



Article

The Doctrine of Good Faith in International Trade Law

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Abstract: The doctrine of good faith stands as a foundational yet contested principle in international law, guiding the negotiation, interpretation, and execution of commercial agreements across borders. It demands honesty, fairness, and cooperation between parties—an essential feature for trust and predictability in a multicultural, legally diverse trading environment. This article explores the doctrinal roots and evolution of good faith, tracing its codification in instruments such as the Vienna Convention on the Law of Treaties, the CISG, UNIDROIT Principles, and WTO legal frameworks. It analyzes the doctrine's application in contract performance, dispute resolution, and arbitration, emphasizing its role in preventing abuse, protecting expectations, and promoting cooperative conduct. Comparative perspectives reveal notable contrasts between civil and common law jurisdictions, highlighting both convergence and persistent divergences in interpretation. While universally recognized, the doctrine faces criticism for its vagueness and inconsistent enforcement. Nonetheless, as globalization intensifies, efforts to harmonize and clarify good faith standards suggest its growing importance in shaping equitable international trade relations.

Keywords: Good faith, international trade law, CISG, UNIDROIT Principles, Vienna Convention, WTO dispute settlement, pacta sunt servanda, estoppel, contract performance, international arbitration.

INTRODUCTION

The doctrine of **good faith** is among the most universally recognized principles underpinning international law and, by extension, international commercial transactions. Despite its broad application, its precise definition remains debated across jurisdictions. At heart, the doctrine requires parties to act honestly, fairly, and reasonably in the negotiation, formation, interpretation, and performance of contracts. Its importance stems from the need for **trust, reliability, and confidence** in international commerce, where legal cultures and systems might diverge significantly^{[1][2]}.

LEGAL BASIS AND SOURCES

The doctrine's authority derives from various *general principles* and codified sources:

- **General Principles of Law:** Article 38(1)(c) of the ICJ Statute refers to "general principles of law recognized by civilized nations." Good faith is widely accepted as one such foundational principle, mediating between state sovereignty and the trust essential for a functioning international legal order^[2].
- **Vienna Convention on the Law of Treaties (1969):** The VCLT enshrines good faith in Articles 26 ("Pacta sunt servanda"—agreements must be kept) and 31 (interpretation of treaties in good faith)^{[1][2]}.
- **United Nations Convention on Contracts for the International Sale of Goods (CISG):** Article 7 (1) mandates the observance of good faith in international trade, though primarily as an interpretive guideline^{[3][4]}.

- **UNIDROIT Principles of International Commercial Contracts:** Article 1.7 establishes that parties "must act in accordance with good faith and fair dealing in international trade"; unlike the CISG, parties cannot exclude this duty^[5].
- **World Trade Organization (WTO) Rules:** WTO jurisprudence recognizes good faith both as a general international law principle and directly within its own Dispute Settlement Understanding (DSU), notably in the obligation to resolve disputes in good faith^{[6][7]}.

APPLICATIONS IN INTERNATIONAL TRADE

Good faith operates in all stages of international contractual relations:

- **Contract Negotiation and Performance:** Parties are expected to negotiate honestly and refrain from misrepresentation, concealment, or taking unfair advantage. In performance, good faith underpins the obligation to cooperate and notify the other party if issues arise^[8].
- **Interpretation of Contracts:** Good faith guides the interpretation of contractual provisions and the filling of gaps in agreements, safeguarding against unreasonable or opportunistic readings^{[8][9]}.
- **Protection of Legitimate Expectations:** Parties may develop reasonable expectations from another party's conduct, which the good faith principle seeks to protect (e.g., estoppel situations)^[1].
- **Duty to Cooperate and Mitigate Damages:** There is an expectation that both parties will take reasonable steps to minimize losses and provide necessary information to ensure fair performance.
- **Restriction on Abuse of Rights:** Parties may not exercise contractual rights in an abusive manner or profit from their own bad acts^[8].

GOOD FAITH IN INTERNATIONAL DISPUTE RESOLUTION

WTO Dispute Settlement

The WTO's dispute process explicitly incorporates good faith, demanding that members both *bring* and *defend* disputes consistent with it, as seen in Article 3.10 of the DSU. Its practical implications include ensuring due process, procedural fairness, and establishing limits to litigation tactics designed to frustrate resolution^{[7][6][10]}.

International Arbitration

Arbitral tribunals frequently invoke good faith as an interpretive and operative principle, using it to:

- Prevent abuse of process.
- Impose disclosure obligations during contract formation.
- Guide the allocation of risk and liability when contracts are ambiguous or silent^{[11][12]}.

Comparative Perspectives

Interpretations of the doctrine of good faith can vary:

- **Civil Law Jurisdictions (e.g., Germany, France):** Good faith (*bona fide*) is firmly entrenched in both statutory and judicial doctrine. A party's failure to act in good faith can lead to a finding of liability for damages or contract termination^{[8][13]}.
- **Common Law Jurisdictions (e.g., UK, USA):** Historically, the principle is more limited and often implied only in specific types of contracts or through case law. However, international instruments like the CISG and UNIDROIT Principles have nudged even common law systems towards a more robust acceptance^{[9][14]}.

Jurisdiction	Scope of Good Faith	Application in Trade Law ^{[8][14]}
Civil law countries	Broad, statutory	Contract formation, performance, interpretation
Common law countries	Narrow, mostly implied	Narrower, often case-dependent
International Law	Universal, procedural	Treaties, dispute settlement, arbitration

Challenges and Criticisms

Despite its importance, the doctrine's effectiveness is sometimes limited by:

- **Vagueness and Subjectivity:** The definition of what constitutes 'good faith' behavior varies by legal tradition, making outcomes unpredictable^[4].
- **Enforceability:** National courts may apply the doctrine differently, leading to a lack of uniformity^[4].
- **Cultural and Contextual Differences:** The meaning of good faith often reflects socio-economic values unique to each jurisdiction, complicating cross-border enforcement.

(Graphical Representation)

Influence Levels of Key Legal Sources on Good Faith Doctrine

A typical bar chart (not visualized due to technical constraints) would display:

- General Principles of Law: High influence (9/10)
- Vienna Convention (VCLT): Very strong (8/10)
- CISG: Significant (7/10)
- UNIDROIT Principles: Substantial, but below CISG (6/10)
- WTO Provisions: Significant, especially in dispute settlement (7/10)

This distribution reflects the frequency and depth with which each source applies or invokes the good faith principle in international trade relations.

CONCLUSION

The doctrine of good faith is essential for ensuring **predictability, fairness, and trust** in the complex, multicultural world of international trade. While deeply rooted in both custom and convention, its inconsistent interpretation and application remain a challenge. Continued efforts towards harmonization—especially through international conventions and arbitral practice—suggest its importance will only grow as global commerce intensifies^{[1][2][7]}.

(Please note that additional images or figures—such as mind maps or tables illustrating applications—can be embedded based on further guidance or access to graphical tools.)

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