

# Legal Mercantile Evolution from the Twentieth Century to the Dawning of the Twenty-First Century

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## I. INTRODUCTION

The need to establish commercial regulations in the foreign arena became manifest at the turn of the twentieth century and the beginning of the twenty-first century, mainly as a result of the problems brought about by internal regulations of nation states devoted to international trade. The nation states played an active and marked role in establishing their own commercial regulations in order to maintain a good balance in this area and to boost an incipient domestic industry. Nonetheless, all of these national laws proved that there was no adequate regulation for commercial transactions at a world-wide level. The lack of such international regulations was a reflection of the commercial policies in use by the nation states which, far from boosting commercial activities, restricted global commercial turnover and prevented foreign economies from profiting from comparative costs. In other words, they denied the possibility to acquire imported goods in areas where such goods were produced at lower costs.

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Consequently, the methods or policies employed by national governments—such as restrictions of certain fields in domestic industries, the benefit of exports—the commercial privileges for dominant countries over colonies, the increase of customs barriers, and the direct control of imports and financial regulation—not only damaged and impoverished developing countries, but also became the main reason for initiating international trade regulations, with the fundamental purpose of developing alternative courses against governmental-driven measures.

The first attempts to establish the aforementioned commercial regulations were consolidated through the signing of bilateral and regional treaties, with the aim of reducing tariffs and other restrictions. However, in order for these agreements to come into effect and to avoid any kind of possible international discrimination—as they only included commercial benefits for the few signing countries—it was necessary for these treaties to be signed on multilateral grounds.

It was only after World War I, when the League of Nations was established in 1919, that a movement for the systematic regulation of international trade on a multilateral basis began. Although the League of Nations had limited duties in the economic field, it had no responsible body for commerce. Mercantile affairs were still conducted with traditional methods, that is, bilateral negotiations and international diplomatic conferences. The failure of the League of Nations—due to the United States' refusal to become a member, even though its president had been the driving force behind the foundation of this society—had a deep impact on the negotiations of all international treaties that did not receive support from the United States, at the time one of the leading world powers.

This was the reason why the world economy experienced a profound, dramatic, and memorable crisis in the 1920s, which gave rise to, among other things, the outbreak of World War II, a conflict that might have been prevented had the economy succeeded in becoming both a thriving commercial growth and an expansionist world system. From 1920 to 1930, however, the most significant attempts to reinstate world economy were the Brussels Financial Conference, held in 1920 to establish the financial and economic principles for the governments to follow, and the Conference for the Abolition of Prohibitions and Restrictions on Imports and Exports, held in 1927, where some decisions were made concerning a reduction of tariffs and other trade barriers, along with the approval of an Agreement for the abolition of prohibitions and restrictions on imports and exports. However, the Conference failed, and the Agreement never really came into effect.

The Great Depression—a result of, among other things, low foreign trade growth, in contrast with high production taxes—led to an industrial contraction, a deep financial crisis, and an increase in protectionist measures assumed by the nation states. Protectionism was varied and widespread. The main industrialized countries increased tariffs and introduced quantitative restrictions and change controls, while bilateral agreements on clearing exchange multiplied, seemingly decreasing the possibility of establishing multilateral foundations to regulate foreign trade. Given the 1929 depression and financial crisis, governments adopted measures to safeguard their economies and products, neglecting the potential effects of such policies on other nations and creating new commercial restrictions, such as a direct quantitative control on imports, economic restrictions, preferential areas, bilateral commercial agreements, higher tariff barriers, strengthening of commercial areas with discriminatory protection, and establishment of direct subsidies to a number of industries destined to help national economies. This protectionism prevailed

throughout the 1930s. In 1941, both the United States and the United Kingdom attempted to establish a series of basic principles to regulate world trade exchange after the war, but to no avail.

After World War II, nation states became aware of the impending need to prevent commercial restrictions. An international consensus was reached, declaring that to restore non-discriminatory commercial conditions, commerce should be liberalized and freed from the protectionist measures that had been in effect since the 1930s. The Nation States were also concerned with the devastating effects of World War II. In order to avoid another conflict of this magnitude, they decided to create a substitute for the “Society of Nations,” called the United Nations, whose tasks included international cooperation toward the solution of international financial problems.<sup>1</sup>

Having the reorganization of world economy as its main objective, the United Nations’ Monetary and Financial Conference, known as the Bretton Woods Conference, was held in 1944.<sup>2</sup> Through the creation of three international bodies, a strategy was established to reorganize the world economy and foreign trade. These bodies were the International Monetary Fund (IMF), the International Bank for Reconstruction and Promotion—better known as the World Bank (WB)—and the International Trade Organization (ITO). Each of the bodies in this tripartite international economic system had a specific goal. The original idea contemplated specific tasks for each of these bodies:

The IMF would only deal with macroeconomic issues of the concerned country—that is, its budget deficit, its monetary policy, its inflation, its commercial deficit, and its foreign debt—thereby guaranteeing order and stability in international financial transactions.

The WB would seek to promote investment and would also deal with structural issues. It would not regulate the public expenditure, financial institutions, labour market, and commercial policies of each nation state.

The ITO was to lay out commercial rules to facilitate the liberalization of multilateral trade, including employment regulations, agreements on basic products, restrictive trade practices, foreign investment, and services.

On December 27, 1945, the Articles of Agreement of the IMF were signed.<sup>3</sup> However, it was not until October 15 of that year that it became a specialized body of the United Nations. Its aims were to contribute to the creation of an adequate and more stable international monetary system by decreasing payment balance problems in participating countries.

The WB came into operation at the beginning of 1947. In its origins, the Bank had the purpose of funding the need for reconstruction of European countries after

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1. The term “United Nations” was first used on January 1, 1942, during World War II, when representatives of twenty-six nations approved the Declaration of United Nations by virtue of which their respective governments committed to struggle in tandem against the Axis Powers (Germany, Japan, and Italy). However, it was only until 1945 that the representatives of fifty countries gathered in San Francisco, California, at the United Nations Conference for International Organization to write the UN Charter. The United Nations Organization officially began its duties on October 24, 1945. *See generally* U.N. CHARTER.

2. *See* United Nations Monetary Fund Financial Conference (Bretton Woods, N.H., July 1-22, 1944) Proceedings and Documents 94, U.S. Dept. of State Pub. No. 2866.

3. *See* International Monetary Fund (IMF) Web site, <http://www.imf.org>.

World War II, granting equal consideration and facilities for projects and resources devoted to development and reconstruction.

The negotiations for the creation of the ITO began at the United Nations Conference on Trade and Employment, held in 1947 in Havana, Cuba (Havana Conference).<sup>4</sup> The Havana Charter, a product of this Conference, listed four main aspects for trade liberalization: (1) economic development and reconstruction; (2) equal conditions for market accessing, supply resources, and production means; (3) elimination of commercial barriers; and (4) cooperation within the International Trade Organization.<sup>5</sup> The Havana Charter additionally established the General Agreement on Tariffs and Trade (GATT), to be regulated by the ITO. This document had been under negotiation since December 1945 to decrease and consolidate customs duties. The IMF was also to regulate this document, defining respective jurisdictions and, above all, safeguarding the IMF's authority over macroeconomic and monetary issues. It also considered a division of responsibilities. The Final Act of the Havana Conference was signed by fifty-three countries, with an appendix of the resolutions taken by the Internal Commission of the International Trade Organization.<sup>6</sup> The validity of this Final Act was conditioned to an international ratification by the countries comprising at least eighty-five percent of all world trade.<sup>7</sup>

Ratification by the United States was decisive. Yet Congress, which appeared to be the party most interested in establishing the ITO, refused to sign the Charter because it was not liberal enough.<sup>8</sup> As a result, some governments, unwilling to submit their regulations to an organization which could have power over their trade regulations, did not ratify the Act either. The Charter to establish the ITO was not ratified by the requisite number of countries, and all attempts to establish a multilateral trading organization were abandoned.

## II. GENERAL AGREEMENT ON TARIFFS AND TRADE

Concerned with safeguarding the tariff concessions negotiated during the Havana Conference, twenty-three governments called for their provisional approval while the ITO was being consolidated. As a result, in October 1947, Australia, Belgium, Brazil, Burma, Canada, Cuba, Czechoslovakia, Chile, China, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, South Africa, South Rhodesia, Syria, Sri Lanka, the United Kingdom, and the United States approved the GATT, which had been under negotiation since the end of 1945 and during the Havana meetings.<sup>9</sup> The GATT established regulations on mutual tariffs, traffic trade, tariff valuation, free trade areas, subsidies, fees, and non-tariff barriers. It went into effect on January 1, 1948.<sup>10</sup>

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4. See United Nations, Conference on Trade and Employment, Havana, Cuba, Nov. 21-24, 1948, *Final Act and Related Documents*, UN Doc. E/Conf.2/78 (1948), 21.7.3(b).

5. See United Nations Conference on Trade and Employment, March 1948, Havana Charter for an International Trade Organization, art. 11(2), U.N. Sales No. 48.II.D.4, E/CONF.2/78 (1948).

6. See *id.*

7. See *id.*

8. See *id.*

9. General Agreement on Tariffs and Trade (GATT), Oct. 30, 1947, art. III, para 8(b), 61 Stat. A-11, 55 U.N.T.S. 194, available at <http://www.gatt.org>.

10. *Id.*

Without the ratification of the Havana Charter, the ITO never came into being. Consequently the GATT became a provisional mechanism to govern foreign trade and the only multilateral framework that established foreign exchange regulations. GATT negotiations were of little value for poor countries because very few efforts were aimed at eliminating trade restrictions of elaborate products or at protecting agriculture. Such difficulties drove developing countries to ask the UN to create an organization in charge of examining world trade issues.

Taking the position of developing countries into account, the UN Economic and Social Council (ECOSOC) decided in 1942 to convene a Conference on Trade and Development, which was hosted in Geneva, Switzerland in 1964. All members of the United Nations attended. The Conference established the United Nations Conference on Trade and Development (UNCTAD)<sup>11</sup> to deal with foreign trade problems. Hence, two independent organizations for international trade arose, but with no clear distinction between them: the GATT and the UNCTAD.

The GATT ultimately turned out to be a formal provisional agreement that made the 1947-approved tariff concessions possible, as it required no ratification.<sup>12</sup> However, the adoption of some regulations related to certain points did not match the domestic legislation of several contrasting parties, so they reached an agreement on a "Protocol of Provisional Application," known as the Grandfather Clause.<sup>13</sup> This clause stipulated that each State was to put GATT principles into practice insofar as they were compatible with their current legislation.<sup>14</sup>

Despite having been conceived as a provisional commercial agreement, the GATT helped establish a stable and thriving multilateral trade system. Nevertheless, and possibly due to its provisional nature, some regional integration processes continued; for example, with a view to liberalizing trade, Latin American countries established the Latin American Free Trade Association (LAFTA) in 1960.<sup>15</sup> Twenty years later, LAFTA would become the Latin American Integration Association (LAIA).<sup>16</sup>

Eight rounds of negotiations were held during the GATT's nearly fifty years of existence. The rounds were aimed at specific subjects of foreign trade, such as tariff duties, commercial policies, trade barriers, subsidies, antidumping, safeguards, and technical assistance to developing countries, among others. Negotiations throughout the first four rounds were bilateral. From the Dillon, Switzerland Round in 1960 onward, the European Economic Community acted on behalf of all its representatives, and thus the negotiations took on a multilateral nature. Nevertheless the GATT evidently was in need of reorganization, which led to the Uruguay Round in the 1980s and, finally, to the establishment of the World Trade Organization (WTO).

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11. During the Geneva Conference, it was resolved that UNCTAD would meet on a four-year basis, with a possibility to hold intergovernmental meetings among conferences. Also, it was decided that a permanent Secretariat would provide any needed support.

12. See generally GATT, *supra* note 9.

13. Protocol of Provisional Application, T.I.A.S. 1700, 55 U.N.T.S. 308.

14. *Id.*

15. Treaty of Montevideo, Feb. 18, 1960, 2 B.D.I.E.L. 54.

16. See Treaty of Montevideo, Aug. 12, 1980, 1329 U.N.T.S. 255, 20 I.L.M. 672 (1981).

### III. WORLD TRADE ORGANIZATION

The GATT Ministerial Meeting held in 1982 in Geneva laid the foundations for the negotiation program set out at the Punta del Este, Uruguay Round, in September 1986. The goals of this Round were focused on the liberalization and expansion of world trade, updating and strengthening GATT regulations by improving the multilateral system, promoting international cooperation to strengthen the interplay of commercial policies and those affecting the growth of world trade, and expanding its application to new areas in international commerce, such as services, agriculture, textiles, and intellectual property.<sup>17</sup> The Ministerial Statement, a product of the 1982 meeting, turned out to be the mandate governing the negotiations of Uruguay's 1986 Round. This Statement focused on two main aspects—the first being negotiations about trade in goods, whereas the second referred to the characteristics and goals of negotiations regarding foreign trade in services.

Coincidentally, in the 1980s, the changes in world trade since the GATT was signed in 1947 became self-evident. Economic globalization was developing, as was trade in services, for which the GATT had not established any regulations. Moreover, there had been an increase in the number of and interest in foreign investments.

The Uruguay Round—which lasted from 1986 to 1994, with the participation of 108 countries—represented an opportunity for liberalizing trade, reinforcing discipline, and improving the openness of the multilateral trade system. In addition, it sought to constitute a mechanism to settle commercial controversies. With a view to fulfilling the goals established in the Ministerial Statement, thirteen negotiation groups were created, together with a special group for trade in services-related negotiations, which included customs duties, non-tariff measures, tropical products, products obtained from the exploitation of natural resources, textiles and clothing, agriculture, articles from the Agreement, safeguards, agreements on multilateral trade negotiations,<sup>18</sup> subsidies and compensatory measures, trade-related aspects of intellectual property rights, antidumping, and measures for trade-related investments.

Finally, after almost forty-seven years of planning a multilateral organization to regulate world trade, the agreements of the Uruguay Round were finally signed in Marrakech, Morocco in April 1994.<sup>19</sup> The international community was at long last able to consolidate the creation and operation of the World Trade Organization (WTO).<sup>20</sup>

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17. See generally Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND, vol. 1 (1994), 33 I.L.M. 1125 (1994) [hereinafter Uruguay Round Final Act].

18. As for the WTO, the term *multilateral* describes all activities on a world basis, specifically between all members of the WTO; they are to be distinguished from regional activities or those carried out by smaller countries.

19. See Uruguay Round Final Act, *supra* note 17.

20. See generally Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31, 33 I.L.M. 1144 (1994), 1867 U.N.T.S. 154, Pub. L. 103-465, 108 Stat. 4809 (1994), 19 U.S.C. 3501. The approval decree of the Final Act from GATT Uruguay Round was published in Mexico on August 4, 1994, in the *Diario Oficial de la Federación*. On December 30 of the same year, all agreements were put into effect and therefore the validity of the World Trade Organization in Mexican law became applicable as well.

The signing of the Final Act by representatives of the 128 member countries, the result of long years of negotiations, culminated with the creation of the World Trade Organization.<sup>21</sup> Several agreements, understandings, and statements were thus formalized that undoubtedly constitute the regulating legal instrument of trade at a multilateral level. The WTO became the most significant modification to the 1947 GATT and, in turn, managed to consolidate itself as an actual multilateral trade organization, a goal that the GATT was never able to accomplish.<sup>22</sup>

The Agreement through which the World Trade Organization was established holds the following tenets, already considered by the GATT in 1947, and which are to be abided by the world trade domain: 1) a discrimination-free trading system; 2) promotion of loyal competition; 3) fewer trade barriers; and 4) promotion of development and economic reform.<sup>23</sup>

As a seminal part of its commercial policy, the WTO also keeps a non-discriminatory treatment principle, according to which all members of the organization are equals and abide by the same trade parameters, regardless of their economic or governmental system. This tenet is expounded through two basic clauses. The Most-Favoured Nation Clause states that any privilege or advantage granted by a WTO member to a country shall be extended or accorded to other members.<sup>24</sup> The National Treatment Clause states that all imported products from any contracting party into another one's territory shall not be directly or indirectly be subject to taxation or internal charges higher to those applied for similar domestic products.<sup>25</sup>

The multilateral legal regime created through the establishment of the World Trade Organization has broadened, as more clauses and goals in new trade areas have been included, such as services and intellectual property. Rights and obligations assumed by contracting parties under the earlier GATT scheme were also significantly modified by the WTO.

The WTO was created to guarantee the development of trade relations between members and to negotiate and monitor the performance of the new obligations they have assumed. Consideration is given to the multilateral trade institutional legal basis and the common framework for the development of such relations, as well as to its role as a forum for multilateral negotiations, designed to raise standards of living and to increase production and trade in services and goods.

The main purpose of the World Trade Organization is to develop a more feasible multilateral trade system than the one established by the GATT in 1947. The WTO has established as one of its essential goals that developing and least-developed countries may benefit from the growth of international trade.<sup>26</sup>

The means by which the WTO plans to fulfil its purposes are established in the signing of agreements directed to obtain—on a reciprocity basis—a significant

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21. See Uruguay Round Final Act, *supra* note 17.

22. Vincent Ferraro, Anna Cristine Santos, & Julie Ginocchio, *The Global Trading System*, available at <http://www.mtholyoke.edu/acad/intrel/bush/tradepaper.htm>.

23. See PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION* 39-44 (2005).

24. GATT *supra* note 9, art. I, para. 1.

25. GATT *supra* note 9, art. III, para. 2.

26. Marrakesh Agreement Establishing the World Trade Organization, pmbl., para. 2, available at [http://www.wto.org/English/docs\\_e/legal\\_e/04-wto.pdf](http://www.wto.org/English/docs_e/legal_e/04-wto.pdf)

decrease in tariffs and other trade barriers. This includes developing a lasting, integrated multilateral trade system, comprising the 1947 GATT, the results of previous efforts for trade liberalization, as well as the results from the Uruguay Round.

As established, the Uruguay Round's Final Act puts an end to the provisional nature of the 1947 GATT through the creation of the World Trade Organization, with the purpose of facilitating cooperation among its members for the development of business relations and with legal status, organs of its own, and ample functions.<sup>27</sup> The organic structure of the WTO is constituted by a Ministerial Conference acting as its main organ, overseeing the Dispute Settlement Body, the General Council, and the Trade Policy Review Body.

The relevance of this Act stems from the fact that it integrates three major agreements under the same structure: (1) GATT, the merchandise agreement<sup>28</sup>; (2) the General Agreement on Trade in Services (GATS)<sup>29</sup>; and (3) the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS).<sup>30</sup> These agreements are managed by three Councils—Trade in Goods, Trade in Services, and Trade-Related Aspects of Intellectual Property Rights, which in turn are managed by the General Council, with the main task of supervising the performance and application of their respective multilateral agreements.

At the same time, two international mechanisms were considered—an understanding concerning the regulations and procedures to settle differences, as well as a mechanism to analyze business policies. In addition, cooperation between the WTO and other specialized foreign organizations, mainly the IMF and the WB, were foreseen.

The incorporation of regulations for trade in services under the legal apparatus of the WTO undoubtedly made a difference between the GATT's proposed system and its own. The GATS is the first and only set of multilateral regulations governing foreign trade in services. It came into being in response to the huge growth of the economy of services during the thirty years prior to the formalization of the WTO and the trade increase in this field, largely brought about by the revolution in communications.

The GATS is the framework for the performance of both governments and individuals, and it is divided into two parts: the main agreement containing regulations and general controls, and national lists including concrete commitments by each country regarding access to foreign suppliers in domestic markets.<sup>31</sup> Still, regardless of commitments with certain service sectors, the GATS allows governments to control foreign suppliers' activities in the domestic market. This control takes the form of restricting market access and domestic regulatory changes established in the list of a country's commitments.

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27. See generally, Uruguay Round Final Act, *supra* note 17.

28. GATT, *supra* note 9, art. VII.

29. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, *supra* note 26, Annex 1B.

30. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, *supra* note 26, Annex 1C [hereinafter TRIPS], available at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm).

31. See GATS, *supra* note 29, Parts II-III.

The GATS comprises all services subject to foreign trade, except for those supplied to the public according to governmental power and, in the field of air transport, traffic rights and all services directly related to the exercising of traffic rights. In this context, encouraged by the rapid and significant business opening of different foreign markets, a regulation of financial services was decided to be included into the World Trade Organization during the Uruguay Round negotiations, specifically under the GATS. These services involved banks, insurance, values, factoring, leasing, finance, or any other related or auxiliary service.

Regulation of trade in services by the WTO has proved to be a deciding factor and is currently considered one of the main features of every trade agreement. Hence, the WTO, acting as the main multilateral trade-oriented organization, has established the principles the financial services sector must follow through the GATS, within a framework directed to governments and individuals.

The GATS allows countries to concede additional credibility to their financial-system liberalization programs. GATS specifically facilitates the organization of reforms made in the international arena.

Regulations governing foreign trade in services, established in the GATS, include three main elements: 1) an agreed framework stipulating basic obligations applicable to all member countries; 2) national lists of commitments where other specific domestic commitments are considered and subject to a constant liberalization process; and 3) appendices concerning the particular state of affairs of different service sectors.<sup>32</sup>

The appendix on financial services, chiefly banks and insurance services, establishes the rights of parties, notwithstanding what has been stated elsewhere, to adopt cautionary measures—such as security measures for investors, depositors, and policy-holders—and to guarantee the integrity and stability of the financial system. There is, however, still another financial service-related understanding that allows interested competitors to make commitments related to financial services by means of a different process.

Regarding access to markets, this understanding involves more detailed obligations, such as the following: 1) monopoly rights and cross-border trade; 2) signing of particular insurance and reinsurance policies; 3) processing and transfer of financial data; 4) rights to establish or expand trade presence; and 5) temporary entry of people.<sup>33</sup>

Domestic treatment-related dispositions expressly concern both access to payment systems and compensation managed by public bodies, as well as official means for funding and refunding. At the same time, consideration is given to affiliation or access to self-regulating institutions, futures and stock markets, and compensation organizations, or their mutual participation.

Since trade in services is closely linked to circulating capital, the boundary between particular instruments of monetary policy and the necessary regulation is too narrow, resulting in the importance of clarifying these issues. Due to the susceptibility of the economical apparatus to financial imbalances, more caution for its liberalization must be taken than in other sectors. Therefore, when negotiating

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32. *See id.*

33. *See Understanding on Commitments in Financial Services* 325, 33 I.L.M. 1168 (1994)

these services, both domestic policies and the degree of development of different members are to be considered.

The GATS includes a stipulated exception, the “chain-exclusion effect,” that is likely to (1) lead to differing interpretations, whether a dispute-settling procedure is used or whether new negotiations are undertaken to define and specify the features of services provided by means of governmental power, and to (2) determine services not provided under commercial conditions. This exception is only defined regarding the financial services sector. Thus, “services provided by means of governmental power” are defined in Section b, Article 1 of the financial services appendix as (1) activities performed by a central bank or monetary authority or any other public body in pursuit of monetary or foreign exchange policies, (2) as part of a legal system of social security or public retirement plans, and (3) any related activity carried out by public bodies either on its own or under State guarantee or with financial resources provided by the State. As to “services,” this term will imply the aforementioned activities when a member allows its financial service suppliers to carry out these activities in competition with a public entity or with another financial service supplier.

Thus, instead of defining services and adding a list of services covered by the GATS, the decision was made to include all services, except for those supplied by means of governmental power, and to formulate a four-fold classification for trade in services, allowing members to take on specific commitments concerning the different ways to conduct such services in the different included sectors.

#### IV. BY WAY OF SYNTHESIS

Trade between different nations has played a fundamental economic and cultural role. It has given rise to institutions, such as the bill of exchange, which in foreign trade bears extraordinary significance.<sup>34</sup> Yet, because of its own nature, it has been forced to face the problem of diverse legal regimes from different countries under which mercantile traffic has taken place. It is in connection with this that a consistent and integrated movement emerged based on mercantile law.

The frequency of transactions among nation states gave rise to a need to orchestrate some regulations regarding world trade, as is the case with contracts. Consequently, throughout the twentieth century and until the dawning of the twenty-first, such States have focused on seeking an integrated world trade regulation.<sup>35</sup>

Ever since the Middle Ages, and remarkably since the end of the nineteenth century and the beginning of the twentieth century, nation states devoted to commerce have intervened to maintain favourable trade balances abroad and to promote the development of a budding domestic industry. The policies in use damaged and impoverished developing countries, and the establishment of trade regulations at a multilateral scale was deemed essential. This regulation first materialized after World War II with the creation of the League of Nations, which was restructured after the war and gave way to the United Nations. The economic

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34. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on International Bills of Exchange and International Promissory Notes, para. 5, Dec. 9, 1988, <http://www.jus.uio.no/lm/un.bills.of.exchange.and.promissory.notes.convention.1988/doc.html#634>.

35. See VAN DEN BOSSCHE, *supra* note 23, at 35-38, 78-85.

protectionism between both world wars, however, led to an increase in tariffs and a multiplication of bilateral agreements of compensated exchange.<sup>36</sup>

By the end of World War II, and with a view to avoid a similar crisis to that of 1929, a United Nations Monetary and Financial Conference was held, with the aim to create a tripartite international economic system, encompassing the IMF, the WB, and the ITO.

The International Monetary Fund and the International Bank for Reconstruction and Development began working in 1945 and 1947, respectively. The ITO, on the other hand, was never able to materialize, due to a denial by the United States to ratify the Agreement. In its place, to safeguard previously negotiated tariff concessions, a General Agreement on Tariffs and Trade (GATT) was ratified in 1947 with provisional status.

The GATT enabled the implementation of tariff duties agreed therein. In addition, it also contributed to establish a thriving, sound multilateral trade system. However, expansion of world trade and enormous technological breakthroughs has made it increasingly necessary to update and strengthen GATT regulations.

The 1982 GATT Ministerial Meeting held in Geneva agreed to host a Round in Punta del Este, Uruguay—the eighth to be held at the time. The Uruguay Round began in 1986 and negotiations came to an end in 1994 with the signing of the Final Act, which finally led to the creation a multilateral organization to regulate international trade—the World Trade Organization.

## V. CONCLUSION

As noted, the development of a multilateral trade organization was a process that lasted over fifty years, beginning with the creation of the League of Nations in 1919 until the establishment of the World Trade Organization in 1994. Its relevance within foreign trade stems not only from its having been constituted as the multilateral institutional legal basis and shared framework for the development of commercial relations among its members, but also from having integrated three agreements into a single structure of great relevance for foreign trade: the Merchandise Agreement (GATT), the Services Agreement (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

During the twentieth century, trade developed to the extent that it became an international phenomenon. As such, States have needed to take this into consideration by not only opening their borders to foreign merchandise, but also signing international agreements and taking part in multinational bodies and organizations that have been increasingly consolidated within the regulation arena of foreign trade.

Markets have been driven by globalization and internationalization these last years, which is nothing but a search for mutually beneficial and productive specializations. Nevertheless, opening up to free trade requires a solid foundation to guarantee loyal competition within the arena of foreign trade. Nation states have attempted to work in consonance with the world order of commercial laws, evolving

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36. See generally Douglas A. Irwin, Historical Perspectives on U.S. Trade Policy, <http://www.nber.org/reporter/winter99/irwin.html>.

to the rhythm of legal international trade harmonization. Hopefully, future regional and multilateral negotiations generations will be able to keep on developing for the benefit of emerging economies.