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**DISPUTES IN THE WTO WITH PARTICIPATION
OF THE MEMBER COUNTRIES
OF THE EURASIAN ECONOMIC UNION**

After the accession of the member states of the Eurasian Economic Union (EAEU) to the World Trade Organization (WTO), the topic of studying the mechanism for resolving disputes within the WTO has become an urgent topic. To date, four countries of the five members of the EAEU: Armenia, Kazakhstan, Kyrgyzstan, and Russia (except Belarus) are full members of the WTO and received direct access to the generally accepted mechanism for resolving trade disputes. In their activities, the member states of the EAEU are guided by the norms and principles of the WTO and recognize the importance of the accession of all member states of the Union to the Organization.

The article discusses the features of dispute resolution in the WTO with the participation of the member states of the Eurasian Economic Union (EAEU). The main task is the need to effectively use the mechanism of resolving trade disputes within the WTO for the development of mutual trade with WTO member countries, guided by the rules and regulations of the WTO while defending the interests of all participants of the EAEU.

The authors identify the main problems of interaction and correlation of the legal regimes of the EAEU and the WTO, compliance with the obligations and agreements of members of the organization by developing common positions and defending the collective interests of states.

Key words: World Trade Organization, Eurasian Economic Union, Eurasian economic commission, Dispute settlement body, dispute settlement, consultations.

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**Еуразиялық экономикалық одаққа мүше мемлекеттердің
қатысуымен өтетін ДСҰ сауда даулары**

Еуразиялық экономикалық одаққа (ЕАЭО) мүше мемлекеттердің Дүниежүзілік сауда ұйымына (ДСҰ) қосылғаннан кейін ДСҰ шеңберінде дауларды шешу тетігін зерттеу өзекті тақырыпқа айналды. Қазіргі таңда ЕАЭО бес мүшесінің төртеуі: Армения, Қазақстан, Қырғызстан және Ресей (Беларусьтан басқа) ДСҰ-ның толыққанды мүшесі болып табылады және сауда дауларын шешудің жалпы қабылданған тетігіне тікелей қолжетімділікке ие болды. ЕАЭО-ға мүше мемлекеттер өзінің қызметінде ДСҰ нормалары мен қағидаларын басшылыққа алады және Одаққа мүше барлық мемлекеттердің Ұйымға қосылуының маңыздылығын мойындайды.

Мақалада Еуразиялық экономикалық одаққа (ЕАЭО) мүше мемлекеттердің қатысуымен ДСҰ шеңберінде дауларды шешу ерекшеліктері қарастырылады. Негізгі міндеті ретінде ЕАЭО барлық қатысушыларының мүддесін қорғай отырып және ДСҰ-ның ережелері мен нормаларын басшылыққа ала отырып, ДСҰ-ға мүше елдермен өзара сауда-саттықты дамыту үшін Дүниежүзілік сауда ұйымы шеңберіндегі сауда дауларын шешу тетігін тиімді пайдалану қажеттілігі болып отыр.

Авторлар ЕАЭО және ДСҰ-ның құқықтық режимдерінің өзара әрекеттесуінің және арақатынасының негізгі проблемаларын, мемлекеттердің ұжымдық мүдделерін қорғау және жалпы

ұстанымдарды шығару жолымен ұйым мүшелерінің міндеттемелері мен уағдаластықтарының ұстануын анықтайды.

Түйін сөздер: Дүниежүзілік сауда ұйымы, Еуразиялық экономикалық одақ, Еуразиялық экономикалық комиссия, Дауларды шешу бойынша Орган, дауларды шешу, кеңес беру.

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Торговые споры в ВТО с участием государств-членов Евразийского экономического союза

После присоединения государств-членов Евразийского экономического союза (ЕАЭС) к Всемирной торговой организации (ВТО) актуальной стала тема изучения механизма разрешения споров в рамках ВТО. На сегодняшний день четыре страны из пяти членов ЕАЭС: Армения, Казахстан, Кыргызстан и Россия (кроме Беларуси) являются полноправными членами ВТО и получили прямой доступ к общепризнанному механизму разрешения торговых споров. В своей деятельности государства-члены ЕАЭС руководствуются нормами и принципами ВТО и признают важность присоединения всех государств-членов Союза к Организации.

В статье рассмотрены особенности разрешения споров в рамках ВТО с участием государств-членов Евразийского экономического союза (ЕАЭС). Основная задача состоит в необходимости эффективно использовать механизм разрешения торговых споров в рамках ВТО для развития взаимной торговли со странами-участниками ВТО, руководствуясь нормами и правилами ВТО, отстаивая при этом интересы всех участников ЕАЭС.

Авторы выделяют основные проблемы взаимодействия и соотношения правовых режимов ЕАЭС и ВТО, соблюдение обязательств и договоренностей членов организации путем выработки общих позиций и отстаивания коллективных интересов государств.

Ключевые слова: Всемирная торговая организация, Евразийский экономический союз, Евразийская экономическая комиссия, Орган по разрешению споров, разрешение споров, консультации.

Introduction

The geopolitical changes happening in the Eurasian region have objectively shown that the concept «Eurasian integration idea» is the important parameter of the modern development of society, so, and jurisprudence.

The Eurasian integration, being a kind of regional integration, can be both the base for development of the international integration economy and a result of the international integration (Лукьянов 2012: 34).

The rapid development of trade causes requirement of the states for receiving more favorable privileges and preferences in relation to other states. The World Trade Organization cannot fulfill such necessities: states conclude more and more trade agreements at the regional level, regulation becomes more detailed and flexible.

One of the types of cooperation is the Eurasian Economic Union. -The Treaty of the EAEU has been signed on May 29, 2014, in Astana by Presidents of Russia, Belarus, and Kazakhstan. It has come into force on January 1, 2015.

The Eurasian Economic Union is created on the basis of the Customs union of Russia, Kazakhstan, Belarus, and the Common economic space as the international organization of regional economic integration having the international legal personality.

The EAEU has the following purposes:

- creation of conditions for the stable development of economies of the member states for the benefit of the increase in living standards of their population;

- the aspiration to the formation of the uniform commodity market, services, the capital and a manpower within the EAEU;

- comprehensive modernization, cooperation and increase in competitiveness of national economies in the conditions of global economy (Договор о Евразийском экономическом союзе, Астана, 29 мая 2014 года).

The main operating conditions of EAEU is the application of the uniform foreign policy in a trade with the third countries. For the performance of this condition by the countries of the union, a number of the international agreements are adopted and also functions on maintaining and change of the foreign

trade policy are transferred to supranational level – the Eurasian Economic Commission (EEC).

The agreement between the countries of the Customs union is also reached that for a basis of the consolidated obligations, so and future tariff of the Customs union obligations of the country first which has joined WTO is assumed.

With the countries of the WTO, the agreement on carrying out consultations on harmonization of Kazakhstan and the Russian obligations for levels of the customs duties is reached.

One of the most sophisticated questions is the international processes directed to the complex and harmonized entry of member states of EAEU into the WTO without violation of performance of earlier undertaken obligations following from membership in other international organizations, first of all in EAEU and the WTO.

The main document regulating how the provisions of the WTO Agreement will be applied in the legal order of the EAEU is the Treaty on Customs Union in the framework of the multilateral trading system (*Договор о функционировании Таможенного союза в рамках многосторонней торговой системы*, Минск, 19 мая 2011 года).

It was signed for ensuring performance by the countries of EEU of obligations assumed during negotiations on accession to WTO, having kept at the same time full functioning of the union. According to provisions of the specified Treaty, obligations of the first country which has joined WTO in the part referred to the competence of ECE become a part of the contractual base of the Customs union. At the same time, the countries of the CU have to coordinate negotiation processes and inform each other on the assumed obligations.

Agreements of the WTO also govern the relations affecting foreign trade of the participating countries, at the same time some of the obligations assumed by the applicant countries directly are within the competence of EEC.

As the member of the WTO Kazakhstan has got direct access to the conventional mechanism of resolving trade conflicts. However, on the other hand, Kazakhstan can become also a subject of complaints from trade partners which for protection of the interests can initiate a dispute within the WTO. In this regard for Kazakhstan experience of participation of other states in procedures of the WTO for settlement of disputes, and a possibility of the corresponding preparation for future disputes, including legal issues, political measures or change of the external economic policy are very interesting and useful. To the Republic of Kazakhstan as to the new member

of the WTO, it is necessary to develop legal examination in the field of the mechanism of settlement of disputes in order to fully use the existing advantages of our participation in the WTO (Amirbecova, R. Galyamov: 2016, 333).

Given some examples of the resolution of disputes between WTO member states. As far as, Kazakhstan from July 27, 2015 has been a full member of the WTO, it provided access to international mechanisms and institutions of dispute settlement in the WTO and it will allow to use this opportunity to protect our national interests, in accordance with the rules and regulations of the WTO (Baimagambetova, Gabdulina: 2017, 70).

The experience of the WTO member countries shows that in addition to the purely economic benefits of joining this international organization, which are achieved by reducing the barriers to free trade, the system of multidimensional trade liberalization positively influences the political and social situation in the member countries, as well as on the individual well-being of citizens. The advantages of the WTO international trading system are manifested at all levels – from an individual citizen and country to the world community as a whole.

Methodology

A methodological basis of a research consists of the method of scientific modeling, a historical method, an analysis method, a method of comparison and statistics, including the analysis of a total of disputes, a ratio of the lost and carried case of the states in various sectors.

On the basis of a historical method digression on stories of formation and development of one of the most authoritative organizations and history of the emergence of disputes per se between the states has been carried out. By means of a method of scientific modeling options of the settlement of disputes within the WTO are presented. Comparative and statistical methods have allowed to estimate various reasons of the carried case at certain states and also to reveal those fields of the economy on most of which often there are disputes further to pay closer attention to all questions.

Results

An international legal basis of cooperation of the states within the World Trade Organization and EAEU

According to the Treaty on Custom Code of the EAEU, since January 2018 new Custom Code of the

EAEU came into force (Договора таможенно-кодексе Евразийского экономического союза, Москва 11 апреля 2017 года).

The world practice demonstrates that, on the one hand, accession to WTO of the states with the insufficient level of development of economy doesn't influence positively on development of their economy – these countries rather largely lose, than receive any benefits (protecting domestic markets from expansion is extremely difficult), with another hand- developing countries, perhaps, expect inflow of the foreign capital to the economy by opening the market and becoming a part of huge international trade space.

In 2006 on General Council of the WTO the Decision on the transparency mechanism for regional trade agreements (document WT/L/671) has been made. Control of observance of requirements is exercised by Committee on regional trade agreements (further – Committee on RTA), however, because of rules of consensus it wasn't able to accept any report on an occasion of the discrepancy of RTA of the WTO, despite the numerous recorded divergences. The role of the committee has been reduced only to obtaining texts of Regional Trade Agreements. Other control mechanisms within the WTO aren't provided.

Only once the question of compliance of RTS to the right of the WTO was brought up before DSB. In the decision on dispute of India against the European Union and Turkey, the Appeal Body of the WTO has evaded from the solution of a question of compliance of the Customs union of the EU and Turkey to the right of the WTO, having specified that now it cannot solve such questions (Turkey – Restrictions on Imports of Textile and Clothing Products, 2011).

It is possible to draw a conclusion that not legal agencies, but the states have to deal with the matters.

As for compliance of provisions of the Agreement of the WTO of EAEU, on the matter A.S. Ispolinov says: «The court of EAEU faces the difficult choice now – whether to accept logic of hierarchy and to recognize the right of the WTO having a priority before the right of EAEU, or to proceed from pluralism and the competition of laws and orders of the WTO and EAEU. Development of law and order of EAEU substantially depends on the solution of this question (Исполинов: 2015).

Really, the question of hierarchy of two legal systems is also one of the main problems of the relationship of the WTO and EAEU. Most international lawyers agree in opinion that the hierarchy doesn't exist.

Both Russia and the ECU have recently imposed new standards on alcoholic beverages in terms of labeling and warehousing requirements and conformity assessment procedures.³¹ For example, labels on all alcoholic beverages must have an expiration date or indicate that the expiry date is unlimited if the storage conditions are observed. Under the Codex products containing more than 10 percent alcohol do not expire and are explicitly exempt from such requirements. Proposed amendments to the ECU technical regulations require that whiskey be aged no less than three years. In similar areas, Russia has liberalized recently, in November 2012, removing mandated aging of rums. However, it is said that Russian importers of U.S. products often complain that their import applications are denied.

The ban is to expire in one year. In ideal cases, the Dispute Resolution Mechanism with appeal requires about 15 months and in practice can take many years when the parties strongly disagree. The WTO agreements contain a broad exception for countries to determine what national security measures they apply to trade (GATT 1947, Article XXI (b)(iii)). Such claims have rarely been challenged, and there is little WTO jurisprudence on the contestability of national security measures (Russian Federation, the World Trade Organization, and the Eurasian Customs Union: tariff and non-tariff policy challenges: 2016).

Discussion

The international lawyer A.S. Smbatyan also adheres to the second approach that the agreements of the system of the WTO and the agreement signed within regional integration associations have identical legal force – contrary to the developed stereotype the first have no priority over the last (Смбатян: 2011, 18).

Meet as well opinions that the hierarchy nevertheless takes place to be: «At last, the priority of agreements of the CU as it is represented, is directly excluded by item 1 of Art. 2 of the Contract on functioning.

Third, an important issue for the WTO and the EAEU is the ratio of their jurisdictions. The Treaty on the EAEU does not prevent the conclusion by the Member States of international treaties that do not contradict the purposes and principles of this Treaty. At the same time, bilateral international treaties between the Member States providing for a deeper level of integration than in the provisions of this Treaty or international treaties within the Union or providing additional advantages in favor

of their physical and (or) legal persons are applied in relations between the states that have concluded them and may be concluded on the condition that they do not affect the exercise by them and the other Member States of their rights and the fulfillment of obligations under this Treaty international agreements in the framework of the Union (Alter Karen: 2003).

The mechanism of advanced cooperation on harmonization and unification of the customs tariff for the accession of the EAEU member states to the WTO, similar to European practice, provides for the active use of the method of consolidated negotiations and consultations on the most important moments and obligations of a system nature for the state. At the same time, in negotiations on systemic obligations on issues within the competence of the Customs Union bodies, each party that joins the WTO aspires to form such a volume of obligations affecting legal relations, the powers to regulate which are delegated to the bodies of the Customs Union, and legal relations settled by international agreements, which make up the legal framework of the Customs Union, which would be most consistent with the obligations of the party, the first entry lice in the WTO. The fundamental deviations from such obligations, which are the result of negotiations of the newly acceding party to the WTO, are subject to discussion and agreement by the parties.

Despite the fact that the experience of each country of the EAEU member and WTO is specific, it will be interesting to consider some of the results of regionalism and regionalization. Kyrgyzstan is the first state from the members of EAEU, which joined the WTO. Roman Mogilevsky from the Center for Economic Research believes that Bishkek has not received «immediate benefits» although he suggests that the WTO helped the country to develop «open trade with almost no restrictions».

In Armenia, after accession to the WTO in 2003, the main economic indicators grew. Armenian exports expanded their access to European markets. Along with this, competition in business has also increased, jobs and purchasing power have decreased, and the volume of imported products has increased (Кадрия: 2016).

At the same time, in the early years, the conjuncture of world markets had a greater impact on the Russian economy than accession to the WTO (Лисоволик: 2002).

Belarus is in the process of negotiating accession to the WTO since 1995. The intensification of negotiations is observed as Belarus's partners join the WTO.

Of course, membership in this organization does not imply immediate benefits. Becoming a party of the WTO agreements should not be the ultimate goal, it should be a stimulant for an effective long-term policy. If earlier Eurasian integration was seen as a rehearsal for the WTO, now one can say that without increasing the competitiveness of the internal potential of each member of the EAEU, it is difficult to expect significant results from global integration.

As the Russian Federation has joined the WTO, the international obligations following from the international treaties existing within this international organization are subject to conscientious execution by Russia. In this regard, one of the legal means of an increase in efficiency of implementation of international treaties of the WTO is legal monitoring. Besides, legal monitoring of the implementation of the international obligations following from WTO membership has to consider that circumstance that the Russian Federation is a member of the Eurasian Economic Union.

Thus, legal monitoring of implementation of international treaties of the WTO by the Russian Federation has to be considered in system communication with the obligations following from membership of the Russian Federation in other international organizations having the competence crossing in certain spheres, namely of the Customs union and the Eurasian economic community, and after entry into force of the relevant international treaty and in system communication with the international legal acts of the Eurasian Economic Union.

Kozheurov Ya. S. notes that the competition of jurisdictions can arise, but it depends on the parties of a dispute: «If the defendant state doesn't object to involvement of this procedure and won't announce in bodies of EAEU, including the Court, violation by the claimant of the integration obligations for commitment to a uniform order of settlement of dispute, then the Court will lose an opportunity even to comment on it. If the defendant state opposes resolving a dispute by DSB and will challenge the actions of the plaintiff state in Court, then the last will face a hard task» (Кожеуров: 2013).

Thus, it is possible to conclude that the appeal of members of EAEU to other international institutions of justice, in particular in DSB WTO, isn't excluded. The situation is complicated because for a bigger number of the states the DSB is the most preferable mechanism of the settlement of disputes due to its authority and complete practice of interpretation and application of provisions of norms of the WTO.

The practice of the Court is too poor today to draw sure conclusions concerning its efficiency, therefore, the trust of member states of EAEU will depend in many respects on the Court: whether it will prove as the impartial judicial body will be shown only by its further practice.

For the system of settlement of disputes within the Customs union and also taking into account further development of integration and formation of the Eurasian Economic Union it is impossible to recognize rather an effective mechanism of control of execution of the decisions made by the international legal agencies including in the former Soviet Union. Besides, in the existing international legal acts in insufficient degree questions of interim measures, the prejudicial character of judgments, etc. are regulated.

Thus, it is possible to summarize that the system of settlement of disputes functioning within the WTO is one of the most effective at the international legal level. It is caused by the worked international legal mechanisms of the settlement of disputes, arising between members of the WTO and also a wide range of international legal means of settlement of disputes. In this regard at the level of integration associations in the former Soviet Union, first of all, it concerns the Eurasian Economic Union, it is necessary to consider the experience accumulated by the WTO and also to expand international legal tools of permission of various disputes arising from functioning of the specified integration associations (Макарова: 2017).

Simultaneous membership both in the WTO and in EAEU definitely causes many serious contradictions. Such main problems as compliance of EAEU to the WTO, a ratio of obligations and jurisdictions in practice raise not only many questions from the academic circles, but also slow down development of the most Eurasian integration. The characteristic of the WTO and EAEU shows that two of these associations are not identical, but only similar in the relation to each other. However, in many respects smoothing of the relationship between the universal and regional level of integration depends on the WTO owing to his settled authority. It is important not to make a relationship at the vertical level, but to cooperate with EAEU on a horizontal level, to involve the intellectual resources in the person of arbitrators and members of Panels for impartial permission of the above problems. Only close interaction and cooperation of the World Trade Organization and Eurasian Economic Union will allow strengthening the system and unity of international law (ЕАЭС и ВТО – проблематическое сосуществование: 2017).

Comparative and legal analysis of disputes with the participation of the EAEU member states

The most active participant of disputes in the WTO among the countries of EAEU is certainly the Russian Federation.

All complaints of Russia are caused by violation of provisions of GATT 1994, Marrakesh agreement, GATS, Agreement on subsidies and countervailing measures, Agreement on anti-dumping, TRIMS and TRIPS. In April 2014 Russia has filed a complaint to the EU concerning «The third power package» according to which the companies which are engaged in gas production can't be owners of the main pipelines in the EU (DS476). As consultations haven't led to permission of a disputable situation, the Panel was created. Nowadays, this case is still not resolved.

Disputes against Russia cover such subjects as:

Anti-dumping measures: for instance, the complaint of the EU in May 2014 concerning anti-dumping measures on light commercial vehicles from Germany and Italy (Russia – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy.-WT/DS479/11, 2018). At the moment this dispute is at a stage of the Panel

Sanitary and phytosanitary measures – the dispute initiated by the EU about the ban of import to Russia of pork and pigs from all EU countries in connection with threat of the African plague of pigs and imposition of the restriction for import of all types of finished meat goods from pork from Poland and Lithuania (Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union).

– Customs assessment of goods – the complaint of the EU on the fact that Russia applies duties on a number of goods (in particular on paper, palm oil, deep freezes, and refrigerators) higher than it should apply (Russia – Tariff Treatment of Certain Agricultural and Manufacturing Products: 2017).

Now, there are the most interesting disputes concerning the Russian Federation. In the case DS474: The EU – Methodology of adjustment of cost and certain anti-dumping measures concerning import from Russia. On December 2013 Russia has requested consultations with the EU about the methodology of adjustment of the cost used by the EU for calculation of a margin of dumping in anti-dumping investigations. In 2002 the EU has provided to Russia the status of the country with a market economy, but, despite it, EU continued to use so-called power adjustments. The main claims of Russia are that during conducting anti-dumping investigations the EU doesn't take into account

information on costs of production (including expenses on energy carriers) and the prices of similar goods from the Russian producers and exporters. Russia considers that thereof the EU incorrectly defines a margin of dumping and damage. The EU replaces properly provided information on costs from the Russian producers and exporters with information from alternative sources, including statements of the European producers on the introduction of anti-dumping measures (European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia).

In October 2015 Ukraine has requested consultations with Russia on the measures limiting the import of the railway equipment and its parts. The main claim is that because of action suspension of certificates of compliance confirmation and obstacles in delivery in the updated technical regulations of EAEU the Ukrainian producers can't export disputable goods to Russia. These measures discriminate goods of Ukrainian origin in comparison with similar goods from other countries and domestic production. Ukraine considers that competent authorities of Russia have violated assessment procedures of compliance and haven't explained the reason of the introduction of measures (Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof, 2018).

The EU and Japan have requested consultations with Russia on utilization collecting on the vehicles. According to the EU, Russia imposes on imported vehicles additional payments in the form of utilization fees, at the same time national vehicles are exempted from these payments under certain conditions. Companies, which have undertaken obligations for ensuring the subsequent safe handling of waste, formed as a result of the loss of the consumer properties by vehicles do not pay such utilization fee. One of the conditions under which the company-manufacturer is able to do it is that it has to be the legal entity registered in the territory of Russia. The release was also available for the vehicles, imported from Republic of Belarus and the Republic of Kazakhstan at the observance of a number of conditions.

The Government of the Russian Federation has approved an order of utilization fee from national automobile plants according to which since January 1, 2014, national manufacturers are obliged to pay utilization fee in accordance with general practice. Despite it, the EU hasn't withdrawn the request for creation of the Panel in the WTO as considers that the amount of fee shouldn't depend on car engine

displacement, and at a calculation procedure, there is the too big difference at a rate of fee for new and used cars (Лемяскина: 2014).

Participation of Russia as the third party:

At the end of August 2014, the EU canceled the ban of import and other measures against the Faroe Islands concerning the Atlantic-Scandinavian herring. Indirect benefit for Russia that if the EU has no right to forbid the import of a herring and production from the countries between which this species of fishes are distributed then has no right to forbid the import of these goods from Russia which is one of five such countries.

Russia has joined in September 2015 a dispute of Japan against the Republic of Korea concerning the import ban and also requirements for carrying out tests and certification concerning radioactive materials. The interest of Russia can be explained with the fact that Russia also has forbidden the import of fish from Japan after an accident on Fukushima. This subject is also interesting to Russia from the procedural point of view of the application of sanitary and phytosanitary measures according to the norms and rules of the WTO. Two disputes which Russia has joined in 2015 are connected with subsidies a dispute of the USA against China about measures of providing public services (DS489) and a dispute of Japan against Brazil on the measures of taxes and tax benefits (DS497). These disputes are interesting to Russia as an understanding of procedures of use of norms and rules of the WTO concerning granting subsidies and also use of other measures of support of domestic manufacturers. The dispute between China and the EU on change of tariff concessions of the EU for fowl which Russia has joined in July, 2015 is interesting to Russia as a practice of participation in disputes over an occasion of change of lists of the connected tariffs and to understand better the procedure of such changes, carrying out the corresponding negotiations, etc.

Armenia participated only in one dispute within the WTO- DS411 «Armenia – the Measures Influencing Import and Internal Sales of Cigarettes and Alcoholic Beverages». Ukraine has filed complaints to the WTO on the fact that Armenia applies different rates of a duty on alcoholic drinks, protecting national producers by discrimination of the imported production from Ukraine (Armenia – Measures Affecting the Importation and Internal Sale of Cigarettes and Alcoholic Beverages, 2010).

Ukraine considers that such actions from Armenia contradict the article III.1, III.2, III.4 of the General Agreement on Tariffs and Trade 1994 (GATT of 1994) which provides to goods, origin from an-

other country, the mode not less favorable, than to similar goods of national production (national treatment). This case has come to the end at the level of consultations. As a result, Armenia has removed discrimination fee.

In 2016 after the decision of DSB on the case-DS485 Russia-Tariff Treatment of Certain Agricultural and Manufacturing Products the real threat of jurisdiction of the Court has appeared. The EU appealed against the decisions undertaken by the Eurasian Economic Commission namely overestimate of the customs duties on a number of goods (paper, palm oil, refrigerators) that violates the Art. of:1(b) of GATT-1994. However, for the reason that a complaint against EAEU can't be filed to the WTO (isn't a member of the WTO), the EU has directed it against Russia. The European Union proceeded from contents of the Report of the Working group, is the annex to the Protocol on the entry of the Russian Federation into the WTO. Optional paragraphs of the Protocol establish that the measures were taken in the CU (EAEU) will be brought into accord with obligations of the Russian Federation within the WTO. In spite of the fact that even the Panel has expressed bewilderment by such approach, the Russian Federation hasn't given any comments. In case the Appeal Body supports this approach from the EU, it will create a potential risk of the appeal of any decision of bodies of EAEU by any state non-member of EAEU (respectively directed against the EAEU member state) and the Russian Federation should bear responsibility for decisions of the Commission every time in case of a dispute.

The problem of responsibility of the Russian Federation for decisions of EEC is examined by Kadysheva O.V. that Russia has no opportunity to unilaterally cancel the decision of EEC, moreover, its decision is obligatory for Russia according to corresponding international legal obligations (Кадышева: 2015).

It is necessary to agree with the aforesaid statement as, really, the Russian Federation takes part in the vote for acceptance of the challenged measures, however, cancellation of these measures can't be carried out without the participation of other member states of EAEU.

The complaint of Ukraine in the WTO about systematic violation of EAEU of norms of the WTO when conducting anti-dumping investigations became one more case against EAEU expecting the consideration that has led to the restriction of access of the Ukrainian production for the markets of the states of EAEU.

At the meeting of Committee of the WTO on anti-dumping practice on April 25-28, 2016 the Ukrainian delegation has made the requirement of cancellation from EAEU of anti-dumping measures concerning bars and steel pipes (on March 29 the Board of EAEU has made the decision to introduce anti-dumping duty for a period of 5 years, including from occupied territories of Donbass) and also to terminate the investigation concerning ferrosilikomarganets. It is established that anti-dumping investigations have been made with violation of Art. 2 (dumping definition), Art. 3 (determination of damage) and Art. 5 (the procedure of excitement and conducting the investigation) of the Agreement of the WTO on the application of the Art. VI of GATT 1994 and GATT.

The representatives of EAEU didn't give an answer to the question, however, they have undertaken to provide explanations in writing. This case is one of the most relevant for EAEU therefore at the moment it isn't possible to foresee a position of the WTO on the solution of this question.

The Republic of Kazakhstan – the equal member of the WTO and EAEU

Implementation of the obligations arising from membership of the Republic of Kazakhstan in the World Trade Organization and EAEU

On July 27, 2015, the President of the Republic of Kazakhstan Nursultan Nazarbayev and the CEO of the World Trade Organization Robert Azevedo have signed the protocol on the entry of Kazakhstan into the WTO.

In the 12th of October the law of the Republic of Kazakhstan «On ratification

of the Protocol on accession of the Republic of Kazakhstan to the Marrakesh agreement on establishment of the World Trade Organization» was signed (Закон Республики Казахстан от 12 октября 2015 года № 356-V «О ратификации Протокола о присоединении Республики Казахстан к Марракешскому соглашению об учреждении Всемирной торговой организации от 15 апреля 1994 года).

The process of goods is almost imperceptible. Kazakhstan has started to fulfill its obligations in the WTO, by adopting the law «On modification and additions in some acts of The Republic of Kazakhstan in connection with the accession to the World Trade Organization».

Besides, there are still obligations of Kazakhstan within EAEU. The plans for the creation of the common financial market are the most affecting the local domestic market. According to the draft of the Concept of formation of the common financial mar-

ket of EAEU till 2025, the participating countries have to:

1. Extremely big lag effect of economic integration changes. If it is about real trade streams and the competition, business goes very slowly. For example, the agreed principles of currency policy, the agreement on trade in services and investments, the free market of oil and oil products, the agreement on free access to gas pipelines – whether they really work? It is possible even to take two reports of the Eurasian economic commission: «The main directions of development of EAEU till 2030», published in 2015, and «Barriers, withdrawals, and restrictions of EAEU», published in 2016. A lot of things from what is stated in documents still don't work – just because disturbs the interests of the elite.

2. Violations of agreements in economic integration associations are punished and stopped as a result of the long procedure. At first, there has to pass the complaint or lawsuit, then there is a trial in the coordinating body, then this supranational body addresses the government of the country to resolve a problem. That is any way it is necessary that someone has become interested in this violation and I worked hard that to correct it on what several years can leave, and it is a big term for businessmen. Now we can analyze internal reasons.

Also, Katerina Putts holds such opinion, emphasizing that distribution of some obligations of RK on all members of the Euroasian Union is the irritating factor in the relations between member countries. Considering similarity of structures of economies of member countries of EAEU which often compete with each other more, it is possible to assume that obligations within the WTO will enter amendments into the general view of association (Смирнова: 2015).

Under the terms of the WTO, Kazakhstan undertakes to create equal conditions both for local and for the foreign business of the subject.

It should be noted that Kazakhstan has also received the status of the observer of the Agreement on government purchases. Considering that the state and private economic subjects of Kazakhstan quite often function in one field, conditions of the WTO can lead to a reduction of access to resources of the first. In case of coordination of the inventory and services, the country will join this agreement in 4 years. In 2021 the requirements of local content in contracts for subsurface, use have to be abolished.

If to consider the list of withdrawals (3512 commodity positions among which cars, foodstuff, forest products, jewelry, wires, cables, drinks, etc.),

it is possible to assume that to the population import production which will be delivered at the rates below EAEU will cost cheaper. It is remarkable, shows experiment of Russia that due to the reduction of the import customs duties mostly was earned only by those sellers who could reduce the expenses (Эксперты оценили возможности и вызовы для Казахстана как члена ВТО: 2015).

Functioning within the organization demands high-quality preparation and the aspiration to protect the interests of the country. Kazakhstan needs to operate with adequate measures for the purpose of the creation of conditions for economic activity in the country. In this connection, it is necessary to solve big layer of tasks in the field of providing effective mechanisms of realization and adaptation of policy of economy support taking into account the undertaken obligations.

It means that Kazakhstan has:

- to increase examination of experts in the field of identification and counteraction of the illegal competition, application of the forbidden measures in trade;

- to increase the level of knowledge of subjects of economy features of functioning within the WTO, opportunities for participation in settlement of trade disputes;

- to increase transparency of the made decisions within EAEU and the WTO.

The principles which are applied at a payment of the customs duties taking into account the entry of Kazakhstan into the WTO and its participation in EAEU.

If the goods from the third country are intended for Kazakhstan, then the rate of the customs duty will be paid according to the requirements of the WTO: At entry into force of withdrawals from the Common customs tariff of EAEU in connection with obligations of Kazakhstan at accession to WTO, when importing goods to Kazakhstan from the third countries (which aren't the states of EAEU) the lowered rates of the import customs duties according to the approved list can be applied.

Participation of the Republic of Kazakhstan in the disputes resolved within the WTO

Kazakhstan becoming a member of the WTO also has received access to the mechanism of the settlement of disputes within the WTO. Due to it, Kazakhstan has an opportunity to solve the conflicts in the international area.

Nowadays in the WTO, there is only one dispute in which the Republic of Kazakhstan acts as the defendant. In other disputes, our state participates in quality of the third party.

A complaint to Kazakhstan was filed by Ukraine in the case: Kazakhstan – Anti-dumping Measures on Steel Pipes. The discontent of Ukraine was caused by the anti-dumping policy of the Eurasian Economic Union (EAEU), in particular, Kazakhstan, concerning import of the Ukrainian steel pipes. According to Ukraine, the decision of Kazakhstan to impose on pipe Ukrainian production high taxes doesn't correspond to Agreements on the application of the article of 1994 (Kazakhstan – Anti-Dumping Measures on steel pipes, 2017).

For settlement of the conflict, Kiev has sent the complaint to the WTO and the requirement about consultations with Kazakhstan. According to the Deputy Minister of Economic Development and trade – the sales representative of Ukraine Natalya Nikolskaya, Kiev hopes to resolve an issue of duties in the nearest future not to pass «to the following stage of the settlement of a dispute».

Anti-dumping duties have been introduced in the territory of EAEU in October 2011, in July 2016 they have been prolonged for five years. Anti-dumping measures establish duties at the rate from 18,9% up to 37,8% for import of the Ukrainian pipe production to the EAEU countries.

The measures were imposed pursuant to the Decision of the Collegium of the Eurasian Economic Commission No. 48 of 2 June 2016 on imports of certain types of steel pipes originating in Ukraine in connection with the sunset review of the anti-dumping measures on imports of certain types of steel pipes originating in Ukraine and imported on the customs territory of the Eurasian Economic Union.

It is also necessary to note that the introduction of anti-dumping duty doesn't mean the import termination. The import goods continue to come to the domestic market, but only with payment of anti-dumping duty which equalizes competitive conditions of the importer and local producer.

Disputes in which the Republic of Kazakhstan participates in quality of the third party:

1. DS493: Ukraine – Anti-Dumping Measures on Ammonium Nitrate. Ukraine has submitted the application to the WTO to demand cancellation of restrictions for the transit of production to Kazakhstan from Russia. In the document, it is specified that the actions of the Russian Federation break the principles of the WTO and have discrimination character concerning the Ukrainian production. Within the meeting of the WTO, the Ukrainian side has read the application to the Russian Federation on the lifting of restrictions and obstacles in the sphere of the transit of the Ukrainian agricultural

production to Kazakhstan as these restrictions break the key principles of the WTO and actually mean failure to follow by Russia obligations assumed at accession to WTO. At a discussion of a question, the Russian side couldn't provide the convincing bases for the introduction of such restrictions. In a question of consideration of this statement in the WTO Ukraine is supported by the EU and the USA. In accordance with the article 5 of GATT freedom of transit through the territory of each contracting party along routes, for transit transportations in the territory or from territories of other contracting parties is established by the most convenient for the international transit. No distinction based on a flag of the vessels, places of origin, departure, calling, an exit or appointment or any circumstances relating to property on goods, vessels or other vehicles becomes, the expert considers.

Transit transportations shouldn't be exposed «to any excessive delays or restrictions (Ukraine – Anti-Dumping Measures on Ammonium Nitrate, 2018).

2. DS502: Colombia – Measures Concerning Imported Spirits. On 13 January 2016, the European Union requested consultations with Colombia regarding certain measures in relation to the treatment that Colombia accords at a national and departmental level to imported alcoholic beverages. At its meeting on 26 September 2016, the DSB established a panel. Brazil, Canada, Chile, China, Ecuador, El Salvador, Guatemala, India, Kazakhstan, Korea, Mexico, Panama, the Russian Federation, Chinese Taipei, and the United States reserved their third-party rights. The EU's concerns about discrimination in the Colombian market are longstanding. In Colombia, EU spirits face higher taxes than local brands through higher national consumption tax and higher local charges. In addition, Colombia's regional authorities or departments impose market-access restrictions for imported spirits.

These measures raise the cost of doing business in Colombia and place EU spirits at a competitive disadvantage on the Colombian market. This is in contravention of Colombia's non-discrimination obligations under WTO rules. In Colombia, a number of departments exercise the so-called fiscal monopoly over the introduction and commercialization of spirits. As a result, the entry of imported spirits is subject to the conclusion of 'introduction contracts' with the department that contain trade restrictive clauses, impose maximum values and minimum selling prices, and requiring traders to secure the payment of the amount of a future fiscal debt, etc. In addition, the departments

enjoy great discretion to arbitrarily deny access to imported brands (Colombia – Measures Concerning Imported Spirits, 2016).

3. China – Export Duties on Certain Raw Materials- the United States requested consultations with China regarding China's export duties on various forms of antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum, and tin. The United States also considers that the measures appear to nullify or impair the benefits accruing to the United States directly or indirectly under China's Accession Protocol. The Republic of Kazakhstan made a wish to be a third-party. China has been imposing export restrictions—essentially duties and quotas—on these raw materials for companies outside of China, which means companies inside of China are saving money and are thus at an advantage because they can make lower-priced goods with unfairly priced inputs. It also means non-Chinese companies are under pressure to set up production operations in China (which means they're sending jobs to China, too).

The problem, other than the obvious, is that the practice goes against the rules China signed onto when it joined the WTO in 2001. What's more, as the EU charged, China's alleged aim to support an environmentally friendly and sustainable production of raw materials could be achieved more effectively with other measures, without negative impact on trade (China -Duties and other Measures concerning the Exportation of Certain Raw Materials, 2016).

The EU brought similar cases before the WTO in 2012 and 2014 (both of which were successful), but for this go around, graphite, cobalt, copper, lead, chromium, magnesia, talcum, tantalum, tin, antimony, and indium are on the target list. The U.S. is targeting nine raw materials in its case: antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum and tin (the same as the EU with the exception of chromium—largely used in stainless steel production and indium -which goes into goods like flat screen computer monitors).

4. DS511: China – Domestic Support for Agricultural Producers. On 13 September 2016, the United States requested consultations with China regarding certain measures through which China appears to provide domestic support in favor of agricultural producers, in particular, to those producing wheat, India rice, Japonica rice, and corn. At its meeting on 25 January 2017, the DSB established a panel. Australia, Brazil, Canada, Colombia, Ecuador, Egypt, El Salvador, the European Union, Guatemala, India, Indonesia,

Israel, Japan, Kazakhstan, Korea, Norway, Pakistan, Paraguay, the Philippines, the Russian Federation, Saudi Arabia, Singapore, Chinese Taipei, Thailand, Turkey, Ukraine and Viet Nam reserved their third-party rights (China – Duties and other Measures concerning the Exportation of Certain Raw Materials, 2016).

The US claimed that China had provided domestic support to the products mentioned above in excess of its WTO accession commitment, and has violated the Agreement on Agriculture.

As the largest exporter of agricultural products, the US, with large production scale and strong competitiveness, produces agricultural commodities mainly for export. By contrast, China is the largest importer of agricultural products, with its agriculture characterized by small-scale production and subsistence farming. The average production scale of China per household is only 1/400 of that of the US. Suffice it to say, the US and China are typical examples of commercial agriculture and subsistence agriculture. By its nature, initiating WTO dispute proceedings against China by the US represents the conflict between interests of large commercial farmers in the US and livelihood of small holder farmers in China.

The US challenge against China's grain support policy is, in a matter of fact, the reflection of conflict between trade liberalization doctrine and real need of developing members to safeguard food security, which had once happened in the 9th WTO Ministerial Conference in 2013, where developing members and developed members had a dispute over public stockholding for food security purposes. Global cereal trade volume accounts for less than 15% of its output, more than 85% of cereal demand is met by domestic supply. The only way for developing members to have a stable food supply thereby ensuring food security is to increase investment in agriculture and food production, and support small farmers, in particular, thus enhancing food production capacity. This is the reason why developing members reiterated in Doha negotiations that food security which is of paramount importance to developing members is not negotiable.

Conclusion

Nowadays, four member states of the EAEU are also members of the WTO. The question of the relationship between EAEU and the WTO is one of most relevant. The authors has revealed a number of problems on the basis of analyzing the disputes with the participation of the member countries of the

WTO and EAEU. First, a question of hierarchy of two legal systems – one of the main problems (Макарова: 2017). Whether the law of the WTO has the privilege before the law of the EAEU. Having studied opinions of various authoritative experts, the author has come to a conclusion that norms of the WTO have a priority over norms of the EAEU in case of a contradiction (in particular it concerns that period until the legal systems of the EAEU are brought into accord with provisions of the Agreement of the WTO), for the rest the hierarchy is absent.

One more problematic issue is the jurisdiction of the EAEU court. There is a potential risk of the appeal of any decision of bodies of EAEU by any state – not the member of EAEU (respectively, directed against the EAEU member state), and the Russian Federation should bear responsibility for decisions of the Commission every time in case of a dispute. The author sorts this situation in work on the basis of the disputes against Russia. As the EAEU isn't a member of the WTO, the plaintiff states file the complaints to one of the EAEU member states, especially the Russian Federation. However Russia has no opportunity to unilaterally cancel the decision of bodies of EAEU, moreover, the decision of

EAEU is obligatory for Russia corresponding to the international legal obligations.

The WTO and EAEU legal regimes are part of the international law; they are part of autonomous rule complex which governs international trade relations in the framework of multilateral trade system. The WTO and EAEU legal regimes are not isolated from the system of international law and should be interpreted and applied on the basis of the principle of harmonization aimed at systematic integration (Boklan: 2017).

The Republic of Kazakhstan, as rather a new member of the WTO, has a brief experience of participation in disputes of the WTO. The authors, having considered disputes with the participation of RK, defined that today the state acts as the defendant in the case of «Kazakhstan – Anti-dumping Measures on Steel Pipes». A complaint has been filed by Ukraine in response to the anti-dumping policy of Kazakhstan. The decision on the case isn't made yet. According to the authors in the Republic of Kazakhstan, there aren't enough experts with profound knowledge of the law of the WTO that in the future can lead to increase in a number of disputes in which RK will act as the state violator, or to loss of disputes.

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