

MULTIDISCIPLINARY VALENCES OF INTERNATIONAL TRADE LAW

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Abstract

International Trade Law is a juridical subject presenting certain particularities since the analysis of the institutions of international trade law cannot be separated from the economical, political, social, geostrategic aspects, from the ones related to the sustainable development, even to the declaration of certain spaces as the common patrimony of humanity, as it is, at the same time, a subject having a continuous and ample evolution. International trade constitutes the object of this juridical matter containing norms of intern law, by organizing and regulating the foreign trade of every state, conflict norms applicable to the juridical reports of foreign trade and norms of international public law applicable to the commercial relations between the states. In this light, international trade law is an interdisciplinary juridical subject with different regulations. This paper wants to present the multidisciplinary valences of international trade law, in report to the juridical norms constituting the content of this subject.

Keywords: *International Trade Law, international trade, trade, juridical norms, conflict norms*

Introduction

Even if international trade was present everywhere in the history, its economical, social and political importance has increased during the last centuries and industrialisation, transport, globalisation and the multinational corporations had a major impact. The importance of this activity had determined actual concerns of regulation of the international commercial relations since the first years of the economical trades, following to decide some principles regarding the way of accomplishing these trades which are at first common, belonging to some peoples, regions or cities to the multitude of codified, national legislations of nowadays which are more and more completed by treaties, conventions and bilateral and multilateral agreements.

Therefore, the economy globalisation, the multiplication and the liberalisation of the international trades, the diversification of the economical actors have led, in time, to the consecration of a real international trade law¹. International trade law is a juridical subject having certain particularities since the analysis of the institutions of international trade law

¹ V. Gomez-Bassac, *Commerce international*, Editions Foucher, Paris, 2009, p. 8.

cannot be separated from the economical, political, social geostrategic aspects², the ones related to the sustainable development, even to the declaration of certain spaces as common patrimony of humanity³, as it is, at the same time, a subject having a continuous and ample evolution⁴.

Delimitation of the international trade notion

An analysis of the multidisciplinary valences of international trade law should start with the conceptual delimitation of the international trade notion. Thus, etymologically, the trade notion comes from the Latin *commercium*, which, by juxtaposing the words *cum* = with and *merx* =merchandise (meaning *with merchandise*), also offers the explication of the term expressing the idea of operations with merchandise⁵. Economically, trade is that activity whose purpose is the voluntary exchange of goods and services, whose main function consists of providing to the consumer the goods and the services they need⁶. The evolution of humanity and of the political-social structure has added new acceptations to the trade notion⁷. Therefore, the emergence of the national states has created the need to define the relations of commercial exchange between them. As a consequence of the emergence of the nation term, there is the international term coming from the association of the words *inter* and *național*, meaning between nations. This word, associated to the trading activity, defines the ensemble of the commercial exchanges accomplished by the nation states, namely every trade outside the sovereign states⁸.

Stricto sensu international trade means the operations of importing and exporting merchandises and services, developed by the natural persons and the juridical entities of a state or on foreign markets. *Lato sensu* international trade means the operations mentioned above, and also the operations of international economical and technical-scientific cooperation⁹.

In the conditions of multiplying and diversifying the international reports established in the sphere of international trade, it is imperative for their development to be accomplished in an organised and systematized framework. Correspondingly, the norms of international trade law offer the necessary instruments and means, providing the stability of the juridical reports¹⁰.

Definition of International Trade Law

International trade law is the science containing the law norms regulating the institutions and the juridical reports appearing in the sphere of the relations of exchange and international economical cooperation. This science is differently named in the specialty literature, namely: Commercial International Private Law, International Commercial Law. We

² V. Neagoe, I. R. Tomescu, *Geopolitică și strategii de securitate*, National Defense University Press, Bucharest, 2005, p.175-185.

³The common patrimony of humanity concept specified in the Resolution of UNO General Assembly no. 2749 (XXV) from December 1970 represented the basis of the negotiations of the third UNO Conference on Sea Law and it was subsequently taken over to the spatial law, considering the declaration of the Moon and of the other celestial bodies as a common patrimony of humanity (the Agreement governing the activity of the states on the Moon and the other celestial bodies from December 5th, 1979) and consecrated regarding the submarine territories beyond the limit of the national jurisdiction in the United Nations Convention on Sea Law from 1982. (L. M. Trocan, *Regimul juridic al teritoriilor submarine*, "C.H. Beck" Press, Bucharest, 2008, p. 91).

⁴<http://www.scribd.com/doc/49947611/Cours-de-droit-du-commerce-international>

⁵A. Giurgiu, *Comerțul intraeuropean – O nouă perspectivă asupra comerțului exterior al României*, Economical Press, Bucharest, 2008, p. 43.

⁶*Ibidem*, p. 44.

⁷In the occidental literature, there is the term of *foreign trade* (M. R. O. Curelar, *Dicționar juridic englez-român*, Academica Brâncuși Press, Târgu-Jiu, 2011, p.116) which if it initially had the acceptance of distance trade, as it was associated to the commercial exchanges of a human collectivity with another one, it currently considers the commercial exchanges of only one country or of an economical area such as the ones of free exchange or such as a custom union. (A. Giurgiu, op. cit., p. 45).

⁸A. Giurgiu, op. cit., p. 44-45.

⁹I. Macovei, *Dreptul comerțului internațional*, vol. I, "C.H. Beck" Press, Bucharest, 2006, p. 3.

¹⁰*Ibidem*, p. XI.

join the opinions considering that none of the names answers exactly to the juridical matter it regulates. This is why the most adequate name expressing the specific of the matter it regulates is International Trade Law¹¹.

Considering the particularities of this subject, the specialty literature expressed several viewpoints regarding the definition of International Trade Law. Thus, according to Professor T. R. Popescu, International Trade Law contains the norms governing the commercial relations overdrawing the intern or national framework of a state and having international adherences, with two or several national law systems¹². M. Costin and S. Deleanu define International Trade Law as an ensemble of conflict norms, civil law norms, commercial law and norms of uniform material law and, within certain limits, norms of international public law regulating the reports of international trade and economical and technical-scientific cooperation established between the participants to the world circuit of values and knowledge¹³. Professor Ioan Macovei shows that International Trade Law contains norms applicable to the patrimonial and personal-non patrimonial relations featured by commerciality and internationality, by means of which they emerge in the sphere of international trade, between the natural persons and the juridical entities, based on the equality of rights¹⁴.

Daniel Mihail Șandru defines International Trade Law as that law branch regulating the patrimonial reports between the subjects of international trade and having a commercial and international feature¹⁵. Professor D. Al. Sitaru defines International Trade Law as an interdisciplinary juridical subject, as it is constituted of the ensemble of the norms regulating the patrimonial reports, having a commercial feature, contracted between Romanian and foreign natural persons and juridical entities which are subjects of international trade law, inclusively between such persons or entities and the state – if the state acts *jure gestionis* – reports where the parties are judicially equal¹⁶.

Professor D. Mazilu appreciates that International Trade Law represents the ensemble of juridical norms regulating the international commercial relations and the ones of economical and technical-scientific cooperation¹⁷.

International Trade Law - an interdisciplinary juridical matter

By analysing the definitions presented above, we find the following aspect: the juridical reports established in the framework of the international trade activity constitute the object of this juridical matter containing norms of intern law, by organizing and regulating the foreign trade of every state, conflict norms applicable to the juridical reports of foreign trade and norms of international public law applicable to the commercial relations between the states. In this light, International Trade Law is an interdisciplinary juridical matter with different regulations¹⁸. The juridical norms mainly composing the International Trade Law are material norms of commercial law, of civil law and norms of civil processual law reunited in the framework of this juridical matter by their common object of regulation, namely the reports emerging in the framework of international trade and of international economical cooperation¹⁹. Therefore, the norms regulating the complex field of the international

¹¹*** Lexicon Promovarea și derularea exportului, Supplement to Economical Magazine, Bucharest, 1986, p. 238.

¹²T. R. Popescu, *Dreptul comerțului internațional*, University of Bucharest, 1975, p. 15.

¹³M. Costin, S. Deleanu, *Dreptul comerțului internațional – partea generală*, vol I, Lumina Lex Press, Bucharest, 1997, p. 13.

¹⁴I. Macovei, op. cit., p. XI.

¹⁵D. M. Șandru, *Dreptul comerțului internațional*, the 3rd edition, University Press, Bucharest, 2012, p. 10.

¹⁶D. A. Sitaru, *Dreptul comerțului internațional – tratat*, “Universul Juridic” Press, Bucharest, 2008, p. 86.

¹⁷D. Mazilu, *Dreptul comerțului internațional – partea generală*, “Lumina Lex” Press, Bucharest, 1999, p. 73.

¹⁸*** Lexicon Promovarea și derularea exportului, p. 238.

¹⁹D. A. Sitaru, op. cit., p. 87.

commercial contracts – the main juridical institution of International Trade Law²⁰ - are norms of material law, and the norms regulating the possibilities to solve the commercial litigations are norms of processual law²¹. The norms of International Trade Law are placed at the limit of the national juridical order with the international juridical order²² considering the fact that these norms are either contained in intern law sources, or they are uniform material norms contained in international conventions. In the specialty literature, there were different opinions regarding the inclusion or not of the conflict norms in the content of international trade law²³, applicable to international trade. There are authors stating that these norms enter the content of international private law and there are authors²⁴ appreciating that international trade law also includes the conflict norms in matter, meaning that the application sphere of the material norms is determined by the conflict norms applicable to international trade²⁵, a fact determining this law to appear as a material and conflict law at the same time²⁶. At the same time, next to these norms, it is appreciated that, in the content of International Trade Law, there are also other juridical norms that, by their nature, belong to other law branches, but having implications on the juridical reports making the object of this matter²⁷. Thus, we find such norms:

- of Constitutional Law – establishing the principles of the economical policy of the country, also having application to the international reports, and also the principle of trade liberty, of loyal competition protection (ex. art. 135, paragraph 2, letter a of the 1991 Romanian Constitution, amended by Amending Law no. 429/2003), the ones regarding the right to property of foreign citizens and of stateless persons (art. 44, paragraph 2 and 3 in the 1991 Romanian Constitution, amended by Amending Law no. 429/2003);

- of Administrative Law – regulating the system of export-import licenses and of other measures of control and surveillance of the operations of import and export, the contraventions in the field of the commercial operations abroad;

- of Financial, Currency and Custom Law – regulating the tax on the incomes of the commercial societies with foreign participation or on the ones of the foreign societies developing commercial operations on the territory of another state different from the one whose nationality belongs to the custom taxes;

²⁰Among the juridical realities of world trade, contract is undeniably the most important, complex and relevant one for this field. International commercial contract represents the main juridical instrument of accomplishing the circulation of values and knowledge at the planetary level, as it is the institution polarising and expressing the entire specific of international trade law. (Th. Mrejeru, B. C. Mrejeru, M. G. Mrejeru, *Neexecutarea contractului de comerț internațional*, “Rosetti” Press, Bucharest, 2001, p. 9).

²¹The norms of material law or the substantial norms directly regulate the juridical report, in its substance, while the norms of civil processual law – regulate the development of the civil process – they usually interfere only when the juridical report gets to a litigious phase, generates a civil process. At the same time, the norms of material law should not be mistaken by the material norms. This last syntagm assigns both the norms of material law (of civil law, of commercial law, of family law etc.), and the ones of processual law, when they are counterposed to the conflict norms, namely to those norms solving the law conflicts emerged as a consequence of establishing certain juridical reports with extraneity elements. (I. Reghini, Ș. Diaconescu, P. Vasilescu, *Introducere în dreptul civil*, Sfera Juridică Press, Cluj-Napoca, 2008, p. 9).

²²D. Mazilu, op. cit., p. 73.

²³The conflict norms is a juridical norm specific to international private law, solving law conflicts, namely it assigns the competent law system to govern the juridical report with an extraneity element, a report susceptible to be governed by two or several different law systems. (D. A. Sitaru, *Drept internațional privat*, Lumina Lex Press, Bucharest, 2000, p.25). The juridical report is only susceptible to be submitted to two or several different systems because, by the mechanism of the conflict norm, it is applied only one law system, namely the one indicated by the conflict norm. The law system determined as such is called the law of cause *-lex causae-*. (D. Lupașcu, *Drept internațional privat*, “Universul Juridic” Press, Bucharest, 2008, p. 11).

²⁴Ex. T. R. Popescu, B. Ștefănescu, O. Căpățînă, D. Mazilu etc.

²⁵I. Macovei, op. cit., p. 6.

²⁶D. A. Sitaru, op. cit, 2008, p. 87.

²⁷ Ibidem, p. 88-89.

- of International Public Law – entering the content of the interstate agreements in the commercial field and in the field of international economical cooperation, and also the application of the principles of international public law on the juridical reports which the state participates to²⁸;

- of Work Law – regarding the system of the foreign staff of the societies having the headquarters in another state different from the one whose citizenship belongs to the staff they have;

- of the Intellectual Property Law – regarding the contracts referring to the international transfer of technology, the international protection of the brands of factory, of trade and of services etc.

- of Criminal Law – regarding the offences²⁹ regarding the commercial activity of societies/legal person³⁰, as some laws consecrated to the commercial activity also contain criminal stipulations (for ex. Law no. 31/1990 regarding the commercial societies)³¹.

Conclusions

These aspects spotlight the fact that international trade law is a complex matter interfering with multiple law branches, offering thus specificity and originality³² to this subject, considering the fact that it is the result of the combination of many juridical norms which are usually registered to the national framework but where the presence of the extraneity element offers them a different size³³. All of these confirm the statement according to which international trade law is a multidisciplinary juridical matter in whose content there are juridical norms belonging to several law branches but mainly to branches of civil law, commercial law, civil processual law, constituting the common law applicable any time there are no special regulations in the matter. On the other hand, considering that the norms of international trade law, as they are proclaimed for regulating a category of social relations having a special specificity, consecrate certain particular solutions derogatory from commercial and civil law, which is able to offer to international trade law a certain autonomy to other law branches and justify its study in the framework of a special juridical subject³⁴. Therefore, the solutions stipulated by the norms of international trade law are configured by the commercial feature but also by the international feature of the reports it regulates³⁵.

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²⁸D. Mazilu, *op. cit.*, p. 82

²⁹ For details regarding the offences see E. G. Simionescu, *Fazele infracțiunii intenționate. Aspecte teoretice și practice*, Annals “Constantin Brancuși”, Juridical Sciences Serie, no. 4/2012, pp. 71-80.

³⁰ E. G. Simionescu, Penalties applicable to the juridical person in Romanian Criminal Law, COFOLA 2009, The Conference Proceedings, 1-st edition, Faculty of Law, Masaryk University, Brno, 2009, pp. 98-101; E. G. Simionescu, Recidiva persoanei juridice în reglementarea noului Cod Penal, Annals “Constantin Brancuși”, Juridical Sciences Serie, no. 4/2011, pp. 85-94.

(http://www.law.muni.cz/sborniky/cofola2009/files/contributions/Elena-Giorgiana%20Simionescu%20_976_.pdf)

³¹D. A. Sitaru, *op. cit.*, 2008, p. 88-89. Also, the Romanian Criminal Code includes offenses against patrimony of legal and natural person. (For details see I. C. Rujan, *Drept penal -partea specială*, I, Didactica and Pedagogică Press, Bucharest, 2007, p. 83-109).

³²H. Kenfack, *Droit du commerce international*, Dalloz, Paris, 2006, p. 7.

³³http://www.guglielmi.fr/IMG/pdf/Droit_du_commerce_internationalUQAM.pdf

³⁴D. A. Sitaru, *op. cit.*, 2008, p. 89. At the same time, international trade law has its own rules and specific institutions and this makes it a distinct juridical subject. (I. Macovei, *op. cit.*, p. XI).

³⁵I. Macovei, *op. cit.*, p. 19.

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