2011, received at the Court on 14 March 2011, in the proceedings UsedSoft GmbH v Oracle International Corp.:

„1. Article 4(2) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs must be interpreted as meaning that the right of distribution of a copy of a computer program is exhausted if the copyright holder who has authorised, even free of charge, the downloading of that copy from the internet onto a data carrier has also conferred, in return for payment of a fee intended to enable him to obtain a remuneration corresponding to the economic value of the copy of the work of which he is the proprietor, a right to use that copy for an unlimited period.

2. Articles 4(2) and 5(1) of Directive 2009/24 must be interpreted as meaning that, in the event of the resale of a user licence entailing the resale of a copy of a computer program downloaded from the copyright holder's website, that licence having originally been granted by that rightholder to the first acquirer for an unlimited period in return for payment of a fee intended to enable the rightholder to obtain a remuneration corresponding to the economic value of that copy of his work, the second acquirer of the licence, as well as any subsequent acquirer of it, will be able to rely on the exhaustion of the distribution right under Article 4(2) of that directive, and hence be regarded as lawful acquirers of a copy of a computer program within the meaning of Article 5(1) of that directive and benefit from the right of reproduction provided for in that provision."

4.5.5 Criminal Law in Intellectual Property Rights

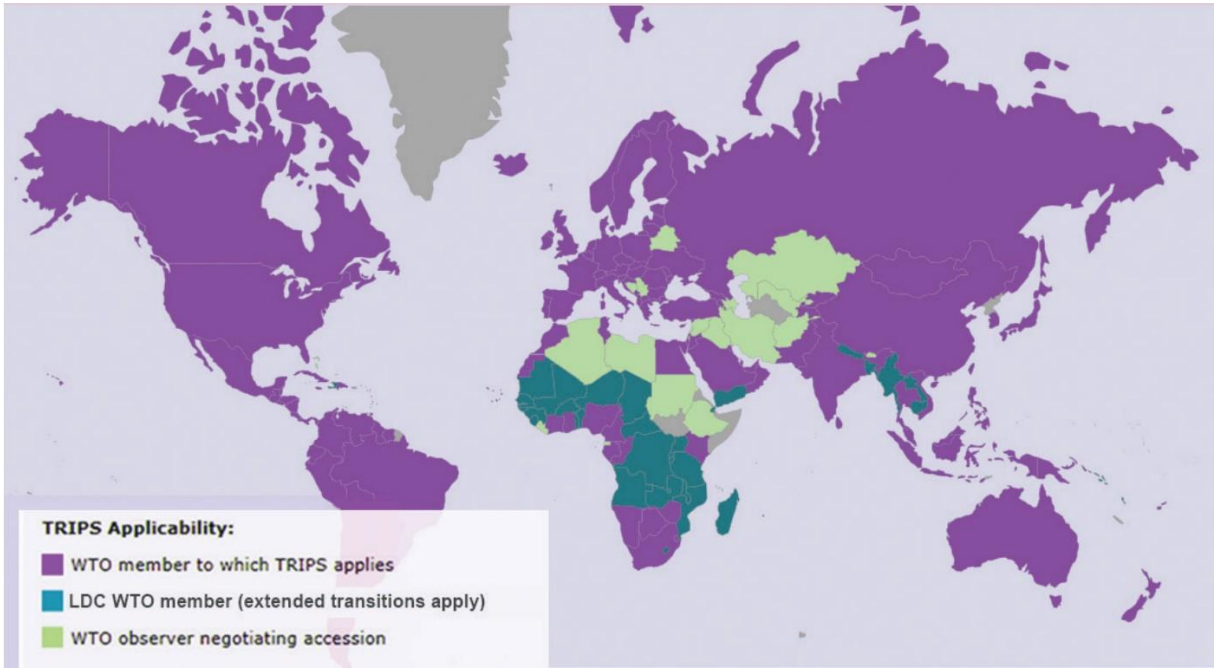
The ultima ratio (the latest available instrument) for the protection of the intellectual property rights involves the criminal proceedings against the persons that abuse the intellectual property rights in a greater range, causing large damage or for enterprise purposes, for counterfeiting of goods etc. It is regulated by the Czech Criminal Code in its §§ 268 – 270 in the following substances of criminal offences:[55]

- Infringement of trademark and other designation rights,
- Violation of protected industrial property rights,
- Infringement of copyright, rights related to copyright and rights to database,
- Counterfeiting and imitation of works of fine art.

Also other general substances of criminal offences could happen in connection to intellectual property, such as fraud, infringement of competition rules or harm to the consumer.[56]

4.5.6 TRIPS Signatory States

The following map shows the signatory WTO members of TRIPS, LDC WTO members and WTO observers.



[55] Czech Republic: Act no. 40/2009 Sb., Criminal Code as amended.
[56] Czech Republic: Act no. 40/2009 Sb., Criminal Code as amended.

Source of the map: World Trade Organization. Where TRIPS standards apply. In: TRIPS AGREEMENT – Changing the face of IP trade and policy-making. Accessible at: https://www.wto.org/english/thewto_e/20y_e/trips_brochure2015_e.pdf.

Questions:

1) Explain the issues with the enforcement of intellectual property rights.
2) What should the publisher company do when there is a case of abuse of the copyrighted work of one of their authors in a different Member State of the EU?
3) Who is the holder of the copyright for the employees of the corporations?
4) What are the differences between patents and industrial designs?

Sources:

- Berne Convention for the Protection of Literary and Artistic Works of 1886 as amended in 1979. Accessible at: https://wipolex.wipo.int/en/text/283693.
- Czech Republic: Act no. 121/2000 Sb., Copyright Act as amended.
- Czech Republic: Act no. 40/2009 Sb., Criminal Code as amended.
- Judgment of the Court (Grand Chamber) of 3 July 2012 in Case C-128/11, REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 3 February 2011, received at the Court on 14 March 2011, in the proceedings UsedSoft GmbH v Oracle International Corp.
- Paris Convention for the Protection of Industrial Property (wipo.int). 1883. Accessible at: https://www.wipo.int/treaties/en/ip/paris/.
- World Intellectual Property Organization. WIPO - World Intellectual Property Organization. Accessible at: https://www.wipo.int/portal/en/index.html.
- World Intellectual Property Organization. Treaty on Intellectual Property in Respect of Integrated Circuits (wipo.int). Accessible at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_202.pdf.
- World Intellectual Property Organization. WIPO Beijing Treaty on Audiovisual Performances. Accessible at: https://www.wipo.int/beijing_treaty/en/.
- World Trade Organization. Where TRIPS standards apply. In: TRIPS AGREEMENT – Changing the face of IP trade and policy-making. Accessible at: https://www.wto.org/english/thewto_e/20y_e/trips_brochure2015_e.pdf.

- World Trade Organization. WTO | intellectual property (TRIPS) - agreement text - contents. Accessible at: https://www.wto.org/english/docs_e/legal_e/31bis_trips_01_e.htm.

4.6 Anti-dumping instruments of WTO and EU / Ondřej Pavelek

It should be emphasized at the outset that so-called dumped prices distort the international market and do not contribute to its liberalization. There are some definitions of so-called dumping. For this publication, we have selected the following:

Dumping is when foreign firms dump products at artificially low prices in e. g. the European market. This could be because countries unfairly subsidise products or companies have overproduced and are now selling the products at reduced prices in other markets.[57]

Example:

From the Czech Republic is exported a grain to Austria at lower price than is sold on the Czech market. This is a sale at an unfair price.

The WTO is therefore in no way in favour of dumping and has an interest in taking measures to prevent it. However, the WTO does not have judicial power and therefore States have a large role to play in assessing anti-dumping. Following the WTO agreements, states can thus combat dumping. However, national governments must always prove that there is dumping, determine the extent of the dumping and the injury suffered.[58]

The basic provision of the WTO, which defines and allows States to take measures against dumping, is Article 6 of the GATT Agreement:

> *1. 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…*

Thus, under this Article, States may take measures, for example, in the form of the levying of a specific duty on a product that balances its market value. However, such a measure must always be duly justified by the state, it must not be accidental and unsubstantiated. In such a case, it would be a violation of the basic principles of international trade. Article 6 then directly

[57] https://www.europarl.europa.eu/news/en/headlines/economy/20180621STO06336/dumping-explained-definition-and-effects
[58] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

sets out how to calculate whether or not the price is dumped. Here are three ways to set such a price:[59]

> *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, (b) in the absence of such domestic price, is less than either (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.*

The WTO sets out a procedure not only for calculating the value but also for opening and conducting investigations. It also provides a period during the anti-dumping measure may last. The key treaty, which contains basic definitions and procedures, is the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

This Agreement builds upon Article VI of the General Agreement on Tariffs and Trade 1994. Following Article 1, *an anti-dumping measure may be applied only under the circumstances provided for in Article VI of GATT 1994 and under investigations initiated1 and conducted by the provisions of this Agreement* (Article 1).

The agreement also defines in Article 3 (1) how the damage is to be determined. A determination of injury for purposes of Article VI of GATT 1994 *shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products*. The States thus agreed on the need for the imminent injury to be duly justified, including the impact on the domestic market. The definition of the Domestic Industry is in Article 4.

Initiation and Subsequent Investigation

Procedural procedures for investigations are defined in Article 5 of the Agreement. *An investigation to determine the existence, degree, and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry*. Records of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury must be

[59] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

provided. The simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient. At the same time, WTO members must be mutually informed.

Duration and Review of Anti-Dumping Duties

As mentioned above, an anti-dumping measure is exceptional protection. These are not tools that should be valid in the long term only as long as necessary.

Art. 11: *An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.*
States should regularly review such anti-dumping measures to avoid a situation where such measures are unreasonably long. Anti-dumping measures should expire within 5 years, unless their expiry still leads to injury (Article 11 (3)). States should also be informed of the measures taken.

Committee on Anti-Dumping Practices

A Committee on Anti-Dumping Practices has been set up, composed of representatives of the Member States. The Commission elects a chairman for a certain period.

Anti-dumping instruments of EU

The EU and its members have an interest in promoting and liberalizing international trade. The EU follows the international rules for the determination of dumping set out in particular in the 1994 Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade.

Anti-dumping rules are regulated in this key legislative regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union.

The basic provision of EU anti-dumping regulation is formulated in Article 1 (2): *A product is to be considered as being dumped if its export price to the Union is less than a comparable price for a like product, in the ordinary course of trade, as established for the exporting country*.

This Regulation also contains the determination of dumping, the determination of injury, and the investigation process. Circumstances for anti-dumping measures are formulated in Article 5 (2) in a similar way as in the case of anti-dumping instruments of the WTO, i.e., evidence of dumping, injury and a causal nexus between the allegedly dumped imports and the alleged

injury. Contrary to WTO's assumptions, anti-dumping measures cannot be against the interest of the EU or against the interests, goals, and values of the EU.[60] If an anti-dumping measure leads to a significant restriction on free movement, it would be against the EU's interests.

As in the case of the WTO, anti-dumping measures may not last longer than 5 years, unless their repeal would lead to injury.

Questions:

1) What measures can the Member States take to prevent dumping?
2) What are the conditions for the adoption of anti-dumping measures?
3) How long can anti-dumping measures last?
4) What are the conditions for imposing an anti-dumping measure in the EU and the WTO?

4.7 Anti-subsidies instruments of WTO and EU / Ondřej Pavelek

A state intervence leads to restriction of international trade. State interventions could be in various forms. For example, public aid is directly regulated in the Treaty on the Functioning of the EU. Protection against subsidization is also regulated by the WTO. A subsidy can simply be defined as the provision of a financial contribution from which producers derive some benefit.[61]

The basic legal framework for the regulation of subsidies is regulated in the Agreement on Subsidies and Countervailing Measures. In Article 1, the subsidy is then directly defined as follows:

> *For the purpose of this Agreement, a subsidy shall be deemed to exist if:*
>
> *(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:*
>
> > *(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);*
> >
> > *(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)1;*

[60] https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf
[61] https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-subsidy/

> *(iii) a government provides goods or services other than general infrastructure, or purchases goods;*
>
> *(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;*

or (a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and (b) a benefit is thereby conferred.

The Agreement distinguishes between these categories of subsidies:[62]

1. Prohibited Subsidies (Article 3)

These are generally subsidies which are linked to the condition that domestic products must be used or that restrictive conditions be set for exports.

2. Actionable Subsidies (Article 5)

No Member should cause adverse effects to the interests of other Members, e.g. by causing serious harm to another state. There will be a serious injury in the case of total ad valorem subsidization of the product in excess of 5% (de minimis).

3. Non-Actionable Subsidies (Article 8)

These are, in particular, subsidies relating to aid for research activities, including the cost of equipment (apparatus, buildings, etc.) used exclusively and permanently for research activities or aid to less - favored areas, etc.

Subsidies in agriculture

Agriculture is still a very sensitive area of international trade; different conditions apply to it than to goods. The Agreement on Agriculture is essential, providing a legal framework for trade in agriculture and seeking market elements in this area. The aim of this regulation is to increase legal certainty and predictability in this area and to ensure stability.[63]

[62] An exception is an agriculture, for which specific conditions apply.
[63] https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#aAgreement

The conditions for the support of domestic production (Article 6) or the conditions for the support of subsidies, e.g. Article 10.

Subsidies in the EU

Subsidies are regulated in EU law, in particular in the protection against subsidized imports from non-EU countries.

The basic principles set out in Article 1 of this Regulation are the following:

> *1. A countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export, or transport of any product whose release for free circulation in the Union causes injury.*
>
> *2. Notwithstanding paragraph 1, where products are not directly imported from the country of origin but are exported to the Union from an intermediate country, the provisions of this Regulation shall be fully applicable and the transaction or transactions shall, where appropriate, be regarded as having taken place between the country of origin and the Union.*

The EU anti-subsidy investigation is led by the European Commission. The European Commission investigates whether imports benefit from the contested subsidies, whether any injury has been caused and there is a causal link. Lastly, it looks at whether the adoption of measures is in line with European interests.[64]

Questions:

1) How are subsidies defined?
2) What categories of subsidies do you know?
3) Which EU institution investigates the admissibility of subsidies?

4.8 WTO Dispute Resolution in Practical Examples / Ondřej Pavelek

The World Trade Organization is not just concerned with the issue of international trade liberalization. Its important functions include resolving disputes between the Member States; for example, if the Czech Republic is convinced that the USA is in breach of a WTO agreement,

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64 https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-subsidy/

this dispute will be resolved within the WTO. It is one of the most important instruments that should lead to the stabilization of international trade. Since 1995 the WTO has settled about 350 disputes between member states. However, in most disputes, the WTO seeks consensus among states.[65]

The legal framework for the settlement of disputes is regulated in Annex 2 of the WTO "Agreement Understanding on the Rules and Procedures Governing the Settlement of Disputes".[66] This agreement set out clear rules for resolving disputes, including setting deadlines for decisions. The aim of setting time limits for a decision is based on the premise that any dispute undermines mutual trust and must be resolved as soon as possible.[67]

Principles of dispute resolution

The basic rules of a fair trial apply to the settlement of disputes before the WTO, i.e. independence and impartiality, the possibility to raise objections, and to comment on the arguments of the other party. Another principle is to strive for a dispute to be resolved quickly and efficiently.[68] The difference between court litigation and proceedings before the WTO is that the WTO process is not so formalized. The WTO try to reach an agreement of parties through consultations; e.g. in accordance with Article 5 (4), the consultation should not exceed 60 days.

The course of resolving the dispute

The proceedings are conducted under Article 2. The Dispute Settlement Body (DSB)conducts proceedings, i.e. its administration, establishes panels (these are more or less such tribunals that also consult with States), but also oversees the implementation of decisions.

Proceeding has several phases. The first phase is a consultation. It can take up to 60 days. The purpose is to informally discuss the dispute and its possible resolution. WTO bodies can help the parties resolve this dispute. If the consultation fails, the second phase of the panel's establishment begins; this phase should not last longer than 45 days. The plaintiff may request the appointment of a panel. The panel assists the DSB by issuing recommendations. The members of the panel shall adopt the final recommendation, which they shall deliver to the

[65] https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm
[66] https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm
[67] Article 1 of Understanding on rules and procedures governing the settlement of disputes
[68] https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

parties; it should be within 6 months at the latest. Subsequently, this final report is forwarded to WTO members. If the panel concludes that there is a breach of the WTO agreements, it will also propose measures. The recommendation is thus like a decision. Then she Dispute Settlement Body adopts report if no appeal.[69]

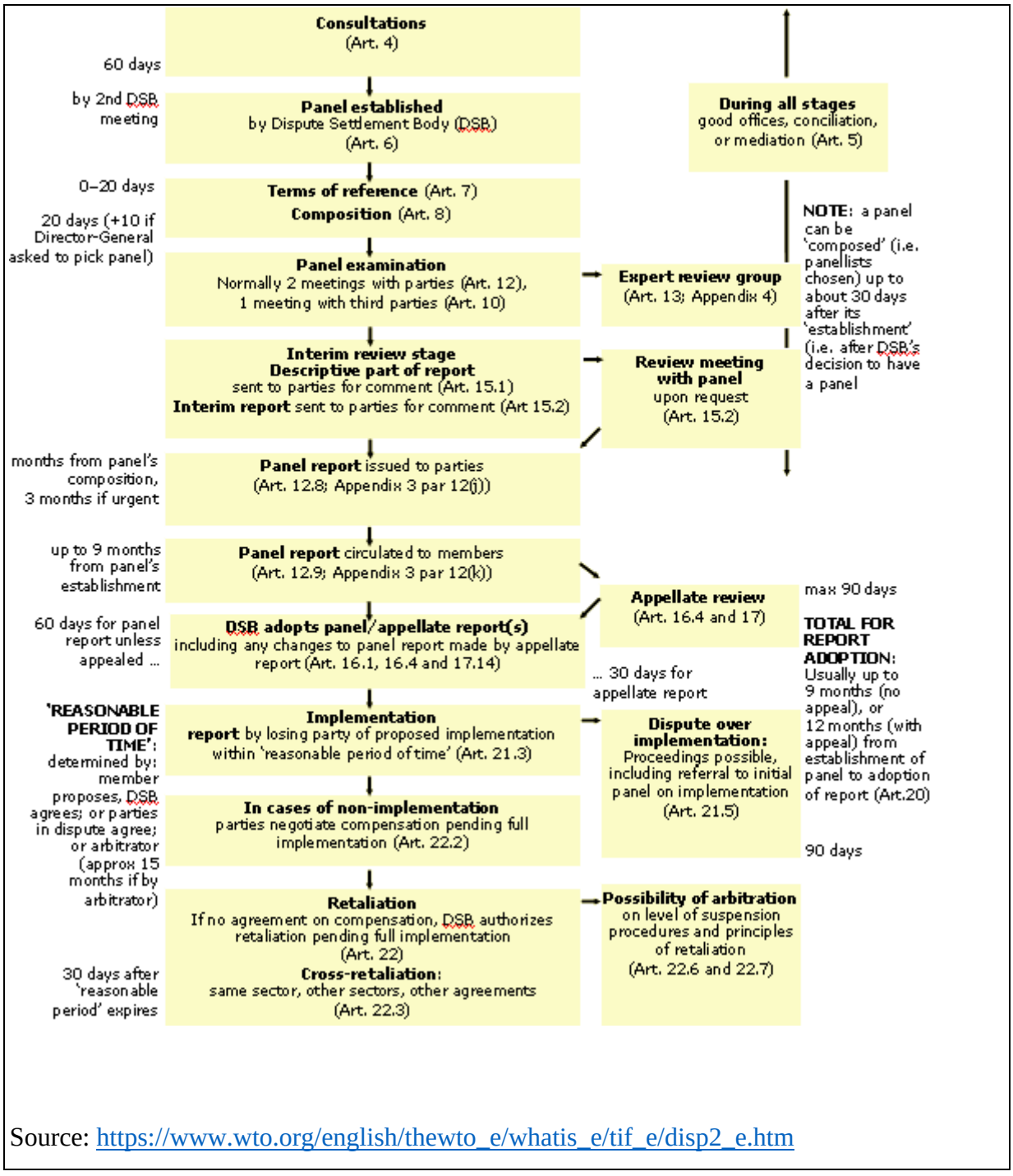
As in the case of ordinary court litigation, so in the case of a dispute resolution before the WTO and accordance with the right to a fair trial, there must be a possibility to defend itself against the DSB's decision. The participant thus has the opportunity to appeal against the decision. Naturally, both parties have this right. The ground of appeal may only be an error of law. Participants may not present new facts and new evidence. Thus, the ground of appeal may be that the DSB incorrectly legally assessed a certain fact. Factual findings are, for example, the number of imported goods or the circumstances of the damage; the legal assessment is then whether or not a particular anti-dumping measure is legal. The appellate body may subsequently confirm, amend or revoke the decision. The appeal procedure should not last longer than 60 days. Once the decision has also been made by the appellate body, the decision is enforceable. The basic principle is that the decision is complied with voluntarily. The unsuccessful party should thus reconcile what was found to be illegal. Failure to do so could result in sanctions and retaliation.[70]

To better illustrate the course of the proceedings, we present this diagram according to time. Specific examples are then given below:

60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)

[69] https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm
[70] https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m **Sources: WTO**	(with appeal)



Source: https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm

Disputes in examples

Detailed information on all resolved disputes can be found on the WTO website.[71]

To better illustrate, we present a dispute involving the Czech Republic as a complainant and Hungary as a Respondent. Consultations on this matter were launched in January 1999.

Complaint by the Czech Republic (January 1999).

On 21 January 1999, the Czech Republic requested consultations with Hungary in respect of the imposition of quantitative restrictions by Hungary on imports of a broad range of steel products from the Czech Republic. The Czech Republic alleged that Hungary imposed a safeguard measure in the form of an import quota on imports of a broad range of steel products from the Czech Republic, and that this measure only applies to the Czech Republic. The Czech Republic contended that these quantitative restrictions are in breach of Hungary's obligations under GATT Articles I and XIX, as well as provisions of the Agreement on Safeguards.[72]

We also present the dispute between the European Union and the Russian Federation from April 2018.

4.8.1 Consultations

Complaint by the European Union.

On 21 May 2014, the European Union requested consultations with the Russian Federation with respect to the levy of anti-dumping duties on light commercial vehicles from Germany and Italy by the Russian Federation pursuant to Decision No. 113 of 14 May 2013 of the College of the Eurasian Economic Commission.

The European Union claims that the measures are inconsistent with: Articles 1, 2.2, 2.3, 2.4, 3.1, 3.2, 3.4, 3.5, 4.1, 6.2, 6.4, 6.5, 6.5.1, 6.8, 6.9, 6.10, 9.2, 9.3, 12.2, 12.2.2, 18.4 and Annex II of the Anti-Dumping Agreement; Article VI of the GATT 1994.

4.8.2 Panel and Appellate Body proceedings

On 15 September 2014, the European Union requested the establishment of a panel. At its meeting on 26 September 2014, the DSB deferred the establishment of a panel.

At its meeting on 20 October 2014, the DSB established a panel. China, India, Japan, Korea and the United States reserved their third-party rights. Subsequently, Brazil, Turkey and Ukraine reserved their third-party rights.

On 8 December 2014, the European Union requested the Director-General to compose the panel. On 18 December 2014, the Director-General composed the panel.

[71] https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm
[72] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds159_e.htm

On 11 June 2015, the Chair of the panel informed the DSB that the panel's work had been delayed as a result of a lack of available experienced lawyers in the Secretariat and that it does not expect to issue its final report to the parties before the end of 2016.

Following the resignation on 1 December 2015 of the Chair and a member of the panel, the Director-General on 11 December 2015 appointed a new Chair and a new member of the panel.

On 27 January 2017, the panel report was circulated to Members.

On 20 February 2017, the Russian Federation notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. On 27 February 2017, the European Union notified the DSB of its decision to cross-appeal.

On 13 April 2017, the Appellate Body informed the DSB that it would not be able to circulate the Appellate Body report in this appeal by the end of the 60-day period, nor within the 90-day time-frame provided for in Article 17.5 of the DSU. The Appellate Body referred to the number and complexity of the issues raised in this and concurrent appellate proceedings, together with the demands that these concurrent appeals place on the WTO Secretariat's translation services, and the shortage of staff in the Appellate Body Secretariat. The Appellate Body also informed the DSB that the circulation date of the Appellate Body report in this appeal would be communicated to the participants and third participants after the oral hearing. On 8 March 2018, the Appellate Body informed the DSB that its report in this appeal would be circulated no later than 22 March 2018.

On 22 March 2018, the Appellate Body report was circulated to Members.

At its meeting on 9 April 2018, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.

4.8.3 Implementation of adopted reports

On 20 June 2018, the Russian Federation informed the DSB that following the expiration of the measures at issue, the Russian Federation had fully implemented the DSB's recommendations and rulings in this dispute.[73]

Questions:

1) What are the principles governing the settlement of disputes before the WTO?
2) What is the function of consultation in dispute settlement before the WTO?
3) What is the role of panels in resolving disputes before the WTO?
4) Is it possible to appeal against a decision of the DSB? What are the grounds of appeal?

4.9 Contract on International Sales of Goods and its direct legal regulation (CISG – Vienna Convention) / Ondřej Pavelek

Introduction to the international regulation of Contract on International Sales of Goods

[73] https://www.wto.org/english/tratop_e/dispu_e/cases_e/DS479_e.htm

Before we take a close look at this important international treaty, we must explain in detail the difference between the unification of substantive law and conflict-of-law rules. The conflict rule determines which legal order will be applied in case.

Example of a conflict rule:

… A contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence…

Article 4, 1 (a) Rome I Regulation

In contrast, a norm of unified substantive law directly sets out rights and obligations in the field of substantive law.

Example of a substantive law standard:

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 26 United Nations Convention on Contracts for the International Sale of Goods.

United Nations Convention on Contracts for the International Sale of Goods

The United Nations Convention on Contracts for the International Sale of Goods ("CISG") is one of the most important international treaty in the field of international trade. Its importance is crucial, as it has been ratified by a large number of states and thus affects the legal environment for international trade. Among the states that have a great influence on international trade but have not signed the CSIG are, for example, the United Kingdom and India. However, most large states have signed the treaty. There are currently 93 signatory states. It is very popular in Europe, which means that its interpretation is often influenced by continental law. One of its great advantages is its universal application in the sense that it is not necessary to devote much effort to studying national law, which saves costs.[74] The convention was concluded on April 11, 1980 and entered into force on January 1, 1988. It entered into force in Czechoslovakia on April 1, 1991 (for the Czech Republic on January 1, 1993).

History of CISG

Already at the beginning of the 20th century, the idea of creating a unified international treaty governing the contract of sale of goods in the international environment appeared (Huber, 2007,

[74] Peter Huber, Alastair Mullis. The CISG: A New Textbook for Students and Practitioners. Munich: Sellier - European Law Publishers, 2007. 408 pp., p. 1-2.

p. 1-2).[75] The International Institute for the Unification of Private Law (UNIDROIT), which was founded in 1926 set up in 1926 as an auxiliary organ of the League of Nations, had a great influence on this effort. The aim of this group *is purpose is to study needs and methods for modernizing, harmonizing and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives*.[76] The Hague Conference on Private International Law also had a great influence.[77] The international unification was undertaken by the Austrian academic Ernst Rabel, who conducted several comparative studies and initiated the establishment of UNIDROIT. Work on unification projects was interrupted by World War II and then continued in 1951 in the Netherlands. In the second half of the 20th century, the United Nations Commission on International Trade Law (UNCITRAL), founded in 1966, joined the debate on unification. In 1968, UNCITRAL submitted a draft New York Draft Treaty. This proposal was presented at a conference in Vienna in 1980. After some modifications, the proposal was adopted in 1980 and entered into force in 1988. At that time, it was valid only for 11 states (Huber, 2007, p. 2-3). CISG is also called as "Vienna Convention" due to the treaty was adopted in Vienna. However, we must be aware that other treaties have also been signed in Vienna, such as the protection of diplomats, etc., which are also commonly referred to as the Vienna Conventions.

Adoption:

Participant	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Albania		13 May 2009 a
Argentina		19 Jul 1983 a
Armenia		2 Dec 2008 a
Australia		17 Mar 1988 a
Austria	1980	29 Dec 1987
Azerbaijan		3 May 2016 a
Bahrain		25 Sep 2013 a
Belarus		9 Oct 1989 a
Belgium		31 Oct 1996 a

[75] Peter Huber, Alastair Mullis. The CISG: A New Textbook for Students and Practitioners. Munich: Sellier - European Law Publishers, 2007. 408 pp., p. 2-3.
[76] https://www.unidroit.org/about-unidroit/overview
[77] https://www.hcch.net/en/about

Benin		29 Jul 2011 a
Bosnia and Herzegovina [3]		12 Jan 1994 d
Brazil		4 Mar 2013 a
Bulgaria		9 Jul 1990 a
Burundi		4 Sep 1998 a
Cameroon		11 Oct 2017 a
Canada		23 Apr 1991 a
Chile	1980	7 Feb 1990
China	1981	11 Dec 1986 AA
Colombia		10 Jul 2001 a
Congo		11 Jun 2014 a
Costa Rica		12 Jul 2017 a
Croatia [3]		8 Jun 1998 d
Cuba		2 Nov 1994 a
Cyprus		7 Mar 2005 a
Czech Republic [4]		30 Sep 1993 d
Democratic People's Republic of Korea		27 Mar 2019 a
Denmark	1981	14 Feb 1989
Dominican Republic		7 Jun 2010 a
Ecuador		27 Jan 1992 a
Egypt		6 Dec 1982 a
El Salvador		27 Nov 2006 a
Estonia		20 Sep 1993 a
Fiji		7 Jun 2017 a
Finland	1981	15 Dec 1987
France	1981	6 Aug 1982 AA
Gabon		15 Dec 2004 a
Georgia		16 Aug 1994 a
Germany [5, 6, 7]	1981	21 Dec 1989
Ghana	1980	
Greece		12 Jan 1998 a
Guatemala		11 Dec 2019 a
Guinea		23 Jan 1991 a

Guyana		25 Sep 2014 a
Honduras		10 Oct 2002 a
Hungary	1980	16 Jun 1983
Iceland		10 May 2001 a
Iraq		5 Mar 1990 a
Israel		22 Jan 2002 a
Italy	1981	11 Dec 1986
Japan		1 Jul 2008 a
Kyrgyzstan		11 May 1999 a
Lao People's Democratic Republic		24 Sep 2019 a
Latvia		31 Jul 1997 a
Lebanon		21 Nov 2008 a
Lesotho	1981	18 Jun 1981
Liberia		16 Sep 2005 a
Liechtenstein		30 Apr 2019 a
Lithuania		18 Jan 1995 a
Luxembourg		30 Jan 1997 a
Madagascar		24 Sep 2014 a
Mauritania		20 Aug 1999 a
Mexico		29 Dec 1987 a
Mongolia		31 Dec 1997 a
Montenegro [8]		23 Oct 2006 d
Netherlands [6, 9]	1981	13 Dec 1990 A
New Zealand [10]		22 Sep 1994 a
North Macedonia [3]		22 Nov 2006 d
Norway	1981	20 Jul 1988
Paraguay		13 Jan 2006 a
Peru		25 Mar 1999 a
Poland	1981	19 May 1995
Republic of Korea		17 Feb 2004 a
Republic of Moldova		13 Oct 1994 a
Romania		22 May 1991 a
Russian Federation		16 Aug 1990 a

San Marino		22 Feb 2012 a
Serbia [3]		12 Mar 2001 d
Singapore	1980	16 Feb 1995
Slovakia [4]		28 May 1993 d
Slovenia [3]		7 Jan 1994 d
Spain		24 Jul 1990 a
St. Vincent and the Grenadines		12 Sep 2000 a
State of Palestine		29 Dec 2017 a
Sweden	1981	15 Dec 1987
Switzerland		21 Feb 1990 a
Syrian Arab Republic		19 Oct 1982 a
Turkey		7 Jul 2010 a
Uganda		12 Feb 1992 a
Ukraine		3 Jan 1990 a
United States of America	1981	11 Dec 1986
Uruguay		25 Jan 1999 a
Uzbekistan		27 Nov 1996 a
Venezuela (Bolivarian Republic of)	1981	
Viet Nam		18 Dec 2015 a
Zambia		6 Jun 1986 a

Source: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en

4.9.1 Structure of the CISG

CISG governs the terms of the international purchase agreement relating to the formation, rights, and obligations of the buyer and seller, including claims in the event of a breach of the international sale contract.

The convention is divided into four parts.

The first part "Sphere of application and general provisions" includes the sphere of application (Art. 1-6) and General provisions (Art. 7-13).

The second part includes the formation of the contract (Art. 14-24).

The third part (Sale of goods) includes five chapters.

Chapter I deals with general provisions (Art. 25-29).

Chapter II (Obligations of the seller) is divided into three sections - section I (Art. 31-34) deals with Delivery of the goods and handing over of documents, section II (Art. 35-44) deals with the conformity of the goods and third-party claims and section III (45-52) deals with remedies for breach of contract by the seller.

Chapter III (Obligations of the buyer) is divided into three sections - section I (Art. 54-59) deals with payment of the price, section II (Art. 60) deals with taking delivery and section III (61-65) deals with remedies for breach of contract by the buyer.

Chapter IV deals with the passing of risk (Art. 66-70).

Chapter V (Provisions common to the obligations of the seller and of the buyer) is divided into six sections section I (Art. 71-73) deals with the anticipatory breach and instalment contracts, section II (Art. 74-77) deals with damages, section III (Art. 78) deals with interest, sections IV (Art. 79-80) deals with exceptions, section V (Art. 81-84) deals with effects of avoidance and section VI (Art. 85-88) deals with the preservation of the goods.

The fourth part includes the final provisions.

States may enter into a so-called reservation within the meaning of Article 95 of the CISG. This consists in the fact that the state is not bound by a specific part of the contract. Until 31 May 2018, for example, the Czech Republic had a reservation to the Article 1 letter b).[78]

Questions:

1) When did the CISG enter into force?
2) How do the substantive law and the conflict of laws differ?
3) What is a so-called CISG reservation?

[78] https://www.mpo.cz/cz/zahranicni-obchod/mezinarodni-organizace-a-obchod/uncitral/cigs/umluva-osn-o-smlouvach-o-mezinarodni-koupi-zbozi--223272/

4.9.2 Sphere of application

Article 1 of the CISG sets out the basic rule for the application of the Convention. The CISG indeed regulates contracts for the sale of goods between parties that have their place of business in different states. However, the CISG itself does not contain the definition of a sale contract, and therefore it is necessary to proceed from academic definitions or national law. Besides, it is necessary to carefully distinguish between a sale contract and a work contract, as a contract for work or contracts relating to large investment units is not regulated by the CISG (Rozehnalová, 2010, p. 262). The contract must, therefore, have an international element in the form of parties to the contract. If, for example, the sale contract is concluded between two Czech businessmen, there is no international element and the CISG does not apply. However, other conditions must be met for the CISG application. The parties must have their place of business in a State which is a Contracting State or, following the rules of private international law, the law of one of the States is to be applied. The place of business is the place where the businessman carries out his activity.

Examples of CISG application

Company Korio, with its place of business in the DPRK, has signed a car supply contract with BL, Ltd., place of business in the UK. Neither North Korea nor the United Kingdom are Contracting States to the CISG and therefore do not apply.

Doma, Ltd, place of business in the Czech Republic, signed a sale contract for the supply of cars with Gartengestaltung, which is based in Austria. Both the Czechia and Austria are contracting states of the CISG. Both companies have places of business in the States Parties to the CISG and will, therefore, be in line with Article 1 (a) the CISG is applied.

Novák, Ltd., Which has its place of business in the Czech Republic, has signed a contract for the supply of bacon to its restaurants, with Royal, Ltd, which has its place of business in the United Kingdom. The parties have chosen that the applicable law will be Czech law. The Czechia is a contracting state of the CISG, the United Kingdom is not. In accordance with Article 1 (b), the CISG will be applied to the CISG. Czech private international law refers to the CISG.

In practice, the situation described in Art. 11 CISG is frequent, where a party has more than one place of business or even no place of business. If it has several places of business located in different states, the one that has the closest connection to the contract and the performance will always be considered. This relationship must be inferred from the content of the performance or the rights and obligations of the parties. If the place of business does not exist at all, or it

cannot be determined, for example, within the framework of online sales, the decisive factor is the registered office of the businessman, which can be ascertained from the publicly available commercial register.

Within the CISG application test, it is necessary to consider not only the parties to the contract and their place of business but also the object of the concluded sale contract. Only certain goods as movable property can be the object, real estate is not a goods. Restrictions are contained in Articles 2, 3, and 4 of the CSIG. In accordance with Art. 2 (a) the CISG *shall not apply to goods purchased for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use*. The CISG application will thus be excluded if, for example, a natural person engaged in business in the Czech Republic enters into a sale contract for the supply of two toothbrushes and, according to this contract, the toothbrushes are to be delivered by a businessman in Slovakia. However, if it were not clear from the parties' meeting that the toothbrush was for his personal use, the CISG would be used.

Further exceptions to the use of the CISG are then provided for in Article 2 b) to f).

Doma, Ltd, place of business in the Czech Republic, signed a sale contract for the supply of ships with Gartengestaltung, which is based in Austria. In accordance with Article 2 (e), the CSIG does not apply.

For the application of the CISG, it is also necessary to perceive the provision of Article 3, which defines the difference between sale contract of goods to which the CISG applies under other conditions and a contract for work to which it does not apply. To distinguish these types of contracts for the goods to be produced, we must always consider who will supply a substantial part of the material. The assessment is always individual on the basis of objective facts. If the predominant part of the obligation consists in the performance of work or services, the CISG shall not apply. For example, the CISG does not apply to a house construction contract.

It should also be emphasized that the CISG applies to the rights and obligations of the seller and the buyer, and does not apply to issues related to rights in rem, the validity of contracts (Art. 4) and the seller's liability for death or personal injury caused by the goods. (Art. 5). The CISG deals only with the question of the existence and form of a contract; in other areas related to validity, it is necessary to look into the field of private international law. It is similar to the effect of the contract on property rights. The CISG only regulates the seller's obligation to transfer ownership, not other effects. The seller's liability for death or personal injury is completely excluded (Rozehnalová, 2010, p. 271).

Example:

Based on the contract, the seller supplied the buyer with kitchen equipment for the restaurant. However, one of the appliances was defective and injured the buyer's employees. Damage caused by a defective product is excluded from the scope of the CISG.

4.9.3 Principles of interpretation and application

First of all, it is appropriate to explain the difference between the interpretation and application of law. The interpretation consists in the fact that in particular by means of the words in the provision of the legal regulation and by means of the purpose which the standard has, and the system of the regulation, we find out to what range of facts the legal norm falls. For example, Art. 11 refers to the written form of the contract. From the words used in this provision, we must explain what is meant by that written form. We will also use Art. 13 CISG, which directly states that the written form is also a telegram and a telex. Interpretation always precedes the application. The application is the application of a specific legal norm to specific factual circumstances.

In practice, there are often problems of interpretation with the CISG and the contracts between the parties. Due to the international nature of the CISG, its authors prefer the so-called autonomous interpretation, ie an interpretation that is not dependent on national law. If, for example, a so-called substantial breach of contract is interpreted in some way in Czech law, a substantial breach in the sense of the CISG cannot be interpreted automatically in same way (Rozehnalová, 2010, p. 275). In such a case, the general principles that help to interpret it plays a very important role. It is not clear how this or that provision is to be interpreted. The CISG, therefore, modifies the rules for its interpretation. E.g. Article 25 of the CISG refers to a "substantial breach". Such a violation can be interpreted in many different ways. It is in these cases that the provisions of the rule set out in Article 7 et seq. Generally formulated principles have advantages and disadvantages. The advantage of their application is flexibility, which allows a good assessment of individual circumstances and thus arrives at a fair solution. The disadvantage is their vagueness, which in turn allows for a very extensive and unpredictable interpretation. These principles thus have their supporters and opponents (e.g. Rozehnalová, 2010, p. 273).

According to Article 7 (1) of the CISG, the interpretation is to be based on the international nature of the Convention, which is a unified substantive law. Uniform interpretation must thus be ensured. Furthermore, CISG emphasizes the need to protect good faith in international trade. Good faith can be interpreted in different ways. The concept of good faith is one of the basic principles of private law, both national and international private law. It can be interpreted very simply in such a way that it is a conviction of the subject (natural person, businessman) that he is acting following the law. The opposite of good faith is then *mala fidei*, i.e. the belief of the subject that he is acting illegally.[79] Whether it is good faith or not must always be judged based on other decisive facts. An example of good faith is the confidence that a person (employee) acting on behalf of a legal entity is entitled to do so. However, we must still keep in mind that good faith must be interpreted independently of national law following the principle of autonomic interpretation (Rozehnalová, 2010, p. 279).

These principles are important in interpreting especially those issues that are not addressed by the CISG. If these principles are not sufficient, the interpretation must be based on national law, which is applicable under the rules of private international law (Art. 7 (2) CISG).

In the context of performance under a supply contract concluded under the CISG, disputes may arise between the parties concerning the interpretation of the supply contract itself.

Example:

Hospital A signed a contract for the supply of cotton T-shirts for hospital volunteers with the B as a manufacturer of T-shirts. However, the contract did not specify what colour the T-shirts should be. The interpretation problem thus arises with what colour T-shirts B should supply.

In practice, these questions are very common and complex. CISG thus offers a solution in Art. 8 and 9.

First of all, it is necessary to find out the purpose of the parties, i.e. why they decided to conclude the contract. This intention of the parties can be considered if the other party knew or could have known it. In the example with the delivery of T-shirts, it would probably be the following. Hospital A concluded a contract for the supply of goods because it wanted to dress its volunteers

[79] E.g. judgment of the Supreme Court of the Czech Republic from 30. 5. 2018, sp. zn. 22 Cdo 1646/2018.

uniformly. It also seems logical that the colour of the hospital is white, and therefore it can legitimately be expected that the colour of the volunteers will also be white (Art. 8/1).

If the purpose of the parties is not clear, it must be taken of how the specific provisions would be interpreted by a reasonable third party (Art. 8 (2)). It is always necessary to look at all the factual circumstances, the context of concluding the contract, the will of the parties, etc.

It is also necessary to pay attention to the practices and customs of the parties within the interpretation of the contract. Under Article 9, the parties are bound by these practices. Practices are certain common behaviour of the parties, which is well known to them (Rozehnalová, 2010, p. 281).

Decision-making practice thus plays an important role. We recommend a database of international case law and bibliography on the UNIDROIT Principles of International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods available at: http://www.unilex.info/main/about.

4.9.4 Principle of dispositivity and principle of informality

The principle of dispositivity applies to most provisions of the CISG, with the exception of Article 12. In accordance with this principle, the parties may directly exclude the application of the entire CISG or some of its provisions or amend them. Thus, in accordance with the principle of autonomy of will, they may agree not to apply it to their contract for the supply of goods. Article 6 of the CISG respects the autonomy of the will of the parties and their professionalism.

Example:
The parties have agreed to apply Article 78 of the CISG, as amended, to their supply contract, i.e. that both parties waive their right to default interest which they would otherwise be entitled to in accordance with Article 78.

The CISG is also based on the principle of informality. According to the CISG, there is no preferred form of contract, i.e. the contract can be concluded orally, in writing (e.g. by telegram and telefax) or tacitly (consent of both parties without having to be in writing or orally).

4.9.5 Formation of the contract

The process of concluding a contract of sale of goods within the meaning of the CISG as regulated in Art. 14 to 24 CISG. For a more detailed explanation, we refer to these articles.

Here we offer only a simplified contracting procedure. To better illustrate, we will explain it with a simple example. However, the reality can be much more complicated, so it is just an example for better understanding.

ABC, from the Czech Republic, offered via e-mail to XYZ, based in Germany, for the delivery of five Škoda Octavia black cars, manufactured in 2015, for CZK 3 million. In terms of Article 14 (1) of the CISG, this is a proposal for the conclusion of a contract; the proposal is sufficiently definite (it contains the designation of the goods, quantity and price) and expresses the will of ABC, s. r. o. to conclude the contract.

This offer is effective from the moment the e-mail with the offer of XYZ is delivered. The offer can be revocable or irrevocable. However, an offer cannot be revoked: (*a) if it indicates whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or (b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer (Art. 16).*

The company XYZ can then accept the offer without further ado. Acceptance of the offer becomes effective when the expression agrees. This can happen, for example, by XYZ writing an e-mail stating that it accepts the offer. As soon as the acceptance of the offer becomes effective, the contract is concluded. In practice, however, it will be more often the case that the addressee of the offer will have comments and additions to it. Therefore, if XYZ answers that it wants, for example, 10 white cars, it is a rejection of the offer and a counter-offer. Changes related to the number of goods, price, quality, or payment are a significant change in the offer. Under Art. 18 applies: *An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise. (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.*

In some cases, acceptance of an offer may be subject to a certain time limit. As in the example above, if ABC stated in the offer whether or not to accept it within five days. The time limits and late acceptance of a tender are set out in Articles 20 and 21 of the CISG as follows: *(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from*

the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree. (2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows. (1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect. (2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Under Article 23, a contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of CISG.

Questions:

1) Define the place of business in the sense of CISG?
2) What is the subject of the CISG?
3) Define the concept of good faith and its meaning in international trade.
4) What are the principles of CISG interpretation?
5) What is the principle of dispositivity?
6) What is the principle of informality?
7) What are the requirements of the offer?

4.9.6 Rights and obligations of the seller and the buyer

The contract of sale of goods is a binding relationship between the buyer and the seller. The content of this obligation is thus the rights and obligations of these parties. In the event of a breach of these obligations, claims arise, i.e. rights such as the elimination of the defect, compensation for damage, or interest on arrears.

Obligations of the seller

The basic obligations of the seller are defined in Article 30 et seq. CISG. These are basic obligations which the parties may regulate differently following the principle of autonomy of will and principle of disposition.

There are the basic duties defined by the CISG:

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

4.9.7 Delivery of the goods and handing over of documents

The seller is obliged to deliver the goods in the quality, place, and time agreed by the parties. The place of delivery is often determined by INCOTERMS conditions (e.g. EXW, CPT, etc.).

Example:

Alfa is obliged to deliver to Beta 10 Mercedes cars to Beta's headquarters on 10 September 2020. In this example, both the place and the delivery date are specified.

However, there may also be cases where the seller is not obliged to deliver the goods in a particular place. In this case, the following options may occur:

Alfa is obliged to supply Beta 10 Mercedes cars to Beta. In this example, only Alfa is obliged to deliver the goods, without specifying delivery place. In such a case, the seller shall fulfil his obligation by handing over the goods to the first carrier for carriage for the buyer (Art. 31 (a)).

Alfa is obliged to supply Beta 10 Mercedes cars which Alfa will manufacture at Alfa's headquarters. The goods are to be manufactured or made in a certain place, I will allow the seller to load the goods in this place.

If none of these provisions apply, the seller will fulfil his obligation by allowing the buyer to dispose of the goods at the place where the seller has his place of business at the time of the conclusion of the contract (Art. 31 (c)).

The goods must be delivered on time. The timing of the supply of goods may take several forms (Art. 33 (a), (b) and (c)).

Examples:

- 1 September 2020 - a specific date,

• the day determined according to the contract, e.g. the third day after the production of the goods,

• at any time during the deadline - e.g. deliver from 1 September to 20 September 2020,

• within a reasonable time after the conclusion of the contract - in this case it depends mainly on the habits of the parties or the circumstances of the contract, e.g. concerning the subject of purchase. In the case of food, the delivery date will be as soon as possible to avoid food spoilage.

The seller is obliged to hand over the documents.

4.9.8 Conformity of the goods and third-party claims

The basic obligation of the seller is to deliver the goods as agreed in the contract. It must therefore have an agreement on quantity, quality and design (Art. 35 (1)). In practice, it will be more common for the parties to agree on the quantity, quality and design of the goods. Article 35 (2) lays down a provision assessing whether or not the goods correspond to the contract. *Except where the parties have agreed otherwise, the goods do not conform with the contract unless they: (a) are fit for the purposes for which goods of the same description would ordinarily be used; (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement; (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model; (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods. (3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity*.

The seller is obliged to deliver the goods without defects. Defects can be divided into factual and legal. A factual defect is, for example, a car that has a malfunctioning engine. A legal defect is a defect in which the goods are bound by the rights of third parties. Typically, the seller sold goods that he did not own or sold goods that were encumbered with credit without the buyer's knowledge. The rights of third parties are governed, inter alia, by Articles 41 and 42 of the CISG. By Article 41 of the CISG, *the seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim*. A fact based on an

intellectual property right may also be a legal defect – typically in the field of copyright or industrial property.[80]

Legal defects in connection with intellectual property rights are regulated in Article 42. This provision places demands on both the buyer and the seller in the field of knowledge of intellectual property rights; a significant obligation is then formulated in Article 43 of the CISG. The basic forefinger follows from Article 42 (1) of the CISG:

The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property: (a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or (b) in any other case, under the law of the State where the buyer has his place of business.

Example:

Company A, as a seller with a place of business in China, signed a contract for the supply of T-shirts with Company B, as a buyer with a place of business in the Czech Republic, to B´s stores in the Czech Republic, Austria, and Italy. Company B has a network of textile stores in the Czech Republic, Austria, and Italy, where it will distribute T-shirts. Following Article 42 (1)/a) CISG T-shirts must comply with Czech, Italian and Austrian legislation governing intellectual property rights.

If the goods (e.g. T-shirts) will not be resold or the purpose of resale is not clear from the contract, it applies that the law of the state, which the buyer has a place of business, i.e. in the given example in the Czech Republic.

However, the obligations lie also with the buyer, who cannot remain inactive. However, under Article 42 (2) of the CISG, *shall not apply to cases where: (a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or (b) the right or claim results from the seller's compliance with ¬technical drawings, designs, formulae or other such specifications furnished by the buyer.*

Therefore, if company B with its place of business in the Czech Republic as a buyer knew at the time of concluding the contract that the goods (in our example T-shirts) infringed

[80] https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm

intellectual property rights, it cannot subsequently argue that they are defects in the delivered goods (Article 42 (2)/a of the CISG.

Company A with a place of business in the Czech Republic as a buyer signed a contract for the supply of agricultural machinery with company B with a place of business in China as a seller. However, company A provided Company B, according to which it was to manufacture these stands. If company B manufactured agricultural machinery under these drawings, which infringed the industrial property right of an entity, A cannot, as a buyer, object to legal defects (Article 42 (2) (b) CISG).

Another important concept for understanding liability for defects and related claims is the so-called **passing of risk** (Art. 66-70 CISG). The transfer of danger to things most often passes with the acquisition of ownership.

Example:

According to the contract, A delivered a tractor to Company B's registered office. At the moment of handing over the goods, buyer B acquires ownership and the passing of risk to the goods passes to B at this moment, i.e. if the roof of the company B's headquarters falls off the roof after this moment, it is B's responsibility.

In Art. 36 (1) of the CISG assumes that *the seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the* ***risk passes*** *to the buyer, even though the lack of conformity becomes apparent only after that time*.

Besides, the situation covered by Article 36 (2) of the CISG may arise. The defect can manifest itself only after the risk of damage to the goods has passed. If such defects are caused by a breach of the seller's obligations, he is responsible for the transfer passing of risk to the goods. Therefore, if, for example, the seller hands over the above-mentioned tractor to the buyer, he has acquired the ownership right, and only then would it be established that the tractor is defective, e.g. does not have certain driving characteristics, the seller is responsible for this defect. Art. 66 CISG, from which it follows that the loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price unless the loss or damage is due to an act or omission of the seller. Thus, an illegal act or omission of the seller does not enjoy protection.

In practice, a number of different situations can occur. E.g. the risk of damage to the goods passes to the buyer at the time of delivery to the first carrier, unless the seller has this obligation

(Art. 67 CISG). In accordance with Article 68 of the CISG, *if the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk. (2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise*. In accordance with Article 68 of the CISG, *(1) in cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery. (2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place. (3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.*

Thus, the buyer cannot exercise the rights arising from defective performance indefinitely. Articles 38, 39, and 40 of the CISG thus set out the time - limits within which the right arising from defective performance must be exercised. The rights of the seller and the buyer should be balanced. The parties have mutual rights and obligations. Thus, under article 38 of the CISG, the buyer is required to inspect the goods as soon as possible to detect any defects as soon as possible. This provision is based on the principle that defects should be identified as soon as possible. Later application of the law often leads to its weakening in practice. The inspection must be carried out at the place of destination; this is of practical importance especially in the case of delivered goods. However, it is always true that the parties may adjust the deadlines differently in the contract. Even in this case, the principles of dispositivity and formality apply.

It follows from the provisions of Article 39 of the CISG that the buyer must report the defects *within a reasonable time after he has discovered it or ought to have discovered it*. If it fails to do so, it loses the right to defective performance. This is the so-called subjective period. The beginning of this period is linked to the moment when the buyer discovered the defect or found the defect about all the circumstances he could and had. However, it is difficult to set a reasonable time limit. Concerning the effective use of the law should give her immediate notification of the defect. The buyer should report the defect immediately after finding it. Article 39 (2) then regulates the so-called objective period, which lasts two years *from the date on which the goods were handed over to the buyer.*

The difference between subjective and objective time period can be shown in this example. The buyer took over the goods on 1 January 2020. In this case, an objective period of two years begins to run. Within this period, the buyer must exercise the right to defective performance. He must, therefore, detect the defect within this period. If he found out until May 5, 2022, the right to defective performance has already expired. The subjective period thus ends no later than the objective period. However, the exception set out in Article 40 applies from these provisions, from which it follows that *the seller is not entitled to rely on the provisions of Articles 38 and 39 if the lack of conformity applies to the facts of which he knew or could not have been unaware and which he did not disclose to the buyer.* Even after the expiry of the time limit, the buyer may, in accordance with Article 44, have *the reduction in price in accordance with Article 50 or claim damages, except for the loss of profit, if he has a reasonable excuse for his failure to give the required notice.*

This can be shown in the following example.

A, as the seller, is to supply B, as the buyer, based on a contract for the sale contract of goods, an older Mercedes car, which is to have a mileage of 150,000 km. However, Seller manipulated the tachometer and deliberately reduced the number of kilometers. Given that the seller knew of this fact and deliberately mistaken the buyer, the seller cannot object that the buyer has exercised rights from defects after the expiration of the period.

Questions:

1) What are the basic obligations of the seller?
2) What is the difference between a legal and a factual defect?
3) What is passing of risk?
4) What is the specific nature of contracts for sale of goods and protection of intellectual property rights?

4.9.9 Remedies for breach of contract by the seller

As stated above, the basic obligation of the seller is to deliver the goods in the specified quantity and quality and within the specified period. If the seller fails to fulfill any of these obligations, the buyer has claims for breach of contract.

List of selected requirements:

1. Performance

2. Delivery of substitute goods

3. Repair

4. Avoidance of contract

5. Price reducing

6. Damages

These claims are different and apply under certain conditions. It follows from article 45 (2) of the CISG that: *the buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies*.

Example:

Company A, as a buyer with a place of business in Slovenia, signed a car supply contract with company B, as a seller with a place of business in Germany. Under this contract, Company B was to deliver a total of 100 Audi cars to Company A's employees within 30 days after signing the contract. However, Company B did not fulfill this obligation in time, the delay lasted 60 days. Due to the delay, Company A, therefore, had to rent cars from another company; car rental cost a total of 10,000 EUR. Company A, as the buyer, is entitled, for example, to avoid the contract or to reduce the purchase price. However, A is also entitled to damages; the damage then is EUR 10 000, which B had to pay for renting spare cars. Thus, in addition to the claims listed under numbers 1 to 5, a claim for damages can also be made.

In practice, not only combinations of individual claims may occur, but also situations, where the seller delivers only part of the goods, the seller may in accordance with Article 51 CISG only in respect of this part, e.g. request a reduction in the purchase price, etc. However, the buyer is entitled to avoid the entire contract if only partial performance would constitute a substantial breach of contract.

Example:

A, as the seller, was to supply two Airbus aircraft on the basis of a contract concluded with B as the buyer. One of these aircraft was defective. Only to that extent does Buyer B, therefore, be entitled, for example, to withdraw from the contract (Art. 51 (1) CISG).

However, if buyer B as an airline needed exactly two aircraft and was not interested in only one, e.g. due to other contracts, this could be a substantial breach of contract and B as a buyer could withdraw from the whole contract (Art. 51 (2) CISG).

It is the seller's obligation to deliver the goods on time. If seller delivers it earlier, ie before the deadline, the buyer has the option, in accordance with article 52 (1) of the CISG, to decide whether or not to accept the goods. The practical use of this provision may be if the buyer has not yet prepared sufficient space, e.g. for storage of delivered goods. Likewise, the buyer can decide whether to accept or reject the excess quantity of goods. If he accepts the performance in excess, he must pay the requested price (Article 52 (1) CISG).

1. Performance

The buyer may require compliance with the obligation. An alternative period may be set for this. (Article 46 (1) CISG).

2. Delivery of substitute goods

If the goods do not comply with the contract, the buyer may request the Delivery of substitute goods. However, there must be a material breach of contract and the request for replacement must be communicated within a reasonable time (Art. 46 (2) CISG).

3. Repair

The buyer may request the removal of defective performance. However, this requirement must not be disproportionate to the circumstances and must be notified within a reasonable time (Art. 46 (3) CISG).

4. Avoidance of contract

Avoidance of contract is one of the most fundamental sanctions for the seller, as it cancels the contract from the beginning (ex tunc). This is different from the termination of a contract which has ex nunc effects.

The avoidance of contract is regulated in Article 49 of the CISG as follows. *The buyer may declare the contract avoided: (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to* ***a fundamental breach of contract****; or (b)* ***in case of non-delivery****, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.*

Example:

A as a seller, should deliver 100 Kg of beef to B. B needed it for the big party, which was to take place on January 10; it was a final commitment. A was late and did not deliver the meat

until January 12. Since it was already after the celebration, B was not interested in such a late performance. This was a substantial breach of contract (Article 49 (1) (a)).

A as a seller, signed a contract for the supply of 10 Škoda cars with B as the buyer. But he didn't deliver the cars on time. B set a new deadline for A in accordance with Article 47 (CISG). However, A did not deliver the cars even within this period, and therefore B became entitled to avoid the contract (Article 49 (1) (b)).

The question is what is meant by substantial breach of contract. Some guidance is given in Article 25 of the CISG: *A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.*

According to the article 49/2, *however, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so: (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made; (b) in respect of any breach other than late delivery, within a reasonable time: (i) after he knew or ought to have known of the breach; (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.*

Effects of avoidance

As mentioned above, the basic effect of withdrawal is the termination of ex tunc obligations. However, neither the right to compensation nor the provisions regarding the method of resolving disputes (e.g. arbitration clause) expire. The parties must return the performance (Art. 81 to 84 CISG).

The buyer must return the goods in the quality in which received it. An exception under Article 82 (2) of the CISG is:

> *(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;*
>
> *(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38 CSIG; or*

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

5. Price reducing

Reducing the purchase price is one of the claims that can cause big problems. Under Article 50 of the CISG, the buyer may unilaterally reduce the purchase price. However, the question is how much the price can reduce. It follows from Article 50 that *the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time*. However, this value must be determined based on objective criteria. Best based on an expert opinion, which can be expensive. The buyer may not reduce the price *if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles*.

6. Damages

The right to compensation is one of the options that the buyer can use in case of breach of contract. However, in the case of damages, the buyer finds himself in a relatively difficult situation, as the buyer must prove that the seller has breached the contract, the buyer has suffered damage, including its quantification, and there is a so-called causal nexus between the seller's unlawful conduct and the damage. At the same time, the damage must be predictable for the seller. Under Article 74 of the CISG, *damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract*.

Example:

To better define damages and differentiate them from other claims, we give this example. A runs a taxi service. A, as a buyer, signed a contract with B as a seller. Under that contract, B, as the seller, was to deliver A as the buyer 10 vehicles for the taxi service by 10 December 2020. B delivered those vehicles with a one-month delay. What are A's buyer's rights?

In the first place, A can claim, for example, delivery within the replacement period or a discount on the purchase price, etc. In addition to these claims, it can also claim damages from B. Damage may consist of not being able to operate a taxi service for one month. The damage thus

represents a lost profit, which he would have achieved if he had vehicles. At the same time, the damage was predictable for B, because he knew for what purpose A needed the vehicle.

Damage can thus consist both in damage in fact (***damnum emergens***) and in the form loss of profit (***lucrum cessans***). We can explain this distinction again with the example of a taxi driver. The real damage is if someone destroys a taxi driver's car; the damage is then represented by the value of the car. The lost profit is most often represented by money that taxi drivers lost because he could not run his business. According to the general preventive clause, i.e. the obligation to prevent potential damage, *a party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated (Art. 77 CISG).*

The causal nexus between the infringement (breach of contract) and the damage is that the damage is the result of an infringement.

The specific relationship is then given between the compensation and the avoidance of the contract (Art. 75 and 76 CISG).

Example

The buyer avoided the contract because the seller did not deliver the goods worth EUR 1,000 on time and it was a substantial breach of contract. The buyer therefore immediately bought replacement goods, which were, however, 100 EUR more expensive than the original goods. Compensation for damage is then the difference between the value of the original and replacement goods. Under Article 76, *if the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance. For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.*

In addition to compensation for damages, the parties can agree on a so-called contractual penalty. A contractual penalty is sometimes referred to as a lump sum compensation. The contractual penalty is a relatively frequent part of the contracts.

Questions:

1) What are the buyer's claims if the seller breaches the contract?
2) If the seller breaches the contract, is the buyer entitled to compensation?
3) What are the preconditions for liability for damage?
4) What is meant by a substantial breach of contract?

4.9.10 Obligations of the buyer

The buyer's obligations are set out in Articles 53 to 59 of the CSIG. The basic obligation of the buyer is to take over the goods and pay for. However, these are not the only obligations. An example of the buyer's obligations is also the prevention of damage or notification of defects in time.

Taking delivery

The buyer's obligation to take delivery consists: (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and (b) in taking over the goods (art. 60 CISG).

Payment of the price

The purchase price does not have to be directly part of the contract and the buyer does not have to be directly asked to pay the purchase price. *Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned* (Art. 55 CISG). The "price generally charged" should preferably be determined based on expert opinion.

Payment could be a form of cash or non-cash payment. It is always necessary to comply with the form specified in the contract and at the same time respect the legislation. For example, the legislation of different states may restrict cash payments. Likewise, the CISG does not regulate customs duties and other similar charges. This regulation is public law and the parties must respect it (Rozehnalová, 2010, p. 308).

The place of payment can be determined primarily by contract. In this case, the buyer must pay the purchase price at this point. If such a place is not specified, two situations are regulated in art. Article 57 (1) CISG: *(a) at the seller's place of business; or (b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.*

The Convention also regulates the situation where the contract does not specify a time limit for payment for the goods. In this case, the seller must pay the price at the time *when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention* (Art. 58 section 1 CISG). Under Art. 58 section 2 CISG, *if the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price*.

Example:

Business A, as the seller, handed over the goods in a warehouse located at the registered office of the buyer B. He thus allowed him to dispose of the goods. At that moment, the buyer is obliged to pay the purchase price (Art. 58 (1) CISG).

Business A as a seller sent goods to B as a buyer to the B´s headquarters. However, he required that the documents enabling the handling of the goods to be handed over to the buyer only after payment of the purchase price (Art. 58 (2) CISG).

4.9.11 Remedies for breach of contract by the buyer

As stated above, the contract is an obligation between the buyer and the seller, where both parties have rights and obligations to each other. In the event of a breach of contract by the buyer, the seller has the following claims against the buyer:

1. Claim to pay the price, take delivery, or perform other obligations.

Under Article 62 of the CISG, *the seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.* If the seller demanded payment of the purchase price and acceptance of the goods and at the same time requested withdrawal from the contract, this would be an incompatible request. *If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable*... (Art. 78 CISG).

There may also be a situation where the buyer is in delay with taking over the delivery. In such a case, the seller must, following Article 85 of the CISG, make appropriate arrangements to preserve the goods, such as storing them in a warehouse. He may then ask the buyer for compensation for storage.

2. Determination of the additional period for performance.

Without losing the right to compensation, the seller may set an additional period for the buyer to fulfill his obligations (Art. 63 CISG). If the buyer does not pay the purchase price or does not take over the goods, he shall, under Article 64 (1) (a), b) CSIG seller the right to withdraw from the contract.

3. Avoidance of contract

The conditions for avoiding the contract are in principle similar to those in the case of avoidance of the buyer. The seller has the right to avoid the contract if the buyer fundamentally breaches the contractor *if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed* (art. 64 CISG).

4. Damages

In this section, we refer to the chapter devoted to this topic in connection with damages in case of breach of contract by the seller.

In practice, there may be situations where the contract stipulates that the buyer has to determine the form, size, or other properties of the goods within a certain period. E.g. the seller and the buyer enter into a contract for the supply of goods, with the buyer specifying the properties of the goods only after the conclusion of the contract within a specified period, e.g. according to the seller's catalogue. Under art. 65 (1) CISG, *(1) if under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him. (2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.*

Questions:

1) What are the basic obligations of the buyer?
2) What are the seller's claims against the buyer if the buyer breaches the contract?
3) What are the preconditions of liability for damages?

Exemptions

Exclusion of liability is an institution that is widely used in practice. If any of the parties, the buyer or seller, fails to fulfill its obligation, it is used Articles 79 or 80 of the CISG to disclaim or limit liability. These articles must, therefore, be interpreted restrictively and always in the light of the circumstances of a particular case. The generalization is very difficult in this case. However, the basic principle set out in Article 80 CSIG applies: *A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission*. The other party's infringement thus does not enjoy protection.

Example:

A, as the seller, sent the goods, which, however, B, as the buyer, refused to take over without giving a reason. And so, he kept it in his warehouse until B picked it up. B thus broke the contract by not taking over the goods. In such a case, B cannot claim compensation from A, for example, or set another deadline for performance.

The key is then Art. 79 CISG, which is extremely difficult to interpret. The exclusion of liability is so difficult. First, liability is excluded only for as long as the obstacle lasts. The party on whose side the obstacle is located must communicate with the other party and report the obstacle and, if possible, explain it. For a better understanding, we present the following examples:

"A", as a seller with a place of business in Germany, was to supply 100 000 medical veils based on a contract for the supply of goods with B as a buyer with a place of business in Poland. However, shortly after the signing of the agreement, COVID-19 was hit. The German government decided with immediate effect to ban the export of any medical supplies from Germany, including veils. Thus, under Paragraph 79 (1) of the CISG, the 'A' as a seller will not be liable for failure to fulfill obligations, since that obstacle arose independently of its will and could not be anticipated. The exclusion of liability may then apply to a third party, such as a carrier (Art. 79 (2) CISG).

4.9.12 Anticipatory breach and investment contracts

This is a precautionary measure as provided for in Articles 71 to 73 of the CISG. Their essence is an effort to prevent damage and disputes. Under article 71 (1) CISG, *a party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of: (a) a serious deficiency in his ability to perform or in his creditworthiness; or (b) his conduct in preparing to perform or in performing the contract.*

An example of such a situation could be, for example, a declaration of insolvency against such a businessman or criminal proceedings, such as an attempted fraud against the other party. If it is clear that one of the parties substantially breached the contract, it is possible to avoid the contract. However, there must always be facts based on which it is clear that a substantial breach will take place. Mere and unsubstantiated facts cannot lead to this.

The CISG also regulates the situation where the performance of partial performances is endangered. A typical contract with partial performance may be a purchase contract, based on which, for example, certain goods are delivered by the seller every month for one year. Under Article 3 CISG, *in the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment. (2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time. (3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.* Therefore, if it is clear that the partial performance is not performed and thus the contract as such will be violated, the party may withdraw from the entire contract.

Questions:

1) Give an example of an unforeseeable obstacle within the meaning of Article 79 (1) of the CISG.
2) Under what conditions can a party suspend its obligations under the contract?

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5 Selected Issues of International Trade Law - European Law

5.1 Structure of the Chapter / Libor Kyncl

- *EU Common Commercial Policy, Membership of EU in WTO / Libor Kyncl*
- *Alternative Dispute Resolution including Arbitration and Mediation, Online Dispute Resolution / Libor Kyncl*
- *Brussels I bis Regulation - Jurisdiction and Decisions' Execution in the EU / Libor Kyncl*
- *Rome I Regulation - Applicable Law in Contracts / Libor Kyncl*
- *Rome II Regulation - Applicable Law in Torts / Ondřej Pavelek*
- *Consumer Protection in International Trade Law including Consumer ADR and ODR / Libor Kyncl*
- *International Insolvency Procedure - EU Harmonization / Ondřej Pavelek*
- *European Small Claims Procedure / Ondřej Pavelek*
- *Financing, Credits and Loans in the International Trade inside the EU / Libor Kyncl*
- *International Investment Disputes, ICSID / Ondřej Pavelek*

5.2 EU Common Commercial Policy, Membership of EU in WTO / Libor Kyncl

This part of the text is provided in the study material in the EU Business law course and in the European Union and Global Governance course, both from the different perspectives.[8182] *The author did not want to create a duplicate of the previous texts so is informing that the relevant chapters are obligatory for the MOPA course.*

Common Commercial Policy is a part of external policies of the European Union that is based on the Treaty on the Functioning of the European Union. Its most general norms are contained

[81] Kyncl, Libor, Bédiová, Monika, Abramuszkinová Pavlíková, Eva. European Union and Global Governance: Teaching Text, International Agreements and Materials. Brno: Mendelova univerzita v Brně, 2018.
[82] Kyncl, Libor, Pavelek, Ondřej. European Union Business Law: Teaching Text, International Agreements and Materials. Brno: Mendelova univerzita v Brně, 2019.

in the art. 206 and 207 TFEU. Practical implications for the EU Common Commercial Policy are contained in the art. 208 – 221 TFEU.[83]

The intergovernmental treaty between the EU and Canada ("CETA") is a relevant example how lengthy and how formally difficult the treaty drafting and concluding could be even in the case when two states clearly wish to cooperate with each other.[84]

Other example is the Customs Union existing between the European Union and Turkey.[85]

The specific negotiations have been conducted on the trade treaty between the European Union and the United States of America on so called TTIP but have been factually stopped during the presidency of the US president Donald Trump due to existing issues, among other airplane manufacturers Airbus and Boeing have been mentioned.[86] The negotiations take place on top of existing cooperation in the Transatlantic Economic Council since 2007.[87]

Questions:

1. Explain the Common Commercial Policy of the European Union.

2. Who is the High Representative of the Union for Foreign Affairs and Security Policy? What is his role and position?

3. What is the place of the European Union in the framework of the World Trade Organization?

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5.3 Brussels I bis Regulation - Jurisdiction and Decisions' Execution in the EU / Libor Kyncl

Brussels I bis regulation is in its full name the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as amended.

In each civil procedure, at least two parties are having a dispute. These parties are called the plaintiff(s), the actor(s) submitting a court action, and the defendant(s), the actor against whom the court action is submitted and who usually defends against the motion of the plaintiff.

The Brussels I bis regulation is covering these main areas in the European Union member states.

For the businesses that are seated outside the European Union, they also need to apply the Brussels I bis regulation as long as either:

A. the non-EU business intends to submit court action in one of the European Union member states or
B. the non-EU business is a defendant to an action submitted in one of the European Union member states.

A specific issue in the choice of law is an option of parties to avoid the application of CISG Vienna convention by their declaration that they do not wish to be bound by its rules. A similar declaration is not possible for many other international legal acts such as Brussels I bis Regulation.

They could have a dispute over the contract where the regulation Brussels I bis is interconnected with the regulation Rome I. Another option is a dispute over non-contractual obligations such as tort which involves the regulation by Brussels I bis Regulation and by Rome II regulation.

Submitting the application to the court is the important stab words achieving the payment of the price of goods or towards obtaining a specific performance from the second party to the contract. It is important to notice that the first step of each court procedure is finding the legal status quo by the court and based on this status quo deciding the case authoritatively. As we mentioned below some methods of alternative dispute resolution could be similar, that is namely the arbitration procedure where the arbitrators or arbitration courts decide the matter also authoritatively. It is the decision of parties to the contract whether they will use their right to the legal judge which could not be violated as it is the constitutional right of each individual and of each corporation. The second option is to submit not called application but arbitration motion which takes the dispute out of the court jurisdiction, although practically only to some extent. In the Czech Republic, the disputes between businesses and consumers and between two consumers could not be decided by the arbitration cards because that would violate the rights of the consumer granted under the Czech legal system.

In the European Union, the usual structure of a judicial system is divided into civil justice and criminal justice with the third part of the administrative justice - they could be more or less separated. The Brussels I bis regulation regulates the civil justice and now it’s major parts half civil disputes, commercial disputes, Labor disputes and some separated areas. It does not include the areas covered by the Brussels II regulation covering some family disputes and two additional regulations covering family and personal status issues connected with marriages and child care. These areas are also a very important part of the civil justice but they are not usually business based so they were not included in this teaching text.

Besides the judgment itself, the European Union member states court is required to issue the certificate according to Annex number one or Annex number two of Brussels I bis Regulation. This overview will be extremely important for the court and the executive office of the country where the judgment will be recognized and executed based on articles 30 to 50 of Brussels one

base regulation. The court of the country of destination is allowed to deny Derek edition and executives in to the judgment only in specifically said cases, otherwise inside the European Union it is expected that the judgments from different EU member states will be executed it so they could strengthen the internal market of the EU – of course they need to comply with the general legal principles and with the imperative EU law requirements.

5.3.1 The areas exempt from Brussels I bis Regulation

The Brussels I bis regulation exempts certain areas from its application, which are enlisted in art. 1 section 2 of Brussels I bis:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;¨

(c) social security;

(d) arbitration;

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

5.3.2 Relation between Brussels I bis Regulation and Rome I and Rome II Regulations

On the other hand, Brussels I bis regulation regulates both contractual obligations based on Rome I regulation and non-contractual obligation's based on Rome II regulation.

In the cases, where Brussels regulations or any other specific EU regulations will not grant any jurisdiction in that area, it is up to the member state of the EU whether the state will grant is our courts the jurisdiction in that specific area. For example in the Czech Republic, these jurisdictions are given primarily by the civil procedure code no. 99/1963 Sb.[88] and by the act on private international law no. 91/2012 Sb.

[88] Czech Republic: Act No. 99/1963 Sb. Civil Procedure Code as amended.

5.3.3 Prorogation clause

In case any of these legal acts do not grant the jurisdiction for that case, the parties who are businesses are generally allowed to set up a jurisdiction for their case. This selection of jurisdiction based on **prorogation clause** (clause selecting the court that will decide all disputes arising from the contract) may generally be denied by the legal acts of the selected state for a specific area of cases.

It is also very important to differentiate between a prorogation close and choice of law clause. They may both direct to a different state or legal system. The choice of law in a so-called conflict of laws applies the collision norms in the way that parties have chosen a governing law for their contract.

Example:

Parties have chosen the Czech law as the governing law for their contract, they have chosen Slovak court to decide all the disputes arising from the contract.

Given this example, the parties will be able to submit a court action to a Slovak court. It will be up to the Slovak procedural and organizational norms whether the jurisdiction will be granted to the Regional Court in Bratislava or the District Court in Košice I.

It will be up to the Czech legal order to regulate whether the contract will be are regulated by the Czech civil code or buy some different Czech legal act. E.g. Slovakia has its commercial code while in the Czech Republic the commercial code has been repealed since 2014. Also, the regulation of contracts could be different in some very important points between countries and legal systems.

5.3.4 Executing the Civil Court Judgments

Both the court decision in the Civil Procedure and the decision of arbitrator or arbitration court need to be executed in some way. Usual execution is conducted by the executor's office or by the court itself, depending on the National legal regulation in the country.

As long as the foreign court decision is not executed in the second country, other party's duties are not fulfilled, the costs of the court proceedings have not been are utilized properly. Practically, in the cut procedures, there are many disputes which are not completely clear

regarding the probable wedding party so very awesome though court procedure costs could lead just to the costs without any benefits because the application/petition is denied by the court.

The execution of the valid legal title (a judgment that has entered into force) is for many types of judgments costing money. The obliged person is although required to pay not only the sum that has been adjudicated to the plaintiff by the court and the rightful execution costs. The adjudicated sum includes also court costs in the amount granted by the legal system, which usually is not including full costs but only the part of them and, in some cases, the right to costs may be void.

Questions:

1) What is the effect of Brussels I bis regulation on the sales contract between enterprises in the different countries of the EU?
2) Is there any difference between jurisdiction of the courts between the business to business (B2B) disputes and the consumer to business (B2C) disputes?
3) Explain the positions of the plaintiff and defendant in the civil court procedure.
4) Is there any difference between recognition of a court judgment and the enforcement of a court judgment?

Sources:

- Czech Republic: Act No. 99/1963 Sb. Civil Procedure Code as amended.
- Mankowski, Peter. Research Handbook on the Brussels Ibis Regulation. Research Handbooks in European Law series. Cheltenham: Edward Elgar Publishing, 2020. ISBN 178811079X.

5.4 Rome I Regulation - Applicable Law in Contracts / Libor Kyncl

The Rome I Regulation is in full name the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations

(Rome I) as amended.[89] As its art. 1 states, the Rome I Regulation „*shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.*"

5.4.1 Structure of Rome I Regulation

- Recital
- Chapter I – Scope (art. 1 - 2)
- Chapter II – Uniform Rules (art. 3 – 18) containing the collision norms setting the governing law of the contracts for specific types of the contract and for the individual .
- Chapter III – Other Provisions (art. 19 - 28) regulates the provisions which are relevant for the application of the regulation, such as the definition of habitual residence both for individuals and corporations, exclusion of private international law of the selected legal system (so-called renvoi, art. 20), public policy of the form, the relation between Rome I Regulation and Rome Convention (predecessor of the Rome I Regulation), relationship with other legal sources, review clause and time limit for applicability based on the date of conclusion of the contracts.
- Chapter IV – Final Provisions (art. 29) contains final provisions and set entry into force and application of the regulation.

5.4.2 Application test

1) Material scope – Type of the case needs to fall under the material scope of Rome I regulation.
2) Formal scope – The dispute must meet formal criteria, practically to be concluded at least partially in the territory of the European Union or to be somehow connected with it.
3) Time requirement – The contract must have been concluded during the legal effect of Rome I Regulation.

5.4.3 Governing law / applicable law

1. Choice of law – art. 3 of Rome I regulation if the parties to a contract have chosen the applicable law / governing law

[89] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). EUR-Lex - 02008R0593-20080724 - EN - EUR-Lex (europa.eu). Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.

2. Special provisions of the governing law rules for the absence of a choice of law according to art. 5 to 8 Rome I Regulation.

- Contracts of carriage
- Consumer contracts
- Insurance contracts
- Individual employment contracts

3. General rules for the absence of a choice of law according to art. 4 section 1 Rome I regulation for specific contractual types

4. General rules for the absence of a choice of law according to art. 4 Rome I regulation for specific contractual types

In international trade, it is important to differentiate between different actors, mainly between states and between businesses having a residence habitual residence in the mentioned state.

5.4.4 Habitual Residence / Domicile

International trade law is based on the principle of lex domicilii (domicile of the person or the corporation).

The collision method is used in the Rome I Regulation, e.g. its art. 4 section 1 letter a) primarily with lex domicilii = habitual residence: "*To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 …, the law governing the contract shall be determined as follows:*

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence…".[90]

According to art. 19 of the Rome I Regulation, the habitual residence of the corporation is its place of the central administration. That will very often be its seat registered in the business register in the state of the registration but it is not necessary in all cases. It could also be its headquarters which could, of course, be in the different state than the seat.

[90] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.

Usually, larger financial groups involve many different companies having seats in different countries. The contracts concluded with these companies need to be strictly differentiated because of the civil law and private international law but also because of the practical reasons. The companies could default and the shareholders may cease to sustain the operation of the specific company in that specific country while continuing in the existence of the financial group in general. Although these situations, unfortunately, exist in the legal system, they are having high reputational risks in doing so.

Under separate rules for the applicable law/governing law are all set for insurance contracts which are contained in art. 7 of Rome I Regulation. The separated applicable or law rules exist for the insurance, insurance contracts covering large risks.

Questions:

1) What is the effect of Rome I regulation on the sales contract between enterprises in the different countries of the EU?
2) Is there any difference between governing law / applicable law in the business to business (B2B) contract and the business to consumer (B2C) contract?
3) What is the difference between choice of law and prorogation clause?
4) How would you define a habitual residence of a corporation?

Sources:

- BĚLOHLÁVEK, Alexander J. Římská úmluva. Nařízení Řím I. Komentář. I. díl a II. díl (volume I and volume II.). Praha: Nakladatelství C. H. Beck, 2009. 2684 pp. ISBN: 978-80-7400-176-5.
- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). EUR-Lex - 02008R0593-20080724 - EN - EUR-Lex (europa.eu). Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R0593-20080724.

5.5 Rome II Regulation - Applicable Law in Torts / Ondřej Pavelek

One of the EU's fundamental objectives is to build an internal market where people, goods, services, and capital move freely. The establishment of a legal framework is a prerequisite for the proper functioning of such an internal market. One of the key legal regulations is the Rome I Regulation, which regulates obligations, and Rome II Regulation (Regulation (EC) No

864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations), which regulates non-contractual obligations. Both regulations form the basis of the so-called European private international law and complement each other. It is intended to help facilitate the functioning of the internal market and to create an area of freedom, security, and justice. It is also important to be aware of the difference between legislative acts that regulate the unification of conflict-of-law rules (e.g. the Rome I and II Regulations) and procedural rules, such as the Brussels I Regulation.

For a better understanding, we give an example of distinguishing between contractual and non-contractual obligations.

A sale contract concluded between two businessmen is a contractual obligation. If there is an international element in the contract, the contract is regulated by the Rome I Regulation.

The non-contractual obligation governed by the Rome II Regulation, on the other hand, is in this case. There was a car accident. A Polish businessman caused damage to a Slovak businessman in the form of lost profit. This is a non-contractual obligation, specifical compensation for damage.

A non-contractual obligation has been defined by the case-law of the ECJ as follows: a non-contractual obligation is any obligation that is not a contractual obligation. Examples of non-contractual obligations are compensation for damage, non-contractual obligations related to unfair competition, damage to the environment, etc. (Rozehnalová, 2013, p. 159).

History

Unification of conflict-of-law rules in the EU was very long; lasted almost 40 years (Kramer, 2008, pp. 414-424).[91] A significant achievement in the field of conflict of law was the Rome Convention on the law applicable to contractual obligations, which was originally intended to contain conflict-of-law rules for contractual and non-contractual obligations. In the end, however, this did not happen and only contractual obligations were regulated. The regulation of non-contractual obligations was thus regulated only later; later than contractual obligations (Rozehnalová et al., 2013, pp. 153-154).

[91] Xandra E. Kramer. The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: The European Private International Law Tradition Continued - Introductory Observations, Scope, System, and General Rules Nederlands Internationaal Privaatrecht (NIPR), No. 4, pp. 414-424, 2008

Structure of the Rome II Regulation

- Preamble - The preamble is an important part of the treaty, as it often sets out the basic principles and reasons why the regulation was adopted. We recommend that you study it carefully before studying this regulation. E.g. point 17 of the Preamble provides an interpretation of the applicable law or point 23 defines the concept of restriction of competition. A study of the preamble is thus necessary.
- Chapter I (Articles 1-3) - defines the scope of the regulation, defines non-contractual obligations and universal applicability.
- Chapter II (Art. 4-9) - defines civil torts, product liability, unfair competition, and acts restricting free competition, environmental damage, infringement of intellectual property rights, and industrial action.
- Chapter III (Art. 10-13) - is devoted to unjust enrichment, negotiorum gestio, and culpa in contrahendo.
- Chapter IV (Article 14) - regulates freedom of choice
- Chapter V (Articles 15 - 22) - regulates the scope of the law applicable, overriding mandatory provisions, rules of safety and conduct, direct action against the insurer of the person liable, subrogation, multiple liability, formal validity and burden of proof.
- Chapter VI (Articles 23-28) defines some important terms, such as habitual residence
- Chapter VII (Articles 29-32) contains final provisions.

Scope

The scope of the Regulation is defined in Article 1. The definition is both positive and negative. It is thus clear from the provisions of this article which area it falls on (Article 1/1) It also explicitly states which areas it does not fall on (Article 1/2). The Regulation applies to non-contractual obligations in civil and commercial matters. It is mainly about compensation for damage associated with civil offenses in the field of civil and commercial law. However, it is a regulation that regulates conflict-of-law rules, and therefore an international element must be part of these non-contractual relations. The international element must be defined autonomously; the international element will most often be given if the tortfeasor and the injured party reside in different EU member states (Rozehnalová, 2013, p. 163).

The Rome II Regulation is then based on the principle of universal application, which is formulated in Article 3: *Any law specified by this Regulation shall be applied whether or not it is the law of a Member State. This principle then defines the relationship to other secondary EU law, as well as to international*

agreements. Regarding EU secondary law. If another secondary law regulates special conflict-of-law rules for a certain issue, this special regulation will apply (Article 27 of the Rome II and Rozehnalová Regulations, 2013, pp. 154-155).

The scope of the regulation can be divided as follows:

1. Territorial - the Rome II Regulation is applied to all EU Member States, except Denmark (Article 1/4).

2. Time - defines the period in which the regulation is to be applied. The case-law of the Court of Justice of the EU that the Rome II Regulation applies to facts arising from 11 January 2009.

3. Personnel scope - not defined in any way.

4. The material scope is defined in Article 1 (Rozehnalová, 2013, pp. 158-159).

However, the relationship with international treaties is complicated. Regarding international treaties concluded between the EU Member States, the Rome II Regulation takes precedence (Article 28/2 and Rozehnalová, 2013, p. 155). In the case of other international agreements, the agreement takes precedence over the regulation. As regards the relationship between the conflict-of-law rules in the Rome II Regulation and the conflict-of-law rules determined by national law, such as the Czech law on private international law, the regulation takes precedence; this is based on the principle of the primacy of EU law.

Example:

A Czech skier injures a Slovak skier on a ski slope in Italy and causes health damage. This creates a non-contractual obligation between them, based on which the Czech skier is obliged to pay compensation to the Slovak skier. There is an international element, as both reside in another EU Member State.

The Regulation does not apply to revenue, customs, or administrative matters or the liability of the State for acts and omissions in the exercise of the State authority (acta iure imperii).

Example:

An Austrian businessman did not pay value-added tax in the Czech Republic. The Czech Republic thus suffered damage in the amount of 1 million Czech crowns. Although this is damage and has an international element, the Rome II Regulation will be not applied.

The Czech court decided to take a Polish national into custody. However, the detention lasted illegally long and the Polish citizen was harmed. These cases of state liability for damage are not affected by the Rome II Regulation either.

Article 1 (2) of the Rome II Regulation then lists specific areas that are not covered by the Regulation.

• non-contractual obligations arising out of family relationships. It can, for example, maintain obligations or matrimonial property regimes, and wills and succession (letters a) and b)).

• non-contractual obligations arising under bills of exchange, checks and promissory notes and other negotiable instruments (letter c))

• non-contractual obligations arising out of the law of companies and other corporate bodies (letter d). E.g. if a partner seeks damages from a company executive who has not acted under due diligence, the scope of the Rome II Regulation is excluded.

• non-contractual obligations arising out of the relations between the settlors, trustees, and beneficiaries (letter e))

• non-contractual obligations arising out of nuclear damage (letter f)

• non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

Example:

Mr. Ferenz, who resides in Budapest, claimed that Mr. Novák, who resides in Prague, had slandered him and asked Mr. Novák to apologize and compensate him for the non-pecuniary damage. This relationship is not regulated by the Rome II Regulation.

Damage is defined in Article 2/1: *damage shall cover any consequence arising out of tort/delict, unjust enrichment, negotiorum gestio or culpa in contrahendo.* Damage then includes property damage (e.g. destroyed house) or non-property damage (e.g. damage to health).

5.5.1 Habitual residence

The concept of habitual residence must be interpreted as so-called autonomously, i.e. the interpretation must be independent of the legal systems of the Member States. Under Article 23, *for the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. Where the event giving rise to the damage occurs, or the*

damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence. 2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

5.5.2 Rules for determining the applicable law

The Rome II Regulation is based on the principle of autonomy of will, i.e. that the parties may, with a few exceptions, agree on the applicable law. In the case of regulation of contractual relations, the choice of law is relatively common. In the case of the adjustment of non-contractual obligations, the situation is different; the choice of law is not so common. However, the parties can choose whether to choose the law ex-post or (Rozehnalová, 2013, p. 166). The procedure can be as follows. There was a loss event, such as damage to the property of person A (resident in Austria). The tortfeasor (domiciled in the Czechia) and the injured party have agreed under Article 14 that compensation for damage will be governed by Czech law. The basic provisions on the choice of law under Article 14 are as follows: *The parties may agree to submit non-contractual obligations to the law of their choice: (a) by an agreement entered into after the event giving rise to the damage occurred; or (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.*

The basic rule for determining the applicable law as set out in Article 4.

The first rule is set out in Article 4/1: *Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.*

Example:

Mr. Hans (resident in Germany) got drunk and destroyed the equipment of a restaurant in Vienna (the owner was Mr. Joseph's resident in Vienna). The applicable law will be Austrian, as the damage occurred here.

A special rule is then regulated in Article 4/2: *However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.*

Example:

Mr. Emanuel (resident in France) injured Mrs. Luissa (resident in France) on a bicycle in the center of Prague. Both the tortfeasor and the injured party are residents in France, i.e. in the same country, and therefore French law applies.

Another special rule is formulated in Article 4/3: *Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.*

Example:

Where it is clear from all the circumstances of the case that the delict is manifestly more closely connected with a country other than that indicated in paragraph 1 or 2, the law of that other country shall apply. A manifestly closer relationship with another country could be based in particular on an already existing relationship between the parties, such as a contract, which is closely linked to the delict in question.

In addition to this general rule, the Rome II Regulation provides for special conflict-of-law rules for the following situations:

- Product liability (art. 5)
- Unfair competition and acts restricting free competition (art. 6)
- Environmental damage (art. 7)
- Infringement of intellectual property rights (art. 8)
- Industrial action (art. 9)

If any of these special provisions apply, the general provision in Article 4 of the Rome II Regulation does not apply.

Chapter III then contains special provisions relating to the institutes of unjust enrichment (art. 10), negotiorum gestio (art. 11) and culpa in contrahendo (art. 12).

Examples:

An example of unjust enrichment may be the following. Person A is mistaken and sends the payment to someone else's account. B thus enriches himself without reason and is obliged to return the money. Article 10 then contains the applicable law.

An example of acting without an order is as follows. Neighbour B's house is on fire. Person A intrudes on his property by breaking into a house and saving things to a neighbour. Person A does so to avert the damage.

An example of pre-contractual liability may be the following. The parties have reached a stage in the negotiation of a contract that it is highly likely that the contract will be concluded. The parties have already exchanged information and other data. If one of the parties suddenly changes his mind and unreasonably terminates the contract negotiations, the negotiations may be qualified as dishonest and illegal. It can also be a misuse of information in the contracting process.

5.5.3 Application test

1. Choice of law - we will find out whether the parties have chosen the law applicable to the non-contractual obligation under Article 14

2. Special provisions of the applicable law according to Articles 5 to 9.

3. General rule - Article 4

5.5.4 Overriding mandatory provisions

The so-called a mandatory provision is contained in Article 16 of the Regulation: *Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation*. The purpose of this article is to prevent situations in which the application of foreign law would be dangerous. However, the Rome II Regulation does not define mandatory standards and must therefore be based on Article 9 of the Rome I Regulation: *Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.*

Safety rules will be an example of mandatory standards. These may be rules of misdemeanour law. If a person resides in the Czech Republic, this does not mean that they do not have to comply with, for example, the rules of road transport in Austria. These are rules of public law that must be respected. However, it can also be the norms of construction law, occupational safety, regulations regulating education or registration proceedings (Rozehnalová, 2013, pp. 191-193).

Example

A child (aged 10) residing in Austria was injured by a bicycle in the Czech Republic. There was a collision with a cyclist residing in the Czech Republic. The child did not have a bicycle helmet, which conflicts with Czech legislation. The amount of damage can thus be reduced because the child did not have a helmet. The child thus violated the rules of the road.

The provisions of Article 16 are then related to Article 26, which protects public order. *The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.*

5.5.5 Relationship with existing international conventions

The relationship to other conventions is then regulated in Article 28. It is primarily The Hague Convention on the law applicable to traffic accidents. This convention then regulates the law applicable to car accidents. In the event of a car accident, it is therefore necessary to apply the applicable law designated by The Hague Convention. Special agreements take precedence over the Rome II Regulation. *This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations*.

Questions:

1) What is the scope of the Rome II Regulation?
2) Define residence according to the Rome II Regulation?
3) Give an example of overriding mandatory provisions.

5.6 Alternative Dispute Resolution including Arbitration and Mediation, Online Dispute Resolution / Libor Kyncl

Alternative dispute resolution involves the resolution of disputes outside of the court system in the selected jurisdiction. It is being cited with a shortcut “ADR”, along with a shortcut “ODR” in place for the Online dispute resolution (vide below). ADR in general involves the following methods of resolving the disputes among parties:

- Mediation,
- Conciliation,

- Ombudsmen,
- Arbitration,
- Complaints boards.[92]

The contract could contain the following choices:

Example of the Choice of Law:

The contract shall be governed by the provisions of Czech Republic's law.

Example of the Forum Selection:

Disputes arising between contracting parties will be decided by the courts of the Czech Republic.

Example of the Arbitration Clause recommended by the Arbitration Court of the Economic and Agricultural Chamber of the Czech Republic:

"*All disputes arising from the present contract and/or in connection with it shall be finally decided with the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator appointed by the President of the Arbitration Court.*"[93]

Example of the Arbitration Clause recommended by the Arbitration Court of the Economic and Agricultural Chamber of the Czech Republic for on-line proceedings:

„*All disputes arising from the present contract and in connection with it shall be finally decided with the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one arbitrator appointed by the President of the Arbitration Court in accordance with the On-line Rules of the Arbitration Court.*

[92] Alternative dispute resolution for consumers | European Commission (europa.eu). Accessible at: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en.

[93] Arbitration Court (soud.cz). Recommended wording of arbitration clauses in contracts. Accessible at: https://en.soud.cz/recommended-wording-of-arbitration-clauses-in-contracts.

The parties select the following e-mail addresses for the conduct of the on-line arbitral proceedings: ...., ...“ [94]

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also abbreviated as "New York Arbitration Convention", has been concluded in 1958. It is applicable in the similar area as the Brussels I bis regulation for the recognition and enforcement of foreign court decision that has been mentioned above, but the New York Arbitration Convention is applied to recognition and execution of the arbitral awards that have been final in one of the contracting states. The contracting states are enlisted on the website of the convention.[95]

5.6.1 Online Dispute Resolution for Consumers

The European Commission has prepared the ODR platform to be used in all EU member states for unified contacting of the trader by the consumer:

- Online Dispute Resolution | European Commission (europa.eu).[96]

For the business where the students will probably work in the future, it has to be prepared to react on the submissions of their consumers in this system.

The Czech Republic has appointed Czech Trade Inspection as the authority in charge of the online consumer dispute resolution and the ODR platform use by the state.

5.6.2 Consumer Disputes in Some Financial Services

The Czech Republic, partially based on the European Union legislation, partially on its own initiative, has created the Office if the Financial Arbitrator, Government Agency as the dispute resolution body for the consumers on the financial market. The Financial Arbitrator, currently Mrs. Monika Nedelková from 2011 decides cases between consumer as the plaintiff and the following defendants (the law also specifically defines the services the petition to the Financial Arbitrator may regards):

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[94] Arbitration Court (soud.cz). Recommended wording of arbitration clauses in contracts. Accessible at: https://en.soud.cz/recommended-wording-of-arbitration-clauses-in-contracts.
[95] New York Arbitration Convention. List of contacting states » New York Convention. Accessible at: http://www.newyorkconvention.org/list+of+contracting+states.
[96] Online Dispute Resolution | European Commission (europa.eu). Accessible at: https://ec.europa.eu/consumers/odr/main/?event=main.complaints.screeningphase.

a) payment service provider, *b) electronic money issuer,* *c) creditor or intermediary arisen in connection with the offering, providing or mediation of the consumer credit or other credit, loan or other financial service,* *d) person managing or administering a administrator collective investment fund or comparable foreign investment fund,* [97]	*e) an insurer or an insurance intermediary in life insurance,* *f) money exchange provider,* *g) building savings bank or intermediary,* *h) person providing investment services,* *i) person which maintains an account other than payment account,* *j) beneficiary of a fixed lump-sum deposit.* [98]

Questions:

1) What is the difference between mediation and arbitration in the international trade (law)?
2) Define online dispute resolution.
3) What are the legal requirements given on the person of arbitrator(s) or on the member(s) of the arbitration court senate(s)?

Sources:

- Act no. 229/2002 Sb. on Financial Arbitrator as amended.
- Alternative dispute resolution for consumers | European Commission (europa.eu). Accessible at: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en.
- Arbitration Court (soud.cz). Recommended wording of arbitration clauses in contracts. Accessible at: https://en.soud.cz/recommended-wording-of-arbitration-clauses-in-contracts.
- Basic information | Office of the Financial Arbitrator (finarbitr.cz). Accessible at: https://finarbitr.cz/en/financial-arbitrator/basic-information.html.

[97] Slightly adapted and simplified list from Basic information | Office of the Financial Arbitrator (finarbitr.cz). Accessible at: https://finarbitr.cz/en/financial-arbitrator/basic-information.html and from § 1 section 1 Act no. 229/2002 Sb. on Financial Arbitrator as amended.
[98] Slightly adapted and simplified list from Basic information | Office of the Financial Arbitrator (finarbitr.cz). Accessible at: https://finarbitr.cz/en/financial-arbitrator/basic-information.html and from § 1 section 1 Act no. 229/2002 Sb. on Financial Arbitrator as amended.

- New York Arbitration Convention. List of contacting states » New York Convention. Accessible at: http://www.newyorkconvention.org/list+of+contracting+states.
- ROZEHNALOVÁ, N. Rozhodčí řízení v mezinárodním a vnitrostátním obchodním styku. 2. vyd. Praha: ASPI, 2008. ISBN 978-80-7357-324-9.
- Online Dispute Resolution | European Commission (europa.eu). Accessible at: https://ec.europa.eu/consumers/odr/main/?event=main.complaints.screeningphase.
- SLOVÁČEK, Jiří. Řešení sporů online [online]. Brno, 2017 [cit. 2020-07-08]. Accessible at: <https://is.muni.cz/th/s6kvs/>. Dissertation Thesis. Masaryk University, Faculty of Law. Supervisor of the work: Jiří Handlar.

5.7 Consumer Protection in International Trade Law including Consumer ADR and ODR / Libor Kyncl

The consumer protection is one of the key areas of the regulation by the European Union law and is also one of the EU's values.

Art. 169 section 1 TFEU

In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

Art. 12 TFEU

Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.

As it is obvious from art. 12 and art. 169 TFEU, the consumer protection needs to be implemented by additional European Union rules such as the ones in the directives. These directives also include:

A. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts as amended.

B. Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market as amended.
C. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights as amended.

The consumer is unfortunately not defined directly in the EU Treaties, we need to have a look into the aforementioned Directive 2011/83/EU into its art. 2 where the consumer is defined as "*any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession*".[99] His or her counterparty in the consumer contracts is a trader (a business without regard to the legal form).

Contract avoidance in so-called cooldown period (14 days after the delivery of the goods to the consumer unless the consumer was not properly informed about this option). If the consumer was not informed about this option, the period for contract avoidance may be prolonged.

The other relevant areas are the following:

- Obligatorily provided information for the consumer,
- Cooldown period and contract avoidance without stating a reason,
- Additional consumer protection for distant and electronic contracts,
- Additional consumer protection for off-premises contracts (concluded outside the business premises of the business),
- Additional consumer protection for consumer contracts in general,
- Prohibition of unfair practices,
- Prohibition of unfair contractual terms,
- Limitation of advertisements.

More detailed information and specific points on individual methods of consumer protection are contained in the course presentation on the consumer protection in the document server. (The consumer protection is mainly contained in the EU Business Law course.)

[99] Art. 2 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights as amended.

Questions:

1. Which European Union legal act and which national legal act in a selected country does define the concept of consumer ("spotřebitel" in Czech)?

2. Define the concept of the Alternative Dispute Resolution for the consumers.

3. Define unfair commercial practices.

Sources:

- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts as amended. Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01993L0013-20111212.
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive). EUR-Lex - 02005L0029-20220528 - EN - EUR-Lex (europa.eu), Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1585324585932&uri=CELEX%3A02005L0029-20220528.
- Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council. EUR-Lex - 02011L0083-20180701 - EN - EUR-Lex (europa.eu). Accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0083-20180701.
- SLOVÁČEK, Jiří. Řešení sporů online [online]. Brno, 2017 [cit. 2020-07-08]. Accessible at: https://is.muni.cz/th/s6kvs/. Dissertation Thesis. Masaryk University, Faculty of Law. Supervisor of the work: Jiří Handlar.

5.8 International Insolvency Procedure - EU Harmonization / Ondřej Pavelek

Insolvency law is an important branch of law. This issue is widely discussed. In the EU's internal market, companies are starting but also disappearing. Insolvency proceedings, such as bankruptcy, are often associated with the dissolution of companies.

Regarding freedom of establishment in the EU, it was also necessary to adopt a common regulation setting out the basic standards associated with insolvency proceedings. The EU institutions are particularly interested in the joint regulation of cross-border insolvency. The proper functioning of the internal market requires that cross-border insolvency proceedings be conducted efficiently and expeditiously. The activities of undertakings are increasingly having cross-border effects and are therefore increasingly governed by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market and a Union act is needed to coordinate the action to be taken against the assets of a debtor who is unable to meet his financial obligations. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings was therefore adopted. It is currently the most important legislative act in the field of cross-border insolvency in the field of EU law.[100]

Another reason for harmonization or unification of this area is the effort to reduce the so-called "forum shopping". EC is interested in preventing the transfer of assets from one state to another to reduce the creditor (explanatory memorandum to Regulation No. 2015/848).

5.8.1 Scope of regulation

This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation: (a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed; (b) the assets and affairs of a debtor are subject to control or supervision by a court; or (c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b) (art. 1).

100 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/insolvency-proceedings_en

As in other facilities, the subject matter of the regulation can be defined both positively and negatively. Negative definition, ie what the regulation does not affect *(a) insurance undertakings; (b) credit institutions; (c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or (d) collective investment undertakings*.

Insolvency proceedings are then defined differently in different states. In the Czech Republic, insolvency takes three different forms:

- audition
- reorganization
- debt elimination

5.8.2 Applicable law

The basic rule for the applicable law is set out in Article 7. The principle applies that the law applies according to the state of the forum. *Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened.* The law of the state where the proceedings were initiated then determines, for example, against which debtors the proceedings will be conducted, the substance of the proceedings, the effects of the proceedings, etc.).

5.8.3 Recognition of insolvency proceedings

The basic principle is set out in Article 19, which states that *any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings. The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States*.

Questions:

1) What are the insolvency proceedings?
2) Why has the EU decided to regulate cross-border insolvency proceedings?
3) How is the law applicable to insolvency proceedings regulated?

5.9 European Small Claims Procedure / Ondřej Pavelek

The purpose of the European Union is to build an area of freedom, security, and justice and to create an internal market. To achieve this purpose, it also seeks to simplify the law and make it effective. An example of this effort is the legislation in the area of small claims procedure.

The key piece of legislation is Regulation (EC) No 861/2007 Of the European Parliament and Of the Council of 11 July 2007 establishing a European Small Claims Procedure. *This Regulation establishes a European procedure for small claims (hereinafter referred to as the European Small Claims Procedure), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States. This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure* (art. 1).

In practice, there are often situations where the costs of litigation are higher than the value of the defendant's claim itself. In cross-border traffic, costs are rising. This regulation is therefore intended to increase the effectiveness of the law.

5.9.1 Scope of regulation

This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta jure imperii) (art. 2).

The regulation can be used against

- other business
- an organisation
- a customer

Here is the course of the proceedings: *Fill out Form A* *and send it to the court that has the jurisdiction over the claim. This could be in the country where your business is established or in the other EU country concerned.*

1. *Once the court receives the application form it must fill in its part of the* ***answer form****.*

2. *The court may ask you to fill in form B if they think you need to add more information.*
3. *Within 14 days of receiving the application form, the court must serve a copy of it — along with the answer form — to the defendant.*
4. *The defendant has to fill out their part of the* ***answer form*** *within 30 days.*
5. *The court must send you a copy of any reply within 14 days.*
6. *The court has 30 days after receiving the defendant's answer (if any) to:*

- *give a judgment on the small claim*
- *request further details in writing from either party (you or the defendant)*
- *summon the parties to an oral hearing (for oral hearings no lawyer has to be present)*

Source: *How does the claim procedure work?* Available at: https://europa.eu/youreurope/business/dealing-with-customers/solving-disputes/european-small-claims-procedure/index_en.htm

Questions:

1) What is the purpose of the Regulation establishing a European Small Claims Procedure?
2) Therefore, who can benefit from the Regulation?
3) What is the procedure?

5.10 Financing, Credits and Loans in the International Trade inside the EU / Libor Kyncl

The financing of international trade could generally be internal or external based on the source of the money which is used for that trade. External financing is based on equity, where is the source of money comes from own shareholders of the business, or on debt, where the money comes from the third person e.g. from the credit, leasing, loan, etc. The credit could be secured or non-secured.

Credit Contracts are contractual arrangements used to obtain or stabilize the financing required for international trade. Their parties are:

- Creditor (such as bank or credit union)
- Debtor (business or individual)
- Intermediary

Leasing is a type of credit contract / financial arrangement which provides the use of thing (land or vehicle) for payment during the stipulated time.

The costs of credit services involve:

A. Borrowing rate (interest rate),
B. Obligatory insurance costs,
C. Other costs included.

The following documents are used for the financing and execution of the sales contract:

- Sales Contract / Purchase Contract
- Carriage Contract
- Insurance Contract
- Pro-forma Invoice
- Advance Invoice
- Invoice / Tax Document
- Delivery Note
- CMR sheet
- Cash receipt
- Customs Declaration
- …

Students are advised to find the definitions of all of these documents and be able to explain their function in the exam.

More details are contained in the relevant presentation (Financing) contained in the document server of the course, please include them as the key source for learning this chapter.

Questions:

1) Define the parties of the credit contract.
2) What is the difference between a mortgage and an unsecured loan?
3) What is the role of the annual percentage rate of charge (APR) in the credit contract?
4) Are there some limitations regarding the advertisement on credit contracts?
5) Are there any specific areas of regulation for the credit and loans provided for a consumer?

Sources:

- European Commission. Annual percentage rate of charge calculator | European Commission (europa.eu). Accessible at: https://ec.europa.eu/info/publications/annual-percentage-rate-charge-calculator_en.
    - Including the recommended aprc-simulator.xls in the link above.

5.11 International Investment Disputes, ICSID / Ondřej Pavelek

The state has the right to decide who will invest in its territory. The state, therefore, has the right to control investments. However, there are a number of different international treaties that regulate foreign investment, thus reducing the role of the state in this area. Already during the 19th century, various agreements were concluded, the purpose of which was to protect foreign companies. The first agreement on the promotion and reciprocal protection of investments was signed in 1959 between Germany and Pakistan. There are currently over three thousand bilateral investment protection treaties. In the field of international investment law, there are a number of multilateral international conventions that regulate the protection of foreign investment. The most important The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Poláček, 2017, pp. 91 and 93).

International investment can then be defined using the following features - economic benefits, medium or long-term return, and the associated business risk. These are largely an economic feature of the investment; there is no legal definition (Poláček, 2017, p. 95-97).

5.11.1 International Center for Settlement of Investment Disputes

In the event of a dispute arising from the protection of investments, there are several options for resolving it. The first option is to use the International Court of Arbitration with the UNCITRAL Commission. The second way is the solution before the International Center for Investment Disputes. Other ways are the ad hoc arbitral tribunal (Pláček, 2017, pp. 101-102). The International Center for Settlement of Investment Disputes (ICSID or the Center) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention). The ICSID Convention

is a treaty ratified by 155 Contracting States. It entered into force on October 14, 1966, 30 days after ratification by the first 20 States.[101]

The International Center for Investment Disputes was established based on Article 1 of the ICSID convention. The seat of the Center shall be at the principal office of the International Bank for Reconstruction and Development. According to art. 18 ICSID, *the Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity: (a) to contract; (b) to acquire and dispose of movable and immovable property; (c) to institute legal proceedings*.

ICSID and the World Bank Group in nutshell

ICSID International Centre for Settlement of Investment Disputes WORLD BANK GROUP	THE WORLD BANK IBRD • IDA | WORLD BANK GROUP		IFC International Finance Corporation WORLD BANK GROUP	MIGA Multilateral Investment Guarantee Agency WORLD BANK GROUP
The International Centre for Settlement of Investment Disputes facilitates foreign investment by providing a multilaterally-agreed system for dispute settlement.	The International Bank for Reconstruction and Development lends to governments of middle-income and creditworthy low-income countries.	The International Development Association provides interest-free loans — called credits — and grants to governments of the poorest countries.	The International Finance Corporation helps developing countries achieve sustainable growth by financing investment, mobilizing capital in international financial markets, and providing advisory services to businesses and governments.	The Multilateral Investment Guarantee Agency promotes foreign direct investment into developing countries by offering political risk insurance (guarantees) to investors and lenders.

Source: ICSID Annual Report, available at: https://icsid.worldbank.org/resources/publications/icsid-annual-report

5.11.2 Jurisdiction of the Centre

The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally (art. 25/1 ICSID).

[101] ICSID Convention – ICSID. Accessible at: https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview.

In ICSID proceedings, several types of proceedings can take place. The applicant may choose one of them:

The first procedure is **conciliation**. According to Article 28, *any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party*. The proceedings are brought before the Conciliation Commission, whose member is the magistrate as chairman and an odd number of magistrates.

5.11.3 Arbitration

Under Article 36, *any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party*. The arbitral tribunal shall have jurisdiction.

The result of the arbitration proceedings is an award. According to Article 48, *the Tribunal shall decide questions by a majority of the votes of all its members. The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it. The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent. The Centre shall not publish the award without the consent of the parties*.

ISCID also offers remedies. The parties may thus request a review of the arbitral award. The grounds for challenging an arbitration award are set out in ISCID Article 52:

(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

States have committed themselves to no longer review arbitration awards. Therefore, if the arbitral award has not been reviewed in the ISCID procedure, it cannot be challenged and must be enforced by the State. *The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party*

shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention (art. 53).

On the issue of investment disputes between the EU Member States, we present an important ECJ decision of 2018 (C 284/16). Following the publication of this decision, the Member States agreed to negotiate the termination of bilateral investment protection agreements between the Member States.[102]

The facts of that decision were as follows:

As part of a reform of its health system, the Slovak Republic opened the Slovak market in 2004 to national operators and those of other Member States offering private sickness insurance services. Achmea, an undertaking belonging to a Netherlands insurance group, after obtaining authorisation as a sickness insurance institution, set up a subsidiary in Slovakia to which it contributed capital and through which it offered private sickness insurance services on the Slovak market. In 2006 the Slovak Republic partly reversed the liberalisation of the private sickness insurance market. In particular, by a law of 25 October 2007, it prohibited the distribution of profits generated by private sickness insurance activities. Subsequently, after the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) held in a judgment of 26 January 2011 that the prohibition was contrary to the Slovak constitution, the Slovak Republic, by a law which entered into force on 1 August 2011, once more allowed the distribution of the profits in question. Since it considered that the legislative measures of the Slovak Republic had caused it damage, Achmea brought arbitration proceedings against the Slovak Republic in October 2008 pursuant to Article 8 of the BIT.

The ECJ concluded that, *articles 267 and 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Czech and Slovak Federative Republic, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.*

[102] Declaration of the representatives of the governments of the member states, of 15 January 2019 on the legal consequences of the judgment of the court of justice in Achmea and on investment protection in the European Union. Accessible at: http://ec.europa.eu.

5.11.4 Restrictions on investment protection in the EU

Investment protection and restrictions in the EU have undergone a very challenging development, involving several actors. The Court of Justice of the EU has also recently intervened in it through its case law. Investment protection is part of the common commercial policy, which is of great importance in the EU and the Member States.

The most important legislative act in this area is Regulation (EU) 2019/452 of The European Parliament and Of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. *This Regulation establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investments likely to affect security or public order. It includes the possibility for the Commission to issue opinions on such investments* (art. 1).

Under Article 2, 'foreign direct investment' means an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity.

This Regulation gives Member States mechanisms to verify foreign direct investment in their territory for reasons of security or public order. The regulation also sets out the factors that will help determine whether an investment may have an impact on security and public order. Among the factors defined in Article 4/2 are, for example, whether the investor is controlled by the government of a third country or whether the investor is involved in criminal activity.

As part of preventive measures, Member States exchange information, which may include, for example, the organizational structure of the investor, etc.

Questions:

1) What is the function of the International Center for Investment Disputes?
2) What is conciliation and arbitration?
3) What are the restrictions on investment protection in the EU?

Sources:

- Court of Justice of the European Union decision in C-284/16 of 2018.
- Declaration of the representatives of the governments of the member states, of 15 January 2019 on the legal consequences of the judgment of the court of justice in

Achmea and on investment protection in the European Union. Accessible at: http://ec.europa.eu.

- ICSID Annual Report, available at: https://icsid.worldbank.org/resources/publications/icsid-annual-report
- ICSID Convention – ICSID. Accessible at: https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview.
- Regulation (EU) 2019/452 of The European Parliament and Of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

6 Selected Issues of International Trade Law - Non-state Contractual instruments

6.1 Structure of the Chapter / Libor Kyncl

- *INCOTERMS and their Significance for Evolution of International Trade / Libor Kyncl*
- *FIDIC and its Significance for Evolution of International Trade / Ondřej Pavelek*

6.2 INCOTERMS and their Significance for Evolution of International Trade / Libor Kyncl

International commercial terms stand for the set of all contractual rules of private law that are designed for the businesses to conclude sales contracts more easily by linking to the specific pre-defined standardized terms. These terms cover main options the sales contract could be executed in practice from the delivery of the goods in the premises of the seller up to the delivery of the goods via dispatching by post or by other transportation company to the premises of the buyer.

The International Chamber of Commerce which has created the INCOTERMS framework shows the following table of the current INCOTERMS 2020 commercial terms (ICC, 2020):

RULES FOR ANY MODE OR MODES OF TRANSPORT
EXW | Ex Works
FCA | Free Carrier
CPT | Carriage Paid To
CIP | Carriage and Insurance Paid To
DAP | Delivered at Place
DPU | Delivered at Place Unloaded
DDP | Delivered Duty Paid
RULES FOR SEA AND INLAND WATERWAY TRANSPORT
FAS | Free Alongside Ship
FOB | Free On Board
CFR | Cost and Freight

CIF | Cost Insurance and Freight

Source: Free Incoterms® 2020 introduction - ICC - International Chamber of Commerce (iccwbo.org), Accessible at: https://iccwbo.org/publication/incoterms-2020-introduction/.

The INCOTERMS exist historically in more groups divided by the number of duties of a seller who is increasing from E class through F class through C class up to D class.

INCOTERMS regulated three important areas of the sales contract the transfer of risks in the sales contract exactly sure the transfer of cost touring the truth and the transfer of duty to conclude the insurance for the goods. In some terms, the insurance is not regulated at all and therefore it is left up to the concluding by the contract parties.

What INCOTERMS do **not** regulate directly is the transfer of the title, i.e. the moment of obtaining ownership rights/property rights to the object of the sales contract – the traded goods. It depends on the national legal system of the governing law of the contract when the property rights are transferred from the seller to the buyer.

A. EXW means Ex Works in the full name while being the only term of the **E group.** Delivery is involving making goods available in the premises of the seller and buyer is loading and clearing the goods for export (!). All other activies form the responsibility of buyer.
B. **F group** of INCOTERMS is including FCA (for all modes of transportation), FAS, FOB (for sea and inland waterway transport):
    a. FCA that is designed for all forms of transportation means Free Carrier where seller has a duty to make the goods available for the carrier of the buyer, thus leaving all other risks and costs to the buyer. Seller has to clear the goods for export which is very convenient mainly in traind with businesses in the countries outside the EU. For non-container transportation, the FCA is advised to be preferred in comparison with EXW.
    b. FAS is a shortcut of Free Alongside Ship. In this commercial term, the seller has to deliver goods to the dedicated place in a port. Sellers Utes do not include loading, loading is a duty of the buyer. If the units are damaged in the process of loading, the seller has already delivered according to the contract and damaged goods are already under the risk of the buyer.

c. FOB means free on the board which is similar to FAS but in FOB the seller is required to load the goods on the transporting ship. If a crane brakes and the goods are damaged in the procedure of loading it is a liability of the seller and the goods have not been delivered properly.

C. The terms of the **C group** are CPT, CIP, CFR, CIF. They are very specific because of the difference between the payment of costs regarding the main transportation by the seller while the risks in the main transportation are already held by the buyer. The difference between CPT & CFR that do not contain specific rules for insurance while CAP & CIF contain insurance which is paid by the seller for all the main transportation time. The limit of the insurance is 110% of the value of the goods sold. This is the difference from the general case of sales contract where there are no requirements for the insurance and it is completely up to the parties whether they want to conclude the insurance or not or whether they include the insurance requirement clause in the sales contract. All the times the relationship between the policyholder and the insurance company depends on a separated contract that is usually concluded either in the form of the framework contract or in the form of the individual contract. The applicable law for insurance contract may be completely different and Hass to be accessed separately.

D. The **D group** of INCOTERMS involves the delivery at the designated place by the seller thus limiting duties for the buyer to a complete minimum. The D group of terms is the closest to the usual models of trading by consumers who very often receive goods by postal mail to their homes. It includes the following terms:

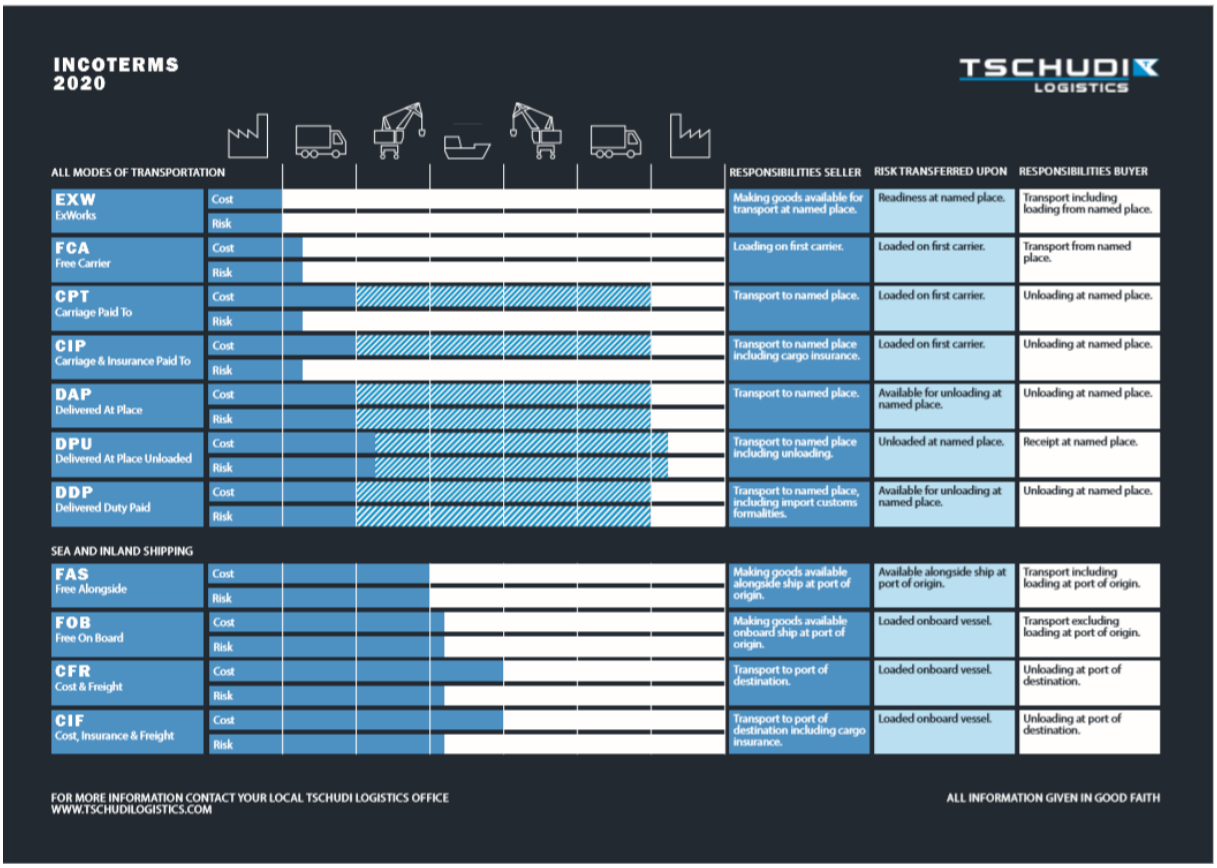
a. DAP where seller is covering both costs and risks to a designated point of destination, the seller clears the goods for import but does not pay import duties, the buyer unloads the goods and pays import duties,

b. DPU (new in INCOTERMS 2020, it was not present in previous versions including INCOTERMS 2010), main difference from DAP is that unloading in the point of destination is provided by the seller, the seller clears the goods for import but does not pay import duties, the buyer only pays import duties,

c. DDP, including the payment of import duties by the seller. The buyer unloads the goods with DDP.[103]

[103] Free Incoterms® 2020 introduction - ICC - International Chamber of Commerce (iccwbo.org), Accessible at: https://iccwbo.org/publication/incoterms-2020-introduction/.

More detailed information and specific points on teach term are contained course presentation on the INCOTERMS in the document server.



Source: Incoterms 2020 - what has changed? Download a free infographic (tschudilogistics.com). Accessible at: https://tschudilogistics.com/incoterms-2020/.

Questions:

1) Which INCOTERMS 2010 clause has been replaced by the INCOTERMS 2020 DPU clause?
2) Define the EXW Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.[104]
3) Define the FCA Incoterms 2020 clause. Determine what the seller and the buyer commit to, how the seller has fulfilled its obligation and whether there are any critical points. Please provide a specific example of the use of this clause.

[104] Template of this question in Czech has been created by Veronika Králíková as her employee work for Mendel University in Brno.

4) Define the FAS Incoterms 2020 clause. Determine what the seller and the buyer commit to, how the seller has fulfilled its obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
5) Define the FOB Incoterms 2020 clause. Determine what the seller and the buyer commit to, how the seller has fulfilled its obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
6) Define the CFR Incoterms 2020 clause. Determine what the seller and the buyer commit to, how the seller has fulfilled its obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
7) Define the CIF Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
8) Define the CPT Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
9) Define the CIP Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
10) Define the DAP Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
11) Define the DPU Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.
12) Define the DDP Incoterms 2020 clause. Determine what the seller and the buyer undertake, how the seller has fulfilled his obligation and whether there are any critical points. Please provide a specific example of the use of this clause.

Sources:

- Free Incoterms® 2020 introduction - ICC - International Chamber of Commerce (iccwbo.org), Accessible at: https://iccwbo.org/publication/incoterms-2020-introduction/.

- Faculty of Business and Economics of Mendel University in Brno. Variety of buying / selling models and INCOTERMS 2020 (!). Accessible at: https://is.mendelu.cz. Document server of MOPA.
- Incoterms 2020 - what has changed? Download a free infographic (tschudilogistics.com). Accessible at: https://tschudilogistics.com/incoterms-2020/.

6.3 FIDIC and its Significance for Evolution of International Trade / Ondřej Pavelek

The most widespread business conditions in construction (typically the supply of construction work) are the conditions of FIDIC (International Federation of Consulting Engineers, in French Fédération Internationale Des Ingénieurs-Conseils). The conditions were drawn up as early as 1913. The organization has been evolving throughout the twentieth century and is very respected today. It has member associations around the world. The basic principles on which FIDIC are based are quality, integrity and sustainability.[105] The advantage of FIDIC in practice is their great flexibility. They are then used mainly in public procurement.

The conditions can be divided as follows (Poláček, 2017, p. 224-226).

In the field of construction work delivery, the most widespread (1999) are:

• Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer, so-called red book. These are the conditions of general contractors. For these projects, the risks are mainly borne by the client.

• Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor, so-called yellow book.

• Conditions of Contract for EPC / Turnkey Projects: The EPC / Turnkey Contract, so-called Silver book

• In the area of business conditions and models for construction work, e.g. the Short Form of Contract is used: The Short Form, the so-called green book.[106]

The individual books developed and continued in terms of content. The so-called red book is from 1957 (Rozehnalová, 2010, pp. 416-417).

[105] The International Federation of Consulting Engineers. Official website. https://fidic.org/fidic-code-ethics
[106] https://fidic.org/bookshop/about-bookshop/which-fidic-contract-should-i-use

Questions:

1) What does FIDIC mean?
2) What are the benefits of using FIDIC?
3) Which FIDIC do you know specifically?

Sources:

- Xandra E. Kramer. The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: The European Private International Law Tradition Continued - Introductory Observations, Scope, System, and General Rules Nederlands Internationaal Privaatrecht (NIPR), No. 4, pp. 414-424, 2008
- https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/insolvency-proceedings_en
- https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview
- The International Federation of Consulting Engineers. Official website. https://fidic.org/fidic-code-ethics
- ROZEHNALOVÁ, Naděžda. Právo mezinárodního obchodu. 3., aktualiz. a dopl. vyd. Praha: Wolters Kluwer Česká republika, 2010. ISBN 978-80-7357-562-5.
- POLÁČEK, Bohumil. Právo mezinárodního obchodu. Praha: Wolters Kluwer, 2017. ISBN 978-80-7552-770-7.
- ROZEHNALOVÁ, Naděžda, Jiří VALDHANS, Klára DRLIČKOVÁ a Tereza KYSELOVSKÁ. Mezinárodní právo soukromé Evropské unie: (Nařízení Řím I, Nařízení Řím II, Nařízení Brusel I). Praha: Wolters Kluwer Česká republika, 2013. ISBN 978-80-7478-016-5.

7 Conclusions / Libor Kyncl

The goal of this book has been how to provide students with study material for the International Trade Law course at Mendel University in Brno, at the Faculty of Business and Economics.

The goal of the course is to introduce the students in the area of the international trade law, i.e. regulation of the international business and trading in the territory of the European Union so they can understand these rules and to apply them in various forms of decision making both in the public administration governance and mainly in corporate governance.

The students of the Faculty of Business and Economics are studying the area of economics and management along with more specific areas that are forming their study programmes according to the existing accreditations of studies. The legal regulation is therefore applied in practical cases and usual conditions that exist during the trading and businesses' operations all around the world.

The authors have discussed the different principles that have been introduced by the European Union including the trade, commercial, development policy along with the principles of the United Nations, UNCITRAL and World Trade Organization that are to be noted and implemented into business activities both in the Czech Republic and the European Union.

Because different parts of the book have been created by two different authors, the literature and resources are cited above in the chapters of the study book.

JUDr. Ing. Libor Kyncl, Ph.D.
Mgr. Bc. Ondřej Pavelek, Ph.D.

International Trade Law
Teaching Text

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