**BASIC PRINCIPLES OF EU COMMERCIAL LAW**

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**Introduction[[1]](#footnote-1)**

European Union Law is of considerable interest to international trade lawyers and businesspeople in non-member States such as the United States, Australia, Canada, New Zealand and South Africa. First, the EU is a major trading and investment partner. Secondly, the EU is one of the great powers in the world’s economic affairs. Thirdly, the future regional development of other regions of the world will at some stage need a reference point. The EU is a viable model of regional economic integration.

 The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are the founding Treaties of the European Union. The Court has described the TFEU as the “constitutional charter” of the Community [1, p. 217]. The EU constitutes an internal market (Art 3(3) TEU) [2]. The internal market comprises “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured” (Art 26(2) TFEU) [3]. The EU is empowered to adopt measures which have as their object the establishment and functioning of the internal market (Art 26(1) TFEU).

The problems of EU Commercial Law were as the research object of the line of scholars such as John Trone, Gabriel Möens, Federico M. Mucciarelli, Tomislav Boric, Kostyantyn Yaloviyetc. But the question of EU commerciallaw principles remained besides their scientific interests.

Object. Therefore the object of the article is the principles of EU commercial law.

**Definition of law principle**

Under the term "EU trade law" we understand a new legal phenomenon, which began its formation mainly in 1957. The peculiarity of this branch of law is that it has both the features of supranational law and domestic law applicable in all countries - EU members. It differs from classical international law because it forms an autonomous international legal regime integrated into the law of the EU member states, as a result of which this law is directly applied by the political leaders and the judiciary of these states.

The concept of principles of law is one of the pressing problems of modern legal science. And this is no accident, because it is in the principles of law most clearly reflected its essence in all the variety of its components and patterns. In addition, the importance of this problem is determined by the fact that the idea of ​​principles formed in domestic science was formed mainly on the basis of narrow legal understanding and has significant shortcomings.

The principles of law usually mean only those fundamental ideas that have been formally enshrined in law. The logical consequence is the assertion that the principles can be manifested only in the content of these norms and they do not include the guiding ideas of legal consciousness, which have received public recognition and are implemented in legal relations, but not fixed in regulations.

Principles of law are ideas, provisions that serve as the foundation on which the legal system is built. Legal norms are created on their basis, law enforcement activity is carried out. Principles of law, as a rule, are officially fixed in normative legal acts. This fact allows some researchers to argue that all principles must have an institutional design. In our opinion, this is not the case. The principles of law can also include provisions that are not enshrined in regulations, but are an important value component of public consciousness. Figuratively speaking, the text of the norm is a document of a special worldview. Thus, the principles on the basis of which norms are created are also ideological in nature.

The most important features of the principles of law include, first of all, their regulatory nature. The normative-regulatory nature of the principles of law is seen in the fact that the principles enshrined in law, acquire the meaning of general rules of conduct, which have a binding, authoritative nature.

Under the objective conditionality of the principles of law should be understood as their correspondence to the nature of social relations, economic, political, ideological processes occurring in society. In other words, the principles of law are such legal phenomena that directly link the content of law with its social foundations - the laws of public life, on which this legal system is built and which it enshrines.

Principles of law are also an ideological category, which means that they, like law in general, is a form of social consciousness, which has an informational and educational impact of a general nature. The principles perform the function of general consolidation of social relations, that allow to consider them from the standpoint of certain ideas, guidelines.

An important feature of the principles of law is the way they materialize in law. It is well known that there are two ways of expressing the principles of law: their direct formulation in the rules of law (textual consolidation) and the derivation of the principles of law from the content of regulations (substantive consolidation).

**Classification of EU Commercial Law principles**

The EU's trade law is based on the principles of the GATT, but today, according to analysts, the EU is one of the key players in the World Trade Organization (WTO), as the EU has developed a common trade policy based on EU trade law. Thus, the EU is one of the driving forces of the current round of multilateral trade negotiations in the WTO, which includes further market opening and additional solutions, which are mainly based on the idea that international trade should fight poverty.

The Principles of European Contract Law are one of the three main documents on the basis of which most contracts for the sale of goods in the European Community are concluded. Others are: the UN Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980), the UNIDROIT Principles of International Commercial Agreements (the UNIDROIT Principles).

The principles help to harmonize international contract law by complementing existing instruments, including the UN Convention on Contracts for the International Sale of Goods, as well as national legislation. Most importantly in private practice, they propose a neutral contractual regime that the parties can choose, either by attaching certain provisions of the Principles to the contract or by directly designating the UNIDROIT Principles as the law governing the contract. For example, such a provision: “This contract is governed by the Principles of International UNIDROIT commercial contracts, as amended in 2016".In practice, this provision is usually accompanied by an arbitration clause, with the definition of international arbitration, which will resolve possible disputes between the parties).

The basic principles and rules of GATT / WTO are as follows:

Non-discrimination. It has two major components: the most favored nation (MFN) rule and the national treatment policy. Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these areas. The MFN rule requires that a WTO member must apply the same conditions on all trade with other WTO members, i.e., a WTO member has to grant the most favorable conditions under which it allows trade in a certain product type to all other WTO members. "Grant someone a special favor and you have to do the same for all other WTO members." National treatment means that imported goods should be treated no less favorably than domestically produced goods (at least after the foreign goods have entered the market) and was introduced to tackle non-tariff barriers to trade (e.g. technical standards, security standards et al. discriminating against imported goods).

According to the principle of maximum promotion and non-discrimination, any preferences (benefits, privileges, privileges, immunity) for the imported product apply to the product originating in or intended for any member country (Article I of GATT-1994). The principle is unconditional and is applied in full.

The principle of the national regime (Article III) provides for the provision of goods from the member countries of the national regime of domestic taxes, fees governing domestic trade.

The principle of protection of national industry provides (Articles VI, XI-XVI) for the development of national industry only tariff methods, not quantitative restrictions, taxes, standards.

Principle of transparency. The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the Trade Policy Review Mechanism (TPRM). The WTO system tries also to improve predictability and stability, discouraging the use of quotas and other measures used to set limits on quantities of imports.

The principle of creating a stable trade base (Article II, Part I) provides for mandatory compliance with agreed tariff levels, the impossibility of increasing them and a gradual reduction in the negotiation process.

The principle of promoting fair competition concerns dumping and subsidies. The GATT Anti-Dumping Code contains rules for responding to dumping and the application of countervailing duties in the case of export and domestic subsidies.

The principle of a general ban on quantitative restrictions on imports applies to trade in agricultural goods, textiles, steel, etc., except for quantitative restrictions, in order to protect the balance of payments, suspend the decline in foreign exchange reserves caused by demand for imported goods due to domestic production.

The principle of admissible action in exceptional circumstances provides for the withdrawal (Article XXV, Part III) of specific WTO obligations in emergency situations and "safeguards" for the temporary imposition of quantitative restrictions or the abolition of tariff concessions for goods whose imports increase and may lead to significant losses of competing national enterprises.

The above mentioned principles form the base of WTO activity. This organization plays special role in intensifying the world trade. The WTO creates more favorable conditions for access to world markets for goods and services based on the predictability and stability of trade relations with WTO members, including the transparency of their foreign economic policy. It gives access to a WTO dispute settlement mechanism that protects national interests and thus eliminates discrimination. The WTO provides an opportunity to realize their current and strategic trade and economic interests through effective participation in the BTP in the development of new rules of international trade. All WTO members undertake to implement the basic agreements and legal instruments, united by the term "Multilateral Trade Agreements". Thus, from a legal point of view, the WTO system is a kind of multilateral contract (package of agreements), the rules and regulations of which regulate approximately 97% of world trade in goods and services.

EU trade law, established on the basis of international trade principles, is now an autonomous legal order governed by the primary and secondary laws of the Union, and a number of these rules have direct effect in the internal legal systems of the Member States. Recognition of the priority of a collective norm over a national one is technically logical. The normative legal acts adopted within the EU and on the territory of the member states naturally determine the possibility of a conflicting question: of which norm should be applied in the exact trade case.

There is also another classification. The system of principles of trade law of the European Union in the legal literature is divided into internal and external trade principles:

Intra-trade principles include:

1) The principle of application of the common customs tariff for all EU member states. It is that all EU members set a common customs tariff for goods from the third countries. This principle reduces the overall level of export and import duties for non-member countries.

2) The principle of free movement of goods within the customs union, which also applies to goods of third countries, the importation of which into one of the Member States has completed all necessary customs formalities, including customs duties and taxes (such goods are equated to national goods members).

3) The principle of approximation of the laws of the Member States on all issues within the functioning of the common market, which regulates the priority of harmonization, approximation of EU law and national law of EU member states. The process of harmonization of trade law of member states with EU law covers almost all major internal and external issues of trade law [4, p. 14].

The external trade principles include:

1) Provisioning (sanctioning) principles - principles that promote the implementation of anti-discrimination principles through the introduction of protective measures. The system of such measures consists of anti-dumping and anti-subsidy procedures, which are the most popular measures to protect the domestic market from external competition. Such principles should include: a) the principle of protection of EU industry and producers by establishing anti-dumping and anti-subsidy rules, standards of protection against trade barriers; b) the principle of proving the application of sanctions for unfair conduct of trade, which consists in the mandatory conduct of anti-dumping (anti-subsidy / special) investigation in case of detection of trade practices by other countries that pose a potential threat to EU interests; (c) the principle of the lawfulness of sanctions for unfair trade. It is expressed in the sanctions only on the basis and in the manner prescribed by EU law and under the condition that the effect of the applied sanctions does not harm the interests of the EU; d) the principle of flexibility of sanctions for unfair trade, which is expressed in a flexible approach to trade with third countries. It consists in the possibility of terminating the anti-dumping (anti-subsidy / special) investigation; e) the principle of the appropriateness of safeguards, which consists in constantly monitoring the relevance of the safeguards; f) the principle of information support. It means the constant exchange of information between Member States and between Member States and EU institutions; (g) the principle of mutual coordination of safeguard measures in relation to third countries in the event of their independent implementation by a Member State in exceptional circumstances.

2) Anti-discrimination principles. These principles are implemented in international trade by removing trade barriers between individuals, businesses and states and are manifested in trade liberalization and the most favored nation treatment.

3) Principles related to the priority areas of international relations: a) trade liberalization; b) protection of peace; c) protection of human rights and fundamental freedoms; d) protection of the environment.

The principles of EU trade law have been set out above. But it should be mentioned also about the principles of another part of EU commercial law – EU company law.

Some specific principles are the base of EU company Law as a subdivision of EU Commercial Law. [Federico M. Mucciarelli](https://ecgi.global/users/federico-mucciarelli)  concludes that only one such principle can be identified with certainty. This is the principle of unrestricted powers of directors to act on behalf of the company, based upon the German tradition and extended to public companies of all Member States by the First Company law Directive of 1968. In this regard, it is interesting to note that, for many Member States, the First Directive was a step in a piecemeal departure from national rules that offered weak protection to third parties, towards a system in which the interest of the market is paramount. In practice, this directive expanded the German rules on directors’ powers to other Member States. As a result, a principle of unlimited and unlimitable directors’ authority is applied throughout the EU. This principle is sufficiently general, common, and fundamental to be classified as a general principle of EU company law.

Another principle is particularly relevant, namely the duty of equal treatment of shareholders who are in the same condition. This is a general duty that all companies’ bodies should respect when they make decisions that affect shareholders and is mentioned (at least for public companies) by many EU harmonizing directives (and is now codified in article 85 of Directive 2017/1132) [5, p. 84].

**Conclusions**

The principles of EU trade law are a complex system of fundamental principles of legal regulation of trade between EU member states, between the EU and other countries, based on the anti-discrimination concept while protecting the interests of the EU, established in the provisions of primary EU law and based on it. international legal obligations.

When we talk about the principles of EU commercial law, we usually mean first of all the principles of European trade law. But the principles of European contract law, the principles of EU corporate law, etc. should also be highlighted.

**Summary**

The article is devoted to the analysis of the basic principles of EU commercial law. The author emphasizes that the principles of EU commercial law, consists of several blocks: principles of EU trade law, principles of EU contract law, principles of EU company law. Each of these sub-branches of EU commercial law has its own specific basic principles that determine the nature of the legal regulation of the relevant legal relationship.

The system of principles of trade law of the European Union in the legal literature is divided into internal and external trade principles. Intra-trade principles include: principle of application of the common customs tariff for all EU member states; principle of free movement of goods within the customs union; principle of approximation of the laws of the Member States.

The external trade principles include: provisioning (sanctioning) principles; anti-discrimination principles; principles related to the priority areas of international relations.

**Keywords:** principle of law, EU Commercial Law, EU trade law, WTO, GATT

**Анотація**

Стаття присвячена аналізу основних принципів комерційного права ЄС. Автор акцентує увагу на тому, що серед принципів комерційного права ЄС варто виділяти принципи торгового права ЄС, принципи контрактного права ЄС, принципи права компаній ЄС. Кожна з цих підгалузей комерційного права ЄС має свої особливі базові засади, що визначають характер правового регулювання відповідних правовідносин.

Система принципів торгового права Європейського Союзу в юридичній літературі поділяється на принципи внутрішньої та зовнішньої торгівлі. До внутрішньоторговельних принципів належать: принцип застосування єдиного митного тарифу для всіх країн-членів ЄС; принцип вільного руху товарів у межах митного союзу; принцип наближення законодавства держав-членів. До принципів зовнішньої торгівлі належать: принципи забезпечення (санкціонування); принципи боротьби з дискримінацією; принципи, пов'язані з пріоритетними сферами міжнародних відносин.

**Ключові слова:** принцип права, комерційне право ЄС, торгове право ЄС, СОТ, ГАТТ

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 [↑](#footnote-ref-1)