
| RESEARCH ARTICLE

Commercial Law and its Evaluation in International Law

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| ABSTRACT

The ease and prevalence of capital movement across international borders has led to its expansion in trade and the economy in recent years, and this may make resolving legal disputes more challenging. As a result of all these changes, national markets are becoming more and more global marketplaces, and commerce is expanding. Legal processes in this process must first be identified, and their characteristics ascertained in order to resolve legal disputes. While research has been done on qualified merchants in commercial law and related fields, no research has been done on qualified merchant requirements on an international scale. This study has, therefore, evaluated the global nature of the qualified trader under commercial law. Semiotic analysis and content analysis techniques were used in the study to evaluate conceptual studies carried out in academic settings. The research findings indicate that while certain national laws exist in the field of commercial law for eligible merchants, significant shortcomings persist in this domain, even within domestic legal frameworks. Confusion in domestic law stems from a number of factors, including the distinction made between the concepts of tradesman and merchant, the definition of "commercial enterprise," and the use of the term "part of" in reference to the requirement of operating a portion of the commercial company. International legal confusion results from inadequate representation of the qualifications of domestic and foreign traders in the legal system, which in turn affects local and national definitions of qualified traders and international activity areas. As a result, both domestically and globally, a more flexible, inclusive, and problem-solving legal strategy is needed.

| KEYWORDS

Law, international law, merchant, qualified merchant.

| ARTICLE INFORMATION

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1. Introduction

Today, the increase in the movement of capital in the international arena has brought with it the transfer of legal processes to the international dimension. In this process, countries have tried to attract international capital on the one hand, and on the other hand, they have sought solutions to the legal disputes that have arisen (Bilgin, 2023; Bilgin, 2019; Darity and Davis, 2005; Deraniyagala and Fine, 2003). After the Industrial Revolution, economic growth began to grow much faster and more permanently, and this growth was stable and higher than that recorded before the industrialization period. This fast and stable growth began in Western Europe and spread worldwide, largely through international trade (Samue, 2019; Tavas et al., 2016).

On the other hand, the Post-industrial 21st century is defined by instability and irregularities in a business environment. Companies are changing not only their products but also their culture, sales methods, relationships with customers, and internal structures. While trying to stay in the market, differentiate from their competitors and create added value, they are focused on gaining new advantages. New technologies, better education, globalization (Alparslan, 2024), new communication tools and distribution networks create new opportunities for business development. The main purpose of this business model analysis is to determine business systems, new trends and changes (Stefan and Richards, 2014). The volume and form of international trade within this entire system are also changing.

Although there are studies on the subject of qualified traders in commercial law and related sources, no study has been found on the qualifications of qualified traders at the international level. Therefore, in this research, the international qualification of qualified traders in commercial law was examined. In the research, conceptual studies conducted in the academic sense were examined by using semiotic analysis and content analysis methods.

2. Literature Review

In order to better understand the characteristics of an internationally qualified merchant, it is necessary to first understand the general definition of the concept of merchant and its place in commercial law and international law. Therefore, these topics are generally covered in the following headings.

2.1. The Concept of Trader and Qualified Trader

The Uniform Commercial Code, published by Karl Llewellyn in 1949, first expanded the legal definition of merchant in Article 2, adding a new dimension to the debate. Given the struggle to understand and identify the Article 2 merchant, critics of the vagueness of the merchant definition may be justified in saying, "I told you so." Many courts and scholars, left to their own devices, have assumed that the Article 2 merchant rules merely codified actual commercial practices, usages, and customs. Believing that the commercial rules were faithful reflections of commercial practice, courts have concluded that the Article 2 merchant rules apply only to those who are familiar with the business practices or have previously engaged in similar transactions because only those who would be familiar with the relevant commercial customs and practices would be able to do so (Hillinger, 1985).

2.2. Qualified Trader in Commercial Law and International Law

Over the past few decades, neoliberal ideas have provided the common normative narrative supporting free trade agreements. The starting point for this argument is the accepted notion in economics that free trade makes all parties better off. This approach argues that protectionism is often misguided. On the other hand, while trade liberalization may cause transitional pains for local industries and workers, it stimulates growth and, through the magic of comparative advantage, increases the overall welfare of all states, giving each state more wealth to distribute among its population. Free trade expands the global and national pie and can make everyone more prosperous (Cohen, 2018).

In commercial law, the development of private law as a sub-field and the problems experienced in determining the scope of application have emerged as a result of developments in the historical process. The emergence of legal rules required by those engaged in commercial activities was initially evaluated as a special legal regime for a small group defined as merchants who conduct commercial activities (Göktürk, 2015). The problems, including increasing returns to scale, which are an integral part of the expansion of industrial firms and are the cornerstones of international trade, have been previously addressed in the literature on trade theory. Marshall avoided the possible multiple equilibrium problem under increasing returns by assuming that costs are historical and, therefore, irreversible over time. Marshall also avoided Pigouvian's proposal of taxes and bonuses for the relevant increasing and decreasing cost industries at once. A similar problem was also brought up by Graham and Knight, who were interested in increasing returns and their effects on trade (Sen, 2010).

Rules of origin (ROO) play an important role in the international trading system and constitute an essential component of any discriminatory regulation. The rapid proliferation of both preferential agreements and selective restrictive measures suggests that the importance of ROO is expected to increase in the coming years. In parallel with the increasing awareness of the importance of ROO, academics, and policy makers have become increasingly aware of the unintended consequences of its activities. The tendency to use ROO as a strategic tool to restrict trade intensifies these concerns. The widespread use of ROO as a protectionist tool poses a significant challenge to the current trading system (Hirsch, 2002).

International trade, otherwise, argues that foreign trade, which includes the exchange of goods, services, capital, and intellectual personal rights between individuals from different states, is interpreted differently in different aspects. Foreign trade is interpreted in two different meanings. First, this type of trade means the turnover of goods from different countries, while in the second meaning, foreign trade, in addition to the turnover of goods, is the turnover of capital services, labor, transfer of information, etc. This is distinguished depending on the exchange of foreign exchange in foreign trade. Concepts such as international freight exchange, international service exchange, international capital movements, and international labor movements are the subject of international law (Aliaj and Mekaj, 2018).

3. Methods

In the research, content scanning analysis, descriptive scanning model and source scanning model were used in social sciences. In this context, studies conducted in the field of international law and trades in the last decade were examined and studies on the concept of qualified trader were evaluated. In this context, international databases such as EBCOHOST, Science Direct, Elsevier, J

Stor, Springer, and Wiley were scanned in the research. Academic studies compiled in the research were analyzed with semiotic analysis methods and the analysis of the concepts that came to the forefront in the literature regarding the qualifications of qualified traders in the legal sense was included.

4. Results and Discussion

In the transactions of qualified merchants operating in the physical market, the parties involved in the transaction rely on a number of face-to-face mechanisms that aim to meet the requirements of convenience and trust. These requirements are even more important for electronic payment systems because the payments involve real money and are, therefore, a prime target for criminals. Convenience and trust are the most important factors affecting consumers' willingness to pay and merchants' willingness to accept payments over the Internet. Easy registration, no downloads, acceptability, user-friendly interface, ease of integration, and ease of use are potential elements of a suitable payment system (Bracun, 2003).

In both national and international law, policies and legal regimes are tied to normative situations. Shared narratives help legitimize the legal regime for those who live within and under it, thus situating the rules in a particular society and its politics. They provide principles that guide practitioners in interpreting the rules of that regime and suggest responses that better fit the goals or values the rules are intended to achieve. Shared normative narratives, therefore, also support the coherence of the rules within a given regime and bring them together as part of a logical whole. By providing coherence and distinguishing them from arbitrary practices of sovereign authority, these narratives contribute to the perceived legitimacy of the regime (Cohen, 2018).

There has always been a theoretical debate between economic growth and trade openness. While many researchers predict that economic growth will be beneficial when trade is open, developments show that economic openness sometimes does not lead to economic growth. Increased international trade leads to economic growth when the direct import of technologically advanced goods facilitates the spread of technological knowledge. Endogenous growth models suggest that the contribution of trade to economic growth varies depending on whether a country's competitive advantage directs or diverts its resources from activities that generate long-term growth. Furthermore, more theories suggest that in the presence of financial or technical constraints, less developed countries may be able or even unable to adopt technologies imported from more advanced economies (Samue, 2019). This situation necessitates the reorganization of international trade issues.

Unlike the supply-side explanations of the trade model in the literature, an alternative explanation of the trade model in terms of "overlapping demand" was presented by Staffan Linder (1961), a Swedish economist, in 1964. According to Linder, the representative demand for a set of goods typically demanded at the per capita income in the trading countries determines the feasibility of trade between countries. Economic and banking preferences in trade are also related to income (Coşkun et al., 2024; Yilmaz and Turanlı, 2022). For production and trade, the representative demand in the relevant countries should have an overlapping area in terms of the types of goods produced and consumed in common. In terms of the above trade interpretation, it is not supply but demand that comes to the center stage as an explanation of trade (Sen, 2010). Therefore, in the trade transaction and in the definition of the trader, the demand side should also be included. In the international order, while determining the definition and qualifications for the qualified trader, demand and trade balances should also be taken into account.

International law serves to increase international trade, investment and promote prosperity. These laws and mechanisms fall into two main categories, although there is significant overlap between the categories: private international trade law and public international law. Private commercial law concerns the rights and obligations faced by international traders and investors. Here, mechanisms are needed to resolve conflicts of law between people from different legal systems. There is also economic value in encouraging harmonization efforts to reduce the cost of commercial transactions between people from different legal cultures (Aliaj and Mekaj, 2018).

5. Conclusion

According to the results obtained in the research, the current legal regulations regarding the qualifications of qualified traders in international law are not sufficient, and there is also no sufficient application information that can provide solutions to the differences arising from legal systems regarding the characteristics of the trader in the international arena and any possible legal process. Although the definitions regarding the qualifications of qualified traders are clearer within the legal order developed by the countries at the national level, the difference in legal norms is evident in the international application.

Although there are slight differences in general, a qualified trader is a person who, according to commercial law, continuously performs a commercial job and acquires it as a profession, partially or completely operating a commercial enterprise. Although this definition is similarly included in legal regulations in all countries, there are differences when it comes to qualified traders and their qualifications. According to the law of obligations, each transaction is subject to the law of obligations, and the transaction conditions evaluate one of the parties as a seller. The fact that the debt relationship in the law of obligations is subject to

commercial law, the distinctions between tradesmen and traders and qualified traders cause significant differences in practice even in national legal regulations today. The level of partiality in the concept of “partially operating” a commercial enterprise, the lack of clarity on the difference between tradesmen and commercial enterprises, and the deficiencies seen both at national and international levels in legal terms are important obstacles to the further development of international trade.

As globalization is increasing and the world is moving towards a structure dominated by global economic powers, a more dynamic and pragmatic legal system that follows these developments is needed internationally. In addition, competition increases with globalization, and as a result, foreign participation in local markets increases. In this process, while commercial actors are protected in the national market through competition law and concerted practices in national systems, it is possible for global companies to create an environment similar to concerted practices in competition law in international terms and cause serious problems in economic terms. In order to prevent this, first of all, the qualifications of the qualified trader should be examined within the current dynamics of national and international trade, and both national and international regulations should be made accordingly.

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References

- [1] Aliaj, K & Mekaj, G. (2019). Legal Aspects of International Trade. *ILIRIA International Review*. 8. 10.21113/iir.v8i2.444.
- [2] Alparslan, G. (2024). The Adequacy of Global Legal Norms on Legal Issues Related to Digitalization and Artificial Intelligence. *International Journal of Law and Politics Studies*, 6(1), 68-75.
- [3] Bilgin, M. (2023). Evaluation of Marketspace Changes of Multinational Companies In Terms of International Legal Norms. *Advances in Social, Humanities and Administrative Sciences* 2, 339-347.
- [4] Bilgin, M. (2019). Uluslararası Kamu Hukukunda Vergilendirme Sistemi Farklılıklarının Yabancı Yatırımcı Üzerindeki Etkilerine Yönelik Bir İnceleme. *Uluslararası Sosyal Araştırmalar Dergisi*, 12(67), 838-843.
- [5] Bracun, F. (2003). Consumer’s And Merchant’s Confidence In Internet Payments. *Management*, 2. 1-29.
- [6] Coşkun, Ş., Turanlı, M., & Yılmaz, K. (2024). Katılım Bankalarında Toplanan ve Kullanılan Fonların Sektör Paylarıyla İlişkisi ve Makroekonomik Göstergelerin Etkisi. *Journal of Islamic Research*, 35(2), 240-53. 10.62862/isar.2024-102381
- [7] Darity, W. ve Davis, LS. (2005). “Growth, Trade and Uneven Development.” *Cambridge Journal of Economics* 29(1): 141–70.
- [8] Deraniyagala, S. ve Fine B. (2003). “New Trade Theory versus Old Trade Policy: A Continuing Enigma.” *Cambridge Journal of Economics* 25(6): 809–25.
- [9] Göktürk, K. (2015). Ticari İş Kavramı, Sınırlandırılması ve Faiz Meselesi. *Gazi Üniversitesi Hukuk Fakültesi Dergisi* C. XIX, Y. 2015, Sa. 2
- [10] Hillinger, I. M. (1985). The Article 2 Merchant Rules: Karl Lewellyn’s Attempt to Achieve The Good, The True, The Beautiful in Commercial Law. *Faculty Publications*. 970.
- [11] Hirsch, M. (2002). International Trade Law, Political Economy and Rules of Origin: A Plea for a Reform of the WTO Regime on Rules of Origin. *Journal of World Trade* 36(2): 171–188.
- [12] Samue, A. (2019). International Trade and Its Impact on the Global Economy.
- [13] Sen, S. (2010). International Trade Theory and Policy: A Review of the Literature. *Levy Economics Institute of Bard College*.
- [14] Stefan, S. ve Richards, B. (2014). Analysis of Business Models. *Journal of Competitiveness*, 6(4), 19-40.
- [15] Tavas, B., Tekiner, M. A. and Yılmaz, K. (2016). AB Uyum Sürecinde Sınır Güvenliği ve Yönetim Stratejisi. *Sage Yayıncılık Reklam Mat.San. ve Tic.LTD.ŞTİ*.
- [16] Yılmaz, K., Turanlı, M. (2022). Türkiye’de Katılım Bankalarının Finansal Performanslarının Hane Halkı Gelir Grupları İle İlişkisi, İşletme Araştırmaları Dergisi, 14 (4), 2785-2795