MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

„INTERNATIONAL TRADE PROTECTION FROM TRADE BARRIERS: ANTI-DUMPING AS A TRADE DEFENCE INSTRUMENT AND THE SETTLEMENT OF AD DISPUTES BY WTO"

verfasst von / submitted by

Klea Sena

Angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien, 2019 / Vienna 2019

Studienkennzahl lt. Studienblatt / Postgraduate programme code as it appears on The student record sheet:	A992548
Universitätslehrgang lt. Studienblatt / Postgraduate programme as it appears on the student record sheet:	European and International Business Law
Betreut von / Supervisor:	Univ. Prof. Dr. Dr. hc. Peter Fischer

Table of Content

TABLE OF CONTENT

ABREVIATIONS

Introduction 4

CHAPTER I

1. A Brief History of International Trade Law... 6

CHAPTER II

2. The Concept and Nature of International Trade Law.. 8
   2.1 The concept of Law of International Trade 9
      2.1.1 Meaning of International 10
      2.1.2 Meaning of Trade 11
      2.1.3 The Difference between International Trade Law, International Business Law and International Economic Law 12

CHAPTER III

3. Sources of International Trade Law...14
   3.1 Hierarchy of Sources of International Trade Law 14
   3.2 International Trade Agreements as Primary Sources 15
      3.2.1 Bilateral and Multilateral Trade Agreements 15
      3.2.2 Universal and Regional Trade Agreements... 17
   3.3 Other Sources of International Trade Law 18

CHAPTER IV

4. Trade Barriers as Stumbling Stones to International Trade....................................... 19
   4.1 General Overview of Barriers 19
   4.2 Different Forms of Trade Barriers.. 20
      4.2.1 Tariffs one of the Major Forms of Trade Restriction 20
      4.2.2 Non-Tariff Barriers and its Core Types 26
         4.2.2.1 Subsidies as part of Aid Policies 27
         4.2.2.2 Quotas as part of Non-Tariff Barriers...34
         4.2.2.3 Import Licencing as part of Non-Tariff Barriers 35

CHAPTER V

5. International Trade War and Trump Tariffs 36
   5.1 The Trade Conflict Between U.S and EU 37
      5.1.1 General Information Regarding U.S and EU Trade Dispute...................... 38
      5.1.2 Tension in the Decision-Making Process in Trade Policy......................... 38
      5.1.3 Possible Solution regarding EU Trade Policy and Trade Conflicts with U.S 39

5.2 The Trade War between U.S and China 40
5.3 The Trade Dispute of U.S with Mexico and Canada 41

CHAPTER VI

6. Anti Dumping as a Panoply of Trade Liberalization and WTO Dispute Settlement Procedure 42
6.1 Anti Dumping as a Trade Defence Instrument 43
6.1.1 Dumping in General 43
6.1.2 The Legal Framework and Notion of Anti Dumping 44
6.1.3 Anti- Circumvention issue regarding Anti Dumping 46
6.1.4 The EU and Anti- Dumping 47
6.1.5 Anti- Dumping versus other Trade Defence Instruments...........................48
6.2 The Settlement of Anti-Dumping Disputes by WTO. 50
6.2.1 Identification of Measure by WTO 50
6.2.1.1 Guatemala- Cement I Case Ruling 50
6.2.1.2 Appellate Body Report U.S- 1916 Act Case Ruling 51
6.2.2 Special Standard of Review under Article 17/6 of the ADA.......................52
6.2.2.1 Panel Report and Appellate Body Report, EC- Bed Liner Ruling.........52
6.2.3 Procedural Issues regarding Claims 53
6.2.4 Recommendations and Suggestions made by Panels 53

RESULTS AND DISCUSSIONS **54**

CONCLUDING REMARKS **55**

BIBLIOGRAPHY **53**

ANNEXES **58**

Table of Abbreviations	
AD(A)	Anti Dumping Agreement
AILP	Agreement on Import Licencing Procedures
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EFTA	European Free Trade Association
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
ICJ	International Court of Justice
ITO	International Trade Organization
MEO	Market Economy Operator
MFN	Most Favoured Nation
NAFTA	North America Free Trade Agreement
NTB	Non-Tariff Barriers
PPA	Protocol on Provisional Application
SCMA	Subsidies and Countervailing Measures Agreement
SPS	Sanitary and Phytosanitary Measures and Agreement
TBT	Technical Barriers to Trade
TFEO	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
USMCA	United States-Mexico-Canada Agreement
WTO	World Trade Organization

INTRODUCTION

A. Study motivation, aims and objectives

At this point of time, we are living in an age of globalization and technological innovation. Rapid international trade growth, political interests and different business strategies, combined with our lack of understanding about how international trade works, have created a mess. The Gordian knot of this is not the globalization or liberalization of trade but the absence of an effective global policy and governance. In the past several decades, international trade law has played an important role in the free flow of goods and services all around the world. However, there are numerous challenging issues arising in this domain and new approaches are needed in order to illuminate and give solutions.

The last couple of years once we open the TV, the newspaper or our gadgets to read and be informed about the daily news, we come across the following concepts: Trump tariffs, trade barriers, trade wars, NAFTA, CETA, and less often anti-dumping. But what does all these concepts mean?! Following this line of thoughts, for this thesis, it was of immense interest to give the once-over on the legal analysis of the main issues disturbing international trade law. Moreover, we meticulously analyse topics such as trade liberalization, protectionism, trade agreements, WTO rules and so one. To bring down the curtain, the overall goal of this work is to investigate the duo logical pattern of trade barriers and how international trade can be protected from trade wars.

B. Central research and investigative questions

As the leader Elijah Muhammad says: “asking good questions is half of learning”. Bearing into mind that research questions and hypothesis are the foundations and catalysts of a research work, this thesis has six main questions, which are divided in the following four categories: exploratory, casual, correctional and descriptive legal question. The questions are as follows:

a) Does free trade improves the world’s economic growth by providing consumers and undertakings with the best products at the best price?

b) To what extend does trade liberalization benefits developed countries or/and transitional corporations?

c) The imposition of tariffs and other protectionist policies must be strongly discouraged as they: reduce trade, affect final consumers and harm producers?

d) Protectionist tariffs must be allowed only on the ground of a trade defence instrument.

e) Are Trump tariffs leading toward s global trade war and not to fair, bilateral trade deals?
f) How accurate is that WTO has failed to fulfil its main objectives such as the implementation of international trade rules, settlement of trade disputes, trade liberalization, cooperation with other economic institutions and help countries to take advantage from free trade?
However, there are many other sub-questions raised throughout this thesis.

C. Methodology, methods and structure of the thesis

There numerous methods used in this thesis in order to achieve a comprehensive work and make it more comprehensible for the reader. First things first, one of the methods used in this thesis is induction and deduction. The former is one of the most important methods of scientific research. Induction represents a reasoning process in which it is passed from particular facts to general conclusions. In contrary, deduction is the other way round. It begins from some general matters and passes to specific conclusions. Secondly, the reader may notice the usage of the analysis and synthesis methods. Both have a universal character. Analysis represents the division of the object being studied in its basic form. Synthesis represents a summation of the elements of the object. In addition, historical and logical methods are practiced throughout the thesis. Last but not least, comparative method is the most applicable method and consist the "heart" of scientific researches.

This thesis is divided in four main parts and six chapters. The first part of the work has as a focal point international trade law and includes Chapters I, II, III. Chapter I briefly mention a historical overview of international trade law while chapter II provide the concept and notion of international trade law. The following chapter present the sources and legal basis of this field. The second part include chapter IV and V. The former is concentrated to trade barriers and with great details describe the notions of subsidies, tariffs, quotas, import licencing, protectionism, liberalisation et cetera. The next chapter is focused on international trade wars and Trump tariffs. The reader will be provided with information regarding the conflict between U.S and EU, China, Mexico and Canada. The third part include chapter VI and spotlight the importance of anti-dumping as a trade defence instrument and the settlement of AD disputes by the WTO mechanisms, including case law studies. Lastly, part IV mentions the results.

"What we learn with pleasure we never forget"
-Alfred Mercier

PART I

CHAPTER I

1. A brief history of international trade law

The main purpose of going back to the earlier times of international trade (law) and its evolution throughout the years, is to create a better understanding of this thesis and to acknowledge international trade around the world. Generally, digging into history is the most necessary tool in order to understand the present and be prepared for the future. This chapter covers the timeline of international trade law from the ancient period till now. Furthermore, analyse *"lex mercatoria"* and its influencing role in the creation of the new international trade law legislation.

In general, international trade has existed since the ancient times of the world's history. The first civilizations were trading goods with each other and soon they understood the benefits of such kind of "exchange". However, besides the presence of trade, it is impossible to discuss the existence of a legal act or agreement regulating such relations. The notion of international trade had the simple meaning of "trade over long distances". Nevertheless, the dilemma whether such kind of trades bring benefits or damage national interests is a topic that was raising roofs from ancient times till present days.

The history of long-distance trade in post Ancient times and during Middle-Ages was progressive since merchants from all over Europe started to use two major corpus of legal systems known as *"lex mercatoria"* (from the Latin for Law of Merchants) and *"lex maritime"* (from the Latin for Maritime Law). In medieval Europe, trade was the main activity besides warfare and diplomacy which involved regular contracts between persons from different territories engaging them with extra-territorial trade.[1] Hence in this way, the Western World started to rise little by little.

The Law of Merchant was created by European merchants and traders as a need for having a specific jurisdiction in that field. This body of laws was administrated by special courts and it functioned as the international law of commerce.[2] Back to that time, there were enormous

[1] Edda Frankot *"Medieval Maritime Law from Oleron to Wisby: Jurisdiction in the Law of the Sea"* University of Groningen/University of Aberdeen, pg. 1.
[2] Sealy and Hooley (2008) 14.

obstacles encumbering trade growth. For instance, as trade was becoming bigger merchants had difficulties in monitoring other's behavior within the community or protect trade from fly-by-night foreign merchants. Those were the main reasons that led to the creation of a written legal act. On the other hand, apart from the law of merchants on land, there is also the law of merchants on sea.

Following this line of thoughts, it was also necessary to regulate trade on sea. Taking into consideration that trading methods were limited, shipping was the most common way to export and import extra-territorial goods. The first steps toward such regulation are appeared during the twelfth century with the regulation of Scandinavian shipping. The very first law of the sea is known as "judgments of the sea" and contained regulations for the wine trade. In addition, was considered to be part of the customary sea laws. In contrast, the second biggest legislation known as Wisby law was part of the maritime regulations in town laws.[3]

Although *lex mercatoria* and *lex maritime* is a very interested topic to be discussed, this thesis set aside further information regarding this field. The main purpose is simply to remark that the modern international trade law is deliberated as the new *lex mercatoria* and to provide a general overview of trade legislation during those times. Henceforth, the law of merchants is the cell and starting point of international trade law. Despite the differences between them, the main priorities of good trade, fairness and equity remain the same.

The upcoming Modern period is of paramount importance since a number of historical events regarding international trade law occurred. The first international free trade agreement, the Cob den Chevalier Treaty, is finalized in 1860 between the United Kingdom and France, prepared by Richard Cob den and Michel Chevalier; it sparks off successive agreements between other countries in Europe. The Japanese Meiji Restoration (1868) leads the way to Japan opening its borders and quickly industrialism through free trade. Under bilateral treaties restraint of trade imports to Japan were forbidden. In 1873, the Wiener Berserk slump signals the start of the continental Long Depression, during which support for protectionism grows.[4] Furthermore,

Here is worthy to clarify the difference in international law of commerce (trade) and international commercial law. The latter is the body of legal norms and rules regulating trade or commercial relations including an international element. Thus, not only international but also national law is included. In contrary, the former excludes the national law dealing with trade issues.

[3]Edda Frankot *"Medieval Maritime Law from Oleron to Wisby: Jurisdiction in the Law of the Sea"* University of Groningen/University of Aberdeen, pg. 2-3.

[4] International Monetary Fund Research Dept. (1997). World Economic Outlook, May 1997: Globalization: Opportunities and Challenges. International Monetary Fund. p. 113.

during the 1930s the United States' decision to put up trade barriers ended up leading to a worldwide depression, and some say, World War II.[5]

After World War II devastation, countries understood that is better to trade rather to fight. Under those circumstances twenty-three countries in Geneva on 30 October 1947 signed one of the General Agreement on Tariffs and Trade.[6] The latter is a legal instrument that encourage international trade by steadily reducing or eliminating trade frontiers (further information on Chapter III). Moreover, the GATT was accepted through the Protocol on Provisional Application (PPA) and was set up as an interim agreement pending the establishment of International Trade Organization. However, At the present time, the Agreement Establishing the World Trade Organization [7] consists the leading legal agreement regulating trade relationships and disputes.

The WTO Agreement was signed on 15 April 1994 as a result of the Uruguay Round and consists the most efficient and complete legal instrument of international trade law. It is worthy to mention that the agreement, widen the scope of trade protection by including not only GATT but also the General Agreement on Trade and Services,[8] Agreement on Trade-Related Aspects of Intellectual Property Rights[9] and the Dispute Settlement Rules.[10] All these agreements are considered as one corpus and when a country signs the WTO Agreement, automatically is party to the other agreements. More details on WTO Agreement are provided on Chapter III.

To summarise, the history of international trade law is an evidence that the contribution of free and fair international trade to the world's economic growth have wide applicability and should be of wide interest. In addition, as Winston Churchill says: "Those who fail to learn from history are boomed to repeat it".

[5] Randy Chasrles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 48.
[6] GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994].
[7] WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) [hereinafter Marrakesh Agreement or WTO Agreement].
[8] General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS].
[9] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].
[10] Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994) [hereinafter DSU].

CHAPTER II

2. The concept and nature of international trade law

2.1 The concept of "law of international trade"

For this study, it was of interest to investigate and analyze the meaning of international trade law. The concept of the law of international trade is a genteel term, sometimes commonly used and not correctly defined. Thusly, the burning question arises: What do we understand with international trade law? The two major legal traditions (common law and civil law) have different approaches regarding this issue. In common law countries, international trade law is part of international economic law or international business law. Contrarily, in civil law countries for international trade transactions prefer to use the terminology of international commercial law or international trade law. This turns out to be a straightforward problem because the terms sometimes are conversely used by academics without defining them.[11]

A challenging problem which arises in this domain is the interpretation of "international trade law". The Gordian knot between the narrow and broad interpretation is the fact that on the one hand, there is an overlap between public and private law and on the other hand by narrowing the definition we exclude relevant economic public matters that shall be covered by the law of international trade. Accordingly, one way to overcome this problem is to define the concept of international trade law in a way that provide workable framework by giving effect to transnational trade agreements. Regarding to the definitions made for international trade law, the following are the most accurate based on the respective interpretations :

Broad Interpretation	***Narrow Interpretation***
"International trade law is that set of legal rules such as customary international, international agreements and domestic law which regulate economic relations including actors in two or more countries".[12]	"International trade law is the body of rules governing commercial relationships of a private law nature involving different countries".[13]

[11] Chia-Jui Cheng "Basic Documents on International Trade Law", fourth revised edition, Wolters Kluwer International BV, The Netherlands, 2012, pg. 45.
[12] Chia-Jui Cheng "Basic Documents on International Trade Law", fourth revised edition, Wolters Kluwer International BV, The Netherlands, 2012, pg. 39.
[13] See, Official Records of the General Assembly, Twenty-first Session, Annex, Agenda Items 88, document A/639; Yearbook of UNCITRAL, Vol. 1, 1970, p. 18.

Based on the first column, international trade law covers the behaviour of governments, private business activities and international finance and foreign investment. It is crystal clear that this is a very broad interpretation and puts into dilemmas the dichotomy of public and private law. The blazing question is: Does such definition disrupt the division of law and hence break up a system of law in its entirety? According to civil law system, the short answer is yes.

Many legal witters from civil law countries disagree with this definition. They argue that the broad interpretation includes national and international legal norms and external legal order of *lex mercatoria*. Ergo, such broad definition is inefficient, complex and uncertain. The main objective is to keep private and public law *de jure* and *de facto* distinctive. Consequently, international trade law would be in serious danger of loosing its legal unity as an autonomous branch of private law.[14]

In the final analysis, there are two theoretical and conceptual frameworks for international trade law. The first one is the public aspect which coordinate commercial policies of a country and is part of the international public law. Secondly, the civil aspect of international trade law which is covered by international private law and is part of the national legal system. This thesis considers the field of public international trade law as the main subject of its study. However, to illuminate the definitions made in the preceding pages, this work examines the divergent elements of "international trade law".

2.1.1 Meaning of "international"

The word international is commonly used to differentiate national trade transactions and those that are international or 'transnational'. The latter term is used to describe rules of law that governs cross-border relationships and transactions.[15] As Lewis Carroll says: "When I use a word, it means just what I choose it to mean, neither more or less".[16] With this in mind, the word international can be interpreted in three different ways:

i. The international character of the legislation
ii. The international nature of the transaction
iii. The international nature of the parties/actors

[14] Chia-Jui Cheng "Basic Documents on International Trade Law", fourth revised edition, Wolters Kluwer International BV, The Netherlands, 2012, pg. 38.
[15] See Jessup, "*Transnational Law*" (Yale University Press, 1956).
[16] Referred to Humpty Dumpty in Lewis Carroll's *"Alice through the Looking Glass"* (1871).

An open problem regarding the international character of the legislation is that there is a misconception between international trade law and international law of trade. The word "international" defines the cross-boarder character of the transaction, including domestic and international law. In contrary, the word "international" in the case of international law of trade, has a narrower meaning since covers only the character of the legislation while the transaction is purely domestic or national.

Apart from the legislation, the foreign element must also be present to the transaction or/and to the parties. With international trade we understand: "the exchange of goods or services along international borders. This type of trade allows for a greater competition and more competitive pricing in the market. The competition results in more affordable products for the consumer. The exchange of goods also affects the economy of the world as dictated by supply and demand, making goods and services obtainable which may not otherwise be available to consumers globally."[17]

2.1.2 Meaning of "trade"

Trade shall be interpreted in the wider sense in order to include all kind of commercial transactions. Following this line of thoughts, trade can be defined as a commercial transaction involving the sale and purchase of a good, service, or information. [18] Another definition is provided by the Oxford English Dictionary, as follows: " the buying and selling or exchange of commodities for profit".[19] In addition, with commodities we understand all things produced to serve for the advantage of humankind.

The meaning of trade has changed over the years. Today we trade by exchanging money not only for goods but for services and information as well. The main practical problem that confronts us is the distinction between the terms "trade", "business" and, "commerce". The latter can be understood as the exchange of goods or services for money or in kind, usually on a scale large enough to require transportation across city, state, or national boundaries.[20] On the contrary with business we understand an organization or economic system.

[17] See: international trade. BusinessDictionary.com. Retrieved April 21, 2019, from BusinessDictionary.com website: http://www.businessdictionary.com/definition/international-trade.html
[18] See: trade. BusinessDictionary.com. Retrieved April 21, 2019, from BusinessDictionary.com website: http://www.businessdictionary.com/definition/trade.html
[19] Oxford English Dictionary, third revised edition, 1970
[20] See: http://www.businessdictionary.com/definition/commerce.html

2.1.3 The differences between international trade law, international business law and international economic law

Recent theoretical developments have revealed that international trade law, international business law, and international economic law are three different areas of law. The up mentioned areas are not identical but inter-related with each other. It is of interest to know whether those theoretical developments still hold true. After having defined the concept of international trade law it is of an intense desire to understand the subtle differences between those autonomous bodies of law.

International business law is the area of law which regulates international business transactions and legal or economic aspects of transnational corporate organizations. In addition, as any business law, governs the legal structure of international business organizations or enterprises. Moreover, although international economic activities are regulated by international business law, business enterprises are subjects to national law. This can be seen in the European Union, where corporates are not subject of EU law but domestic law. More specifically and in accordance with the European Court of Justice (ECJ):

> "It should be born in mind that, unlike natural persons, companies are creatures of the law and, in the present state of Community law, creatures of national law. They exist only by virtue of the varying national legislation which determines their incorporation and functioning". [21]

On the other hand, international economic law is influenced by the theories of Adam Smith[22] and David Ricardo [23] on absolute and comparative advantage, economy of scales and much more. Generally, can be described as the body of legal norms which regulates international marketing and finance. At the same time, covers all relevant economic policies and the impact of international institutions. International economic law consist the rock bottom of international trade law. Therefore, the latter is part of the former and accordingly narrower in scope and practice.

[21] Case C–81/87 The Queen v Treasury and Commissioners of Island Revenue, ex parte Daily Mail and General Trust PLC (1989) I All E.R. 328.

[22] See: Adam Smith *"The Wealth of Nations"*, Shine Classics, 2014.

[23] See: David Ricardo *"The principles of Political Economy and Taxation"*, London, New York: Dent & Sons, 1911.

2.2 The legal nature of "law of international trade"

For decades, one of the most popular ideas in international trade literature is the idea that the legal nature of this specific field is dynamic and complex. The question is, why international trade law has such nature and what does this mean?! The dynamic character prescribes the capability of not being static in the course of time. To put it differently, the ability of changing or being changed and at the same time remaining effective with the passage of time.[24] The dynamic nature is far-reaching since international trade is in parallel line with globalization and technological development. Therefore, with the increased international integration of economic activities and the generation of innovation, international trade law must be flexible and adaptable. [25]

Equally important is the complexity of international trade law. This field has to deal with issues involving heterogeneity of customers, traders and currencies belonging to different legislations. Additionally, covers divergent topics relating to trade barriers, shipping, transportation, tariffs, quotas and so on. Furthermore, the distinction between public international trade law and private international trade law makes it more and more complex. Many legal scholars are on a second thought when it comes to the legal nature of trade law in the international public sense, due to the lack of an autonomous and sovereign authority to enact such laws. However, those theories cannot hold since there are numerous of international treaties, conventions and international institutions (such as: WTO, NAFTA, GATT and so forth) taking care of international trade issues.

Last but not least, international trade law is also autonomous, modern and comprehensive in nature. As previously mentioned, has its own bunch rules and regulations, consisting a separate category. Compared to other fields of international public and private law, international trade law is a more recent and less-advanced field. Nevertheless, there are copious of non-exhaustive international trade agreements and national trade legislations. In due time, those agreements and rules have served for the harmonization of international trade law and consist some of the primary sources. The following chapter will meticulously investigate and analyse the zip sources of (mainly) public and private international trade law.

---

[24] See: dynamic. BusinessDictionary.com. WebFinance, Inc. http://www.businessdictionary.com/definition/dynamic.html (accessed: April 25, 2019).
[25] Paul, Joel R. *The American Journal of International Law*, vol. 94, no. 1, 2000, pp. 206–209. *JSTOR*, www.jstor.org/stable/2555247.

CHAPTER III

3. Sources of international trade law

3.1 Hierarchy of sources of international trade law

To our knowledge, the legal framework of international trade law is based on several sources such as: universal and regional trade agreements, customary trade law, general principles, national legislation, jurisprudence and doctrine.[26] Considering that this thesis focuses on public international trade law we, therefore, outline the utmost sources under the scope of public domain. Generally, international public law stands on a specific hierarchy of sources. Such hierarchy smokes out potential contradictory provisions between different sources and apply to an efficient legal system. As provided by article 38 of the Statute of International Court of Justice (ICJ):

> "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states ;
>
> b. international custom, as evidence of a general practice accepted as law;
>
> c. the general principles of law recognized by civilized nations ;
>
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified..."[27]

Analogously, the hierarchy of legal sources laid down in article 38 of the Statute of ICJ is also applicable to public international trade law as a separate discipline and area of international public law. Likewise, based on the broad and objective interpretation of the upper mentioned article, international trade treaties and agreements[28] are the primary sources, followed by customary trade law and general trade/WTO principles. In due time, jurisprudence and doctrine are ranked at the final stage of the pyramid. On the other hand, for private international trade law, the hierarchy depends on the relevant applicable law.

---

[26] Legal sources can be defined as: all relevant provisions operating within the legal system and which serve as the basis for the creation of legal norms.

[27] Charter of the United Nations and Statute of the International Court of Justice 1945, § 38 (1).

[28] Vienna Convention on the law of treaties, 23 May 1980, § 2 (1) (a): "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

3.2 International trade agreements as primary sources

International trade treaties and agreements consist the principal source for international trade. For many countries, their abstract and technical legal character make them the most preferred and widespread form to regulate their trade relationships. What is unique with international trade agreements is the fact that, most of the times they are not affected by various conflicts between the contracting parties. Their main aim and interest are to regulate a particular area by safeguarding the effective function of international agreements. Predominantly, international agreements are a mean to achieve a goal, and not a goal in themselves. There are two important categories of international trade agreements or treaties: a) universal and regional, b) bilateral and multilateral.

3.2.1 Bilateral and multilateral trade agreements

Modern trade law is influenced by numerous factors, such as globalization, technological innovation, intellectual property, and service sector. The ongoing growth of those areas and need for protection, combined with the lack of a stable (trade) legal structure, created vast problems in the international trade arena. Those were complex problems and to simplify them a new regime was required. Likewise, the "big boom" occurred during the 1940s with the establishment of multilateral trade law, inspired from prior bilateral agreements. The transition process from bilateral to multilateral free trade agreements was easier said than done. Nonetheless, the climax of international trade law was achieved in 1948 with the GATT agreement and in 1995 with the establishment of WTO.

When two countries get together to regulate trade in goods and/or services, they probably end up establishing a bilateral trade agreement. However, these kinds of agreements are gradually falling out of favour and countries prefer more inclusive "multilateral" accords. The latter are agreements between three or more trading partners.[29] There is an old riddle that says five frogs sitting on a log. Four decide to jump off. How many are left? The answer is five, because four "just decided" to jump off. There is a big difference between deciding and doing.[30]

In the same manner, by the ninetieth century, many states decided to promote international free trade by crystallising this approach into bilateral trade treaties or agreements. However, few

[29] Randy Chasrles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 182, 214
[30] John C. Maxwell *"The 15 Invaluable Laws of Growth",* Center Street, New York, pg. 25

states took action to make this approach reality. Britain was one of the helping hands of free trade together with French. The latter countries, established the Anglo-French Cobden-Chevalier Treaty[31] on 23 January 1860 which consist the first modern trade agreement and set afoot other bilateral tariff reduced treaties.[32]

One primary problem with bilateral tariff reduced treaties is that they were discriminatory and unstable. The desire to reduce trade tariffs and promote free trade was encouraged until the World War I. After that period, tariffs were relatively high and there was a hesitation regarding the liberalization of trade. Under this scope, U.S adopted the Smoot-Hawley Act and rose U.S tariffs up to fifty-three per cent. After two years and specifically on 1934 U.S adopted the Reciprocal Trade Agreement Act which gave the authority to president to negotiate bilateral trade agreements. As a result, between 1934 and 1938 U.S entered into 32 bilateral tariff agreements by considerably reducing trade barriers.[33]

The problems of bilateral trade agreements were well-posed, and a new system was definitely required. At the present time multilateral trade law became the primary legal framework and replaced bilateral agreements. In addition, they mark the beginning of the modern trade law period. During 1945 U.S issued a document entitled proposal for Expansion of World Trade and Employment for consideration by an International Conference on Trade and Employment. In depth the proposal was a call for the establishment of a code or charter of trade that will affirm unconditional reciprocity MFN and set parameters for governmental restrains on international trade through an International Trade Organisation. The main condition was that the agricultural sector was to be exempt from the principle of liberalization. [34]

After this long journey, in 1948 twenty-two countries introduced the GATT agreement interim the Provisional Protocol Application. However, the ratification and application of GATT was delayed because of its temporary provisions of reciprocity and procedural concerns. The major distresses of GATT were: a. lack of enforcement provisions, b. accommodation of pre-existed trade requirements, c. subsidies and income prices were still supported. Thereunto, free trade

[31] Grossman, Gene M. "The Purpose of Trade Agreements", March 2016, *NBER Working Paper No. 22070*
[32] Christopher E.S Warburton "International trade law and trade theory", John Jay College, City University of New York, Henryville, Pennsylvania, US, pg. 4
[33] Christopher E.S Warburton "International trade law and trade theory", John Jay College, City University of New York, Henryville, Pennsylvania, US, pg. 5-6.
[34] Christopher E.S Warburton "International trade law and trade theory", John Jay College, City University of New York, Henryville, Pennsylvania, US, pg. 6-7.

under GATT agreement would be limited based on national security, when such limitation is in the higher interest of the country.[35] The upper mentioned discomposes caused the failure of GATT and led to the establishment of WTO. The later organisation adopted the same principles and beliefs and tried to overcome the obstructions left by the GATT agreement. The WTO regime also included services, IP, agriculture, services and enforcement provisions.

3.2.2 Universal and regional trade agreements

Many scholars and professors of law divide trade agreements in two important subcategories, universal and regional. The legal structure of public international trade law is based on worldwide international agreements, such as the 1947 General Agreement on Tariffs and Trade, the 1979 Tokyo Round Agreement and the 1994 Uruguay Round Agreements. As we previously mentioned GATT law ranks and legally limits the alternative trade policy instruments in accordance with economic theory and sets up a coherent institutional framework for the making, administration, adjudication and enforcement of trade rules and for the coordination of trade policies.

The worldwide GATT rules are supplemented by an increasing number of regional free trade area agreements, such as the NAFTA in North America and, in Europe, the European Free Trade Association (EFTA), the European Economic Area (EEA), the "Europe Agreements" of the EC with Eastern European countries, and other bilateral free trade agreements of the EC, e.g. with Mediterranean countries. In addition, there are also regional agreements providing for customs union, such as the EC and its Association Agreements with a number of countries. The contents of these free trade and customs union agreements are shaped and coordinated by the general substantive rules (Article XXIV) and procedures of GATT (Articles XXIV, XXVIII). GATT Law has universally harmonised customs, anti-dumping and other free trade laws in the 128 GATT member states. [36]

However, based on the principle of state sovereignty, countries are free to regulate trade and economic matters that affect their domestic economy and correct marker failures. What is necessary to be mentioned is that international trade legislation give the possibility to each country to implement non-discriminatory, transparent and proportionate trade barriers. On the

[35] Article XXI of the GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

[36] Ernst-Ulrich Petersmann *"International and European trade and environmental law after the Uruguay Round"*, 1995, pg. 1

other side, the line separating allowable and prohibited trade barriers, is very thin and constitute a "grey zone". The prime mover of that is the involvement of free trade elements such transparency and proportionality which give to countries the space to "play" or make further interpretations to such barriers. Nonetheless, it is necessary to strictly keep in mind that such elements consist the main principles of international trade and any violation of them shall be followed by the analogous international trade sanctions.

Table 1: Provide free trade sources and the respective sectors.[37]

Free Trade Sources	Goods	Services	Persons	Capital
National Trade Private Law	Contract law, Private property rights etc.	Contract law, Private property rights etc.	Contract law, Private property rights etc.	Contract law, Private property rights etc.
National Trade Public Law	Constitutional laws, General economic law, Human Rights	Constitutional laws, General economic law, Human Rights	Constitutional laws, General economic law, Human Rights	Constitutional laws, General economic law, Human Rights
International Public Law	Uruguay Round, EEA,NAFTA agreements, GATT, EFTA	Uruguay Round, EEA,NAFTA agreements, ICAO, ITU	Uruguay Round, EEA,NAFTA agreements, OECD, ILO	Uruguay Round, EEA,NAFTA agreements, IBRD, ICSID
EU Trade Law	EC Treaty, EU Treaty, General principles of EU	EC Treaty, EU Treaty, General principles of EU	EC Treaty, EU Treaty, General principles of EU	EC Treaty, EU Treaty, General principles of EU

3.3 Other sources of international trade law

As abovementioned there are number of sources building up a complete and comprehensive legal structure for the international trade area. Customary trade law has played significant role and has been reference point to the worldwide development of trade. Nonetheless, customary law gets the jump on the general principles of international trade such as: principle of national treatment, most-favoured nation, reciprocity, fairness, non-discrimination and transparency. Each of these principles consist the Achilles heel of international trade. For this thesis, the principle of fairness in trade will be widely illustrated as the basic mean for enabling countries to impose anti-dumping and countervailing measures. Last but not least, jurisprudence and doctrine are the guiding path toward which foreign trade can be developed and bossed up.

[37] Ernst-Ulrich Petersmann *"International and European trade and environmental law after the Uruguay Round"*, 1995, pg. 4

PART II

CHAPTER IV

4. Trade barriers as stumbling stones to international free trade

4.1 General overview of trade barriers

For decades, one of the most popular ideas in international trade literature is the idea that trade frontiers and protectionism have a negative effect on economic growth and poverty eradication while free trade and the restriction of trade barriers has a positive effect on economic welfare.[38] On the other way round, liberalization of trade is not considered as the "perfect" scenario and many issues, put even the advocates of free trade, on second thoughts. Obstacles like significant and unequally distributed losses, and the economic dislocation of workers in import-competing sectors, are some of the drawbacks of free trade.[39]

However, referring to the passage of time liberalization of trade has positively contributed to the world's economic development, peace and security. Following this line, an interesting approach is the "bicycle theory" introduced by the American economist Fred Bergsten. According to this theory, trade policy is extremely unstable in that it constantly tends towards either liberalisation or protectionism. To prevent falling off the bike, (cons of protectionism) trade policy and multilateral trade negotiations must constantly pedal towards greater liberalisation. In order to achieve that, decision makers must appeal to the greater welfare for consumers and the wider national economy over narrower parochial interests. [40]

In order to achieve the difficult mission of trade liberalisation countries must be take into consideration two key factors, consumers welfare and national economy in the wide sense. As Bergsten states, this mission cannot be filled if personal and narrower political interests prevail over consumers welfare. Moreover, trade negotiators must balance the right of damaged persons for a fair, prompt and proportionate compensation with the right of consumers to freely choose the desirable product/service at the best price (benefits of free trade).

[38] See: P.Krugman, «The Narrow and Broad Arguments for Free Trade», American Economic Review, Papers and Proceedings, 83(3), 1993 ; and P.Krugman, Peddling Prosperity: Economic Sense and Nonsense in the Age of Diminished Expectations, New York, W.W. Norton & Company, 1994.
[39] See: Chicago Booth, 'The initiative on Global Market' (Free Trade, 13 March 2012) <http://www.igmchicago.org/surveys/free-trade> accessed 14 May 2019.
[40] See: Destler, Mac and Noland, Marcus (July 2, 2014). Constant Ends, Flexible Means: C. Fred Bergstern and the Quest for open Trade. Peterson Institute for International Economics.

4.2 Different forms of trade barriers

Trade barriers like walls between feuding neighbours, are usually imposed unilaterally by one country acting on its own to limit imports. These barriers are most of the times designed to "temporarily" protect local producers from foreign competition and allow them to improve their productivity.[41] The most common forms of trade frontiers are divided in two categories: tariff and non-tariff barriers such as subsidies, quotas, dumping, income and export licences. In this thesis we have investigated and analysed the legal point of such barriers and not that much the economic scope. Namely, the legal discipline of trade barriers and its rational, the legal interpretation of the respective provisions and alternative approaches to overcome problem areas related to international trade.

4.2.1 Tariffs as one of the major forms of trade restrictions

The term "tariffs" can be loosely defined as a monetary burden on imports. Following accession to the WTO, tariffs can be "bound"; that is, they have to respect a "tariff ceiling," a level of tariffs that parties have agreed to observe following negotiations to this effect. Once "bound," tariffs cannot be unilaterally increased any more. If they want to increase the bound level of duty, WTO members must be prepared to pay compensation. Tariffs can also remain unbound, either because negotiations were not held or because they proved unsuccessful.[42] Even in the latter case WTO members shall fulfil several prerequisites and follow the principles of international trade law.

Whether or not they have bound their tariffs, WTO members must, in principle, comply with the most favoured nation (MFN) obligation when imposing tariffs; that is, they cannot impose a different level of tariffs on "like" products originating in various WTO members. WTO members can impose lower customs duties (than the "ceiling") as provided for in Article II.1(b) of GATT. Although, as previously suggested, there is no obligation to bind all duties, WTO states did it. Before GATT, member states were free to impose dissimilar level of tariffs and non-banded by the MFN principle. [43] Tariff discrimination would cause damages to international trade since traders could not calculate the costs of imports and exports.

[41] Randy Charles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 47.
[42] Mavroidis, P. C. (2016). The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 133.
[43] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 134.

As about the nature of tariffs they can be described as distributive in the sense that some benefits from such tariffs (domestic industry and producers) and other may suffer a lot of loses (imported goods and foreign producers). On the other side of the coin, tariffs can be variable or fixed by the nature, this depends if they are a constant sum per unit of imported goods or if they vary in accordance with the price.

The first multilateral tariff negotiation took place in Geneva between the late spring and summer of 1947. The legal framework for the Geneva negotiations had been established at the London Conference. Article 24 of the London Draft dealt with the process of binding duties but did more than that. It imposed an obligation on all states to negotiate tariff reductions, if requested to do so. If this obligation had not been observed (i.e., if a request to negotiate were refuted), requesting states could be authorized by the ITO to withhold the extension of MFN rights on tariff reductions negotiated with third partners. This is a remarkable provision, which was omitted from subsequent drafts. It obviously aimed at reducing the free rider problem.

Trading nations could not stay idle, reduce their tariffs involvement to that of innocent bystanders, and still profit from tariff reductions that others agreed upon in the context of reciprocal negotiations. It was some sort of an early version of "conditional MFN." There was a caveat, though. Countries with low tariffs could justifiably refuse to negotiate because their pre-negotiation level could not be regarded as a serious obstacle to inter-national trade. What constituted a "low tariff" was not defined. It was left to the discretion of negotiators, and the (often elusive) common sense that hopefully would prevail. Article VIII of the New York Draft 7 kept some of the elements of Article 24 of the London Draft. It stopped short, though, of including an obligation to negotiate whenever a request to this effect had been tabled.

Cordell Hull wanted to allow some countries (those that mattered less in international trade) to profit from tariff reductions without paying a price. In his view, this was the contribution of the "big guys"—the duty of leaders, indeed—to incite cooperation from everybody else. Cooperation could occur in trade, of course, as well as in other areas of international relations. Trading nations, though, did not stop worrying about the free rider problem. Hull won the battle as far as the first negotiation was concerned, but he did not win the war. In later years, the idea of a conditional MFN re-entered the picture in a more relaxed form.[44]

[44] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 135.

Many countries decide to impose trade tariffs for number of reasons. First things first, the main interest of governments is to protect their domestic trade and producers. When the imported goods harm domestic trade or competition then countries impose a tax on imports. There is no strict answer if the imposition of these taxes is a good practice or not. Those who support protectionism are pro on trade tariffs. In contrary, advocates of trade liberalization, strongly discourage such taxes. However, there are some exceptions from the general rule, for instance anti-dumping is considered as a trade defence instrument for free and fair trade.

Another reason of why countries adopt this practice is the fact that many imported goods and foreign producers pollute environment. In order to prevent environmental pollution, countries impose higher tariffs. In a different manner, those who support trade liberalization can argue that this is not a proportionate measure, since there are other and more efficient methods for protecting environment. In addition, other national reasons such as the aim to raise incomes, can be counted as one of the primary causes to tax foreign goods. Lastly, in many cases governments are influenced by a mix of the upper mentioned reasons.

After, the government, have decided to impose tariffs based on a legitimate or non-legitimate reason, must decide what kind of tariff will practice. There is not only one but several of duties bound. Nowadays, more and more people tend to believe that "duties," "customs duties," "tariffs," "import tariffs," and "charges" have the same and exact meaning. Undoubtedly, some of them are inter-changeable and some other inter-related. In what follows, we aim to analyze what exactly is being bound for the purposes of customs clearance. In the classic scenario, duties will be bound following reciprocal negotiations, where trading nations give a tariff promise in exchange for a tariff promise they receive. Reciprocity holds the key in the process of binding duties, and it is only natural for any discussion to start there.[45]

As starting point is necessary to mention the principle of reciprocity. The latter is linked with the principle of fairness and transparency. Generally, the steps toward trade liberalization were taken mutually by the parties (particularly during GATT negotiations). The question that arises is: What is the meaning of reciprocity in trade tariffs?! Unfortunately, there is no explicit definition regarding the term of reciprocity, however, ex-director general of GATT conquered reciprocity in tariff negotiations, during the Torquay round, as follows:

[45] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 145.

> "... a number of European countries with a comparatively low level of tariff rates considered that they had entered the Torquay negotiations at a disadvantage. Having bound many of their rates of duty in 1947 and 1949, what could these low tariff countries offer at Torquay in order to obtain further concessions from the countries with higher level of tariffs?"[46]

As we mentioned in Chapter I reciprocity consist one of the fundamental legal principles of international trade law. However, we shall keep in mind that aside its significant character, must not be in violation of the WTO agreement. This principle (in connection with tariff reduction) is laid down in two key provisions of GATT. The term reciprocal is revealed more than once in the GATT Preamble, and in Article XXVIII bis of the agreement. We concretely quote:

> "Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs … The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade."

Both times, thus, it is a mention of moralistic nature, and not of a binding legal obligation. Also, the term "renegotiation of tariffs" can be found in Article XXVII GATT, which has the meaning of reciprocal and mutually advantageous concessions. Furthermore, apart from the prementioned article, there are plentiful of other references throughout GATT (i.e. Annex 1A Agreements). Moreover, Article 24 of the DSU regulates that WTO members states are not free to be in infringement of WTO Agreement in order to be in compliance with the principle of reciprocity. To put it differently, WTO members are not free to disrespect their obligations, just because one of the parties has failed to do so. The argument that the incompliance shall be justified because the other party has violated WTO agreement is not valid. [47]

[46] Torquay Round: The third GAIT Round of multilateral trade negotiations, held at Torquay, England, from September 1950 to Apri1 195l.
[47] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 148.

Article II of GATT explains that it is the level of "ordinary customs duties" (OCD) and "other duties and charges" (ODC) that will be "bound." Neither of the two phrases is special any in addition in the body of Article II of GATT. The wording of Article II of GATT, but, indicates that a dividing line ought to be drawn among the two phrases seeing that exceptional duties had been assumed with admire to each one in every of them, as a minimum initially. The relevant part of Article II.1(b) of GATT reads:

> "The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date".

Noticeably, there is no statutory definition of the term "everyday customs duty" (OCD), even though as we have said a number of times to date on this extent, the primary motive of GATT was the "binding" of customs obligations. it's far imaginative impositions of customs responsibilities that delivered the question of definition of OCDs before GATT/WTO panels. The Panel on Chile—charge Band gadget first, and the AB later, handled this difficulty in massive detail. The thrust of the evaluation in the reviews is that a measure can not simultaneously be both an OCD and an ODC. the problem before the WTO adjudicating our bodies became the consistency of the infamous price band system (PBS) that Chile practiced with the WTO policies.

The panel 41 defined OCDs as duties that, as an "empirical" matter, take the form of ad valorem, specific duties, etc., and as a "normative" matter, they relate to the value of the imported good but are levied without regard to exogenous factors; e.g., market prices (§7.52). The AB disagreed with this definition, arguing that many applied duties take into account exogenous factors such as the needs of producers and consumers.[48]

[48] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 148-149.

Since the empirical element is what matters when qualifying a measure as an OCD, we need to look at the practice regarding forms of duties. Schedules of concessions reveal that (except for tariff quotas, as already discussed in chapter 2) WTO members practice the following forms of duties: 1. Ad valorem 2. Specific 3. Compound 4. Alternative (or mixed) 5. Technical duties An ad valorem duty is a percentage of the value of the imported product (e.g., 15 percent of a fax machine, the import price of which is $400). A specific duty is related to the weight, volume, surface, and other aspects of the good at hand (e.g., $20 per ton of imported wheat).

A compound duty comprises an ad valorem duty to which the customs authority adds or from which it subtracts a specific duty (e.g., 10 percent on the import price of wheat plus $2 per imported kilogram of wheat). An alternative or mixed duty ensures a minimum or maximum tariff protection through the choice between say ad valorem and a specific duty (e.g., 10 percent on the import price of wheat, or $2 per imported ton, whichever is the greater). Finally, particularly where agricultural products are concerned, a technical duty is determined by complex technical factors such as alcohol or sugar content.

As we previously mentioned there was also lack of a strict definition of the term ODC. Following this line, the GATT secretariat gave his/her impute by producing a document, which consisted the very first step toward ODC's definition and harmonization. What makes the Secretariat document so important is that provided helpful elements to define and make clearer what consist ODCs. In addition, state practices served as the basis for the creation of such criteria. To be more concise, the questioned elements are as follows: 1. ODCs should be applicable only to imports, 2. The applicable date concerning the binding of an ODC, 3. The legal effect of inscribing an ODC in a schedule of concessions.

These highly important elements are integrated into the Understanding on the Interpretation of Article II. 1(b) of GATT, concluded during the Uruguay round. The implementation of these elements is the best alternative since the creation of an exhaustive list of ODCs is beyond the bounds of possibility. In more details, ODCs ought to be recorded in schedules of concessions; in any other case, they may be ipso facto GATT-inconsistent. 2. since ODCs are connected to customs obligations, and since most effective certain customs obligations appear in a schedule, in practice, ODCs relevant to unbound obligations do no longer must be protected in schedules of concessions. [49]

[49] Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.) pg. 150

4.2.2 Non-tariff barriers and its core types

Heretofore in this thesis was mentioned that trade barriers are divided in two major categories: tariff and non-tariff barriers. After having scrupulously analysed tariffs, this work briefly summarises the understanding and legal definition of the key types of non-tariff barriers. Similarly, to tariffs, non-tariff barriers follows the same direction and aims to restrict imports or exports of goods or services. On the other way around, there are many differences between these kind of trade barriers, regarding the scope and way of application. The transition from tariffs to non-tariff barriers was enough paradoxical and disturbing process.

The transition from tariffs to NTBs began when most developed and industrialized countries had sources of income other than tariffs. Generally, the formation of nation-states requires considerable amounts of funding. Tariffs was one of the greatest means for achieving this goal and this is the reason why still some countries encourage the imposition of such barriers. However, developed countries can sustain not to depend on tariffs. Another reason for such transition is that these barriers can be used to assist weak industries or compensation of industries which have been impacted negatively by the reduction of tariffs. Last but not least, the ability of interest groups to affect the process in the absence of opportunities to obtain government support for the tariffs.

Regarding the definition, the Southern African Development Community (SADC) defines a non-tariff barrier as "*any obstacle to international trade that is not an import or export duty. They may take the form of import quotas, subsidies, customs delays, technical barriers, or other systems preventing or impeding trade.*"[50] On the other hand, based on the WTO non-tariff barriers to trade include import licensing, rules for valuation of goods at customs, pre-shipment inspections, rules of origin ('made in'), and trade prepared investment measures.

As we have already mentioned apart from subsidies and quotas, tariffs and non-tariff barriers have many commons. One of the greatest achievements of GATT was the reduction of tariffs. However, the advocates of protectionism being afraid that liberalization of trade could harm their domestic industries, supported the creation of NTBs (i.e. technical barriers to trade). The legal base and sources of NTBs are WTO agreements (i.e. the TBT Agreement, SPS Measures Agreement, the Agreement on Textiles and Clothing, and GATT articles).

[50] See: Southern African Development Community, Non-tariff barriers <https://www.sadc.int/themes/economic-development/trade/non-tariff-barriers/>

The general rule with NTBs is that they tend to be protectionist measures. In contrarily, the exception is that in particular situations and circumstances they can be justified in order to protect the health and safety of people, animals, and plants or the environment. Furthermore, NTBs are not allowed when they consist obstacles to the liberalization of trade or negatively impact world's economic growth. As a result, NTBs are introduced as a new form of safeguard and replace tariffs. In comparison with tariffs, NTBs can be divided in many categories of policies. The most common kind of NTBs policies are protectionist policies, aid policies and non-protectionist policies. However, only a few studies have shown the main disparities and characteristics of them. This is the reason why this thesis sticks to the analytical overview of NTMs and trade barriers in its entirely.

4.2.2.1 Subsidies as part of aid policies

People sometimes confuse the terms subsidies, dumping, countervailing duties, anti-dumping, quotas, tariffs and so forth. All these terms do have many similarities but there are fundamental differences as well. Later on, this work, will be explained in detail the meaning and definition of anti-dumping and anti-subsidies or countervailing measures as trade protected instruments. At the present time subsidies consist the Gordian knot of this thesis. To illuminate the legal and less economic understanding of subsidies and state-aid is decisive to study the legal basis and sources regulating such barriers.

Meritoriously the Agreement on Subsidies and Countervailing Measures (hereafter SCM Agreement), enacted by WTO, consist the most compelling evidence and main pillar for the regulation of subsidies. The SCM Agreement has a specific structure and is classified in eleven (XI) parts. The first part is considerably relevant because defines the term "subsidy" and "specificity". The second and third part, systematically categorises all subsidies as prohibited or actionable, and establish new rules of procedure.

The fifth part is also important because provides the key elements that a country shall fill in order to impose countervailing measures. The two next parts focuses on the establishment of institutional framework and notification for interpretation. Part VIII and IX contain differential rules treatment for various developing countries. Finally, part X and XI mention appropriate dispute resolution mechanisms. [51]

---

[51] See: UNDERSTANDING THE WTO: THE AGREEMENTS
<https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm>

Anterior in this thesis was mentioned the SCM Agreement as the fundamental legal instrument for the regulation of subsidies and countervailing measures. However, prior to this agreement there was the Tokyo Round Subsidies Code.[52] One of the differences between them is the fact that the Code does not define the term "subsidies" while the SCM Agreement has regulated such issue. Under Article 1 of the SCM Agreement:

> "subsidy is a financial contribution granted by a government or public authority within the territory of a Member State and which confers a benefit".

In specie and based on the objective interpretation of this article, there are three prerequisites or elements that shall be filled in order to have subsidised goods or services. Moreover, is important to make it clear that these elements are cumulative. The elements are as follows: a. kind of contribution, b. provider of the contribution and c. what is conferred. The following table clarifies these elements.

Subsidised Goods or Services	
Elements	
Type of contribution	Financial
Provider of contribution	Government or public authority
Kind of confer	Benefit

To put it another way, in order to have a subsidy, there must exist a financial contribution granted by the government and which benefits a particular undertaking or industry. First thing to remember is that with financial contribution we understand a charge or expense on the public account. There were many opinions regarding the meaning of financial contribution such as any form of government intervention which do not charge public account but distort competition. Article 1.1 of the SCM Agreement make available a list of what can be considered as a financial contribution. This poses the dilemma whether the proposed contributions constitute an open or exhaustive list. If we take a closer look on the article, the second sentence include the term "i.e." which means that, this list only gives us some examples. Following this line of thoughts, the list laid down in article 1.1 of the SCM Agreement cannot be considered as an exhaustive list. Hence, in our situation a broad interpretation of the article is required.

[52] See: Agreement on International and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Subsidies Code, 1973
<http://www.worldtradelaw.net/tokyoround/subsidiescode.pdf.download>

In order to have a better understanding of the financial contributions, we literally cite Article 1 of the SCM Agreement:

> "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 ; (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..."[53]

Together with the element of financial contribution, who provides this financial aid consist the second element. Again Article 1 of the up mentioned agreement mention the government or any public body within the territory of a Member State. The last element is the benefit. Thus, for a financial contribution to be a subsidy, the government must confer a cash grant. Under circumstances the benefit may be clear or complex. To examine the impact and meaning of the term "benefit" is worthwhile to rely not only to the SCM Agreement but to WTO cases as well. Indeed, SCM Agreement brought many innovated ideas and concepts, including the definition of subsidies.

On the other side of the coin, the definition made by the SCM Agreement is really vogue, since it provides the general scope of subsidies, including some open lists, but does not provide a "*stricto sensu"* definition or explanation of the main elements of the subsidised goods or services. To put it differently, Article 14 of the SCM Agreement provides the calculation of the amount in terms of the benefit but does not define what a benefit is but only offer some guidelines. Considering this, WTO and its Appellate Body in 1999 made a clarification regarding benefits, when settling the dispute between Canada and Aircraft.[54] In this connection, we therefore analysed and investigated this case study.

[53] See: Agreement on Subsidies and Countervailing Measures <https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.
[54] *Canada vs Aircraft* [1999] DS70 (WTO).

This case deals with Canadian measures offering financial aid to the domestic civil aircraft industry. On 10 March 1997, Brazil requested consultations with Canada in respect of the up mentioned subsidies. The request was made in compliance with Article 4 of the SCM Agreement. Brazil argued that the Canadian measures consist protectionist measures and they are in breach of Article 3 of the SCM Agreement. Based on Article 1.1 of the SCM Agreement the Panel argued that "a financial contribution confers a benefit when offered on terms more beneficial than those available on the market. In other words, the existence of a benefit is determined based on the marketplace. On the other hand, the Appellate Body concluded that the term "conferred", in connection with "thereby", request for an inquiry into what was conferred on the recipient, not an inquiry into the cost to the government.[55]

After having treated the topic of what constitutes a subsidy, it is reasonable to proceed analysing the categories of the latter. The study case (Canada vs Aircraft) was not chosen only because explains the word "benefit" but also because defines the existence of contingency. However, before going into further details is worthy to mention the two main types of subsidies. There are many opinions regarding the categorization of subsidies, but to give some idea this thesis supports the theory that subsidies are labelled as prohibited and actionable. Based on Article 3 of the SCM Agreement:

> "Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:
> (a) subsidies contingent, in law or in fact , whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I5 ;
> (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.
> 3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1."[56]

The kernel difference between them is the fact that prohibited subsidies can only be challenged in WTO while actionable can be challenged to countervailing measures. Based on the narrow interpretation of Article 3 of the agreement at stake, export subsidies are prohibited because they directly affect international trade and have adverse effects on other Member States. This is also in infringement of Article the SCM Agreement.

[55] See: *Canada vs Aircraft* [1999] DS70 (WTO). <https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds70sum_e.pdf>
[56] See: Agreement on Subsidies and Countervailing Measures <https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.

To come back to Canada-Aircraft case, the Panel and Appellate Body sustained and introduced a very interesting view regarding export subsidies. They made a broad interpretation of Article 3.1 of the SCM Agreement and explained that in order to have the existence of contingency there must be a casual link between the grant and the foreseen exportation. As about Canada's measure the Panel argued that the EDC programme as such was discretionary legislation and, upon a *"prima facie"* investigation of its application, the measures were not export subsidies.

To the contrary, although the Panel also found that the Canada Account programme per se was discretionary legislation and in compliance with the SCM Agreement, it adjudged that the programme as applied conferred a benefit and was an export subsidy contingent upon export performance. Moreover, was stated that TPC assistance was a subsidy contingent in fact upon export performance. In this respect, the Panel adopted the idea of the Market Economy Operator Principle and argued that "the facts demonstrate that [TPC contributions] would not have been granted but for anticipated exportation". The Appellate Body was in the same line of thoughts with the Panel. [57]

A common technique to turn a provision or regulation into a weapon is to check for escape clauses and gaps. Indeed, Article 1.1 define subsidies but is there any escape clause, through which Members could rely on?! Part IV and Article 8 of the SCM Agreement provide a list of non-actionable subsidies. That means that not all subsidies are prohibited but under certain circumstances they are justified. When a subsidy is made for environmental, renewable energy, public service, social policy, health service, research service, innovation and transport purposes shall be considered as in compliance with the agreement. In more details Article 8 foresees:

> "The following subsidies shall be considered as non-actionable: (a) subsidies which are not specific within the meaning of Article 2; (b) subsidies which are specific within the meaning of Article 2 but which meet all of the conditions provided for in paragraphs 2(a), 2(b) or 2(c) below. Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable: (a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if the assistance covers not more than 75 per cent of the costs of industrial research..."[58]

[57] See: *Canada vs Aircraft* [1999] DS70 (WTO).

[58] Agreement on Subsidies and Countervailing Measures <https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.

Another key point to shade light on regarding this topic is State Aid. The cord between state aid and subsidies stands in the terminology used in EU and global level. Hence, the question is often made whether these two terms are interchangeable, interrelated or antithetical. People sometimes refer to the two together but there are fundamental differences as well. First things first, the term "state aid" is used in an EU level and is regulated by EU legislation (primary and secondary). In contrary, the term subsidies as we earnestly mentioned, is used in a global level and regulated by WTO and more specifically SCM Agreement. Secondly, there are cardinal differences in the definition and elements. Last but not least there are also dissimilarities in the dispute settlement mechanisms.

In order not to repeat information regarding subsidies and with attention to state aid, we are going to scrutinize the main facts of the latter. The first thing to be mentioned is Article 107 of the Treaty on the Functioning of the European Union (TFEU). This provision is the most important and primary EU legal framework regulating state aid. We literally acknowledge:

> "Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."[59]

The notion given by Article 107(1) TFEU is broad enough and involves all crucial conditions needed to be filled in order to have a state aid. The first condition that is noticed is the existence of an aid. The concept of aid is very expansive and includes any kind of commercial benefit. Thus, can take many forms such as: grants and subsidies from the state, tax exceptions, social security exceptions, loans, guarantees, preferential treatment etc. In addition, the aid must be granted by the government or through state recourses. The term "government" must be interpreted broadly and include aids conferred by the central, regional and local state sources. Additionally, even recourses of private or public undertakings are included.[60] The determined factor is whether the funds are under State control and publicly available.

[59] Article 107 of the Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47

[60] See: Cases C-328/99 and C-399/00 Italy and SIM 2 Multimedia v Commission, 8 May 2003, para. 33 and Cases T=267/08 and 279/08 Region Nord-Pas-de-Calais v Commission, 12 May 2011, para.108

Moreover, the form of the aid is not a prerequisite if the economic advantage is conferred to a specific undertaking. That is the so called “selectivity advantage” and apply to both state aids and subsidies. Selectivity means that an individual undertaking, group of undertakings (and not the whole industry) obtain an economic advantage that was not possible to be gained under normal market circumstances.[61] In this event the adequate tool used to assess selectivity is the market economy operator principle (MEO). Based on this principle, a benefit is not considered as a state aid if the economic advantage could be provided in the normal course of events by a private investor.

Lastly, the aid must distort competition and effect trade between EU Member States. An economic advantage distort competition when improves the competitive position of an entity to other undertakings with which it compares.[62] However, in most selectivity cases a distortion of competition is presumed to arise. This provision does not apply in monopoly cases, in which there is no competition at all. On the other hand, the internal market can also be affected in the cases when an undertaking does not export its goods or services, but the aid increases domestic production and reduce foreign exports.

At the same time, the guidance of the Commission on the notion of State aid consist the secondary EU legislation regulating such barriers. As a result of the revision of EU legislation, in July 2016 the Commission published a Notice on the notion of State aid.[63] The main purpose of this Notice is to provide States with appropriate guidance in order to easily identify State aids. Additionally, it covers and explains in detail all the above-mentioned elements.

Equally important is the fact that the prohibition of State aids is not absolute since Article 107(2) and 107(3) leaves room for the government to interevent and confer economic advantages for specific purposes. State aids are usually allowed in when the intercession of government is needed for the well-functioning and equitable economy. Thus, the Commission has the authority under Article 107(3) to evaluate whether the measures taken by the State are compatible and fall within the block exceptions. In some cases, the Commission has to assess the measures on individual basis by balancing the positive and negative effects.[64]

[61] See: Case C-39/94 SFEI and Others, 11 July 1996, para. 60, and Case C-342/96 Spain v Commission, 29 April 1999, par. 41.
[62] See: Case 730/79 Phillip Morris v Commission, 17 September 1980 and Jointed Cases T-298/97, T-312/97 etc. Alzetta 15 June 2000.
[63] Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ 2016 C262/1, 19.7.2016).
[64] Slaughter and May “The EU Rules on State Aid”, January 2018, pg. 1-5.

4.2.2.2 Quotas as part of non-tariff barriers

In this thesis we characterize different aspects of tariff and non-tariff barriers. With this in mind we therefore investigate quotas and their impact on the free flow of goods and services around the globe. This kind of barrier is considered as a quantitative restriction on imported or exported goods or services. In other words, a quota is when the government limits the quantity of foreign products.[65] The main problem with quotas i that is very difficult to be conquered once they are imposed and the price of the imported products cannot shrink to avoid them. On the positive side, quotas are the one of the first barriers to get around when countries negotiate free trade agreements. [66] In some cases, the importing countries require from exporting countries to impose voluntary export restraints.

Characteristically, quotas are strongly discouraged because they harm free trade by drawing the line of undertakings to enter foreign trade markets and reduce the number of goods permitted for import and exports. Also, quotas are imposed to specific countries for a limited period of time through voluntary export restraints. In addition, this type of restrictions is directly controlled and regulated by different government regulations of foreign trade as one of the most essential instruments of trade regulation. However, cannot be denied the fact that in many cases they are more flexible and effective than other types of trade regulation. As the other forms of trade barriers, quotas are also divided in four categories. More specifically they are known as global quota, tariff rate quota, export quota and discriminating quota.

The outcome of quotas is to increase costs, limit final comer's selectiveness of foreign products and impose higher import prices. One significant peculiarity of quotas is that they are unilateral as nature forasmuch as they are imposed by a State without negotiations or trade agreements. There are many reasons of why countries choose to impose such barriers. These reasons encompass the interest of the importing country to flaw the domestic products that are in storage in the national market, manipulation of prices and control of foreign goods. Moreover, export quotas can be set as to provide domestic consumers with satisfactory stocks of goods at low prices, to prevent the depletion of natural resources, as well as to increase export prices by restricting supply to foreign markets.[67]

[65] Randy Charles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 47
[66] Randy Charles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 222
[67] Trade Policy Review Report by the Secretariat China (PDF). *World Trade Organization (WTO)* (Report). Trade Policy Review Body. June 6, 2018. p. 193. Retrieved July 26, 2018.

4.2.2.3 Import Licencing as part of non-tariff barriers

Import licencing is one of the many forms of non-tariff barriers. Simply saying is a document issued by a Country, authorising the importation of foreign products. Even though nowadays they are not used as much as in the past, they consist an important part of WTO's discipline. The Agreement on Import Licencing Procedures (AILP) comprise the legal instrument regulating such trade barriers and serving as guideline for the government on how to recognise and assess licences. The Agreement at stake has its own characteristics and define import licences. For example, under article 1 AILP:

> "...import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member."[68]

Moreover, according to procedures, must be transparent, predictable and simple. For instance, in order to be following AILP governments must acknowledge all relevant information to the public as to let them know the reasons and procedures the licences are granted. Moreover, introduce the procedures needed to be followed in order to notify WTO for the imposed licences and the relevant institutions. Article 4 of the agreement mention the Committee on Import Licencing composed of representatives from each Member State. The Committee has its own Chairman and Vice-Chairman. On the other hand, any dispute raised regarding licences has to be settled by the provisions of Articles XXII and XXIII of GATT.

It is also important to realize that there are two types of import licencing. The first category has to do with those who are issued automatically if prerequisites are met. The AILP sets adequate administrative procedures to be followed in order to follow free trade and not restrict it. Under Article 1(3) AILP these procedures must be neutral, fair and equitable. The other group of licences are not issued automatically, trying to restrict the importers' burden in applying for licences, so that the administrative procedure does not restrict or distort trade. Furthermore, the agreement says the agencies handling licensing should not normally take more than 30 days to deal with an application — 60 days when all applications are considered at the same time. [69]

[68] See: Agreement on Import Licencing Procedures <https://www.wto.org/english/docs_e/legal_e/23-lic.pdf>
[69] See: Understanding the WTO: The Agreements, Non-tariff barriers: red tape, Import licensing: keeping procedures clear <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm>

CHAPTER V

5. International trade war and Trump Tariffs

In this thesis we have investigated in details trade frontiers and their impact on international trade. Occasionally, trade barriers can lead to international trade conflicts or trade wars. The latter occurs when a country impose tariff or non-tariff barriers against the other country's import products. Trade wars have their positive and negative effects but in the first place they can cause significant damages to both consumers and producers of either nation. As a matter of fact, trade wars are "side effects" of protectionist barriers, imposed by governments with the main purpose to secure and defend domestic trade and workforce. Contrarily, protectionism can serve as a mean to protect domestic market from trade deficits. A trade deficit occurs when the imported goods exceeds domestic products.

Whatsoever, domestic industries and transitional corporations can influence politicians to make domestic goods more attractive to final consumers, pushing international policy toward a trade war. What is interesting is the fact that trade wars may result as a misconception of the global benefits of free trade. One of the characteristics of trade wars is that they can start in one sector and eventually affect other sector or countries. Paradoxically, even though governments know that this tit-for-tat battle is not a win-win situation, still prefer to practice it. In addition, there are many ways through which states control imports and exports, however, they differ from each other. For example, trade wars and sanctions are two different actions, since the former has solely trade purpose, while the latter may have philanthropic purpose as well.

Trade barriers have an old history and they are not considered as a creation of modern society. Such kind of conflicts have been excised since the establishment of trade relations between countries. Colonial powers fought with each other over the rights to trade exclusively with overseas colonies in the 17th century. The British Empire has an old history over such kind of war. For instance, the opium wars of the 19th century with China consist one of the most "famous trade wars" of that period. Another example is the Smoot-Hawley Tariff Act which raised tariffs in order to protect U.S farmers from EU products. Thus, many nations chose to use the tit-for-tat process and impose their tariffs. [70] Nowadays, due to Trump Tariffs is assumed to have started a new trade war between U.S and other countries such as China, Mexico, Canada and EU.

[70] See: Investopedia "Trade War" <https://www.investopedia.com/terms/t/trade-war.asp>

5.1 The trade conflict between U.S and EU

Everything started at the beginning of January 2018, when President Donald Trump decided to impose protectionist tariffs on everything from steel and aluminium to solar panels and washing machines. These duties impacted trade between U.S and the European Union (EU), China Canada and Mexico. The EU retaliated such unfair trade practice by imposing tariffs on American agricultural imports and other products including Harley Davidson motorcycle.[71] In the past several decades, the removal of trade and other barriers have played an important role in European integration. Going back to the very beginning, any European could have dreamt of what are now possible thanks to the Internal Market in a Europe without unfair trade practices and internal frontiers.

At this point is worthy to mention the Transatlantic Trade and Investment Partnership (TTIP). According to Karel de Gucht, European Commissioner for Trade between 2010 and 2014, the TTIP is the largest bilateral trade initiative ever negotiated, not only because it involves the two largest economies in the world but also "because of its potential global importance in setting an example for future partners and agreements".[72] Without hesitation EU is the largest exporter of good and services but on the negative side is dependent on imports (especially on raw materials). Henceforth, as a matter of fact, the EU and U.S have the most integrated economic relationship in the world.

As we mentioned, U.S has imposed the so-called “Trump Tariffs” on EU products affecting free and fair trade. It would be of special interest to elaborate this topic since consist one of the burning issues for EU. We will also be focused on the main obstacles of the decision-making process in trade policy. This topic is of paramount importance since the incapability of EU to negotiate unanimously in international trade negotiations consist the Achilles heel in the trade conflict with U.S.[73] . Also, it is of immense importance to identify the core problems of international trade, between the U.S and EU caused by those market obstacles. With this aim in mind, we meticulously investigate the dilemma of accountability[74], legitimacy and efficiency in the European Union.

[71] See: Investopedia “Trade War” <https://www.investopedia.com/terms/t/trade-war.asp>
[72] Karel de Gucht, Foreword in Jean-Frédéric Morin, Tereza Novotná, Frederik Ponjaert and Mario Telò, The Politics of Transatlantic Trade Negotiations, TTIP in a Globalized World, Routledge, 2015, p.xvii.
[73] Rafael Leal-Arcas ‘Theory and Practice of EC External Trade Law and Policy’ (published 2008), London,421
[74] According to the Cambridge Advance Learner’s Dictionary online, accountable is defined as follows: ‘Someone who is accountable is completely responsible for what they do and must be able to give a satisfactory reason for it in http://www.dictionary.cambridge.org/define.asp?key=564anddict=CALD

5.1.1 General provisions regarding U.S and EU trade disputes

Apart from the economic crisis there is a further problem that EU must deal with. No longer than a year ago President Trump imposed several tariffs on EU imports and several other countries. The rhetorical question is: do we have to deal with a trade war? At a closer look and from the broad interpretation of the definition of trade wars, the short answer is YES. Trade wars can be defined as an economic conflict resulting from extreme protectionism in which states raise or create tariffs or other trade barriers against each other in response to trade barriers created by other party. [75]

Consequently, from the literal interpretation of the upper mentioned definitions is clear that we are facing: a restriction from trade liberalisation by imposing protectionist tariffs on EU imports. Many reactions occurred by the side of EU. For example, Jean-Claude Juncker, the president of the European Commission, condemned U.S. steel and aluminium tariffs and brought the case to the WTO on June 2018. The EU filed U.S once the tariffs took effect.[76]

European Union punitive tariffs took impact on 2018, imposing tariffs on a hundred and eighty styles of product, over $3 billion of U.S. goods. European Commissioner for Trade Cecilia Malmström stated: "The rules of international trade, that we have got developed with our yank partners, cannot be profaned while not a reaction from our facet. Our response is measured, proportionate and absolutely in line with WTO rules." Among the U.S. makers laid low with the EU's responsive tariffs is Harley-Davidson, that proclaimed that it might move a number of their producing out of the us.

5.1.2 Tension in the Decision-Making Process in Trade Policy

Many times, EU has been criticised for its incapability to negotiate without internal agreements and being unable to negotiate with one voice. Such kind of criticism has come from the EU's trading partners. A well-known problem with the decision-making process is the accountability and legitimacy and efficiency. The Gordian knot between efficiency and accountability will be of a great importance in the near future. When it comes to policy making in EU, we can freely say that is a technocratic system. The truth is that the system lacks a democratic approach to policymaking although has the advantage of being considerably efficient.

[75] "What is trade war? definition and meaning". BusinessDictionary.com. Retrieved 2017-08-15
[76] Emre Peker, European Union Launches WTO Challenge to U.S. Tariffs, Wall Street Journal (June 1, 2018)

I would like to mention four possible scenarios when it comes to efficiency and legitimacy. The first scenario is the "perfect" situation of an EU federal/constitutional system, with the highest level of both efficiency and accountability. The second scenario is the less effective because both accountability and efficiency are low due to the lack of cooperation between EUMS. The two last scenarios are "*sensu contrario"* with each other. On the one hand, we have the situation in which EU Commission has full exclusivity and which is incompatible with the principle of subsidiarity (thus the level of efficiency is relatively low). [77]

5.1.3 Possible solutions regarding EU trade policy and trade conflicts with U.S

When a country unilaterally erects trade barriers, other countries often follow suit, putting up trade barriers on their own, which can escalate into full-scale trade wars, or, even worse, military conflict. During the 1930s, for example, the United States' decision to put up trade barriers ended up leading to a worldwide depression. Hence, it seems that Trump Tariffs are leading to a second worldwide depression. To resolve trade disputes, governments often "batter" free trade, agreeing to only remove a barrier to a specific import when other countries remove barriers of their own.

This is a bit absurd: even though politicians know that free trade is a win-win situation, they still demand on making the removal of trade barriers a "tit for tat" process.[78] Once, free trade agreements are in place, some sort of mechanism is needed to ensure that countries respect their promises. In this case, WTO is the "watchdog" of the world trade. Apart from that, EU can use trade defence instruments, as legitimate responses to the unfair trade practices imposed by the other party. Such kind of trade defence instruments include countervailing measures, anti-dumping and safeguards.

Many alternative approaches have been developed over the last few decades regarding the problem of accountability versus efficiency. If accountability is for the good of the whole, it should be considered very seriously. Thus, if we accept the argument that the European Parliament represents the will of the people, having a greater involvement and empowerment of the European Parliament during the negotiating process would increase democratic legitimacy. One way of recovering from this problem could be to seek help from civil society.

[77] Rafael Leal-Arcas 'Theory and Practice of EC External Trade Law and Policy' (published 2008), London, 426-427

[78] Randy Charles Epping *"A beginner's guide to the world economy"*, Vintage Book, New York, 2001, pg. 48

5.2. The trade war between U.S and China

In the same fashion with the EU, President Trump in 2016 argued that goods and services imported from China, Canada and Mexico have damaged national trade and manufacturing industry. Hence, one of his promises was to flourish U.S trade and workflow as well as restrict the importation of foreign products. Within the frame of this campaign, President Trump had mentioned many times to exit U.S from WTO. However, no more than a year ago he threatens China to impose a fine over intellectual property theft and protectionist tariffs upon Chinese products (i.e. soy and steel goods). As a result, China retaliated with a 25% tax on U.S goods.

Regrettably, the two countries did not manage to find a common ground and kept the ball rolling toward trade disputes. Recently, the U.S. government imposed 10% tariffs on Chinese products, causing considerable economic harm to Chinese traders and manufacturers. In December, the dispute parties decided to "calm the waters" and interrupt the imposition of tariffs. However, within this year their relationship got agitated and they continued to harm international trade by imposing protectionist tariffs. Although, in the spring things seemed to get better, the government of China decided to hit the road and refuse to review their company-subsidizing laws. As a result of China's stance, President Trump on 5 of May announced his decision to raise the tariffs by 15%. As of May 10, China and U.S ended negotiations without any deal being met. [79]

As a matter of fact, U.S and China consist the World's Economic Superpowers. Is very thought-provoking the fact that the World War II and Great Depression were side effects of protectionism and in 2019 the biggest superpowers still "support" import tariffs. Many economists and international trade lawyers wrote to President Trump to back up the tariffs since there is a very high risk to repeat the errors occurred during 1930's.[80] However, it seems that national interests prevail over international economic wealth, peace and security. The reasoning of the President is clear: He desires to become the dominant world power once more and as he argues "Put America first". On the other hand, is interesting that G20 are united against import tariffs. With G20 we understand a group of twenties and has as the main objective to discuss policies and safeguard the international economic or financial stability. Is consisted by nineteen countries and the European Union.

[79] See: Investopedia "Trade War" <https://www.investopedia.com/terms/t/trade-war.asp>
[80] See: Tender Capital "The Trump Tariffs: the pros and cons of trade protectionism", 07 August 2018, https://tendercapital.com/en/the-trump-tariffs-the-pros-and-cons-of-trade-protectionism/

5.3 The trade dispute of U.S with Canada and Mexico

Apart from China and EU there are two more countries which have been directly affected by the punitive tariffs imposed from President Trump. Canada and Mexico are touched as well from these trade frontiers. Here is to say that such tariffs are imposed on steel and aluminium, washing machines and so forth. In addition, illegal immigration consists a huge concern between Mexico and U.S. Nonetheless, the damaged trade partners decided to start proceedings for the damages caused by Trump tariffs on WTO. Based on the proceedings, the first step is to conduct consultations and if there is no deal the parties may continue to make up with adjudication by a panel.[81]

Surprisingly, less than a month ago and specifically on 17 May 2019, U.S decided to revoke the steel and aluminium tariffs on Canada and Mexico. Consequently, the parties decided to stop the pending litigations on WTO regarding tariffs and abolish retaliated tariffs. Whatsoever, this also consist the "green light" for the ratification of the United States-Mexico-Canada Agreement (USMCA).[82] The latter, is in the epicentre of attention since is created to replace NAFTA. In fact, USMCA is a trilateral free trade agreement, renegotiating the main provisions of NAFTA. These provisions include the regulation of automobiles, dairies, labour as well as the dispute settlement mechanisms and currency. Likewise, there are number of critics relating to this "new" agreement. Personally, I hold the opinion that is an agreement made under pressures and "threats", henceforth, in infringement of international public law and principles.

Despite the fact that things seemed to improve, on 30 May 2019, President Trump out of the blue announced that he would impose a 5% tariff on all imports from Mexico on June 10, causing an increase up to 10% on July 1, and by another 5% each month for three months, "until such time as illegal migrants coming through Mexico, and into our Country, STOP".[83] As a result of this "ping-pong game" on 07 June 2019, U.S the imposition of tariffs on Mexico were "indefinitely suspended" after Mexico was in the same page with U.S as to take stronger measures to curb immigration across the border of the U.S. According to the deal, Mexico agreed to house migrants seeking asylum in the U.S.[84]

[81] "US reaches deal to lift steel and aluminium tariffs on Canada and Mexico". *CNBC*. May 17, 2019.
[82] "Agreement between the United States of America, the United Mexican States, and Canada Text". *Government of the United States*. Retrieved November 30, 2018.
[83] Karni Annie, Swanson, Ana, Shear, Michael D. (May 30, 2019), "Trump Says U.S. Will Hit Mexico with 5% Tariffs on All Goods"-via NewYorkTimes.com
[84] "Trump claims he's reached deal with Mexico". *Axios*. June 7, 2019. Retrieved June 8, 2019.

PART III

CHAPTER VI

6. Anti-dumping as a panoply of trade liberalization and WTO dispute settlement procedure

One of the major topics to be investigated in this chapter is the different forms of trade defence instruments used by the "damaged" countries as a mean to protect their domestic market. This is now a mature field which is being spun out into practical application by governments all around the world. Anti-dumping consists the most widely trade defence instrument used as a response to unfair trade practices. Notably, our focus is concentrated upon this barricade instrument. And with the intention to clarify the legal points of anti-dumping, this thesis spotlights the regulation of anti-dumping under WTO rules and clarifies anti-dumping and countervailing measures respectively. Moreover, one of the focal points to be discussed is the anti-dumping dispute settlement procedure by WTO.

Aforementioned, was spoken of the current trade conflicts affecting the World's economic development and consumers welfare. The point of international trade protection was often overlooked during this thesis. When a trade conflict occurs, most of the times, countries will not stand with crossed arms but will take appropriate actions in order to protect their industries. However, is important to understand that although their rights have been infringed, there are certain conditions to be met and not all defence instruments are legal or in conformity with WTO rules. Additionally, this work also analyses whether these unfair trade practices can actually have a positive effect to liberalization of trade and globalization.

Following, is provided an extent overview of dumping and anti-dumping. For example, it is intriguing to touch the meaning of dumping, the reasons standing behind such practices and what can be done as to avoid practices that harm national industries and directly affect the principle of liberalization. Another principle to get through to is the principle of fairness. Is important to understand that the latter consist the pillar upon which trade barriers may be justified. Having this in mind, anti-dumping and similar trade defence instruments, under certain circumstances may be the best way to response when the other country infringes the rules and principles of international trade. Additionally, as Mahatma Gandhi says: "an eye for an eye only ends up making the whole world blind".[85]

[85] This famous line was spoken by Mahatma Gandhi.

6.1 Anti-dumping as a trade defence instrument

6.1.1 Dumping in general

First things first, the problem with trade liberalization and its protection is rooted in a vicious circle of businesses encouraging the use of dumping as a pricing policy. However, the practice of dumping is only the tip of the iceberg since there are plenty of other reasons causing the violation of trade liberalization. Unfortunately, at this point of time dumping consist the crux of the matter. The main practical problem is that people many times get confused and cannot differentiate dumping from subsidies and the cases under which they are allowable. Thus, the first thing to be explain is the notion of dumping (subsidies are explained in detail during Chapter IV) and its impact to trade.

Dumping is a term commonly used in economics and finances. To keep it as simple as possible, with dumping we understand the imposition of lower sale prices to export goods by its own exporter in order to gain unfair market share. Another definition is made in Article VI of the GATT, which defines dumping with great details and broadly interpret it, in a manner avoiding any possible misinterpretation and misunderstanding. We literally cite Article VI:

> "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..."[86]

As we can understand, the general rule is that dumping is legal under GATT and the exception is that dumping is not allowed if results injurious on the importing country's national market. Nonetheless, the reasons why companies dump are not relevant. Article VI provide the occasions under which a measure is considered as dumping practice. Some of the most common types of dumping are cyclical dumping, predatory dumping, market expansion dumping, state-trading dumping strategic dumping.[87] Besides, Article VI does not provide the exact meaning of injury. However, "injury" cover three occasions: threat of material injury to a domestic industry or threat of a material injury to a domestic industry and material retardation of the establishment of such an industry.

[86] Article VI of the GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).
[87] United Nations Conference on State and Development "Dispute Settlement", WTO, 2003, pg. 7

6.1.2 The legal framework and notion of anti-dumping

The starting point of national anti-dumping legislation dates to the 20^{th} century. The primitive legal basis regulating anti-dumping is Article VI of the GATT Agreement. To our knowledge GATT 1947 contained special provisions regarding dumping and antidumping action. Kennedy and Tokyo round were the key stones on the creation of Anti-Dumping Code approved by 17 parties at the late sixte's. There was an immediate need for revision since the measures fixing dumping margin etc. were complex and insufficient. Currently, the Anti-Dumping Agreement under the WTO, have preplaced the previous codes and consist the most accurate legal instrument.

Regarding the procedures, the WTO holds two annually meetings of the Anti-Dumping Committee (AD Committee) to provide a form for discussion of anti-dumping measures. Apart from the AD Committee is the review of antidumping implementation laws of the countries for conformity to the Agreement, the hearing of reports on anti-dumping measures, and the study of issues in antidumping policies and practice. Moreover, the AD Committee is directly interrelated to the Council for Trade in Goods and reports to it each year on the implementation and administration of the AD Agreement. The AD Committee has payed attention to two subjects for discussions of specific points of contention.

The first is the meeting of the Informal Group on Anti-Circumvention. This was an issue asked to be delighted to the AD Committee for further study because no conclusions could be reached on it during the Uruguay Round negotiations. The second is the meeting of the Ad Hoc Group on Implementation, which has as a focal point to harmonize national discretion in the agreement where the interpretation is or could be vague. These subjects have been detrimental for the evaluation of anti-dumping measures by WTO on an ongoing basis.

By the same token, apart from the international legal framework, anti-dumping is regulated by the national legal corpus of each country. After the Tokyo Round, countries have made the appropriate regulations as to comply their domestic anti-dumping legislation with the Anti-dumping Agreement. Unfortunately, this poses the problem whether WTO countries will administrate them in conformity with the Agreement. Having this in mind, countries have to report to the committee and give information to other countries when asked. In addition, the committee is responsible to review national legislation.[88]

[88] See: Anti-dumping measures <https://www.meti.go.jp/english/report/downloadfiles/gCT0105e.pdf> pg. 68-69

Interesting is that GATT (now WTO) punish dumping that causes injury to the trade partner, but it does not prohibit it. When it comes to the notion of anti-dumping, Article VI of the GATT makes crystal clear that:

> "In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with..."[89]

As we can see, WTO authorizes the damaged country to impose a "tax" or "duty" in the form of anti-dumping when dumping occurs. Therefore, many may wonder why Article VI of the WTO Agreement authorises countries to impose a trade barrier and does not really "punish" businesses, since the latter are the infringed parties. The answer is: because WTO is an international organization of countries and their governments, which means that punishing companies is not within the competences of WTO. Anti-dumping Agreement only concerns the actions countries, governments and government agencies may take actions against duping.[90]

In light of this situation, governments many times may abuse and use it as a mean for import restriction and protectionism. Despite that, the chink in the Armor is the determination of anti-dumping duty by the dumping margin. The latter is the difference between the export price and the domestic selling price in the exporting country. By adding the dumping margin to the export price, the dumped price can be rendered a "fair" trade price.[91]

Regarding the procedures, the WTO holds two annually meetings of the Anti-Dumping Committee (AD Committee) to provide a forum for discussion of anti-dumping measures. Apart from the AD Committee is the review of antidumping implementation laws of the countries for conformity to the Agreement, the hearing of reports on anti-dumping measures, and the study of issues in antidumping policies and practice. Moreover, the AD Committee is directly interrelated to the Council for Trade in Goods and reports to it each year on the implementation and administration of the AD Agreement. The AD Committee has payed attention to two subjects for discussions of specific points of contention.

[89] Article VI of the GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).
[90] See: Understanding the WTO: The Agreements " Anti-dumping, end safeguards" <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm>
[91] See: Anti-dumping measures <https://www.meti.go.jp/english/report/downloadfiles/gCT0105e.pdf> pg. 67

6.1.3 Anti-circumvention issues regarding anti-dumping

As we mentioned, when a WTO Member State desorb fair trade by dumping, the other trading partner protect its industries by desorbing free trade. Nonetheless, in many occasions the country subject to antidumping duties, attempts to avoid paying the duties by moving outside the range of the anti-dumping duties orders while doing the same activities as before. This is also well known as circumvention. The Uruguay Round mention three kinds of circumvention: slightly modified product, third country circumvention, importing country circumvention and "countryhopping". However, the kinds of circumvention discussed by most countries are:

> "(a) Falsified customs declarations and other clear illegalities. (b) Switching to exports of products that have only minor differences with those subject to anti-dumping duties (slightly modified product). (c) Exporting the parts for products subject to anti-dumping duties to the importing country and assembling them there (importing country circumvention). (d) Exporting the parts for products subject to anti-dumping duties to a third country and assembling them there (third country circumvention). (e) Exporting products subject to anti-dumping duties from third countries)"

However, the situation with anti-circumvention is more miscellaneous than it seems. Anti-circumvention is a complex problem and to solve it requires the existence of uniform rules both at international and national level. AD Committee has worked on that issue but without success. Moreover, the situation turns out to be even more problematic because of the lack of anti-circumvention's definition. During May 2000 at the Unofficial Circumvention Meeting of the AD committee was discussed about creating a clear definition of the term but without success. Another issue is the conflict between different countries such as U.S, EU, Japan and so one regarding anti-circumvention rules.

The best way to overcome this problem is to balance national AD legislations with the current AD Agreement. Even in this case there is the vast issue that there are, currently, no uniform rules on anti-circumvention in the WTO Agreement. Is interesting the fact that the anti-dumping and anti-circumvention measures are commonly used by the most developed countries (such as U.S, EU, Australia and Canada) and less used by the developed countries.[92] In addition, the percentage of usage in U.S and EU had increased by 50% from 1990 to 1999.

[92] See: Anti-dumping measures <https://www.meti.go.jp/english/report/downloadfiles/gCT0105e.pdf> pg. 70-71

6.1.4 The EU and Anti-dumping

Anti-dumping is the most preferred trade defence instrument within the EU. Withal, there are several occasions where EU Member States practice it as a protectionist measure. On the grounds of this, EU legislation was adopted in conformity and in shape of AD Agreement. Many hold the opinion that this was one of the key reasons enabling the accomplishment of the Uruguay Round negotiations.

Likewise, is very crucial to monitor the administration of the new EU Antidumping provisions as to be in compliance with the Anti-Dumping Agreement. However, regarding violation in this area which seems to have become common practice, there are rightful concerns that abuse may continue where discretion is allowed even if the EU Anti-dumping legal framework do not seem to violate the Agreement. This is especially the case in the European Union because EU institutions have greater discretionary powers than they do in the United States or other developed countries. [93]

When it comes to the enforcement of anti-dumping measures, the EU Commission is the "policy keeping" and "economic machine gun". Investigation is required when an EU Member State accuse another EU Member State for practicing dumping. The investigation lasts 15 months. Like the WTO, the EC must find an injury or material harm to the industry. In contrary to the WTO, the EC doesn't explicitly provide the notion of dumping.

Under WTO rules, governments shall be using a formula to determine that the price is lower than in the exporter's domestic market. On the other hand, EC must find two other prerequisites before it imposes duties. Firstly, it must find the casual link between the dumping and the material harm. Secondly, it must find that the sanctions don't violate the general interests of the EU and not only EU Member States.

If found guilty, the infringed party has the possibility offering to remedy the situation by agreeing to sell at a minimum price. It is up to the EC to accept or not the offer. If the latter does not accept the offer, it can impose anti-dumping charges. These may take various forms such as: a product-specific duty, ad valorem tax, , or a minimum price.[94] There are several issues to be discussed regarding AD in the EU, however, falls outside of the of our thesis.

[93] See: Anti-dumping measures <https://www.meti.go.jp/english/report/downloadfiles/gCT0105e.pdf> pg. 101
[94] See: The Balance "Trade Dumping and its consequences" <https://www.thebalance.com/what-is-trade-dumping-3305835>

6.1.5 Anti-dumping versus other trade defence instruments

Generally binding tariffs aiming to restrict or eliminate free trade are not allowed under WTO rules. This is crystal clear by the general principles of WTO such as MFN treatment principle, transparency, principle of proportionality and so one. However, as any general rule has its exceptions, WTO has as well-established deviations from this rule, when certain requirements are met. Anti-dumping, countervailing duties (CVD) and safeguards are the escape clauses under WTO Agreement regarding MFN treatment.

Many times, people confuse these terms and treat them as a single measure “AD-CVD”. It is common for WTO Signatories States to regulate both under a single law or rule, apply same procedures and give the competence to be investigated by the same authority. Besides, WTO committees for AD and CVD use to meet to discuss about such issues.

A similarity is that they occasionally take the form of an offsetting import tax. On that account, GATT principles of equal treatment is restricted. Rightfully many specialists and experts of international trade law may wonder whether WTO Agreement differentiate its principles and classify them in a hierarchical order. From this exception it seems like the principle of fairness prevails from the MFN principle. From a personal point of view, the main purpose of these escape clauses is not to differentiate the WTO principles or make a hierarchical order.

The main goal is the coexistence and maintenance of “free” and “fair” trade. The American journalist Lyn Nofziger argues: “Foreign trade should be fair rather than free”. Trade defence instruments try to balance free and fair trade. The mean to achieve that is by conducting a comprehensive investigation displaying that the imposition of such import taxes is needed as a response of a domestic industry injury.

As we mentioned apart from the similarities there are many differences as well. First, dumping is an action taken by enterprises and subsidies by governments. On Chapter IV was mentioned that one of the conditions of subsidies is that the provider must be the government, a government agency or by requiring companies to subsidize certain clients. As a result, WTO cannot deal with dumping but only with anti-dumping, subsidies and countervailing measures.[95]

[95] See: The Balance “Trade Dumping and its consequences” <https://www.thebalance.com/what-is-trade-dumping-3305835>

Furthermore, the international legal framework regulating anti-dumping and countervailing duties is not the same. Anti-dumping is governed by the AD Agreement while countairveling measures by the Agreement on Subsidies and Countervailing Measures (SCM). A common problem to be mentioned is the fact that neither of these agreements, explicitly define the notion of the countervailing measures and anti-dumping. Under Article 10 of the SCM Agreement, a measure shall fill specific procedural and substantive requirements as to be considered as a countervailing duty. Governments follow the same logic with countervailing requirements when are imposing anti-dumping measures. The following table summarises the similarities and differences of AD-CVD.

	Anti-Dumping	**Countervailing Duties**
Practices related to	Dumping (by companies)	Subsidies (by state)
International legislation	AD Agreement and Article VI of the GATTT	SCM Agreement
WTO Committees	AD Committee	SCM Committee
Substantive requirements	Dumped imports	Subsidised imports
	Injury to national industry Casual link	
Procedural requirements	Conduct of investigation Imposition and maintenance	
Notion	Lack of definition	

Safeguards are not that common as the other instruments. Many states preferred to protect their industries through “grey area”, namely by using bilateral negotiations not covered by GATT’s advocacy. However, the WTO does no longer allow the use of “grey area” and sets deadlines (sunset clauses). Also, safeguards enable the temporal restriction of imports if the national industry is injured or threated to be injured by a surge on imports. Agreements of this kind were reached for various products. [96]

[96] See: The Balance “Trade Dumping and its consequences” <https://www.thebalance.com/what-is-trade-dumping-3305835>

6.2 The settlement of AD disputes by WTO and Case studies

This part of the thesis has a focal point the dispute settlement clauses in the AD Agreement, WTO dispute settlement case law and some conceptual concerns. National procedural and substantive rules are out of the scope of this work. Compared to other cases, anti-dumping is the less challenged topic in the WTO. The foremost problems are the facts that dumping is a measure practiced by the private sector. As a result, governments may have difficulties to define whether they have the authority to interevent or not. In addition, anti-dumping legislation is convoluted, and cases are like wheels within wheels. Additionally, countries will proceed with bringing the case before WTO panel or Appellate Body when the outcome is in their favour. Most importantly, anti-dumping cases are time consuming and very expensive because they must pay attention to details. Nonetheless, previous cases show that, when countries decide to start proceedings, they have a tough case.

6.2.1 Identification of measure by WTO

Under Article 17/4 of the ADA a WTO Member State has the right to refer cases to DSB if the administering authorities have taken all the appropriate measures impose final anti-dumping duties or to accept price undertakings. Besides, the government that has requested consultation may refer to the DSB the case when the imposition of the provisional measure is not in compliance with Article 17/1. In the very first anti-dumping case prior, Guatemala-Cement I, the Appellate Body argued that in the cases of anti-dumping, the requests for establishment of a panel must identify one of these three measures. Namely, it is not possible to challenge a "proceeding". Following this line of thoughts, results that cannot be challenged the initiation of proceedings or substantive decisions. The main point is to identify one of the three measures laid down in Article 17/4 AD Agreement.[97]

6.2.1.1 Guatemala- Cement I case ruling

> "...Article 17/4 of the Anti-dumping Agreement specifies the types of "measure" which may be referred as part of a matter to the DSB. Three types of antidumping measure are specified in Article 17.4: definitive anti-dumping duties, the acceptance of price undertakings, and provisional measures. According to Article 17/4, a "matter" may be referred to the DSB only if one of the relevant three ant-dumping measures is in place.

[97] United Nations Conference on State and Development "Dispute Settlement", WTO, 2003, pg. 47-49

This provision, when read together with Article 6/2 of the DSU, requires a panel request in a dispute brought under the Anti-dumping Agreement to identify, as the specific measure at issue, either a definitive anti-dumping duty, the acceptance of a price undertaking, or a provisional measure..." [98]

6.2.1.2 Appellate Body Report, US-1916 Act ruling

"In the context of dispute settlement proceedings regarding an anti-dumping investigation, there is tension between, on the one hand, a complaining Member's right to seek redress when illegal action affects its economic operators and, on the other hand, the risk that a responding Member may be harassed or its resources squandered if dispute settlement proceedings could be initiated against it in respect of each step, however small, taken in the course of an anti-dumping investigation, even before any concrete measure had been adopted."[99]

This case is of special interest because the WTO Appellate Body highlights that Article 17/4 of the AD Agreement should be broadly interpreted. The WTO dispute settlement mechanisms may take actions not only against the three measures but to the whole legislation as well. In contrary, the United States claimed that should be take actions only against one of the three measures on Article 17/4 of the AD Agreement. Following we literally provide the ruling of the WTO Appellate Body:

"In the same way that Article XXIII of the GATT 1994 allows a WTO Member to challenge legislation as such, Article 17 of the Anti-dumping Agreement is properly to be regarded as allowing a challenge to legislation as such, unless this possibility is excluded. No such express exclusion is found in Article 17 or elsewhere in the Anti-dumping Agreement...We note that unlike Articles 17.1 to 17.3, Article 17.4 is a special or additional dispute settlement rule listed in Appendix 2 to the DSU.…Nothing in our Report in Guatemala – Cement suggests that Article 17.4 precludes review of anti-dumping legislation as such. Rather, in that case, we simply found that, for Mexico to challenge Guatemala's initiation and conduct of the anti-dumping investigation,

[98] Appellate Body Report, Guatemala Cement I, WT/DS60/AB/R, para. 79.
[99] Appellate Body Report, United States – Anti-Dumping Act of 1916 (US – 1916 Act), WT/DS136/AB/R, para. 73

Mexico was required to identify one of the three anti-dumping measures listed in Article 17.4 in its request for establishment of a panel. Since it did not do so, the panel in that case did not have jurisdiction."[100]

In the cases US-DRAMS and US-Hot-Rolled Steel was ruled that the challenge of the legislation may occur when is applied in a certain investigation. For instance, a WTO Member may challenge one of the three measures by arguing that it was based and in compliance with national law. In this case the latter may be challenged as well.

6.2.2 Special Standard of review under Article 17/6 ADA

A special standard of review for WTO Panels is provided by Article 17/6(ii) of the AD Agreement and based of this provision the Panels are limited to examine the evaluation of the facts provided by the governments. Moreover, Article 17/6(ii) bind panels to support permissible interpretations of ADA provisions by the government in cases when such provision allows more than one permissible interpretation.

6.2.2.1 Panel Report and Appellate Body Report, EC-Bed Linen ruling

"...we consider that an interpretation of Article 2.2.2(ii) under which sales not in the ordinary course of trade are excluded from the determination of the profit amount to be used in the calculation of a constructed normal value is permissible."[101]

"...we reserve the finding of the Panel...that, in calculating the amount for profits under Article 2.2.2(ii) of the AD Agreement, a member may exclude sales by other exporters or producers that are not made in the ordinary course of trade."[102]

Contrarily, in US-Hot-rolled Steel, the Appellate Body held that the use of downstream sales prices by affiliates to independent customers on the domestic market was a permissible interpretation of Article 2/1 of the AD Agreement.[103] However, apart from the standards of review there are some procedural issues as well. Following we will provide the most relevant.

---

[100] Appellate Body Report, US – 1916 Act, paras 62-72.
[101] Panel Report, EC-Bed Linen, para. 6.87.
[102] Appellate Body Report, EC-Bed Linen, paras. 84.
[103] United Nations Conference on State and Development "Dispute Settlement", WTO, 2003, pg. 51

6.2.3 Procedural issues regarding claims

According to the Appellate Body the claims have to clearly be specified in the request for creation of a Panel. Nonetheless, in many cases this requirement has been violated such as in the EC-Bananas case.[104] Additionally, the more the obligations the grater the necessity for detailed claims (Korea-Dairy Safeguards). Moreover, is suggested that an applicant must not only make a reference to the respective articles but briefly mention the claims in a detailed form. The AD Agreement puts an importance to claims because most of anti-dumping issues have a multi-claim character. The Appellate Body has claimed that there is no exhaustion of administrative remedies. Such statement was made in the Thailand-HBeams case where:

> "…The Panel's reasoning seems to assume that there is always continuity between claims raised in an underlying anti-dumping investigation and claims raised by a complaining party in a related dispute brought before the WTO. This is not necessarily the case. The parties involved in an underlying antidumping investigation are generally exporters, importers and other commercial entities, while those involved in WTO dispute settlement are the Members of the WTO. Therefore, it cannot be assumed that the range of issues raised in an anti-dumping investigation will be the same as the claims that a Member chooses to bring before the WTO in a dispute..."[105]

6.2.4 Recommendations and Suggestions made by Panels

First of all, there is a distinction between Panel's recommendation and suggestion. In addition, the two of them are not legally binding for the concerning parties. The differentiation of them is laid down in Article 19/1 of the DSU. Regarding this Article, the Panel claimed that it recommends the Member concerned to bring the measure in conformity with the agreement and make appropriate suggestions how to achieve that. Also, the legal basis is not AD Agreement but DSU. The reason behind such differentiation is that, where an illegal investigation occurs by the adequate authorities, AD/CVD measures must be revoked and remunerated. However, such recommendations are no more accepted and only suggestions are possible. Thus, only the Guatemala-Cement II Panel suggested the revocation of a measure. Nonetheless, the Panel did not accept to suggest that the AD duties be reimbursed.[106]

[104] Appellate Body Report, European Communities – Regime for Importation, Sale and Distribution of Bananas (EC Bananas), WT/DS27/AB/R, adopted 25 September 1997
[105] Appellate Body Report, Thailand-H-Beams, para. 94.
[106] United Nations Conference on State and Development "Dispute Settlement", WTO, 2003, pg. 53-54

PART IV

Results and discussions

This section summarises the findings and contributions made. We showed that international trade law is a very broad field of law and we must be able to make the distinction between private and public international trade law. This finding is directly in line with previous findings. However, others have been focused on the private scope of international trade law. This thesis demonstrates matters covered by public international trade law. Our findings in relation with the sources of international trade at least hints that free trade agreements may not be superlative, but they play a vital role in the regulation and safeguard of foreign trade law.

A further novel finding is that trade barriers indeed restrict trade liberalization and support protectionism, but it must be admitted that they have a controversial character. A popular explanation is that under specific circumstances they result necessary to be imposed in order to protect domestic trade and competition from unfair practices such as dumping. However, we acknowledge that there are considerable discussions among researchers regarding this topic. Many are definite to the opinion that trade barriers must be prohibited under any situation. Nonetheless, results demonstrate that this is not necessarily true. In many cases in which anti-dumping or countervailing measures have occurred, the outcome was sufficient reasonable.

Our results regarding trade defence instruments casts a new light on Trump tariffs. Often WTO Members use such defence instruments to “hide” protectionist duties. By compering the results from trade conflicts such as U.S- EU, Mexico, Canada, and China, we hope to determine that Trump tariffs are leading toward a trade war and appropriate measures must be taken by WTO as the “watchdog” of international trade. One concern about the findings of Tramp tariffs is that is extremely difficult to stay focused on the legal and technical issues of such tariffs and not get involved in the politico-social matters compound. Because of this potential limitation we treat Trump tariffs under a comparable overview with the trade defence instruments. This is particular important when investigating their effect to traders and consumers.

Last but not least, superior results are seen for anti-dumping measures. The latter is like a weapon the purpose of which depends on the hands of the person to whom the weapon is. Accordingly, anti-dumping may be used to protect trade or otherwise cause an injury. This can be proved by the different anti-dumping cases brought before WTO to be settled. This may raise concerns about the way with which WTO settles such kind of disputes.

CONCLUDING REMARKS

The main conclusions that can be drawn is that we must be careful that globalization does not become something people are afraid of. Most importantly, WTO and governments must create a system or international trade that works for everyone and not only for few. We raised the question whether trade liberalization benefits developed or/and corporations and limits the economic freedom of poor countries or the working class. There are many debates for this issue but if we go down to history this phenomenon was concordant with facts. On the other side of the history, free trade improves the world's economic growth by providing consumers and undertakings with the best products at the best price.

As we have argued elsewhere the imposition of tariffs and other protectionist policies may be considered a promising aspect for national industries but in the long term, they have side effects. They must be strongly discouraged when they reduce trade, affect final consumers and harm producers. However, the findings of this study can be understood as allowing protectionist measures when they take the form of trade defence instruments. This is because, there is a legitimate aim behind such trade barriers. This aspect of the research suggested that safeguards, countervailing duties and anti-dumping are allowed under WTO rules if they do not cause an injury to the other contracting party. As the political consultant Lyn Nofziger says:

" foreign trade needs to be fair rather than free"

Correctly, our results appear consistent with the idea that Trade tariffs are leading toward a global trade war and not to fair, bilateral trade deals. Experts and researchers of the field argues that the deception of such tariffs in the past caused the Great Depression and opened the door to WWII. Indeed, these tariffs have a positive impact to domestic industries and in the wealth of the country, but all there are temporary effects. We must take care the outcome from these barriers in a macro perspective. Thus, WTO must take appropriate actions and close the doors to the arguments that has failed to fulfil its main objectives. The latter has a unique dispute settlement mechanism and must take advantage of that as it did with AD issues.

Overall, perfectionism does not exist. Consequently, a liberalized trade has many problems to deal with and cannot considered as the best system. Nonetheless, we have to measure the benefits that liberalization and protectionism offer to the world's economic development and to the eradication of poverty. From this point results that free and fair trade can offer much more to prosperities than protectionist trade could ever do.

BIBLIOGRAPHY

1. Books

-Edda Frankot "Medieval Maritime Law from Oleron to Wisby: Jurisdiction in the Law of the Sea" University of Groningen/University of Aberdeen

- Chia-Jui Cheng "Basic Documents on InternationalTrade Law", fourth revised edition, Wolters Kluwer International BV, The Netherlands, 2012

- David Ricardo "The principles of Political Economy and Taxation", London, New York: Dent & Sons, 1911

- Randy Charles Epping "A beginner's guide to the world economy", Vintage Book, New York, 2001

- John C. Maxwell "The 15 Invaluable Laws of Growth", Center Street, New York

- Ernst-Ulrich Petersmann "International and European trade and environmental law after the Uruguay Round", 1995

- Christopher E.S Warburton "International trade law and trade theory", John Jay College, City University of New York, Henryville, Pennsylvania, US

- Mavroidis, Petros C. The Regulation of International Trade : GATT. Cambridge, Massachusetts: The MIT Press. APA (American Psychological Assoc.)

- Rafael Leal-Arcas 'Theory and Practice of EC External Trade Law and Policy' (published 2008), London

- Rafael Leal-Arcas 'Theory and Practice of EC External Trade Law and Policy' (published 2008), London

- Slaughter and May "The EU Rules on State Aid", January 2018

- Adam Smith "The Wealth of Nations", Shine Classics, 2014

2. International Agreements

- GATT 1994:General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994)

- WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994)

- General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994)

- Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

- Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994)

- Charter of the United Nations and Statute of the International Court of Justice 1945

- Vienna Convention on the Law of Treaties 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331

- Agreement on International and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Subsidies Code, 1973

- Agreement on Subsidies and Countervailing Measures

- Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C 115/47

- Agreement between the United States of America, the United Mexican States, and Canada Text. Government of the United States. Retrieved November 30, 2018.

- United Nations Conference on State and Development "Dispute Settlement", WTO, 2003

3. Law journals and other sources

- International Monetary Fund Research Dept. (1997). World Economic Outlook, May 1997: Globalization: Opportunities and Challenges. International Monetary Fund

- Official Records of the General Assembly, Twenty-first Session, Annex, Agenda Items 88, document A/639; Yearbook of UNCITRAL, Vol. 1, 1970

- Paul, Joel R. The American Journal of International Law, vol. 94, no. 1, 2000

- Grossman, Gene M. "The Purpose of Trade Agreements", March 2016, NBER Working Paper No. 22070

- Ernst-Ulrich Petersmann “International and European trade and environmental law after the Uruguay Round”, 1995

- Trade Policy Review Report by the Secretariat China (PDF). WTO (Report). Trade Policy Review Body. June 6, 2018

- Karel de Gucht, Foreword in Jean-Frédéric Morin, Tereza Novotná, Frederik Ponjaert and Mario Telò, The Politics of Transatlantic Trade Negotiations, TTIP in a Globalized World, Routledge, 2015

- Emre Peker, European Union Launches WTO Challenge to U.S. Tariffs, Wall Street Journal (June 1, 2018)

- Karni Annie, Swanson, Ana, Shear, Michael D. (May 30, 2019), "Trump Says U.S. Will Hit Mexico With 5% Tariffs on All Goods"

- “US reaches deal to lift steel and aluminium tariffs on Canada and Mexico". *CNBC*. May 17, 2019.

- United Nations Conference on State and Development “Dispute Settlement”, WTO, 2003

- Jessup, “Transnational Law“ (Yale University Press, 1956)

4. Cases & Reports

- Case C–81/87 The Queen v Treasury and Commissioners of Island Revenue, ex parte Daily Mail and General Trust PLC (1989)

- Canada vs Aircraft [1999] DS70 (WTO)

- Cases C-328/99 and C-399/00 Italy and SIM 2 Multimedia v Commission, 8 May 2003

- Cases T=267/08 and 279/08 Region Nord-Pas-de-Calais v Commission

- Case C-39/94 SFEI and Others, 11 July 1996

- Case C-342/96 Spain v Commission, 29 April 1999

- Case 730/79 Phillip Morris v Commission

- Jointed Cases T-298/97, T-312/97 etc. Alzetta 15 June 2000

- Appellate Body Report, Guatemala Cement I, WT/DS60/AB/R

- Appellate Body Report, United States – Anti-Dumping Act of 1916 (US – 1916 Act), WT/DS136/AB/R

- Appellate Body Report, US – 1916 Act

- Panel Report, EC-Bed Linen

- Appellate Body Report, EC-Bed Linen

- Appellate Body Report, Thailand-H-Beams

- Appellate Body Report, European Communities – Regime for Importation, Sale and Distribution of Bananas (EC Bananas), WT/DS27/AB/R, adopted 25 September 1997

5. Internet sources and websites

- international trade. BusinessDictionary.com. Retrieved April 21, 2019, from BusinessDictionary.com website:http://www.businessdictionary.com/definition/international-trade.html

- trade. BusinessDictionary.com. Retrieved April 21, 2019, from BusinessDictionary.com website: http://www.businessdictionary.com/definition/trade.html,

- http://www.businessdictionary.com/definition/commerce.html

- http://www.businessdictionary.com/definition/dynamic.html

- Chicago Booth, 'The initiative on Global Market' (Free Trade, 13 March 2012) http://www.igmchicago.org/surveys/free-trade

- Understanding the WTO: The Agreements <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm>

- Agreement on International and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Subsidies Code, 1973 <http://www.worldtradelaw.net/tokyoround/subsidiescode.pdf.download>

- Agreement on Subsidies and Countervailing Measures <https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.

- Agreement on Import Licencing Procedures <https://www.wto.org/english/docs_e/legal_e/23-lic.pdf>

- Understanding the WTO: The Agreements, Non-tariff barriers: red tape, Import licensing: keeping procedures clear <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm>

- Investopedia "Trade War" <https://www.investopedia.com/terms/t/trade-war.asp>

- Tender Capital "The Trump Tariffs: the pros and cons of trade protectionism", 07 August 2018,https://tendercapital.com/en/the-trump-tariffs-the-pros-and-cons-of-trade-protectionism/

- Anti-dumping measures <https://www.meti.go.jp/english/report/downloadfiles/gCT0105e.pdf>

ANNEXES

ABSTRACT

Research on international trade law has a long tradition. The focal point of this thesis is the international trade protection from trade barriers, the AD as a trade defence instrument and the settlement of AD disputes by WTO. For this thesis it was of interest to understand how trade barriers affect international trade and why many governments support such trade obstacles. In addition, a new approach is therefore needed for trade barriers when they are practiced as instruments to protect domestic manufactories from different and unfair policies taken by other trading partners. Hence, the main purpose of the thesis is to offer a light bulb to go on in readers head and put them on second thoughts about the duo logical nature of trade frontiers and the current threats of WTO and international trade law. As the politician Frank Chodorov says:

> "Perhaps the removal of trade restrictions throughout the world would do more for the cause of universal peace than can any political union of peoples separated by trade barriers"

Most of the research in this field is aimed at solving the problem resulting form the lack of global governance, current trade wars and Tramp tariff. Moreover, this work tries to understand the impact of trade liberalization in the economic development of the world and customers welfare. Methods such as induction, deduction and comparing analysis, where enough to prove that by reducing trade barriers, the market access will be increased for traders and consumers. Based on this assumption, hypotheses were developed whether is time for WTO to use effective mechanisms in tackling trade barriers. Nonetheless, this study cannot be considered large enough to cover all actual and potential measures. For this reason, the work is focused on the regulation of AD and on the substantial-procedural matters.

It is important to highlight that WTO has played a significant role in the settlement of AD disputes. Not only "de jure" by providing the Anti-Dumping Agreement but also "de facto" by settling disputes raised in this area. Because the topic covers many areas of international trade law, we decided to not investigate a lot of AD dispute cases but to involve the most crucial cases and findings. This is very much the key component in future attempts to investigate in more details anti-dumping. Lastly, appropriate changes are required in the international trade law and how WTO works, in order to have progress in these fields

ZUSAMMENFASSUNG

Die Erforschung des internationalen Handelsrechts hat eine lange Tradition. Kernpunkt dieser Arbeit ist der internationale Handelsschutz vor Handelshemmnissen, die AD als Handelsschutzinstrument und die Beilegung von AD-Streitigkeiten durch die WTO. Für diese Arbeit war es von Interesse zu verstehen, wie Handelshemmnisse den internationalen Handel beeinflussen und warum viele Regierungen solche Handelshemmnisse unterstützen. Darüber hinaus ist daher ein neuer Ansatz für Handelshemmnisse erforderlich, wenn diese als Instrumente zum Schutz einheimischer Manufakturen vor unterschiedlichen und unfairen Richtlinien anderer Handelspartner eingesetzt werden sollen. Der Hauptzweck der Arbeit ist es daher, eine Glühbirne anzubieten, die den Lesern in den Sinn kommt und sie über den duo-logischen Charakter der Handelsgrenzen und die aktuellen Bedrohungen durch die WTO und das internationale Handelsrecht nachdenken. Wie der Politiker Frank Chodorov sagt:

> „Vielleicht würde die Beseitigung von Handelsbeschränkungen auf der ganzen Welt mehr für den Weltfrieden tun, als eine durch Handelshemmnisse getrennte politische Union der Völker“

Der größte Teil der Forschung in diesem Bereich zielt darauf ab, das Problem zu lösen, das sich aus dem Mangel an Global Governance, den gegenwärtigen Handelskriegen und dem Tramp tarif ergibt. Darüber hinaus wird versucht, die Auswirkungen der Handelsliberalisierung auf die wirtschaftliche Entwicklung der Welt und das Wohlergehen der Kunden zu verstehen. Methoden wie Induktion, Deduktion und Vergleichsanalyse belegen, dass durch den Abbau von Handelshemmnissen der Marktzugang für Händler und Verbraucher verbessert wird. Basierend auf dieser Annahme wurden Hypothesen entwickelt, ob es für die WTO an der Zeit ist, wirksame Mechanismen zur Beseitigung von Handelshemmnissen einzusetzen. Dennoch kann diese Studie nicht als groß genug angesehen werden, um alle tatsächlichen und potenziellen Maßnahmen abzudecken. Aus diesem Grund konzentriert sich die Arbeit auf die AD-Verordnung und auf die wesentlichen Verfahrensfragen.

Es ist wichtig hervorzuheben, dass die WTO eine wichtige Rolle bei der Beilegung von AD-Streitigkeiten gespielt hat. Nicht nur „de jure“ durch die Bereitstellung des Antidumping-Abkommens, sondern auch „de facto“ durch die Beilegung von Streitigkeiten in diesem Bereich. Da das Thema viele Bereiche des internationalen Handelsrechts abdeckt, haben wir beschlossen, nicht viele AD-Streitfälle zu untersuchen, sondern die wichtigsten Fälle und

Erkenntnisse einzubeziehen. Dies ist die Schlüsselkomponente bei zukünftigen Versuchen, Antidumping genauer zu untersuchen. Schließlich sind angemessene Änderungen des internationalen Handelsrechts und der Funktionsweise der WTO erforderlich, um Fortschritte in diesen Bereichen zu erzielen.

ACKOWLEDGEMENTS

First, I would like to gratefully thank my thesis supervisor Prof. Fischer Peter of the Faculty of Law at University at Vienna University for being an inspiration and helping me getting in my next level. He persistently allowed this thesis to be my own work and give me advices whenever I needed it. I would also like to acknowledge my program manager Dr. Sturm Maria who responded to my questions or queries very promptly and for always being available to help me. Additionally, I thank my course management Prof. Fina Siegfried for providing a program with a wide range of courses and thus, give us the possibility to widen and deepen our knowledge in various fields of business law.

Furthermore, I thank God for always giving me the strength to keep going and fight for my dreams. In addition, I would like to express my gratitude to my family for the unconditional love and endless support that I needed during the ups and downs of the research. Finally, a special acknowledge goes to my friends for being by my side and encouraging me along this journey.

"The more you are thankful, the more
you attract things to be grateful for"
-Unknown