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SPECIFIC CLAUSES IN THE INTERNATIONAL TRADE AGREEMENTS

PhD Thesis Abstract

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Keywords: international commercial contracts, contractual liability, contractual balance, clauses insuring against risks, extension of contractual relations.

ARGUMENTUM

The development of international trade in the current circumstances of globalization with influences on the global economic development, but also on the cooperation and closeness among nations is not without legal rules designed to underpin the social trading relations with foreign elements. One of the relevant dimensions of international trade is the international trade agreement. The efficiency of the international trade agreement also involves a legal issue revealed by identifying and providing the most appropriate clauses to represent a progress for the future contractual relations with a foreign element.

In choosing the theme for research and in composing the thesis I started from ascertaining the utility of studies in the present economic and legal context, in that of globalization, and of intensification of the frequency of contractual relations between professionals in the Member States of the European Union, and more. The particular clauses of international trade agreements designate significant points of interest since they cover a legal reality in the light of which the agreement appears to be an effective tool for achieving the interests of the contracting parties and the objectives for which it was perfected. This reality is what imposed continuing the efforts for in-depth knowledge and adaptation of specific clauses in international trade agreements to the dynamic changes of the business and legal efforts, efforts towards which we hope to make our contribution.

The specific clauses in international trade agreements are of interest to law theorists and practitioners alike, as they reflect a regulatory space in continuous evolution. Such research can contribute to a better and more complete description of specific categories of clauses in the context of the present peculiarities of international trade.

The specific clauses in international trade agreements are the necessary parameters of contractual relations, the performance of the participants in international trade activity being conditioned by the drafting of the international trade agreements in general, and by their specific clauses in particular.

Compared with intrastate contractual relations, the international trade is characterized by complexity, thus to obtain positive effects both legally and, therefore, economically necessarily requires proper drafting of the international trade agreements.

The aim of the thesis is to identify the entirety of the legal issues involved by the specific clauses in international trade agreements.

To achieve the aim of the thesis the following were investigated and resolved:

- The analysis of specific clauses in international trade agreements through the regulations of Romanian, French, English law, etc.

- Revealing the complexity of the clauses in question and highlighting the convergent and divergent aspects in the foregoing legislative context;

- Identification of certain standards for the interpretation of international trade agreements, binding for the arbitration and judicial courts;

- Emphasizing the objective pursued by the contracting parties, reflected by both the general effects and the specific effects of international trade agreements;

- Proposals for the intended law.

The scientific novelty of the thesis is determined by the detailed analysis of specific clauses in international trade agreements in light of the provisions of the Romanian Civil Code in force, other legal systems, but also the regulations of the uniform law, and the examination of the relevant national and international case law. Also, in terms of research novelty, the identification of the theoretical and practical problems solved contradictory or nuanced and expressing the own opinions in this regard, and the conclusions resulting from the investigations performed should be mentioned.

The support of the scientific approach consists of specialized theoretical papers from the national and international law, the case law of arbitration and legal courts of civil and international trade law, the own research of the practice of The Court of International trade Arbitration of the Romanian Chamber of Commerce and Industry.

In consideration of the legal institutions analyzed, the aim and tasks of the research, the conceptual content of the doctoral thesis is divided into seven chapters on: formation of the international trade agreements, own terms of international trade agreements, insurance clauses of the international trade agreements, the clauses of adjustment of the international trade agreements, clauses for the extension of contractual relations, default clauses in the international trade agreements, interpretation and effects of the international trade agreements, conclusions and bibliography.

Chapter I
FORMATION OF THE INTERNATIONAL TRADE AGREEMENTS

The international trade agreement are defined by the features customizing it: internationality and being connected to trading activities.

From a juridical point of view, an international agreement is that agreement which implies the existence of a foreign element, namely an element which is connected with the legal regulations emanating from several states.

From the economic point of view, an international agreement is that agreement which provides a flux and a reflux movement across borders, namely a double transfer of values, goods or services.

Regarding the feature of being connected to trading activities, the national legal systems have established two conceptions: the subjective and objective conception. The subjective conception reflected in the Romanian law (Art. 3 of the Romanian Civil Code) and the German one (Art. 343 H.G.B.) considers the quality of professional-trader of the contracting party. The objective concept reflected in the French law and the laws of French inspiration focuses on the nature of the foreseen through it, with or without commercial features, regardless of the quality of the contracting parties.

The exploratory approaches and negotiation are a first step towards establishing a long lasting international trade contractual relationship. We must not neglect the importance of bilateral or unilateral legal acts in the pre-contractual phase, which contribute to establishing the real will of the parties and, therefore, the interpretation of the international trade agreements. Also, assuming any breach of the contracting parties' agreement, the conduct of the parties during the pre-contractual phase must also be considered.

Approximation of the contractual freedom principle with the need of legal certainty in the pre-contractual phase is expressed in legal obligations: the obligation of good faith and the obligation of confidentiality in pre-contractual negotiations. With the exception of Anglo-Saxon law, according to which a party is not bound by the obligation of good faith to the other party in negotiations, most systems of law and the provisions of uniform law allow sanctioning the breaches of the obligation of good faith in the field of tort.

If, however, the parties entered into a negotiation agreement, the behavior inconsistent to the obligations determines the engagement of contractual liability, enforcing the penalty clause that the parties are able to insert it in the body that agreement. With respect to the foregoing and considering the benefits of evidence, we think it is advisable that the parties conclude the negotiation agreement and in the event of default, to promote an action in contractual liability and not one based on tort civil liability. Similarly, in the absence of a confidentiality agreement, a breach of that obligation during pre-contractual negotiations will lead to tort liability, as in the case of a breach of the obligation to negotiate in good faith.

The law applicable to pre-contractual phase, whether the breach of the foregoing obligations is enforced in the field of tort or contractually, is the law applicable to the international trade agreement expected to be concluded according to Art. 12 of (EC) Regulation no. 864/2007 of the European Parliament and of the Council of July 11th 2007 on the law applicable to non-contractual obligations.

The agreement, as an agreement between the parties, is concluded in the context of total accordance between the offer to contract and the acceptance of such an offer.

The offer is the unilateral legal act comprising a complete agreement proposal, for which the acceptor's approval is sufficient as it is considered as acceptance of that offer.

The offer must be complete, firm, addressed to determined persons, and must take the form provided for the expected agreement.

The Romanian, German and Anglo-Saxon law systems believe in the principle that commercial advertising is not an offer because it is not sufficiently precise, it is not addressed to determined recipients and its circumstances of issue reveal no intention to contract solely on the basis of the commercial advertising document. The French law opted to the contrary, namely that commercial advertising is considered an offer.

Acceptance is the unilateral legal act by which the offeree agrees to conclude the agreement. To determine the conclusion of international trade agreements, acceptance must be made by the offeree, must be pure and simple, reflecting the recipient's intention to accept the offer, to reach the offeror within the time limit for acceptance, and to take the form required by law for validity of the expected agreement.

If the acceptance includes changes, it represents a counter-offer or counter-proposal which, in order to produce legal effects, must be accepted in turn. By way of exception, acceptance of the amended offer may lead to the conclusion of the agreement if it does not substantially alter the composition of the offer, the offeror doesn't formulate objections in short term, and the offer does not restrictively mention that acceptance be pure and simple.

Externalizing the will to accept the offer may be express or implied. According to Art. 1196 of the Romanian Civil Code, Art. 18 of the Vienna Convention on Contracts for the International Sale of Goods, Art.2.1.6 second thesis of the 2010 UNIDROIT Principles, Silence does not in itself amount to acceptance. An exception when silence amounts to acceptance may arise from the parties' agreement to this effect, the previous contractual conduct of the parties, the customary or legal provisions (namely tacit relocation). German law is even more favorable admitting the theory of the de facto agreement.

The agreement between the present parties shall be concluded at the time and place with respect to which the parties express their consent of wills on the agreement terms.

Art. 1186 par. 1 of the Romanian Civil Code, the French jurisprudence, Art. 23 in conjunction with Art. 18 par. 2 of the Vienna Convention on Contracts for the International Sale of Goods, Art. 2.1.6. par. 2 of the 2010 UNIDROIT Principles and Art. 2205 of the Principles of European Contract Law enshrine the theory of acceptance regarding the time and place of conclusion of the agreement between absent parties.

Since the conclusion of the agreement, the mere commitment becomes obligation, the social relationship becomes legal relationship, and the offeror and acceptor become parties to the agreement.

Also, after the time of concluding the international trade agreement, on the one hand, the offer can not be revoked, withdrawn or become obsolete and, on the other hand, neither the acceptance can be withdrawn. If the offer is addressed to multiple recipients, the first acceptance by the received offeror determines concluding the agreement and the subsequent acceptances remain without object.

However, the time of conclusion of international trade agreements is important in terms of: the vices of consent, the grounds for invalidity, the ability of the parties, the date on which the international trade agreement takes effect, unless the parties or the applicable legal provisions establish another term, the limitation periods, determination of the law applicable to the international trade agreement, in the event of a conflict of laws throughout time.

The place of conclusion is relevant in terms of determining the local practices susceptible to incidents in question on the interpretation of the agreement, the legal provisions applicable to the form of the international trade agreement and, sometimes, the law applicable to the international trade agreement in the event of a conflict of laws in terms of area.

The fact remains that, for the time being, according to most modern and procedural provisions and the Community Law, the place of agreement conclusion no longer is a criterion for determining the law applicable to the international trade agreement, the issues of capacity and agreement of the contracting parties, as well as the competence of international jurisdiction.

The validity conditions of the international trade agreement are governed by the law applicable to it. Although, according to certain national laws and European projects of agreements, the cause it is not perceived as a substantive condition of the agreement, we consider favorable the opposite option of the Romanian legislator given the relevance of the cause institution with respect to the interpretation and classification of the agreement.

Under the principle of contractual freedom, the contracting parties usually have the opportunity to establish the requirements of form for the international trade agreement, yet being advisable to use the written form because of the advantages that it preserves.

The principle of contractual freedom also finds expression in the parties' possibility to determine the content of the international trade agreement by inserting those clauses that most effectively ensure accomplishment of the contracting parties' interests.

Chapter II
OWN TERMS OF INTERNATIONAL TRADE AGREEMENTS

A relevance in terms of contractual liability is firstly shown by the amendment of liability clauses: liability limitation clauses, liability exclusion clauses and the liability aggravation clauses.

The liability limitation clauses either limit the amount of damages which may be outstanding even if the damage incurred by the contractor exceeds the cap mentioned, or limits the conditions for the exercise of contractual liability action.

The liability exclusion clauses suppress any liability of the debtor in the event of non-performance or improper performance of its pertaining to means or results. The elusive remedy clauses by which the parties tend to suppress any right to compensation for the creditor of the non-performed obligation are also assimilated to the exclusion clauses.

The exclusion and limitation clauses are exceptions from the suppletive rules of contractual liability, allowing the party that has breached its contractual obligation not compensate for the damage caused in whole or in part in relation to its contractual partner. The validity of the clauses referred hereto is recognized in most national legal systems, under the principle of contractual freedom. The rule of validity involves exceptions applicable to intentional or grossly negligent non-performance of the contractual obligations in transportation agreements, agreements concluded between professionals and consumers, and in other cases expressly provided for by the lex contractus.

The exclusion and limitation clauses are similar to force majeure clauses in their effect to remove part or all of the debtor's liability in the event of default under the international trade agreement concluded. But while in the case of clauses amending contractual liability, exoneration from liability occurs when the debtor is in default for not performing its

obligations, the force majeure clauses enter into effect when an absolutely unpredictable and insurmountable event occurs, which excludes any breach of the debtor pertaining to any non-performed obligation.

Moreover, the limitation clauses resemble those penalty clauses that establish a low fixed amount of compensation based on the actual damage suffered foreseeable at the time of concluding the international trade agreement. In this respect, the difference between the two types of clauses is, a formal one in the sense that while the limitation clause sets a limit of compensation for the damages, the penalty clause sets a fixed amount of the penalties.

The liability aggravation clauses are those contractual arrangements whereby the debtor undertakes contractual liability even in those cases expressly mentioned whereby the provisions of law applicable to the international trade agreements would be exempted from liability, as well as those contractual provisions through which the debtor undertakes certain additional obligations beyond those provided by law for the international trade agreement concluded.

There may be raised issues concerning the validity of such clauses while inserting them into the agreements concluded with retailers and consumers when debtor of the obligation is the consumer, and when the aggravation clauses have the effect of transforming certain obligation of means into obligations of result.

Contractual liability may be aggravated or, on the contrary, mitigated by the contracting parties by inserting a penalty clause into the international trade agreements. Through the contractual stipulation mentioned, the debtor undertakes to a particular benefit without it being strictly limited to the payment of a sum of money in case of default of the principal obligation.

The issues concerning the validity of the penalty clause and sanctioning the abuse in establishing penalties do not have a uniform regulation in the national legal systems.

Unlike continental legal systems in Anglo-Saxon law there is a distinction between liquidated damages clauses and penalty clauses. Penalty clauses are those clauses of punitive nature, establishing an arbitrary amount very different from the real damage and are void, while liquidated damages clauses have a compensatory character whereas they estimate in advance the real damage, being considered valid. Consequently, the excessive clauses of a punitive nature are void in states such as the UK, Ireland, USA, etc. According to other national legal systems, such as Romania, France, Germany, Belgium, Luxembourg, Switzerland, Italy, Netherlands, Portugal, etc., the courts of jurisdiction have the power to reduce a penalty considered disproportionate in relation to the amount of damages.

The judicial / arbitration review of the penalty clause undermines the principle of autonomy of the parties, but limiting contractual freedom is justified by the need to assure the protection and security of the contracting party in a weaker position by removing unfair contractual provisions.

We align to the opinions that the Romanian law system, similar to the French law, should expressly regulate not only the possibility of judicial review of the obviously excessive penalties, but also the obviously ridiculous ones.

Both in the legislation and case-law levels, the proprietor of certain information is granted the right to confidentiality, the clauses mentioned in this respect in the international trade agreements being valued as valid unless those contractual provisions were inserted in order to conceal illegal practices or they abusively restrict the debtor's possibility to access the market.

The confidentiality clause involving the debtor not using the confidential information for its own purposes may have the same finality as the non-compete clause, namely the prohibition of the debtor to conduct business activities which compete with the ones of the creditor. Unlike the confidentiality clause, the competition activity from which the debtor of the non-compete clause is obliged to refrain is not related to the confidential information that have been revealed by the creditor throughout the international trade agreement. This is why a non-compete clause must be justified economically and legally, its validity is subject to the limitation of geographical and temporal restraint of free competition and proportionality of the prejudice to the freedom of trade and industry and the lawful interests of the creditor of the non-compete obligation.

Through the exclusivity clause, the debtor undertakes not to enter into contractual arrangements with a third party with respect to the benefits promised to the clause creditor. Such a clause may raise issues of validity based on the provisions of competition law.

The criteria that must be fulfilled by the debtor's execution in the case of inserting the best efforts, due diligence, reasonable care clauses, etc. may have different meanings depending on the law applicable to the agreement. Each of these concerns in varying degrees of intensity the augmentation of contractual liability. We regarded as desirable the reference to professional standards that are more accurate in terms of determining the debtor's conduct than the more general terms mentioned above.

Under the principle of autonomy of will enshrined in most national laws, the parties have the possibility to choose the law applicable to the international trade agreement. In the Romanian system of law, (EC) Regulation no. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations represents the common law provisions in the matter.

In order to avoid any conflict between the contractual provisions and the mandatory provisions of the applicable law, we consider it appropriate to express the choice of law at the beginning of negotiations between the parties and inserting it within the international trade agreement a clause of electio juris.

In the international trade agreements, especially the complex ones concluded over a medium or long term, the parties sometimes insert clauses that provide that any arising disputes shall be resolved through alternative means of dispute resolution or mediation, conciliation, neutral evaluation, award, expertise, etc. Despite the current success of these alternative methods of dispute resolution in the US and Western Europe, arbitration remains the usual method of resolving international trade disputes.

Currently in Romania the percentage of disputes settled by alternative methods of dispute resolution is an insignificant percentage by reference to common law jurisdiction and arbitration. In this context, we consider that the existing disadvantages of lege lata resulting from lack of legal framework for the alternative means of dispute resolution except mediation are required to be highlighted through a legislative initiative aimed at setting up the regulatory framework for neutral evaluation, expertise, mini -trial.

Chapter III
INSURANCE CLAUSES OF THE INTERNATIONAL TRADE AGREEMENTS

Throughout the international trade agreements may occur disruptive events independent of any party's fault and affecting the balance agreed upon on conclusion of the agreement, causing the impossibility or substantially aggravating the fulfillment of

obligations for at least one of the parties. The risks likely to affect international trade agreements on long-term can be economic: currency or non-currency or commercial in nature: political risks and natural disasters.

In order to prevent currency risks, the contracting parties may stipulate the following insurance clauses within the agreement: the gold clause, the currency clauses, the clause for choice of the exonerating currency, the clause for choice of the place of payment, etc.

Of the gold clause forms, relevant in terms of currency risk prevention is only the gold-value clause. According to the value of the gold clause, the payment currency agreed, with an official gold parity at the time of conclusion of the agreement will fluctuate according to the evolution of the parity specified when executing the payment obligation of the contractual price.

Gold has ceased to be a benchmark index along with its demonetization, namely when the US stopped supporting fixed parity of the dollar with gold in 1971. In the present context, since currencies no longer expressed through a formal parity in gold, the applicability of the gold clause is limited, preferences being shown towards the use of currency clauses.

Depending on the complexity of the reference elements, we separate them into the single currency clauses, the multicurrency clause based on a currency selection elected by the parties, and the multicurrency clause based on an institutionalized currency selection.

The single currency clause involves agreeing to two categories of coins, one for payment, invoicing - more fluctuating by definition - and one of reference, calculation, account - more stable. Under this clause, the agreement price will be determined in the currency of account and shall be paid in the currency of payment, depending on the exchange rate of the currencies referred to on the date of payment.

In international agreements, the parties' freedom of choice of currency of account is a substantive rule of private international law and involves investigating the will of the parties. Under the principle of unity of the agreement, in the absence of contractual provisions to the contrary, all monetary obligations pertaining to the capital and the interest are subject to the same account currency. In case of compensation, it is necessary that both debts must be valued in the same currency of account.

As a source that defines the exchange rates between currencies, the parties can opt for the official exchange rate in the country of the debtor for an accepted bank on the actual date of payment. It may be agreed, in a less formal manner, on a source such as, for example www.oanda.com/convert/clasic allowing the exchange rate at any time, the access to the Internet facilitating inspection by any of the parties.

If the very account currency agreed between the parties is unstable, the real value of cash benefits received by the creditor is affected. Therefore, a correlation of the payment currency rate with the average of the exchange rates of a currency selection composed of 3-5 benchmark currencies selected by the parties is advisable.

Unlike the multicurrency clause based on a currency selection established by the parties, the multicurrency clause based on an institutionalized currency selection does not imply the agreement of the parties in specifying the currencies in the selection and the calculation of rate changes. This role lies with a specialized international body. The best institutionalized currency selection body represented by the Special Drawing Rights - S.D.R. of the International Monetary Fund.

Under the clause for choice of the place of payment, the contract price expressed in account currency shall be paid in one of the places alternatively provided for this purpose in local currency at the exchange rate of the account currency and the one the payment is made in.

The choice of the place of payment by itself does not cause change of the contractual price, yet this is the result of applying the exchange rate between the account currency and the payment currency in that location. In principle, the clause for choice of the place of payment is specified in favor of the creditor.

Through the means of the clause for choice of the exonerating currency, the parties express the contractual price in two or more currencies of payment provided alternatively, following that on the due date the creditor chooses which of those payment currencies to choose for paying his obligations.

The right of choice of the exonerating currency may be determined by the parties to the benefit of the debtor as well. Thus, the parties may stipulate a monetary option clause according to which the debt is denominated in multiple currencies, leaving the debtor the option of freedom of choice on the day of payment.

Other ways to avoid currency risks are: choice of payment using the most stable currency for the exporter, or choosing a depreciating payment currency for the importer; on the due date the creditor sells the debt to certain banks; in the group of companies it is aimed to partially offset the revenues and expenditures in the same currency; the agreement includes a deadline within which payment may be made, the debtor thus having the option to either hurry or delay the payment depending if the account currency is in the process of appreciation or depreciation.

The prevention of non-currency risks can be achieved by inserting a price revision clause, a price post-calculation clause, etc. in the international trade agreements.

The clause of price revision allows contractors' automatic recalculation of the price agreed upon by a long term international trade agreement, if substantial changes in non-currency elements occurred throughout the execution thereof with the risk of affecting the contractual balance determined at the time of concluding the international trade agreement.

The indexing elements are the indexed value and the index. With respect to the indexed value, it must be mentioned that indexing may be total, namely to cover the entire price, or partial, in which case indexing only concerns certain elements of the original price. By index we mean the element (raw materials, work force, etc.) used as a reference benchmark whose development determines changes in the index value. Thus, according to the criteria agreed by the parties as a reference whose evolution determines the change in the indexed value, we distinguish between sole indexation clauses, cumulative indexation clauses, general indexation clauses.

In international trade agreements indexation is free, any restrictions laid down by national law systems for the domestic agreements not being applicable.

The indexation clause removes the principle of monetary nominalism, whereby the value of the unit of account is the same regardless the depreciation occurred. However, such a clause could not call into question the power to discharge the currency chosen as payment instrument and only concerns the extent of the debt.

The indexation clause is different from the gold clause or currency clause in that it does not involve any purchase of metal or currency that would weaken the euro on the stock exchange. The distinction is also made in terms of the reference element agreed by the parties, because for the review clause prices evolve in response to non-currency economic factors, namely the abundance or scarcity of the goods, and relative to supply and demand.

The price review clause should not be confused with the update clause, whereby the parties stipulate in the agreement that the price will be updated according to an index of

their choice. The update clause also helps to facilitate the determination of the contractual price, but it is not subject to the rules of the indexation clause.

The indexation clause is also different from the post-calculation clause price even if both have the same purpose, namely insurance against non-currency risks. The post-calculation clause has no automatic effect because, unlike the indexing clause, it assumes intervention from one of the parties.

The price post-calculation clause is the contractual legal instrument that allows to counteract the risks related to the development of production and salaries prices. On that basis, the supplier or service provider acquires the right to determine the final price after the execution of the contractual obligations, also taking into account such possible changes that may occur in the price of raw materials and salaries between the time of concluding the agreement and time of its execution.

Frequently, the parties resort to inserting a cost + fee clause, according to which the final price is composed of the price of raw materials and the salary expenses incurred by the supplier or service provider.

Chapter IV
THE CLAUSES OF ADJUSTMENT OF THE INTERNATIONAL TRADE AGREEMENTS

In the view of preserving medium and long term trade relations, the contracting parties appeal to negotiation and stipulating into international trade agreements clauses that allow adaptation and renegotiation of the agreement in the event of changes to the contractual balance and of the circumstances taken into consideration by the parties when signing the agreement.

Among the adaptation clauses and with a role of insurance against non-currency risks at the same time, the clause of competitive offer or the English clause plays a particular role. This allows the beneficiary (usually the buyer) to obtain from the promisor (usually the seller) more favorable conditions than those originally provided for in the agreement being carried out within the meaning of the offer of a third party. The promisor has the right to choose between aligning its bid to the most favorable offer emanating from a third party and drafting by the beneficiary of a new agreement with the third party offeror, in which case the original parties' agreement is suspended or, less frequently, rescinded.

Both the competitive offer clause and the favored-customer clause aim at adapting the medium or long term international trade agreement to its competitive environment. Unlike the favored-customer clause, under the competing offer clause the agreement price will be aligned to the price proposed to the customer by a third party supplier and not the price agreed between the supplier and another customer.

The competing offer clause shows advantages for both parties. Thus, it provides for the beneficiary the right to benefit of the competition's more favorable offer, whether as a result of adapting the original agreement, or as a result of concluding a new international trade agreement. For the suppliers, the competing offer clause ensures the right to have knowledge of the pricing policy pursued by its competitors, yet he can't be compelled to align to the competitive prices if the latter has become too competitive.

The competing offer clause, often stipulated in the exclusive concession agreements, represents the good faith of the concession provider and his constant concern to remain competitive on the market. Viewed from the point of view of the concessionaire, the competing offer clause is an instrument of pressure and stimulation of the concession provider, but equally meant to ensure the freedom of the concessionaire to obtain supplies

from elsewhere should the supplier performance degrade. That clause is a counterpart to the exclusivity obligation undertaken by the concessionaire in relation to his supplier. The long-term competing offer allows preservation of the contractual relations under conditions of very competitive markets where the potential suppliers are quite numerous, ensuring the necessary flexibility to agreements by calling into question a contractual issue without destroying the whole trade relations between the parties.

Given the evolving circumstances of the contractual terms, the promisor may undertake, through the most favored customer clause, the obligation to provide the beneficiary with all the advantages that result or will result from the promisor agreements with third parties.

According to the most favored customer clause, the medium or long term international trade agreement currently underperformance and concluded between the promisor and the beneficiary will be adjusted in line with the more favorable conditions in the agreements concluded between the promisor and third parties.

The clause objective is to adapt long-term international trade agreements to the market conditions in order to avoid a disadvantage of the beneficiary in relation to third party competitors.

Basically, automatically implementing the favored-customer clause attracts nullity of the obligation as it had initially been agreed by the parties and generates the obligation to adapt the agreement in the spirit of more favorable conditions agreed by the promisor in the agreement with the third party.

According to the agreement between the parties, the adaptation of an international trade agreement may also be the consequence of new negotiations. The effectiveness of such a clause requires detailed and rigorous regulation of the agreement mechanism of adaptation analogously to the circumstances in the case of the unforeseeability clause.

The effects of the clause may cause spatial and temporal limitations. Thus, it is possible to limit the effects of territorial clause to only those areas where the favored third parties are on a market accessible to the beneficiary. The parties may also agree to a temporal limitation of the clause, meaning its incidence only after a certain period of time after the conclusion of the agreement between the promisor and the beneficiary.

With regard to the time when the more favorable conditions are applicable to the beneficiary, the fact remains that, as a rule, it is considered the moment when the more favorable conditions were provided by the promisor to the favored third parties. Consequently, starting the moment of conclusion of the agreement with more favorable conditions, they will also be applicable to the agreement already in effect between the promisor and the beneficiary.

Since the favored customer clause basically produces retroactive effects, the promisor will be obliged to refund any amounts paid after the conclusion of the agreement between the promisor and third parties beyond those that would have been due under the new conditions agreed with the third party. By their express agreement, the parties may also agree on another time when a most favored customer clause to start having effects, for example, starting the date when the promisor accepts he notice of adaptation received from the beneficiary.

The most favored customer clause provides equal treatment in relation to the contractors of the promisor, while the clause of competing offer seeks an adaptation of the agreement by reference to the beneficiary contracting parties, competitors with the promisor. In the first case the beneficiary plays a passive role, because the promisor takes the initiative to offer more favorable terms to third parties, terms he will extend to the

beneficiary after informing him. In the second case, the beneficiary is fully active to the extent he requests adaptation of the related agreement to the competing offer that has been addressed to him. The favored-customer clause does not allow for the promisor to refuse to align the conditions offered to the beneficiary with those granted to a third party, aspect that differentiates it from the competing offer clause.

Disruptive events occurred during the execution of a medium or long term international trade agreement may substantially change the contractual balance that the parties had in mind when concluding the agreement, creating so onerous consequences for one of the parties that it would not be fair to bear it alone. To continue the contractual legal relations, under the clause of unforeseeability inserted into the agreement or under the legal provisions applicable to the agreement with regard to unforeseeability it is necessary that the parties to the international trade negotiations to proceed to negotiations for restoring the contractual balance.

The main objective of the unforeseeability clause is to maintain or restore the contractual balance despite any circumstance that would change the original elements on which the agreement of the parties had relied. Therefore, unlike the review clause and the currency clauses referring only to well-defined changes, the unforeseeability clause through its generalization may target any serious changes that could affect the balance of the original agreement.

The prevention of natural and political risks is achieved in particular by inserting a force majeure clause into the international trade agreements. This may be regarded as an adaptation clause insofar as it provides that in case of force majeure (unforeseeable, insurmountable event which makes it impossible to execute) the agreement will be suspended and subsequent to the suspension period it will continue under the new terms and conditions to be negotiated in the meantime.

In particular, to be fully effective such a clause must also determine the effects of the occurrence of such an event: suspension of the agreement or solely of certain obligations, exoneration from liability, suspension duration, the effects at the end of the event occurred, the effect in case of perpetuation of the event, a possible termination, renegotiation, sharing the costs of agreement suspension, etc.

While force majeure mainly concerns the circumstances where performance has become impossible or reasonably impossible, the notion of unforeseeability cover the circumstances where, due to an unforeseeable event beyond the parties' control, the contractual balance is substantially altered and the execution becomes excessively burdensome for one of the parties.

Chapter V
CLAUSES FOR THE EXTENSION OF CONTRACTUAL RELATIONS

In order to extend the contractual relationship, the parties are able to use an unilateral or mutual promissory agreements, an option agreement, depending on how they express their agreement on a clause of first refusal or a preference agreement. Such clauses specific to medium or long term collaboration relations between the contracting parties are also referred to as option clauses as they grant the beneficiary the right to choose whether to conclude the expected of international trade agreement or not.

By means of the unilateral promise to contract, the promisor undertakes to conclude an agreement in the future under the terms and conditions predetermined and agreed with the promisee, if the latter expresses its option to contract.

Unlike the offer to contract which is a unilateral legal act, the unilateral promise to contract is a basically unilateral preparatory agreement.

Under the unilateral promise to contract, on the one hand, the promisor undertakes not to contract with a third party as long as the beneficiary is within the term to opt and to maintain its commitment to conclude the international trade agreement with the beneficiary. On the other hand, the promisee enjoys a discretionary right whether to opt for the conclusion of the expected of international trade agreement or not.

We consider desirable for the parties to establish a particular term in relation to the beneficiary's right to exercise the option of concluding the international trade agreement, otherwise that term shall be determined by the competent courts.

If the promisor observes its obligation undertaken by means of the unilateral promise to contract and the promisee consents within the agreed term, the preliminary agreement shall be concluded. Conversely, if the promisee chooses not to conclude the agreement within that period, the promisor may conclude discretionary with third parties.

If the promisor breaches the obligation undertaken by means of the unilateral promise to contract, the promisee is entitled to claim damages for the damage incurred, may request cancellation of the promissory agreement concluded by the promisor with a third party if it proves its conclusion with complicity to fraud from the buyer third party.

Also, the beneficiary may request delivery by the courts or tribunals of a judgment that replaces the agreement provided that the nature of the expected agreement to allow it, provided the beneficiary fulfilled its obligations arising from the promissory agreement and all legal requirements pertaining to the validity of the agreement being expected to be met.

By concluding a mutual promise to contract, both parties reserve the right to manifest their option to the future conclusion of an international trade agreement under the prescribed conditions.

Unlike the unilateral promise to contract, the mutual promise to contract is always a mutually binding agreement and the option to enforce the agreement belongs to each party.

The parties expressing their consent in relation to the relevant elements of the future international trade agreement is the essence of the promissory agreement even in the wording of the preliminary agreement. The advantage of the promissory agreement lies precisely in configuring the provisions of the expected agreement, the contractual rights and obligations can not be unilaterally altered prior to perfecting the international trade agreement considered by the parties.

The promise to contract lies close to the expected agreement both in terms of time, as well as in terms of the rights and obligations on which the parties have agreed, the distinction between the two agreements being highlighted by both the object of the covenants referred to, and the effects that they produce.

The option agreement is an agreement whereby the offeror promisor undertakes to respect and give efficiency to the beneficiary's option to accept or decline the offer to contract included in that legal act for a period of time.

Compared with the promise to contract, the option agreement appears to be a more effective legal instrument as it can cause automatic conclusion of the agreement, without the necessity of a new agreement of wills of all parties and the beneficiary does not become a mere holder of a right of claim, but acquires a potestative right to conclude the expected agreement.

The first refusal clause is a preparatory agreement under which the promisor undertakes to the beneficiary to give him preference in relation to third parties whether to conclude, under comparable conditions, a particular international trade agreement. Unless

the parties agree otherwise, the promisor regains discretionary freedom to contract after the beneficiary's refusal to conclude the expected agreement.

In terms of the objective pursued by the parties, we consider relevant the inclusion of the first refusal clause clauses in the category of the clauses extending the contractual relations and not in the one adjusting the agreements.

Specific to the first refusal clause is that upon the promisor does not fall the obligation to enter into the expected international trade agreement, but in the event that he will decide in this respect, his right to contract is subject to the condition to give priority to the clause beneficiary. The promisor's obligation to give preference to the beneficiary applies, being subject not to a pure but to a simple potestative condition, as the promisor's decision to conclude the expected agreement is influenced by external factors such as market conditions.

An element of distinction in relation to the other clauses extending contractual relations is that the parties to the first refusal clause don't predefine the elements of the future agreement elements. The reference of the parties' negotiations is represented by the offers of third parties.

The first refusal clause may produce anticompetitive effects. In this regard, for example, in the field of advertising display, the French Competition Council decided that the agreement whereby, in the event of non-renewal of the agreement, the lessor undertakes to the lessee to propose placement of the advertising material with priority in the event the lessor would decide to re-loan the space in the next year, produces an anti-competitive effect.

If the promisor doesn't decide to conclude the expected agreement, it is not incumbent on any obligation. But if the suspensive condition has been fulfilled, the promisor showing its intention to conclude the agreement, he is bound to make a priority offer to the beneficiary.

Unlike the option agreement, the first refusal clause by itself does not constitute a binding offer to contract, so its effect can't consist in automatic conclusion of the agreement.

The first refusal clause is different from other clauses for extension of the contractual relationship. Thus, the promisor's obligation regarding the promise to contract and the option agreement is unconditional, while the obligation incumbent to the promisor of the first refusal clause is affected by a potestative condition - if the promisor decides to conclude the expected agreement in the future, depending on the economic circumstances.

The option agreement constitutes a binding offer to contract, causing automatic conclusion of the expected international trade agreement by the mere acceptance by the beneficiary. Other clauses extending the contractual relations involve a new consent of the parties to conclude the prepared agreement.

Also, the first refusal clause is distinguished from the competing offer clause and the favored-customer clause. While the first refusal clause ensures priority to concluding a new agreement, the competing offer clause and the favored-customer clause allow adapting the conditions of an ongoing agreement.

The preference agreement is a preparatory agreement under which the promisor undertakes to the preemptive-promisee that in the event of concluding the expected sales agreement, to give him priority to other potential contractors under comparable conditions.

By its nature, the first refusal clause is a preference agreement. The distinction between the two lies within their scope. Thus, traditionally, the preference agreement is used for transmission of real rights, while the first refusal clause is used for contractual rights of any kind.

Chapter VI
DEFAULT CLAUSES IN THE INTERNATIONAL TRADE AGREEMENTS

The intensification of international economic relations, the common character of certain categories of economic transactions, the necessity of providing timeliness and the efficiency of concluding international trade agreements required the use of default clauses for concluding the agreement between the parties.

The participants in the international trade with a large volume of business, and not only, justifies interest in the development and use default clauses in international trade agreements. They are invariable under a certain type of agreement that is drawn repeatedly and include elements essential to that agreement, being determined in advance by the or for the use of the debtor of the characteristics performance.

The name used in some national legal systems or in the provisions of the uniform law is that of standard clauses. They were defined as being provisions laid down in advance by either party for common and repeated use and without being negotiated with the other party. In this respect are Article 1202 par. 2 of the Romanian Civil Code, and the provisions of Article 2.1.19 of the UNIDROIT Principles of 2010.

The agreement prepared using default clauses is based on the agreement between the contracting parties, too.

The default clauses included in international trade agreements have the same legal value as any clause directly and freely negotiated by the parties. By exception, the non-unusual default clauses whose presence could not reasonably had been foreseen by the parties, have no legal effects if the contracting parties had not expressly consented to them.

When all the parties use default clauses and a divergent circumstance occurs, the agreement is concluded on the basis of the pre-agreed terms and the default clauses which essentially are common to the parties, unless a party has informed the other either before or after concluding the agreement, without undue delay, that it doesn't agree to be bound by such an agreement.

It is necessary to differentiate the default clauses from the unfair clauses. The latter have the purpose or effect of creating a significant imbalance between the rights and obligations of the contracting parties to the detriment of the consumer and o the benefit of the professional.

In principle, default clauses are optional, the parties being able to negotiate the content of the international trade agreement, to modify or supplement the default clauses in accordance with their agreement. There are also default clauses mandatory to signing the agreements, like the case of adhesion agreements.

The legal force of the non-usual default clauses is conditioned by their express acceptance by the contracting party who did not propose them. Thus, according to Art. 1203 of the Romanian Civil Code, the non-usual clauses, namely those clauses providing limitation of liability, the right to unilaterally terminate the agreement, to suspend performance of the obligations for the benefit of the party proposing them, or providing forfeiture of rights or benefits, limitation of the right to oppose exceptions, restrictions on freedom to contract with third parties, tacit renewal of the agreement, applicable law, arbitration clauses to the detriment of the other party, or derogating from the rules relating to the jurisdiction of the competent courts shall have no effect unless expressly accepted by the other party, in writing.

To enforce legal effects, the default clauses must be consistent with the will of the parties as expressed in the wording of the special clauses, as in the case of a conflict between the two foregoing clauses, priority is given to the special clauses.

The parties may conclude international trade agreements based on certain standard agreements, namely those printed forms that include all the usual terms for a particular type of agreement, and blank spaces to be customized by specifying the price and the payment method, the quantity and quality of the goods, the deadlines and the identification data of the parties.

Configuring international trade agreements can be achieved through the use of general conditions. In this case, the agreement consists of two parts, one comprising general conditions and one comprising special conditions. The general conditions include those relevant contractual provisions that are constantly applicable by means of which the debtor of the characteristic performance systematizes the offer addressed his prospective contractors.

The general conditions may be amended or supplemented by special conditions, and may be freely and directly negotiated by the parties. Given this, in the context of a conflict between the provisions of the general conditions and the ones in the particular, special conditions, the latter shall prevail.

The general conditions may be developed by the party representing its offer, for example general sales conditions, general transportation conditions, etc.. The general conditions may also emanate from professional associations, in which case they may be regarded as customary to be taken as such by the members of that organization.

In practice, the general conditions usually take the form of annexes to the agreement and the parties' agreement with respect to general conditions is achieved by inserting a designated clause in the agreement expressly referring to them without the need to be signed separately.

The general conditions, unlike standard agreements, don't include all the elements of the future international trade agreement.

Also, by signing a framework agreement, the parties can organize their future contractual relations in advance, agreeing to the main contractual terms applicable to the special agreements that will customize the execution of the obligations undertaken. Specific to the framework agreement is that it is succeeded by a series of specific agreements for application and implementation of the framework agreement.

The initial agreement of the parties establishing all the future documents to be executed is an agreement with successive execution, not a framework agreement.

By the conclusion of a framework agreement, on the one hand, the Parties aim to highlight the conditions of their medium or long term collaboration and, on the other hand, to establish the general principles that are to be observed by the parties along with the conclusion of implementation and execution agreements.

The international trade agreements may be categorized as adhesion agreements when their essential clauses are imposed by one party, the other party only having the choice to accept them as such. In this case, the consent of the parties exclusively concerns whether to conclude the international trade agreement or not, whose default clauses can't be subject to negotiations as being the requirements of the party with a superior economic position.

In French doctrine, two main elements of the adhesion agreement are highlighted. Thus, on the one hand, the adhesion agreement requires an offer of a general nature, addressing to an undefined number of people, permanent character, as it concerns economic transactions concluded over a long period, and also detailed character because it involves determination of all the agreement elements. On the other hand, the adhesion

agreement highlights the economic superiority of the offeror which enforces the agreement terms, refusing negotiations.

The lack of negotiation characterizes the adhesion agreement but all its terms are not standard clauses by default. A standard clause should be included in the agreement without being negotiated with the other party, but in addition must be established in advance for general and repeated use. Or, by way of exception, it is possible to conclude an adhesion agreement without the party which enforced the clauses wanting such use.

The adhesion agreements limit the contractual freedom of parties which are not economically equal, therefore the national legal systems include normative provisions protecting the party considered to be economically weaker. Those provisions are not applicable if both contracting parties are professionals, except for the limitation or liability exemption clauses for intentional non-performance or non-performance due to negligence, and fraud.

The adhesion agreements are different from the standard agreements, the terms of the latter may be subject to the negotiation of parties, with the possibility of modifying the printed form.

In principle, the national legal systems don't require the parties to conclude agreements based on predetermined terms. Regarding the exceptions to that rule, by way of example, the provisions of Art. 1369 par. 4 of the French Civil Code may be mentioned, which require general conditions for the professionals that sell goods and services electronically.

Chapter VII
INTERPRETATION AND EFFECTS OF THE INTERNATIONAL TRADE AGREEMENTS

The risk of insecurity that can be caused by the interpretation of the agreement may be mitigated or even eliminated if the parties insert in the drafted agreement certain interpretation clauses aiming at the limitation of debate on the meaning to be given to the terms of the agreement and guiding the interpreter in its investigations with respect to the intentions of the parties regarding the documents relevant to the interpretation of the conventions, their hierarchy in case of contradictions, etc.

The interpretation of international trade agreements involves the application of the principles of good faith and trade loyalty and the principle of cooperation of the contracting parties. Based on them, throughout the interpretation of international trade agreements, the parties are incumbent the obligations to adopt a fair conduct that reflects compliance to the interests of all contracting parties, but also to make joint efforts to stringently determine the contractual rights and obligations.

Also, to clarify the meaning of an ambiguous or questionable international trade agreement involves use of the common law rules of interpretation. The rules of interpretation of the international trade agreement are included in the scope of the law applicable to the agreement. Depending on the regulatory requirements of the lex contractus, the interpretation of the international trade agreement is achieved by giving prevalence to investigating the declared will of parties, reflecting the principle of objective interpretation or, conversely, investigating the real will of the parties, reflecting the principle of psychological interpretation, noting that the differences between the two foregoing principles are attenuated in practice.

Among the common rules of interpretation of the international trade agreement a special relevance is shown by the systematic interpretation of agreements, which involves an overview of the agreement as a whole, the interpretation of questionable clauses in the meaning that best

fits the nature and object of the agreement, and under the rule of the useful effect with consideration to the customs. Also, the interpretation of agreements involves the application of in dubio pro reo and contra proferentum rules, according to which if, after applying the rules of interpretation, the agreement remains unclear, it shall be interpreted in favor of the one who undertakes, namely against the one who proposed the agreement.

If the parties agree by express clauses solely the main elements of the agreement it will be incomplete, the competent authority being called to determine the tacit will of the parties, by way of interpretation. The validly concluded agreement requires not only what is explicitly stated, but all compliance to all consequences caused by execution of the agreement by the practices established between the parties, the customs, the law or equity, depending on its nature.

Beyond the interpretation rules common to all agreements under the law applicable to the international trade agreement, the special rules of interpretation arising from the international nature of the agreement, those generated by the customs of the international trade, the use of default clauses and the language of the agreement must also be considered.

The agreement of the parties is not abstract for the sole purpose of making a law connection, but aims to produce general and special legal effects. The general effects are common to all agreements and concern the binding force of the agreement and the relativity of its effects. The special effects only occur in the case of reciprocal international trade agreements being configured by the exception of non-performance of the agreement, termination / cancellation and the contractual risk.

Once validly concluded, the agreement shall be binding for the parties, the binding force being the main effect of the agreement. The agreement is the law of parties and only a new agreement might decide either modification or revocation of the original agreement, thus consecrating the rule of symmetry in agreements.

The contractual binding force principle is not absolute, but allows exceptions. The main exceptions to the principle of pacta sunt servanda are the adaptation clauses of the international trade agreements, unilateral termination and the forfeiture clause. In the international trade law, unlike the domestic law, the contractual adjustment clauses play a key role in maintaining the contractual balance agreed by the parties at the conclusion of the agreement.

In international trade law, too, the agreement has effects not only over the initial parties, but also on their universal successors, with an universal and particular title. Also, the fluctuations of the parties' assets resulting from the contractual rights and obligations are borne indirectly by the unsecured creditors of the parties.

In continental law, stipulation for another is the exception to the principle of the agreement's relative effects, a principle which is not absolute, as well.

In the Anglo-Saxon law, the doctrine of privity of contract designates the rule according to which a person can't have any right or interest arising from an agreement without being a party to that agreement. It is not possible for a third party to be subject to a contractual obligation. The modern Anglo-Saxon law has adapted the doctrine of privity of contract, adding two exceptions to the principle:

- On the one hand, it recognizes the possibility for a party to assign its contractual rights to a third party, subject to certain conditions,

- On the other hand, if the agreement was concluded to the benefit of a third party, it will have the possibility to address the rights arising from the agreement in court, similar to the stipulation for another of the continental law.

The exception of non-performance of the agreement is enshrined in most national legal systems and in the provisions of the uniform law. The Anglo-Saxon law also acknowledges the discharge by breach notion, according to which if either party severely breaches its contractual obligations, the other party is released from all his contractual obligations.

The incidence of termination in international trade is less frequent than in the domestic law as termination concerns bilateral agreements with simultaneous execution, and in the international trade the most frequently concluded agreements are on medium and long terms, involving a successive execution.

In the international trade, unlike the domestic law, the penalty of termination occurs as a last resort, only when the continuation of the contractual relationship is no longer possible due to failure of the attempt to adapt the agreement to the specific terms agreed by the parties.

In almost all national legal systems, a contracting party may terminate the agreement if the other party does not fulfill its contractual obligations undertaken. In addition to judicial termination, continental law mainly recognizes the unilateral extrajudicial termination as well.

The Anglo-Saxon theory of fundamental breach allows the unilateral termination of the agreement in the event of a fundamental breach of the contractual obligations, namely a total or partial non-performance of an essential contractual obligation, which is a fundamental obligation of the agreement under the law or the will of the parties. In this respect, the Anglo-Saxon law distinguishes between condition - essential obligations, and warranty - secondary obligations of the agreement.

In the event that the international trade agreement is subject to a legal system that does not allow unilateral extrajudicial termination of agreements, commissoria lex is a true exception to the principle of judicial termination. The major interest of commissoria lex lies in the certainty offered to the creditor that, by effect of his will, in the context of a default, the agreement may be terminated if he considers this cancellation as appropriate.

Under the provisions of Art. 1557 and Art. 1634 Romanian Civil Code or pursuant to Art. 1722, 1741 and 1790 of the French Civil Code, in the agreements that don't transfer any property rights the risks are mainly borne by the debtor of the obligation impossible to be executed.

With respect to the transfer of risks in the agreements that transfer property rights, Art. 1274 of the Romanian Civil Code, establishes the rule of res perit debitori, except when the creditor of the obligation to deliver was given a notice of default by the debtor.

The solution of transfer of risks upon delivery of goods is gaining more and more ground to the detriment of the principle of res perit domino, being established in Germany (Art. 446, 447 BGB), and also in Austria, USA (Uniform Commercial Code), by the Civil Code of the province of Quebec (1990) or the Civil Code of the Moldavian Republic (2002). Also, Art. 69 par. 1 of the Vienna Convention on Contracts for the International Sale of Goods includes the foregoing solution.

CONCLUSIONS

The present political and economic context characterized by the expansion of foreign trade relations, enhancing cross-border trade especially between the Member States of the European Union, but not limited to it, grants a character of certainty to the utility of the scientific approach to research specific clauses in the international trade agreements.

In the first chapter I have examined aspects related to the formation of international trade agreements.

Defining for the international trade agreements are the features that it customize it: its internationality and the fact that it is connected to the trading activity.

In particular, the preparation of complex international trade agreements requires conducting exploratory actions and conducting pre-contractual negotiations. The law applicable to the pre-contractual phase, whether the breach of obligations is in the field of tort or contractual, is the law applicable to the international trade agreement expected to be concluded in accordance with Art. 12 of (EC) Regulation no. 864/2007 of the European Parliament and of the Council of July 11th 2007 on the law applicable to non-contractual obligations.

The agreement, as an agreement between the parties, is concluded in the context of a complete accordance between the offer to contract and the acceptance of such offer. The substance of the international trade agreement is governed by the law applicable to it. Under the principle of contractual freedom, the contracting parties shall usually have the opportunity to establish the formal requirements of the international trade agreement, but it is rational to use the written form because of the advantages that it preserves.

The principle of contractual freedom finds expression in the possibility of the parties to determine the content of the international trade agreement by inserting those clauses that ensure the most effective realization of the interests of the contracting parties.

The second chapter covers the own terms of the international trade agreements concerning contractual liability, establishing the applicable law, and the prevention and settlement of disputes.

Relevance in terms of contractual liability shall first have the liability amending clauses and the penalty clause. Also the parties' contractual liability can be customized by inserting into the international trade agreements clauses such as confidentiality clause, exclusivity clause, non-competition clause, best efforts clause, solve et repete clause, etc.

Under the principle of autonomy of will, enshrined in most national laws, the parties have the possibility to choose the law applicable to the international trade agreement, expressing their agreement in relation to the provision of an express clause of electio juris.

In the international trade agreements, especially in the complex medium or long term ones, the parties sometimes insert prevention and settlement of disputes clauses whereby providing that any potential disputes that may arise in connection with such agreements shall be settled by arbitration, mediation , conciliation or other alternative dispute resolution methods.

In the third chapter I have approached the topic of the insurance clauses in international trade agreements.

Throughout the execution of the international trade agreements, disruptive events may occur independently of any party's fault that affect the balance agreed upon conclusion of the agreement, causing non-performance or severely aggravating the performance of the obligations for at least one of the parties. The risks likely to affect long-term international trade agreements may be economic: currency or non-currency in nature, or commercial: political risks and natural disasters.

In order to prevent currency risks, the contracting parties may stipulate in the agreement the following insurance clauses: the gold clause, currency clauses, the clause for choice of the exonerating currency, clause for choice of the place of payment, etc.

The prevention of non-currency risks can be achieved by inserting the price revision clause, the price post-calculation clause, etc. into the international trade agreements.

The fourth chapter covers to adaptation clauses of the international trade agreements.

In the view of preserving the medium and long term trade relations, the contracting parties to international trade agreements use negotiation and stipulate clauses that allow

adaptation and renegotiation of the agreement in the event of a contractual imbalance or a change of the circumstances expected by the parties when concluding the agreement.

Relevant in terms of adaptation of the international trade agreements are the competing offer clause, the most favored customer clause, the unforeseeability clause and the force majeure clause.

In the fifth chapter I have examined topics related to the extension of the contractual relationships for which the parties are able to resort to the conclusion of an unilateral or reciprocal promissory agreement, an option agreement or they can express their agreement for a first refusal clause or a preference agreement.

Such clauses specific to the medium or long term collaboration relationships between the contracting parties are also referred to as option agreements because they give the beneficiary the right to choose whether to conclude the expected international trade agreement or not.

The sixth chapter covers the default clauses in international trade agreements.

The timeliness requirements of economic operations, of costs reduction and streamlining the legal actions as well as the repetitive nature of certain types of international trade agreements converge towards the more frequent use of default clauses in international trade agreements: standard agreements, general conditions, framework agreements and adhesion agreements.

In respect of their legal value, to the extent that they were freely and expressly accepted by all parties to the agreement, the default clauses are binding, just as the freely negotiated clauses. By means of exception, the legal force of non-usual clauses is subject to their express acceptance by the contracting party that did not proposed them.

The seventh chapter covers the topic of interpretation and effects of the international trade agreements.

Despite the rigor and precision of drafting, the international trade agreements frequently raise the question of their interpretation, difficulties arising from the incidence of the foreign element, involving a conflict of at least two national legal systems.

The risk of insecurity that can be caused by the interpretation of the agreement can be mitigated or even eliminated by inserting certain interpretation clauses by the parties in the agreement concluded.

The activity of interpretation of the international trade agreements is governed by the principles for good faith and trade loyalty, and the cooperation between the contracting parties. Also, to clarify the meaning of the international trade agreement involves the common law rules of interpretation, and also the special rules of interpretation arising from the international nature of the agreement, those generated by the customs of the international trade, the use of default clauses, the language in which agreement is drawn up.

The agreement between the parties is not performed abstractly for the sole purpose of entering a legal connection, but aims at the intention to produce general and special legal effects. The general effects are common to all agreements and aim at the binding force of the agreement and the relativity of its effects. The special effects occur only in the case of reciprocal international trade agreements, particularized by the exception for non-performance of the agreement, termination / cancellation and risks of the agreement.

In light of the above, the clauses specific to international trade agreements show significant points of interest to achieve the interests of the contracting parties, the objectives for which they were inserted, and at the same time for the nature, complexity and dynamics of international trade and for the very purpose of international trade.