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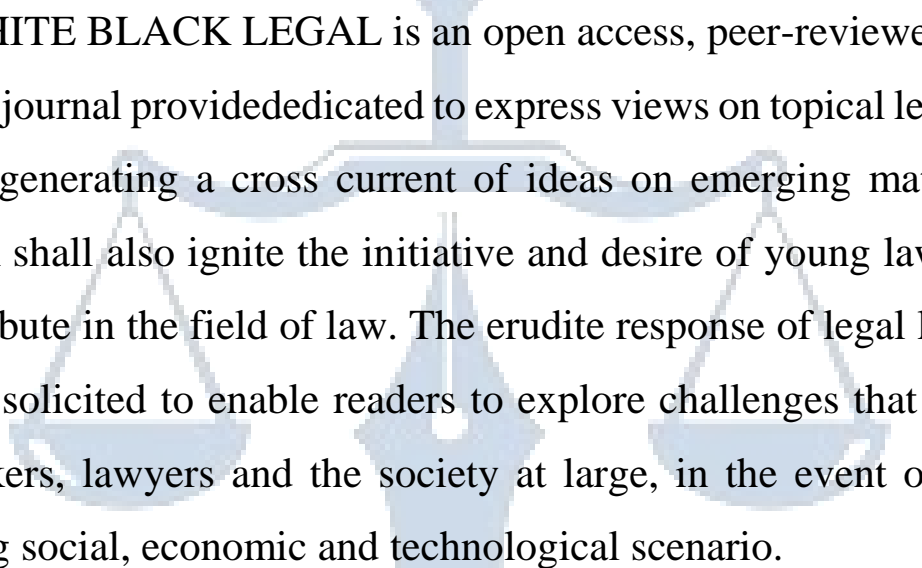


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
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TRACING THE RECORDS OF PRINCIPLES OF GATT AND COMPREHENDING ITS LEGAL NATURE

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INTRODUCTION

In the aftermath of World War II, the international community grappled with the economic devastation wrought by protectionist trade policies. Recognizing the need for a new approach, nations embarked on a path towards cooperation and liberalization. The General Agreement on Tariffs and Trade (GATT), established in 1948, emerged as a pivotal instrument in this transformation. However, GATT's legal nature defied conventional categorization and unlike traditional treaties requiring formal national legislative ratification, it operated with a more nuanced and flexible framework.

This paper meticulously traces the evolution of its core principles and deconstructing its unconventional legal character and elucidate how GATT, despite lacking a rigid legal structure, exerted significant influence on the global trading landscape.

A central pillar of GATT's legacy was its unwavering commitment to progressive tariff reduction and dismantling of trade barriers which was once a formidable obstacle to international commerce, unleashed a wave of trade and economic growth on a global scale.

Beyond tariff reduction, GATT championed the principle of non-discrimination in trade practices by inserting the Most-Favoured-Nation (MFN) clause which ensured that any trade concession offered by a member country had to be extended to all others.

Prior to MFN, a labyrinthine network of bilateral agreements and preferential treatment for select trading partners defined international trade, creating an unpredictable and uneven environment. GATT's architects sought to dismantle these discriminatory practices, establishing a level playing field for all participants in the international trading system.

GATT's influence transcended the limitations of its formal legal structure and reveals a deep commitment to fostering a more cooperative and open trading environment. This commitment manifested in the establishment of a rudimentary dispute settlement system, albeit lacking the enforcement power of a formal court.¹

Despite its limitations, this system provided a platform for consultations and recommendations, paving the way for the more robust dispute settlement mechanism established by the World Trade Organization (WTO) in 1995 and the exploration of GATT's historical records unveils a fascinating paradox. While lacking a rigid legal framework, GATT's core principles – progressive tariff reduction, non-discrimination, and fostering a cooperative trading environment – fundamentally reshaped the post-war global economy.

UNROOTING THE ROOTS: THE EVOLUTION OF GATT

The Scars of Protectionism: A World in Search of Cooperation (1914-1948)

The 20th century witnessed the devastating consequences of protectionist trade policies. The high tariffs and quotas implemented by many countries in the early 1900s contributed significantly to a decline in international trade and ultimately fueled the Great Depression of the 1930s. This economic collapse, coupled with the rise of nationalism and protectionist policies, created a breeding ground for global conflict, culminating in World War II.

Emerging from the ashes of war, nations yearned for a new path – one built on economic stability and international cooperation. The Bretton Woods Conference in 1944 laid the foundation for this new order by establishing the International Monetary Fund (IMF) and the World Bank to promote financial stability and reconstruction. However, a similar institution focused on trade remained absent.

¹ https://www.wto.org/english/res_e/booksp_e/agmntseries2_gatt_e.pdf

The Havana Conference and the Birth of GATT (1947-1948)

Recognizing the critical role of freer trade in global prosperity, nations convened at the International Trade Organization (ITO) Conference in Havana, Cuba, in 1948. Although the ITO itself never materialized due to political resistance from the United States, its proposed charter became the foundation for the General Agreement on Tariffs and Trade (GATT).²

- **Most-Favoured-Nation (MFN) Treatment:** This cornerstone principle ensured non-discrimination across the globe between the countries. If a country offered a trade concession (like lower tariffs) to one nation, it had to extend the same benefit to all GATT members. This created a level playing field, fostering fair competition and discouraging the formation of exclusive trade pacts that could disadvantage others.
- **National Treatment:** This principle ensured a fair marketplace once goods entered a country. Imported goods, after clearing customs, were to be treated identically to domestic products. This meant eliminating internal taxes or regulations that could artificially inflate the price of imports, fostering a more competitive environment.
- **Progressive Tariff Reductions:** GATT actively promoted freer trade through a series of multilateral negotiations known as trade rounds. These negotiations aimed to

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² https://legal.un.org/avl/pdf/ha/gatt/gatt_e.pdf

progressively reduce tariffs, the taxes levied on imported goods. Lower tariffs meant cheaper imports and exports, leading to increased trade flows and economic efficiency.

- **Transparency and Predictability:** Clear and consistent trade policies were crucial for businesses navigating the complexities of international trade. GATT emphasized transparency in regulations and procedures. This allowed businesses to make informed decisions, understand the costs involved in cross-border transactions, and operate with greater confidence in the global marketplace.

These principles, while seemingly straightforward, represented a significant shift from the protectionist policies that had dominated the pre-war era.

From GATT to WTO: A Transformation Towards a More Robust and Rule-Based Trading System (1948-1995)

The General Agreement on Tariffs and Trade (GATT), established in 1948, ushered in a new era of international cooperation and trade liberalization. However, by the mid-1980s, its limitations became increasingly apparent. The rudimentary dispute settlement system, often resulting in lengthy and inconclusive proceedings, coupled with the lack of a permanent institutional structure, hampered GATT's ability to adapt to the dynamic needs of the global trading system. Additionally, new areas of trade, such as services and intellectual property, remained inadequately addressed within GATT's framework.³

Recognizing these shortcomings, the international community embarked on a critical reform process. The Uruguay Round of multilateral trade negotiations, launched in 1986, marked a pivotal moment. This ambitious round aimed not only to achieve further tariff reductions but also to significantly expand the scope of GATT. The negotiations were complex and protracted, spanning eight years. However, they culminated in a landmark achievement: the creation of the World Trade Organization (WTO) in 1995.⁴

The WTO wasn't merely a successor to GATT; it represented a significant evolution in the global trading system. While it built upon the foundation laid by GATT, incorporating its core principles

³ https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm

⁴ <https://www.britannica.com/topic/General-Agreement-on-Tariffs-and-Trade>

and dispute settlement mechanism, the WTO introduced several key advancements:

- **Stronger Institutional Framework:** Unlike GATT, which lacked a permanent administrative body, the WTO established a dedicated secretariat in Geneva, Switzerland. This permanent structure provided ongoing administrative and technical support for member countries. Improved communication, streamlined dispute settlement procedures, and efficient implementation of trade agreements became hallmarks of the WTO system. A bustling central office was equipped to handle the complexities of international trade; the WTO secretariat served precisely this purpose, facilitating smoother trade relations between member nations.
- **Enhanced Dispute Settlement:** GATT's dispute settlement system, while innovative for its time, had limitations. The WTO addressed these limitations by establishing a more robust and streamlined process. Panels of independent experts were empowered to hear trade disputes, analyze evidence, and issue binding rulings. While countries could still appeal these rulings, the process was significantly faster and more transparent compared to GATT. This enhanced system fostered greater confidence among member countries, knowing that trade disputes could be resolved efficiently and fairly through a neutral mechanism.
- **Expanded Scope:** The WTO encompassed a wider range of trade issues compared to GATT. Recognizing the growing complexity of the global economy, the WTO framework formally incorporated agreements on trade in services, intellectual property rights, and investment. Trade in services, encompassing everything from banking to tourism, had become a significant driver of economic growth. Similarly, intellectual property rights, such as patents and copyrights, played a crucial role in innovation and technological advancement. The WTO framework's expansion to encompass these areas ensured that the global trading system remained relevant and addressed the contemporary realities of international commerce.

The establishment of the WTO marked a significant step towards a more rule-based and enforceable international trading system. The permanent institutional framework provided a platform for ongoing dialogue, negotiation, and collaboration on trade issues. The enhanced dispute settlement mechanism offered a swifter and more dependable means of resolving trade conflicts. The expanded scope of the WTO framework ensured that the evolving needs of the global economy were effectively addressed. Overall, the WTO's creation ushered in a new era of predictability and stability for international commerce, fostering a more cooperative and

prosperous global trading environment.⁵

It's important to note that the WTO system is not without its critics. Some argue that the organization prioritizes the interests of developed nations and overlooks the concerns of developing countries. Others express concerns about the potential negative impacts of certain trade agreements on domestic industries and labor standards. However, despite these ongoing debates, the WTO's role in promoting freer trade, fostering economic growth, and facilitating a more integrated global trading system remains undeniable.

THE ENDURING LEGACY OF GATT: A CATALYST FOR GLOBAL TRADE TRANSFORMATION

The General Agreement on Tariffs and Trade (GATT), while demonstrably limited in its purely legalistic framework, stands as a transformative force in the annals of international trade. Its impact transcended the constraints of its legal structure, leaving an indelible mark on the global economic landscape.

1. From Crippling Tariffs to Flourishing Trade: A Pillar of Prosperity

A cornerstone of GATT's success was its unwavering pursuit of progressive tariff reductions. Through successive rounds of meticulously crafted multilateral negotiations, GATT facilitated a dramatic decrease in average tariffs on manufactured goods. Prior to GATT's intervention, international trade languished under the burden of exorbitant tariffs levied by individual nations. Imagine a world where countries imposed sky-high taxes on imported goods – and this imagination was the reality before GATT. By the late 1990s, thanks to GATT's relentless efforts, these tariffs had plummeted from around 40% to a mere 7%, according to data compiled by the World Trade Organization. This significant reduction in trade barriers unleashed a wave of international trade, fostering economic growth and prosperity on a global scale. Lower import costs translated into greater consumer choice and a more efficient allocation of resources across nations.

2. A Level Playing Field for All: Championing Non-Discrimination

⁵ https://www.researchgate.net/publication/228631129_Analysis_of_the_importance_of_general_agreement_on_tariffs_and_trade_GATT_and_its_contribution_to_international_trade

GATT championed the principle of non-discrimination in trade practices through the cornerstone Most-Favored-Nation (MFN) clause. This principle ensured that any trade concession offered by a country to one member nation had to be extended to all GATT members. Prior to the MFN principle, international trade was often characterized by a web of bilateral agreements and preferential treatment for selective trading partners, creating an uneven and unpredictable environment. The MFN principle eradicated such practices, creating a level playing field for all participants in the international trading system. Businesses could now operate with greater certainty, knowing that they wouldn't be unfairly disadvantaged by discriminatory trade policies.⁶

A Paradigm Shift: From Protectionism to Cooperation

GATT's unwavering commitment to free trade and multilateral cooperation fundamentally reshaped post-war economic thinking. In the pre-GATT era, protectionist policies dominated the global economic landscape, with countries erecting significant barriers to shield domestic industries from foreign competition. GATT ushered in a new era of international cooperation, fostering closer economic ties between nations and paving the way for a more integrated global economy. Its success story demonstrated the power of collaboration in addressing global economic challenges and spurred a significant shift away from the isolationist tendencies that had characterized the pre-war era.

3. The Foundation for the WTO: A Legacy that Endures

The principles and dispute settlement mechanisms established by GATT provided the bedrock upon which the World Trade Organization (WTO) was built. The WTO continues to play a vital role in promoting free trade, resolving trade disputes, and upholding a stable and predictable trading environment for its member countries. GATT's legacy is deeply embedded within the WTO framework. Core principles like non-discrimination, tariff reduction, transparency, and predictability remain central tenets of international trade law today. The WTO serves as the current custodian of these principles, adapting them to the complexities of the 21st-century global economy.

⁶ <https://www.investopedia.com/terms/g/gatt.asp>

4. Beyond the Footnote: A Testament to Cooperation

The story of GATT is more than just a historical footnote; it's a powerful testament to the transformative potential of international cooperation. By fostering an environment conducive to trade, GATT spurred economic growth and prosperity for member nations. While the ever-evolving global economy necessitates ongoing discussions and reforms within the WTO framework, the core principles established by GATT continue to shape the way nations interact commercially. Understanding the unique legal character of GATT, with its blend of contractual elements, a nascent dispute settlement system, and a flexible institutional structure, offers valuable insights into the evolution of international trade law. It reminds us of the ongoing challenges of promoting a stable and equitable trading system for all nations in an increasingly interconnected world.

GATT's legacy serves as a source of inspiration as we navigate the complexities of international trade today. It is a reminder that through cooperation, dialogue, and a commitment to fair trade principles, we can create a more prosperous and integrated global economy for all.

A CONTRACTUAL FRAMEWORK WITH LIMITED ENFORCEMENT MECHANISMS

GATT functioned in a manner akin to a contract, outlining legally binding obligations for its signatories. This contractual approach streamlined its adoption by various countries, circumventing the potential delays and roadblocks. However, this informality also had drawbacks which have been highlighted below:

- a. **Dispute Settlement: A System in Evolution:** GATT established a rudimentary dispute settlement system, a significant innovation for its time. While it facilitated consultations and issued recommendations, it lacked the enforcement power of a formal court. Countries could choose to disregard rulings, making the process slow and cumbersome. This nascent system paved the way for the more robust dispute settlement mechanism established by the World Trade Organization (WTO) in 1995.
- b. **Decentralized Decision-Making: A Double-Edged Sword** GATT lacked a permanent

administrative body, relying instead on consensus-based decision-making through regular meetings of member countries. This decentralized approach fostered a sense of ownership among members and allowed for a more flexible response to evolving trade issues. However, it could also be time-consuming and hinder swift action on pressing matters. The WTO, in contrast, established a more permanent bureaucratic structure to handle the growing complexities of international trade.

Influence Beyond Legal Muscle: A Multifaceted Approach

Despite these limitations, GATT wielded significant influence on the global trading landscape, employing a multifaceted approach that extended beyond strict legal enforcement.

- a. **Widespread Adoption and Collective Voice:** Over time, GATT membership grew significantly, creating a powerful force advocating for free trade. By 1994, it boasted 128 contracting parties (countries), representing a major portion of global trade. This collective voice amplified its impact on international trade policies, making it increasingly difficult for countries to pursue overtly protectionist agendas.
- b. **Engine of Trade Liberalization: Successive Rounds of Negotiation** GATT's framework facilitated successive rounds of multilateral trade negotiations (GATT rounds). These rounds have spread over decades, progressively reduced tariffs and addressed new trade concerns that emerged alongside a globalizing world. The Kennedy Round, for example, addressed issues like anti-dumping measures and subsidies, while the Tokyo Round tackled non-tariff barriers such as quotas and product standards. These negotiations played a pivotal role in liberalizing trade and fostering economic growth worldwide.⁷
- c. **Moral Suasion and the Cost of Non-Compliance:** While GATT's rulings weren't legally enforceable, they carried moral weight. Countries faced pressure to comply with established principles to avoid being labeled protectionist. Non-compliance could potentially lead to retaliation through trade sanctions, further incentivizing adherence to the agreed-upon trade rules. This system of moral suasion, though informal, proved reasonably effective in promoting a more cooperative and open trading environment.

⁷ <https://www.emerald.com/insight/content/doi/10.1108/07363769610107383/full/html>

THE CURIOUS CASE OF GATT: A LEGAL FRAMEWORK BEYOND TREATIES

The legal recognition of the General Agreement on Tariffs and Trade (GATT) presents a fascinating paradox. While not a traditional treaty with a formal ratification process, GATT established a framework with significant legal weight that transformed the global trading system.

i. A Contractual Web, not a Traditional Treaty:

Unlike a classic treaty, GATT lacked the formal ratification process typically associated with international agreements. Countries didn't go through the standard procedures of signing, ratification by national legislatures, and deposit of instruments of ratification. Instead, GATT operated through a series of "protocols of accession" where countries agreed to be bound by the existing GATT rules. These protocols, along with the core GATT text itself, created a web of legally binding obligations for signatories, resembling a contract in some ways. Countries were bound to uphold the core principles of GATT, such as Most-Favored-Nation (MFN) treatment, national treatment, and tariff reduction commitments negotiated during GATT rounds.

ii. Dispute Settlement: A Platform for Consensus, Not Coercion:

GATT established a rudimentary dispute settlement system, a crucial aspect of its legal recognition. This system, however, lacked the enforcement power typically associated with a formal legal system. Countries could not be compelled to comply with rulings issued by GATT panels. Instead, the system relied on moral suasion and the power of consensus. When a trade dispute arose, GATT would facilitate consultations and encourage member countries to find mutually agreeable solutions. Panels would issue recommendations based on GATT principles, but these recommendations were not legally binding. However, they carried significant weight and countries faced pressure to comply with these recommendations or risk being seen as protectionist and hindering global economic progress.

iii. Transparency: Building Trust Through Openness:

GATT emphasized transparency in trade policies and regulations. This focus on transparency played a key role in the legal recognition of GATT principles. Member countries were obligated to make their trade laws, regulations, and tariff schedules publicly available. Additionally, GATT reports and legal rulings were accessible to member countries, fostering a sense of fairness and predictability in the trading environment. This transparency allowed countries to assess their rights and obligations under GATT and hold other members accountable for their trade practices.

iv. The Evolution of Legal Weight: From Principles to Power:

Over time, GATT's legal weight grew through its impact on international trade practices. Successive rounds of multilateral trade negotiations under GATT (known as GATT rounds) progressively reduced tariffs and addressed new trade issues. This success in promoting freer trade solidified GATT's role as a central player in the global trading system. Additionally, the widespread adoption of GATT principles by a growing number of member countries strengthened their legal recognition. As more and more countries adhered to GATT principles, they became a de facto standard for international trade, even without formal enforcement mechanisms.

v. The Legacy: Paving the Way for the WTO:

Despite its limitations, GATT's influence on the legal landscape of international trade cannot be understated. It laid the groundwork for the establishment of the World Trade Organization (WTO) in 1995. The WTO built upon the foundation laid by GATT, incorporating its core principles and dispute settlement mechanism. However, the WTO marked a significant evolution and established a more robust institutional framework with a permanent secretariat and a stronger dispute settlement system with enhanced enforcement power. While GATT may not have been a traditional treaty in the strictest sense, its legacy lives on within the WTO framework. The principles enshrined in GATT – non-discrimination, tariff reduction, transparency, and predictability – remain central tenets of international trade law today.

CONCLUSION

A meticulous examination of the General Agreement on Tariffs and Trade (GATT) unveils a captivating anomaly within the international legal landscape. Established in 1948, GATT eschewed the traditional path of formal national ratification for treaties. Instead, it employed a series of accession protocols, forging a web of legally binding obligations for signatories within a more flexible framework. While this unconventional approach facilitated broader adoption, it lacked the absolute enforcement power associated with formal treaties.⁸

Nonetheless, GATT's core principles – progressive tariff reduction, non-discrimination, and fostering a cooperative trading environment – demonstrably reshaped the post-war global economic landscape. Through successive rounds of multilateral trade negotiations, GATT's unwavering commitment to tariff reduction yielded a dramatic decrease in trade barriers, subsequently unleashing a surge in international commerce and economic prosperity. Moreover, the Most-Favored-Nation clause ensured a level playing field by prohibiting preferential treatment for select trading partners. GATT's influence extended beyond the confines of its formal legal structure. It established a rudimentary dispute settlement system, a precursor to the WTO's more robust mechanism. While not legally binding, these recommendations carried significant moral weight, incentivizing adherence to established trade rules.

Despite its unconventional legal nature, GATT proved remarkably effective. Widespread adoption by a growing number of countries amplified its collective voice, making protectionist policies increasingly untenable. GATT's legacy extends far beyond its historical context. The principles it championed – non-discrimination, tariff reduction, transparency, and predictability – laid the groundwork for the World Trade Organization (WTO) established in 1995. While the WTO represents a significant evolution with a more robust institutional framework and dispute settlement system, GATT's core tenets remain central to international trade law today. Delving into GATT's unconventional legal approach and its enduring principles offers invaluable insights into the evolution of global trade and serves as a valuable source of inspiration for navigating the complexities of trade in our interconnected world.

⁸ <https://law.duke.edu/lib/research-guides/gatt>



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