International Trade Regulations – Term Paper (Spring 2018)

**1) Tarbert Trading Ltd. v. Cometals, Inc.**

1. Import/export transactions usually require much more documentation than domestic transactions. These include detailed invoices, packing lists, shipping and insurance documents, and specialized certificates. In this case, a “certificate of origin” was required by the government of Columbia before the goods could be imported. Does it refer to the country from which the goods were shipped or where they were grown or made? Why do you think Columbia required a certificate of origin? What is its purpose?

2. Suppose that the beans had arrived in Columbia and were then stopped by Columbian customs authorities because of a fraudulent certificate. What do you think might have happened to the beans? What would the risk have been to Cometals and Tarbert? What if the Columbian buyer had already paid for the beans?

3. Evaluate and discuss the conduct of Cometals and Tarbert. Fraudulent documentation is not uncommon in international trade, especially when parties do not have a history of business together. What are the lessons to be learned by all parties?

**2) Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.**

1. What are the “limited exclusive” rights granted to the licensees in this case?

2. What is the difference between the rights granted to the plaintiff and those granted to the defendants?

3. Do you agree or disagree with the court’s interpretation of the license agreements?

4. What does this case tell you about negotiating and drafting a licensing agreement?

**3) Dayan v. McDonald's Corp.**

1. What social or cultural factors might have affected McDonald's presence in Paris?

2. How could McDonald's have exercised greater control over its foreign franchisee?

3. What types of products or services are most suitable for foreign licensing?

**4) Gas Plant Disaster In re Union Carbide Corporation at Bhopal**

1. India gained independence from Great Britain in 1947. Like many developing countries with agrarian economies, independent India embarked on a long period of socialist and protectionist policies. How do you think this affected the investment climate in India? How do you think this defined the relationship between UCC and the Indian government prior to 1984?

2. Why do you think UCC might have chosen to produce agricultural pesticides in India rather than exporting those products to India from plants in developed countries?

3. Why did India require local management and control? What are the advantages and disadvantages of local management, and what problem does it present to the multinational?

4. Had the legal requirements in India concerning the handling of hazardous chemicals been less than that required in the United States, should UCC have ethically followed the higher U.S. standard?

5. Do you think that a parent corporation, like UCC in this case, should be financially liable for torts committed by its foreign subsidiary? Should the parent be protected by the limited liability of its corporate veil, or should a multinational firm with a “global purpose” be responsible under some theory of “single-enterprise” liability? How would this affect the attitude toward investment worldwide?

**5) Transatlantic Financing Corporation v. United States**

1. Did the parties agree on what would happen if the Suez Canal had closed? In other words, did they allocate the risk of closure? Would that have changed the result?

2. What is Transatlantic’s argument? If admiralty law implies that a ship’s journey will be by the “usual and customary” route, why did the court not hold that the contract had become impossible to perform? How does the court define “impossible?”

3. Did Transatlantic’s performance become impracticable? How difficult was it for Transatlantic to take the alternate route around Africa?

4. Suppose it had been bad weather instead of a blocked canal? Would the case outcome have been different? How about a tsunami? What if a government order had prohibited the ship from departing Texas?

**6) Gaskin v. Stumm Handel, GMBH**

1. Why did Gaskin claim that he was not bound by the forum selection clause included in the contract to which he agreed?

2. In business, is a party to contract negotiations obligated to provide translation services to other parties?

3. If the parties to a contract execute two copies of a contract, one in each language, which is the operable and effective document?

**7) Bernina Distributors v. Bernina Sewing Machine Co.**

1. What were the importer’s two arguments in this case? How did the court address each?

2. What is the effect of the fact that just prior to executing the contract, the dollar had fallen by 7 percent against the Swiss franc?

3. In any international business transaction, which party assumes the exchange rate risk?

**8) DIP SpA v. Comune di Bassano del Grappa**

1. What was the ostensible purpose of the Italian law? What was its effect

2. Do you think this law creates a climate ripe for corruption?

3. Why was the law not found to be discriminatory?

4. Assume that a municipality in a foreign country passes a law limiting the size of retail stores in the city. How might this affect U.S. firms wanting to open stores there?

**9) It's Intoxicating, Inc. v. Maritim Hotelgesellschaft mbH**

1. On what basis did the court conclude that the parties had not sufficiently evidenced intent to opt out of the CISG? What language would you have included in the purchase and confirmation orders to clearly evidence such intent?

2. What was the effect of the application of the CISG to the contract rather than Pennsylvania state law?

**10) Solae, LLC v. Hershey Canada, Inc.**

1. What was the court’s holding with respect to the inclusion of the forum selection clause in the parties’ contract?

2. What are the requirements for the formation of a contract pursuant to the CISG?

3. Did the court improperly excuse Hershey’s failure to object to the forum selection clause given the parties’ extended dealings (which included conditions of sale containing a forum selection clause)? Why or why not?

**11) Chicago Prime Packers, Inc. v. Northam Food Trading Co.**

1. What was the court’s decision with respect to Chicago Prime Packer’s claim for breach of contract?

2. What should Northam have done in order to avoid the result in this case?

3. Is the court’s opinion overly harsh given that Northam was only a trading company and not the end user of the product? Why or why not?

**12) Tandrin Aviation Holdings Ltd. v. Aero Toy Store, LLC**

1. On what basis did the court refuse to enforce the force majeure clause to excuse ATS’ failure to perform?

2. Should economic or market circumstances ever serve as a basis for failure to perform contractual duties? Why or why not? Under what circumstances should such circumstances excuse performance?

3. If you were ATS’ attorney, how would you have drafted the force majeure clause to excuse performance in the event your client could not obtain financing?

**13) Banque de Depots v. Ferroli Gas**

1. Why did the court not permit Banque de Depots to seize the cargo Bozel shipped?

2. What are the policy reasons for not allowing a creditor, such as Banque de Depots, to seize cargo that is being shipped to a buyer under a bill of lading?

3. What are the expectations of a good faith purchaser of a bill of lading?

**14) Ample Bright Development, Ltd. v. Comis International**

1. Why did the court not permit Comis to diverge from the terms of the bill of lading?

2. What are the policy reasons for not allowing a carrier, such as Comis, to disregard the terms of the bill of lading?

3. When combined with the opinion in Banque de Depots v. Ferroligas, what does this case tell you about the legal nature and effect of a bill of lading?

**15) Biddell Brothers v. E. Clemens Horst Co.**

1. Why did the court rule that the buyer was not entitled to inspect the goods prior to paying for them?

2. What assurance did the buyer have that conforming goods were actually shipped?

3. What terms could the buyer have negotiated in the contract to assure that the goods shipped would be as ordered?

4. Assume that the documents arrive well ahead of the ocean cargo and that they were purchased by the buyer. A day later, the ship and cargo go down at sea. Assuming that the carrier was not at fault, what is the buyer’s recourse?

5. In a CIF contract, which party assumes the risk of changes in the cost of ocean freight after the signing of the contract but before shipment?

**16) Basse and Selve v. Bank of Australasia**

1. Why do buyers in international transactions often use inspection firms?

2. If the seller fails to provide an inspection certificate as required in the contract, can the buyer refuse to accept the documents?

3. Give examples of industries or products that would benefit from the following: health certificates, ingredients certificate, fumigation certificate, inspection certificate, certificate of chemical analysis, certificate of quantity or weight, and social compliance audit certificate.

**17) Cedar Petrochemicals Inc. v. Dongbu Hannong Chemical Co.**

1. What provisions could Dongbu have included in the contract with Cedar if it intended to avoid the application of the CISG?

2. What Incoterm would you have recommended to Dongbu to avoid the result in this case?

**18) Maurice O’Meara Co. v. National Park Bank of New York**

1. Had the bank been aware that the newsprint shipment did not conform to the requirements of the underlying sales contract, would it have still been required to pay under the letter of credit?

2. If the bank pays for documents that conform to the letter of credit, but the goods

themselves turn out to be nonconforming, is the buyer legally justified in refusing to reimburse the bank?

3. Do you think under current law and banking practice, that bankers should physically inspect the goods when they arrive before honoring their customer’s letter of credit?

**19) Sztejn v. J. Henry Schroder Banking Corp.** (see <https://www.lexology.com/library/detail.aspx?g=7fea8758-87b8-4edf-b131-40c634d12183> )

1. What basic principle of letter of credit law does this decision challenge?

2. How would the result be different if the draft and documents had been sold and negotiated to a holder in due course who took with no knowledge of the fraud, and who then presented the documents to the issuing bank for payment?

3. Explain the misrepresentation that took place in this case. How was this “fraud in the transaction”? Can you think of other examples of how fraud could occur in a documentary letter of credit transaction between foreign parties?

4. What steps could a buyer and seller take to avoid falling victim to an international fraud? How could they learn more about each other, and what sources could they consult?

**20) European Economic Community—Import Regime for Bananas**

1. What is a tariff concession?

2. What is a tariff binding? What was the EEC’s bound rate?

3. What actions did the EEEC take that violated its tariff concessions?

4. Why is it important that countries maintain their tariff commitments? If not for tariff commitments, what do you think the impact would be on foreign banana exporters or on exporters in any industry?

5. What is the legal basis for Latin America’s objections?

**21) Japan—Taxes on Alcoholic Beverages**

1. What is the purpose of GATT’s Article III and how is that purpose ensured?

2. Is it necessary that the complaining party show that a discriminatory tax has a negative effect on trade? Is a remedy possible even where the discrimination has no adverse impact on the sales volume of the imported products?

3. How does a WTO Panel determine whether two products are “like products” for purposes of the first sentence of Article III:2 or “directly competitive or substitutable products” that fall within the domain of the second sentence of Article III:2?

**22) India—Quantitative Restrictions on Imports of Agricultural, Textile, & Industrial Products**

1. Compare the system of import licensing in effect in India during that time to what you know in the United States today. Are there any industries you can think of in the United States that are subjected to import licensing? What industries are so highly regulated?

2. Why did the licensing scheme violate Article XI?

3. What causes a balance-of-payments problem, and why can this be a critical problem for many developing countries?

4. Why did the panel not accept India’s balance-of-payments argument?

**23) European Communities—Regime for the Importation, Sale & Distribution of Bananas**

1. When may a member bring a complaint against another member of the WTO?

2. What was the basis for the EC’s argument in this case?

3. The EU-Latin America banana dispute did not end until 2012. What was the ultimate conclusion to this WTO issue?

**24) Commission of the European Communities v. Italian Republic (Public Monument Case)**

1. What was the ECJ's holding with respect to Italy’s claims regarding the cost to local governments of maintaining cultural attractions and historic locations?

2. What was the basis for the ECJ's decision that the Italian national government was responsible for the conduct of local governments with respect to the fees charged for admission to museums and cultural attractions?

**25) Commission of the European Communities v. Portuguese Republic**

1. What was the ECJ's holding with respect to Portugal’s claims that the prohibition upon window tinting was in the interest of public safety and eradication of crime?

2. What was the basis for the ECJ's decision that Portugal’s law constituted an obstacle to the free movement of goods?

3. How did the ECJ conclude that the prohibition on window tinting was an obstacle to the free movement of goods when the Portuguese law did not contravene a directly applicable EU law?

**26) Apple, Inc. v. Samsung Electronics Co., Ltd.**

1. Should patent cases be decided by lay judges and juries?

2. Are litigation damages too high in patent case

3. How can the legislature improve the patent system and reduce the inefficiencies of litigation?

 **27)** **Diamond v. Chakrabarty** (see<http://blog.legalsolutions.thomsonreuters.com/legal-research/today-in-1980-the-supreme-court-allows-the-first-patent-of-a-genetically-modified-organism/>)

1. The foregoing decision was decided by the Supreme Court by only a 5 to 4 vote. Do less developed nations agree with the majority or minority? Why?

2. Has the development of artificial life forms been encouraged by the Supreme Court’s decision? Is this a good thing? What would have happened to the Horizon oil spill in the Gulf of Mexico without crude oil-ingesting organisms?

3. Do industrialized nations like the United States tend to expand the scope of IPRs? Why?

**28) Mobile Communications Services, Inc. v. WebReg, RN**

1. Would the complainant have won the case if it could not show that it had an interest in the name Mobilcom? Must all the elements be shown to get relief?

2. Is it acceptable to have a business selling domain names? How must such a business show that it creates domain names?

3. How would one show that the company creating domain names was aware of another firm’s use of a dictionary term as a trademark?

**29) TVBO Production Limited v. Australia Sky Net Pty Limited**

1. How difficult would it have been for plaintiffs like TVBO to find out who was stealing and rebroadcasting its signal?

2. How would an Australian court enforce its jurisdiction over a foreign copyright infringer?

3. If it were difficult to trace this type of piracy, would it be worthwhile for the pirate to continue? How would a court system discourage this type of piracy?

**30) Comite Interprofessional du Vin de Champagne v. Wine Worths Group, Ltd.**

1. The result in this case means that “champagne” is an enforceable IPR in New Zealand and the United Kingdom, but not in Australia, Canada, or the United States. Do you think that the court’s approach was objective or subjective? What does this suggest about trademark law?

2. The court reached its decision by reviewing evidence about association between the word champagne and the product from France. Such surveys were organized and conducted by experts for each of the parties. Were these surveys subjective or objective? Whose job is it to determine which surveys are more reliable?

3. The Coca Cola Company hires personnel worldwide to assure that when consumers order a “coke,” they are either served Coca-Cola products or are advised that none are available. Why?

**31) A. Bourjois & Co. v. Katzel**

1. Certain German automobiles that are regarded as non-luxury in Germany have upgraded options before shipment to the United States, where they are marketed by the U.S. licensees as luxury cars. How would this business model be adversely affected if not for the Bourjois decision?

2. How does the protection afforded by Bourjois hurt U.S. consumers?

3. If the Bourjois protection were not afforded, what would this mean for U.S. licensees of products from outside of the United States?

**32) CSU et al. v. Xerox Corporation**

1. Is there a conflict between antitrust laws and IPR laws? If so, how can such a conflict be resolved by the legislature or the courts?

2. Should the courts or the legislature impose a duty to license to prevent a company to monopolize a market?

**33) Pulp Mills on the River Uruguay (Argentina v. Uruguay)**

1. The court found that Uruguay violated its procedural duties to provide notice and seek agreement with Argentina before launching on the project, and then it argued that it was disproportionate to dismantle the pulp mills as a remedy for its violation. Did Uruguay then benefit from proceeding with construction without seeking consent? How might Argentina have prevented this from happening?

2. Was Argentina able to show that Uruguay’s new mills were polluting in violation of the treaty? What would have happened if Argentina had been able to prove that?

3. The court imposed a duty to cooperate in monitoring ongoing pollution. Did such a duty not already exist? What do you think will happen because of this future monitoring?

**34) The Border Area—Costa Rica v. Nicaragua**

1. The International Court of Justice noted that it had authority to resolve this dispute because both Costa Rica and Nicaragua had consented to its compulsory jurisdiction over treaty disputes under Article 36, paragraph 2 of the Statute of the International Court of Justice. Could the Court have resolved their dispute without such consent? Why is it in the interest of nations like Costa Rica and Nicaragua to consent?

2. The rule that the Court endorsed is that a “State is…obliged to use all the means at its disposal to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.” If the United States renews generation of electricity through coal-fired plants and acid rain results in Canada, would Canada have a claim under international law against the United States? Would the International Court of Justice have jurisdiction to resolve the dispute?

3. Costa Rica did show that the Nicaraguan dredging caused a diversion of water, but the Court decided that it was not sufficient to sustain a claim under international law. What was the Court’s basis for determining when environmental damage occurs? How could you make such a determination under customary international law? Does this seem subjective for a legal ruling?

**35) Whaling in the Antarctic- Australia v. Japan: New Zealand intervening**

1. The International Court of Justice had jurisdiction to resolve this dispute because both parties had consented to compulsory jurisdiction under the Court’s Statute and because it involved a treaty, the Convention for the Regulation of Whaling. Do you think that Japan anticipated that a third party like the Court would enforce the Convention in this way when it entered the Convention? Do you think that Whaling in the Antarctic (Australia v. Japan) will discourage countries from entering such treaties?

2. The Court noted that Japanese authorities had engaged in “scant analysis and justification for the underlying decisions” and this was very important in the Court’s decision that the JARPA II program was not really “for research purposes.” What if Japan had prepared a better “paper trail” with lengthy analyses, but the same result? Would they have won? What if there had been analysis, but the Court determined that the analysis was wrong?

3. The Court never explicitly accused Japan’s program as being conducted as a cover for continued whale hunting. Do you think that’s what the substantive decision means? Can Japan avoid this problem by withdrawing from the Convention? What would prevent Japan from withdrawing?

**36) European Communities—Measures Affecting Asbestos & Asbestos-Containing Products**

1. Was there any question that France’s ban would have a discriminatory impact on Canadian asbestos products?

2. If France’s ban had been based on grounds other than protecting the health of French residents, would it have been upheld? Do nations have greater discretion to discriminate against foreign products if they base the discrimination on health concerns?

3. How would the Appellate Body have been perceived if it compelled France to accept products that its democratically elected government deemed unhealthy? Do you think this judicial rule might be partially based on the tribunal’s desire to preserve its legitimacy?

**37) United States—Import Prohibition of Certain Shrimp and Shrimp Products**

1. The United States had to change its original regulation regarding the preservation of turtles. How does this compare to the treatment given to France’s law on asbestos? Do nations have more discretion in discriminating to protect human health within their borders than animal species around the world?

2. What changes to the rules made them acceptable “discrimination”?

3. Can a large market such as the United States change environmental policy throughout the world using measures like this? Why? Is it antidemocratic to have the United States impose its policies on other nations through its bargaining power?

**38) Judgment of February 23, 1988**

1. What is the major difference between this case and the Pulp Mills case?

2. How did the Austrian court justify getting jurisdiction over a matter over 100 kilometers in the territory of another country?

3. If an Austrian court issues a judgment and the Czech party refuses to comply, how do you think that the plaintiff will seek to enforce the judgment?

**Instructions for the term paper**

* Min. 8 max. 12 pages accept the cover page. The study will be fulfilled in digital environment and sent to bulentozer@cag.edu.tr via email by specifying the student’s name, school number and the case name on it.
* Provide references for the information sources you benefit (use only text books, published articles, well known/reliable web pages preferably with org, edu and gov domain name).
* Make sure that you have the answers for the relevant questions in your study and give brief info (company profile) about the related parts.
* Try to give examples similar with the given case.
* Let me have your own inferences and try to use your own words when writing the paper.
* Do not hesitate to benefit various web sites on internet widely.

The dead-line for the term paper is **April 10, 2018**. Late submissions will not be regarded.

**NOTIFICATION LIST**

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