Professional Certificate in International Arbitration and Trade Law (Sri Lanka)

International Trade Law Fundamentals

Arbitration Clause
Related terms: mediation, jurisdiction, award, procedural rules.
An arbitration clause is a contractual provision that obliges the parties to submit any dispute arising out of or relating to the contract to arbitration rather than litigation. It typically specifies the seat of arbitration, the applicable rules (e.g., ICC, SIAC), and may refer to a particular set of procedural guidelines.
Example: A Sri Lankan export-manufacturing agreement includes a clause stating that any disagreement will be resolved by arbitration under the International Chamber of Commerce Rules in Colombo.
Practical application: The clause provides certainty, reduces court backlog, and allows parties to choose arbitrators with expertise in trade law.
Challenges: Drafting overly broad clauses can lead to jurisdictional disputes; parties may later contest the validity of the clause on grounds of unconscionability or lack of consent.

Bilateral Investment Treaty (BIT)
Related terms: treaty, investor-state dispute settlement (ISDS), sovereign immunity, protection standards.
A BIT is a treaty between two states that sets out the terms and conditions for private investment by nationals and companies of one state in the other state's territory. Core protections include fair and equitable treatment, protection against expropriation without compensation, and free transfer of capital.
Example: The Sri Lanka-India BIT provides Indian investors with protection against discriminatory taxation in Sri Lanka.
Practical application: BITs encourage foreign direct investment by reducing political risk; they also create a framework for investors to bring claims before international arbitration tribunals.
Challenges: BITs may conflict with domestic policy goals, such as environmental regulation, and can generate tension when state measures are perceived as violating treaty obligations.

Carriage of Goods by Sea Act (COGSA)
Related terms: bill of lading, carrier liability, Hague-Visby Rules, maritime lien.
COGSA governs the rights and responsibilities of carriers and shippers in the transport of goods by sea. It incorporates the Hague-Visby Rules, setting limits on carrier liability and defining the carrier's duty to exercise due diligence in making the vessel seaworthy.
Example: A Sri Lankan coffee exporter relies on a vessel chartered under COGSA to ship beans to Europe; the carrier must ensure the ship is properly manned and equipped.
Practical application: The act provides predictable liability limits, facilitating insurance and risk assessment in international trade.
Challenges: Variations in national implementations can cause uncertainty; carriers may invoke force majeure defenses, leading to disputes over the extent of liability.

Convention on Contracts for the International Sale of Goods (CISG)
Related terms: Vienna Convention, contract formation, breach, remedies.

The CISG is a multilateral treaty that harmonises the law governing contracts for the international sale of goods. It applies automatically when both parties are in signatory states unless the parties expressly exclude it.
Example: A Sri Lankan textile supplier sells fabric to a German buyer; the CISG governs the contract, providing uniform rules on formation, performance, and remedies for breach.
Practical application: Parties benefit from a neutral legal framework, reducing the need for extensive choice-of-law analysis.
Challenges: Divergent interpretations of key concepts such as “conformity” and “notice of non-conformity” can lead to litigation; parties unfamiliar with the CISG may inadvertently default to domestic law, creating inconsistency.

Countervailing Duty (CVD)
Related terms: anti-dumping duty, subsidy, World Trade Organization (WTO), investigation.
A CVD is a tariff imposed by an importing country to offset subsidies provided by the exporting country’s government that cause injury to the domestic industry. It is a remedial measure authorized under the WTO Agreement on Subsidies and Countervailing Measures.
Example: Sri Lanka imposes a CVD on imported steel from Country X after a WTO-mandated investigation finds that the steel is subsidised and harming local producers.
Practical application: CVDs level the playing field for domestic manufacturers, protecting them from unfair foreign competition.
Challenges: Determining the existence and amount of a subsidy can be complex; investigations are time-consuming and may trigger retaliatory trade actions.

Dispute Resolution Clause
Related terms: arbitration clause, litigation, mediation, escalation.
A dispute resolution clause outlines the mechanism(s) that parties will use to resolve disagreements, specifying whether disputes will be settled by negotiation, mediation, arbitration, or court proceedings, and often indicating the governing law and seat of arbitration.
Example: A supply agreement includes a tiered clause: first, parties must attempt good-faith negotiation; if unresolved, they proceed to mediation; failing that, arbitration under the Singapore International Arbitration Centre (SIAC) Rules.
Practical application: Such clauses provide a structured pathway, reducing uncertainty and avoiding protracted litigation.
Challenges: Poorly drafted clauses may be ambiguous, leading to jurisdictional disputes; parties may disagree on the applicability of the clause after a breach has occurred.

E-Commerce
Related terms: digital trade, electronic signature, cross-border data flows, UNCITRAL Model Law.
E-commerce refers to the buying and selling of goods and services via electronic networks, encompassing online marketplaces, electronic contracts, and digital payment systems. International trade law addresses issues such as jurisdiction, consumer protection, and electronic authentication.
Example: A Sri Lankan artisan sells handmade jewelry through an international platform, using electronic signatures to validate contracts.

Practical application: E-commerce expands market access for SMEs, reduces transaction costs, and enables real-time customs declarations.
Challenges: Cybersecurity risks, lack of harmonised legal standards for electronic signatures, and data-privacy regulations can hinder cross-border transactions.

Force Majeure
Related terms: impossibility, frustration of purpose, hardship, contractual clause.
Force majeure is a contractual provision that relieves parties from liability when an extraordinary event beyond their control prevents performance. Typical events include natural disasters, war, and pandemics.
Example: A Sri Lankan exporter cannot deliver goods due to a cyclone; the force-majeure clause excuses delayed performance without penalty.
Practical application: The clause allocates risk, providing a safety valve for unforeseen disruptions.
Challenges: Determining whether an event qualifies as force majeure often requires judicial or arbitral interpretation; parties may dispute whether mitigation efforts were reasonable.

General Agreement on Tariffs and Trade (GATT)
Related terms: WTO, most-favoured-nation (MFN), national treatment, trade liberalisation.
GATT, established in 1947, is the foundational multilateral treaty governing international trade, aiming to reduce tariffs and other trade barriers. Its principles, such as MFN and national treatment, continue to shape WTO law.
Example: Sri Lanka’s reduction of import duties on agricultural products aligns with its GATT commitments to promote trade liberalisation.
Practical application: GATT provides a framework for negotiating tariff reductions and resolving trade disputes through the WTO dispute-settlement mechanism.
Challenges: Balancing development objectives with liberalisation commitments can be difficult for emerging economies; GATT provisions may conflict with domestic regulatory policies.

Hague Convention on the Choice of Court Agreements
Related terms: jurisdiction, exclusive jurisdiction clause, enforcement, Brussels I Regulation.
The Hague Convention establishes a uniform rule for the recognition and enforcement of exclusive choice-of-court agreements and related judgments. It aims to promote legal certainty in cross-border commercial disputes.
Example: A Sri Lankan buyer and a French supplier include an exclusive jurisdiction clause designating the courts of Paris; under the Convention, a Sri Lankan court would recognise and enforce a Paris judgment.
Practical application: The Convention facilitates predictable forum selection and reduces forum-shopping.
Challenges: Not all major trading partners have ratified the Convention; conflicts may arise when a chosen court lacks competence over certain subject matters.

Incoterms
Related terms: FOB, CIF, DAP, delivery obligations, risk transfer.
Incoterms are a set of internationally recognised trade terms published by the International Chamber of Commerce that define the responsibilities of buyers and sellers for the delivery of goods. They allocate costs, risks, and obligations such as loading, transport, and customs clearance.

Example: Using FOB Colombo, the Sri Lankan seller delivers goods on board the vessel; risk passes to the buyer once the goods are loaded.
Practical application: Incoterms simplify contract drafting by providing standard definitions, reducing ambiguities in international sales contracts.
Challenges: Misapplication can lead to disputes over who bears transport costs or customs duties; parties must ensure the latest edition is referenced.

Jurisdiction
Related terms: forum selection, competence, sovereign immunity, arbitration seat.
Jurisdiction refers to the legal authority of a court or tribunal to hear and determine a case. In international trade, jurisdictional issues arise when parties from different states dispute which forum should resolve their conflict.
Example: A dispute between a Sri Lankan exporter and a Canadian importer may be brought before the Singapore International Arbitration Centre if the contract designates Singapore as the seat of arbitration.
Practical application: Clear jurisdictional clauses provide predictability and avoid parallel proceedings.
Challenges: Overlapping claims of jurisdiction can result in forum-shopping; sovereign immunity may limit the ability to sue a state entity in foreign courts.

Knowledge Transfer
Related terms: technology licensing, capacity building, intellectual property, trade-related assistance.
Knowledge transfer involves the sharing of expertise, technology, and best practices between parties, often as part of trade agreements or development programmes. It can be facilitated through licensing, joint ventures, or training initiatives.
Example: A Sri Lankan university collaborates with a European research institute, receiving expertise in renewable energy technology under a knowledge-transfer agreement.
Practical application: Knowledge transfer enhances competitiveness, supports domestic industry development, and can be a condition of trade-related aid.
Challenges: Protecting intellectual property rights while enabling access; ensuring that transferred knowledge is effectively absorbed and applied.

Letter of Credit (L/C)
Related terms: documentary credit, bank guarantee, performance security, UCP 600.
A letter of credit is a banking instrument that provides a payment guarantee to the seller, contingent upon the presentation of specified documents that prove shipment and compliance with contract terms. The Uniform Customs and Practice for Documentary Credits (UCP 600) governs its operation.
Example: A Sri Lankan tea exporter receives an L/C from a UK bank, ensuring payment upon presentation of a clean bill of lading, commercial invoice, and inspection certificate.
Practical application: L/Cs reduce payment risk, facilitate financing, and are widely used in high-value or high-risk transactions.
Challenges: Complex documentation requirements can lead to discrepancies; banks may delay payment if documents are not perfectly compliant, causing cash-flow issues.

Most-Favoured-Nation (MFN) Clause

Related terms: non-discrimination, WTO, tariff treatment, trade preference.
An MFN clause obliges a WTO member to extend to another member any favourable trade terms (e.g., lower tariffs) that it grants to any third country. It is a cornerstone of WTO nondiscrimination principles.
Example: Sri Lanka must apply the same tariff rate to goods from Country A as it does to goods from Country B if it has granted Country B a lower rate under an MFN commitment.
Practical application: MFN ensures equal market access, preventing preferential treatment that could distort competition.
Challenges: Exceptions such as free-trade agreements or regional trade blocs can create complexity; developing countries may seek to use MFN flexibly to protect nascent industries.

Non-Tariff Barrier (NTB)
Related terms: technical regulations, sanitary-phytosanitary measures, import quotas, standards.
NTBs are trade-restrictive measures that are not customs duties, such as product standards, licensing requirements, and customs procedures, which can impede the flow of goods.
Example: Sri Lanka imposes strict phytosanitary standards on imported fruits, requiring certification that may be costly for exporters.
Practical application: NTBs protect health, safety, and the environment, while also potentially serving as protectionist tools.
Challenges: NTBs are often less transparent than tariffs, making it difficult for exporters to comply; they can trigger disputes under WTO agreements.

Origin of Goods
Related terms: rules of origin, preferential treatment, customs valuation, certificate of origin.
Rules of origin determine the national source of a product for the purpose of applying trade measures such as tariffs, quotas, and preferential treatment under free-trade agreements.
Example: A Sri Lankan garment manufacturer must prove that at least 55% of its product value originates in Sri Lanka to qualify for reduced duty under the South Asian Free Trade Area (SAFTA).
Practical application: Accurate determination of origin enables exporters to benefit from preferential tariffs and avoids penalties.
Challenges: Complex production processes can make it difficult to trace the origin of components; documentation requirements may be burdensome.

Preliminary Injunction
Related terms: interim relief, conservatory measures, arbitration, emergency arbitrator.
A preliminary injunction is an order issued by a court (or occasionally an arbitral tribunal) to preserve the status quo pending final resolution of a dispute. It may restrain a party from taking certain actions that could cause irreparable harm.
Example: A Sri Lankan shipbuilder seeks a preliminary injunction to prevent a competitor from using its patented hull design during arbitration.
Practical application: Injunctions protect assets, prevent waste, and maintain bargaining power while the main dispute is adjudicated.
Challenges: Securing injunctions in foreign jurisdictions can be difficult; courts may be reluctant to intervene in matters that are subject to arbitration.

Quota
Related terms: import quota, export quota, quantitative restriction, WTO Agreement on Safeguards.
A quota is a limit on the quantity of a particular good that may be imported or exported during a specified period. Quotas can be used for protectionist purposes or to manage scarce resources.
Example: Sri Lanka imposes an import quota on rice to protect domestic farmers from sudden surges in foreign supply.
Practical application: Quotas can stabilise domestic markets and support strategic industries.
Challenges: Quotas are generally inconsistent with WTO obligations; they can lead to higher consumer prices and encourage smuggling or retaliatory trade measures.

Retaliatory Measures
Related terms: countermeasures, trade dispute, WTO dispute settlement, sanctions.
Retaliatory measures are actions taken by a WTO member in response to another member's breach of WTO obligations, often involving the suspension of concessions or the imposition of additional tariffs.
Example: After a WTO panel finds that Country X violated anti-dumping rules, Sri Lanka may impose additional duties on imports from Country X as a countermeasure.
Practical application: Retaliatory measures enforce compliance and provide a remedy for affected industries.
Challenges: They can escalate trade tensions, affect third-party countries, and may be subject to WTO review for proportionality.

Sanctions
Related terms: embargo, trade restriction, UN Security Council, secondary sanctions.
Sanctions are coercive measures imposed by one or more states to influence the behaviour of another state, entity, or individual, often restricting trade, financial transactions, or travel.
Example: International sanctions against Country Y prohibit Sri Lankan companies from exporting certain high-technology equipment.
Practical application: Sanctions serve foreign-policy objectives and can be used to enforce international norms.
Challenges: Compliance requires robust due-diligence systems; sanctions can inadvertently harm humanitarian trade and may conflict with domestic commercial interests.

Trade Remedy
Related terms: anti-dumping duty, countervailing duty, safeguard measure, WTO dispute settlement.
Trade remedies are WTO-authorized actions that a member may take to protect its domestic industry from unfair trade practices, including dumping, subsidised imports, or sudden import surges.
Example: Sri Lanka imposes an anti-dumping duty on imported steel after an investigation confirms that foreign producers are selling below cost.
Practical application: Remedies provide a legal avenue to address market distortion and protect jobs.
Challenges: Investigations are time-consuming and costly; remedies may provoke retaliation and can be challenged before the WTO.

Uniform Commercial Code (UCC)
Related terms: sale of goods, negotiable instruments, secured transactions, contract law.

The UCC is a set of model laws governing commercial transactions in the United States, particularly the sale of goods (Article 2). While not directly applicable to Sri Lanka, its principles influence international contract drafting and comparative law studies.
Example: A Sri Lankan exporter references UCC provisions when negotiating terms with a U.S. buyer to ensure alignment with the buyer's domestic legal expectations.
Practical application: Understanding UCC standards helps parties anticipate contractual obligations and risk allocation in cross-border sales.
Challenges: Differences between UCC and local law can create conflicts; reliance on UCC concepts without proper adaptation may lead to unenforceable clauses.

Valuation
Related terms: customs value, transaction value, deductive method, adjudicated value.
Valuation determines the monetary worth of imported goods for customs purposes, affecting duty liability. The WTO Agreement on Customs Valuation establishes the primary method (transaction value) and alternative methods (deductive, computed, fallback).
Example: Sri Lankan customs officials assess the value of imported machinery based on the transaction price declared by the importer, adjusting for freight and insurance.
Practical application: Accurate valuation ensures correct duty payment and compliance with customs regulations.
Challenges: Discrepancies between declared and actual values can lead to penalties; complex supply chains may complicate the application of valuation methods.

World Trade Organization (WTO)
Related terms: Doha Development Agenda, dispute settlement, trade liberalisation, member state.
The WTO is the principal global organization governing international trade, establishing rules on goods, services, and intellectual property, and providing a dispute-settlement mechanism. Its agreements, such as GATT, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Agreement on Subsidies and Countervailing Measures, form the legal backbone of contemporary trade.
Example: Sri Lanka, as a WTO member, participates in negotiations on agricultural subsidies and must align its domestic policies with WTO obligations.
Practical application: Membership offers market access, a forum for dispute resolution, and a platform for negotiating trade agreements.
Challenges: Balancing development goals with liberalisation commitments; navigating the complex dispute-settlement process; addressing concerns over the WTO's ability to adapt to emerging issues such as digital trade.

X-ray Imaging in Customs Inspection
Related terms: non-intrusive inspection, cargo scanning, trade facilitation, security measures.
X-ray imaging is a non-intrusive inspection technique used by customs authorities to examine the contents of containers and cargo without opening them, enhancing security while facilitating trade.
Example: Sri Lankan customs employs high-energy X-ray scanners at Colombo Port to detect contraband hidden in shipments, reducing clearance times.
Practical application: Improves risk assessment, speeds up cargo processing, and protects supply-chain

integrity.
Challenges: High equipment costs, need for trained operators, and concerns about radiation exposure require strict compliance with safety standards.

Yield Management
Related terms: capacity allocation, pricing strategy, revenue optimisation, demand forecasting.
Yield management is a pricing strategy that adjusts rates based on anticipated demand and capacity, commonly used in transportation and hospitality but increasingly applied to freight services.
Example: A Sri Lankan logistics firm uses yield management to dynamically price container space, offering lower rates during off-peak periods to maximise utilisation.
Practical application: Enhances revenue, improves asset utilisation, and provides flexibility in responding to market fluctuations.
Challenges: Accurate demand forecasting is essential; overly aggressive pricing can erode profit margins and may trigger regulatory scrutiny if perceived as predatory pricing.

Zone of Production
Related terms: production area, free-trade zone, customs territory, origin.
A zone of production designates the geographical area where a product is considered to be produced for the purposes of determining its origin under trade agreements. This concept is critical in applying preferential tariffs.
Example: Under the ASEAN-Australia-New Zealand Free Trade Area, Sri Lankan garments must have a specified percentage of their value originating within the ASEAN zone to qualify for reduced duties.
Practical application: Enables exporters to structure supply chains to meet origin criteria, thereby accessing tariff concessions.
Challenges: Complex supply chains can make it difficult to document compliance; changes in regional agreements may alter the definition of the zone, requiring continual monitoring.