

- How could other traders a long distance away be sure that the trader who had been entrusted with money/goods was doing the right thing?  
→ The group set up other individuals from the same ethnic group to check up on them.
- Compliance with the norms of the group was privately enforced through the potential of a threat to reputation if they did not do the right thing. It sounds very contemporary. Think about TripAdvisor!!  
→ Philip M. Nichols, *A Legal Theory of Emerging Economies*, 39 VA. J. INT'L L. 229, 273 (1999)

#### *Trade and the state: Ricardo and Smith*

- Adam Smith 'The Wealth of Nations' and the theory of absolute advantage of nations – nations/states are endowed with resources e.g. natural resources, labour
- If you restrict imports you reduce the wealth of a nation because that country is unable to specialise
- David Ricardo: the theory of comparative advantage - countries should produce those things in which they are relatively more efficient
- If countries produce those things in which they are relatively efficient and exchange them, then both countries benefit. If countries trade, then they can acquire more goods and this benefits consumers.

#### *If the state does not 'create' the market(s), how can it regulate it?*

- Kadens says '**government was entwined with commerce**' from the beginning of the commercial revolution of the high Middle Ages. In later centuries when nations began to write codes of law they were not innovating, they were building on existing practices.  
(*Chicago J of Int law* p 56)
- In the medieval period, to buy and sell, foreign traders faced restrictions and needed the protection of local authorities.
- This led to legislative influences, which are important in the story of the law merchant. Not a case of a customary law merchant and then the government or state became involved

### 16. Interaction of customs, norms, and legislation

- Standards – usually a quality measure have origins in the medieval period at least and in both legislation and in the practices of merchants.  
→ English wool merchants packed bales of wool for export in standard sizes. They marked them on the top for good quality and at the side for lesser quality. The bales were weighed and buyers often bought on the basis of sample. If the original seller acted in bad faith the middleman "stood in peril of death". (Kadens)
- Today, obligations in a sale by sample that goods accord with the sample in SGA, in CISG
- There was also legislation to ensure quality and measure and weights  
→ e.g. accounts of very early legislation re the quality of bread (Hamilton)

### 17. Standards

- Interaction of standards and legislative control continues today.
- International Standards Organisation.  
→ International Standards **make things work**. They give world-class specifications for products, services and systems, to ensure quality, safety and efficiency. They are instrumental in facilitating **international trade**.  
→ ISO has published more than 21000 International Standards and related documents, covering almost every industry, from technology, to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere.
- Codex re food standards.  
→ The reference made to Codex food safety standards in the World Trade Organization's Agreement on Sanitary and Phytosanitary measures (SPS Agreement) means that Codex has far reaching implications for resolving trade disputes. WTO members that wish to apply stricter food safety measures than those set by Codex may be required to justify these measures scientifically.

### 18. Types of rules

#### *Soft law v hard law*

- Soft law – guidance  
Guidelines e.g. UNGCP; principles e.g. OECD Principles; Principles re international commercial contracts; Non binding, peer review
- Hard law – clear rules  
Enforcement: WTO Disputes, national Courts, Arbitration

## 19. Institutions as rule generators and makers

- ‘Transnational quasi legislatures’? (Halliday)
- e.g. UNCITRAL – United Nations Commission on International Trade Law

### *UNCITRAL*

- The core legal body of the United Nations system in the field of international trade law. A legal body with universal membership specializing in commercial law reform worldwide for over 40 years, UNCITRAL's business is the modernization and harmonization of rules on international business
- Trade means faster growth, higher living standards, and new opportunities through commerce. In order to increase these opportunities worldwide, UNCITRAL is formulating modern, fair, and harmonized rules on commercial transactions. These include:
  - Conventions, model laws and rules which are acceptable worldwide
  - Legal and legislative guides and recommendations of great practical value
  - Updated information on case law and enactments of uniform commercial law
  - Technical assistance in law reform projects
  - Regional and national seminars on uniform commercial law

Go to video on UNCITRAL [http://legal.un.org/avl/ls/Sekolec\\_IEL\\_video\\_2.html](http://legal.un.org/avl/ls/Sekolec_IEL_video_2.html)

- Conventions, Model laws
- New law or harmonisation?
- The United Nations Convention on Contracts for the International Sale of Goods (**CISG**; the Vienna Convention) is a treaty that is a uniform international sales law.
- The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.

### *WTO*

While the WTO is driven by its member states, it could not function without its Secretariat to coordinate the activities. The Secretariat employs over 600 staff, and its experts — lawyers, economists, statisticians and communications experts — assist WTO members on a daily basis to ensure, among other things, that negotiations progress smoothly, and that the rules of international trade are correctly applied and enforced.

## Trade negotiations

- The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes.
- These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

## Implementation and monitoring