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FEATURES RESOLVING TRADE DISPUTES UNDER WORLD TRADE ORGANIZATION (WTO)

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Abstract
The settlement of the interstate dispute sis a key element of the multilateral trading system and the special contribution of the World Trade Organization (WTO) on ensuring the overall stability of the world economy. In this article investigated mechanism of resolving international trade disputes between WTO members, considered separate stages of the settlement of disputes between the parties, identified procedural features, procedures and methods of decision execution monitoring. 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.

Key words: World Trade Organization, Dispute settlement body, arbitration group, dispute settlement, consultations.

Introduction

The system of the dispute settlement of the World Trade Organization (further - the WTO) works more than 20 years. Its extensive practice includes approximately 300 reports of arbitration groups and Appellate body.

Need of creation of a dispute settlement system arose together with creation of the General Agreement on Tariffs and Trade (GATT) in 1947 [1]. The articles XXII "Consultations" and XXIII "Cancellation or reducing benefits" in GATT concerning settlement of matters of argument of the agreement laid the foundation of modern system of the dispute resolution. To the termination of the Uruguayan round there were main lines of modern system of the dispute resolution: results of negotiations of the Tokyo round, the decisions passed on disputes and following them the rule of interpretation of agreements of GATT formed the basis of the Arrangement on the rules and procedures regulating the dispute resolution.

In a system of law of the WTO the basic principles are distinguished: the principle of nondiscrimination, most-favored-nation principle (plays the greatest role in that, as for import and export), the principle of provision of a national treatment (matters for protection against the measures taken in the domestic market of the states). As scientists note, "development of the right of the WTO is on a first line of that way on which the international law should pass in general" [2].

As a result within the WTO the system of the dispute resolution, single for all multilateral agreements of the WTO, consists of:

1. The first stage of dispute settlement are intergovernmental consultations which begin at the initiative of the party considering that its rights, interests are infringed on any of agreements of the WTO. If after 60 days the dispute isn't settled, any party can ask about creation of the special group of experts.

2. The group of experts (usually from 3 people) is created in personal quality of highly qualified specialists in a matter in issue. It considers representations and the argumentation of the parties, finds out applicability to a matter in issue of provisions of the relevant agreement, prepares the report with conclusions, the decision and recommendations and not later than submits it within 6-month term Dispute Settlement Body (DSB). If the participating party of the WTO doesn't implement the recommendation of the group of experts, then suspension of action of the approved tariff concessions can be applied to it by other party of a dispute, compensation of the caused damage, etc. is requested. Solutions of a dispute and responsibility of party at fault based on the taken-out recommendations can be the following:

— to recognize recommendations, to take measures for violation liquidation;

— to pay compensation or to offer compensation;

— to request from DSP of powers and to perform counter-measures by, in particular, suspension of the approved customs concessions (as a result of it the rate of a rate for goods or the goods imported from the country violator increases or equivalent measures are taken if it is about service trade). Dispute Settlement Body within 60 days automatically accepts the report of the group of experts. The DSB functions are performed by the General Council of the WTO, specially gathering for consideration of disputes. DSB has huge rights on control (observation) of execution of recommendations of the group of experts. The decision, recommendations of the group of experts can be Appellated by any party of a dispute. The dispute is considered to be solved only after a deviation from rules or their violation is eliminated.

Main objective of the procedure of dispute settlement within WTO is not pronouncement of the "judicial" decision and not compensation of damage to the state which addressed with the claim, and recovery of the broken balance of the rights and liabilities. Activities of DSB first of all are directed to rapprochement of line items of the parties and motivation to permission of a disputable situation during negotiations. The fact that DSB have no powers on imposition of sanctions concerning the states which aren't carrying out the made decisions is connected with it. Counter-measures which have no penal character can be entered only by the state which made the complaint, and such sanctions can be at any time cancelled. This mechanism completely considers the special nature of interstate trade relations.

4. Appellate Body is created by the solution of DSB as a part of 7 people acting in personal quality. The task of the Body is to give a legal treatment to the decision, recommendations of the group of experts from the point of view of their legitimacy, compliance to precedents and rules of the WTO. The decision according to Appellates is transferred to DSB [3].

The appellate body consists of the persons having acknowledged authority which proved the competence of area of the right, international trade and general questions falling within the scope of the covered agreements. The appellate body consists of seven arbitrators, but each case is examined by three arbitrators. Arbitrators are appointed to four-year term and can be appointed repeatedly to one term. They can't participate in consideration of any disputes which can lead to a conflict of interest directly or indirectly. For the purpose of ensuring the sequence of law-enforcement practice the arbitral panel considering a specific dispute before preparation of the final report holds informal consultations with other arbitrators who are members of Appellate body.

Disputes within WTO

"The dispute settlement system within the WTO is a crucial element in safety and predictability of world system of trade" - the text of the Arrangement on rules and procedures of dispute settlement says.

Appellate body, considering case "the USA – Shrimps", has carried out interpretation of the relevant provision of DRS and recognized the right of arbitration group to receive the materials from the individuals who aren't participating in business given by such persons on their own initiative. Thus, the Appellate body has rejected withdrawal of arbitration group that the arbitration group has the right "to request", but has no right "to obtain" information which hasn't been requested [4].

Within business of EU-Asbest the Appellate body has provided to Morocco as the party which isn't participating in business, the right to provide the materials concerning business [5].

Though Arrangement on dispute settlementis still based on the principles according to GATT 1947, the requirement of consensus for the statement of arbitration groups and adoption of reports is replaced with the principle of "the return consensus". According to this principle, the report of group or Appellate body is accepted if only DSB doesn't make the consensus decision on the return. In practice this principle guarantees automatic adoption of all reports of the WTO.

The vast majority of the disputes considered for all history of the GATT/the WTO treats the type "a".

In 1986 the EEC, Canada and Mexico made the complaint to actions of the USA because the USA in defiance of article III GATT entered tiered rates of gas taxes of national and import production. The USA claimed that increase in duties was insignificant, and the effect of such increase on trade was minimum or zero. According to the USA irrespective of whether entering of graduated tax rates contradicted the first offer of the article III:2 or isn't present, such insignificant distinction couldn't lead to cancellation and reducing the benefits following for EEC, Canada and Mexico from GATT. In response to it the arbitration group noted that within the procedure of the dispute resolution GATT Contracting Parties repeatedly referred to the fact that the measures contradicting GATT don't render a harmful effect on trade and, respectively, don't lead to cancellation and reducing benefits. However in the history of GATT there was no precedent that the Contracting Party of GATT could confute successfully a presumption that the measure violating liabilities leads to cancellation and reducing benefits. The arbitration group noted that as Contracting Parties in an obvious form weren't determined concerning whether the presumption that illegal measures lead to cancellation or reducing benefits is, it is confutable, in practice this presumption is incontestable in the absence of the proof for benefit of opposite. The arbitration group also came to a conclusion that demonstration of the fact that the measure breaking provisions of the article IIIGATT doesn't render or renders insignificant effect on trade, isn't the sufficient evidence of the fact that the benefits resulting from this article aren't cancelled or aren't reduced even while such confutation in principle was authorized. This decision is essential for understanding of the concept of cancellation and reducing benefits [6].

Another interesting dispute which cornerstone the measure which isn't breaking provision GATT also was the dispute between the USA and EEC concerning import duties on seeds of oil-bearing crops. The USA addressed with the claim to actions of EEC in which they claimed that from EEC the tariff concession in the form of a zero rate on import of seeds of oil-bearing crops was provided, the EEC enacted the program of agricultural support. After adoption of this program it became more profitable to European producers to make seeds of oil-bearing crops, in comparison with what was earlier since the program provided subsidies. As a result - to receive benefits which the USA expected as a result of entering of a zero import duty, were reduced. In response to this EEC claimed that expectations about failure to provide subsidies can't be legal even after provision of a tariff concession because the articles III: 8(b) and XVI:1 of GATT explicitly recognize the right to provision of subsidies [7].

The arbitration group didn't agree with such argumentation, having noted that a matter in issue are subsidies which completely protect producers from impact

which imported goods can render, and thus don't allow a tariff concession to exert any impact on conditions of the competition between domestic and foreign goods. According to arbitration group, the main value of a tariff concession is that she guarantees the improved access to the market by means of creation of more favorable conditions for a price competition. Contracting parties hold negotiations with the purpose of receipt of such benefits. Therefore they shall be sure that they in case of negotiation about tariff concessions can be based on expectation that the price effect which will follow after receipt of a tariff concession won't be leveled.

The dispute "the EU - Bed linen" was the first in a series of the cases (in the others the defendant were the USA) calling into question practice of zeroing in case of calculation of a margin of dumping for establishment of anti-dumping measures. This practice which explicitly is not regulated by the Anti-dumping agreement of the WTO consisted, in effect, in equating with zero negative margin arising in case normal cost exceeded export price (in other words, the zero margin of dumping took place). It usually led to calculation of higher general margin of dumping than if instead of zero negative value was used. Zeroing can be applied within different methodologies and at different stages of the anti-dumping procedure, for example model and simple zeroing in initial anti-dumping investigation, and also periodic review, review in connection with change of carrier and review in connection with the termination of anti-dumping measures.

In 2009 Canada submitted a claim to Korea with the purpose to appeal against the beef import ban operating since 2003 from Canada imposed in connection with risk of infection with spongy encephalitis. In 2003 Korea was in the five of the export markets for the Canadian beef of which 0, 3% of export were the share that constituted about 2,5 million US dollars. After entering of a prohibition Canada repeatedly tried to get access to the market of Korea, however it wasn't possible to prove compliance of the Canadian beef to standards of national system of health and phytosanitary control of Korea. In 2008 Korea introduced a number of additional requirements which Canada should execute to eliminate a running prohibition that was the cause for the appeal of Canada to Body for the dispute resolution of the WTO. The dispute was resolved before completion of the procedures by arbitration group on mutual consent of the parties – the government of Korea eliminated a 8-year prohibition of import of the Canadian beef. Canada resumed deliveries of beef to Korea, however the previous level didn't manage to be reached – in 2012 was delivered beef on 30 thousand dollars of the USA, in 2013 – on 834. Thus, the gap of trade relations and the subsequent long-term lack of trade lead to the fact that the economic result of the won dispute can be obvious only in the long term when economic communication is reestablished and their further development will become possible [8].

In "the EU – Bananas" a number of the countries specified that since the beginning of action of GATT there was a practice of representation of interests of the parties by the state lawyers and experts that emphasizes interstate nature of the procedure. The Appellate body, however, noted that nothing in texts of agreements of the WTO, including the Agreement on WTO and DSB organization, and also Working procedures, and also in regular rules of international law, and in practice of the dispute resolution international courts interferes with the member of the WTO independently to determine the persons addressing within oral hearings Appellate body however explained that it doesn't affect consideration of a dispute by arbitration group [9].

As we know, on July 27, 2015 in Geneva the President of the Republic of Kazakhstan Nursultan Nazarbayev signed Protocol on the entry of Kazakhstan into the World Trade Organization. Negotiations lasted 19 years. Among many advantages of being a member of WTO it is necessary to distinguish the fact that Kazakhstan has been recognized as the country integrated into the world economy and also automatically receive most favored nation regime with all members of WTO. The great value can represent the mode of the WTO concerning trade disputes, especially in case of the anti-dumping trials applied export goods of Kazakhstan. WTO membership makes possible to solve trade and political disputes within procedures provided by this organization on more fair basis [10].

Today, Kazakhstan participates into 5 cases as a Third party, which gives an opportunity for better understanding of the procedure of dispute settlement within WTO.

Conclusion

Nowadays, the mechanism of the dispute resolution of the WTO is one of key instruments of protection of national interests in the foreign markets within multilateral trade system. Permission of the trade conflicts at the multilateral level is a significant element of the external economic strategy of the states of members of the WTO and especially important for new participants that sets an example of China. The body for settlement of disputes of the WTO creates possibilities of the accounting of positions of various countries and search of the compromise solution, and each new dispute exerts impact on further formation of case practice of the WTO.

The main economic motive of initiation of a dispute at the multilateral level is the actual or potential damage of the state from the termination of commodity export to the country which entered the measure limiting trade. The purposes of the foreign trade strategy of the state directed to achievement of long-term economic benefits by expansion of export of priority industries, and also non-admissions of its discrimination in the foreign markets can act as other motives. A number of the disputes initiated in the WTO arose in the conditions of lack of real economic loss from action of a measure in view of insignificant export volumes. Considering in detail such cases, it is possible to conclude that participants of multilateral trade system challenge this or that practice for the purpose of creation of a precedent which will have horizontal influence on all sectors subsequently.

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ON THE CONCEPT AND CONTENT OF THE SOURCES OF CONSTITUTIONAL LAW

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Abstract

The article is devoted to the analysis of the concept and the content of the sources of law. Making the legal analysis work of domestic and foreign scholars, the author comes to the conclusion that the term "source of law" includes two interrelated aspects. Firstly, the source of law is the external form of expression of the rule of law; secondly, under the source of law is understood a form of giving the rules of conduct legally binding - the character of the law. These two aspects do not always coincide. The state issues legal rules in the form of legislative and other normative legal acts or authorizes the latter, giving them the most valid. Sources of constitutional law are legal instruments through which the set and get valid constitutional and legal norms regulating social relations that constitute its content as a subject of constitutional law.

Keywords: source of law, the form of law, the source of constitutional law, legal act, constitutional-legal norms, the subject of constitutional law

The term "source" means "something" that gives the beginning of something, or the place from which emanates something. Consequently, a certain power creating any phenomenon or promoting their creation can be called the source of these phenomena"[1,p.209].

The law has its initial sources. Here it is necessary to consider the historical aspect of process of formation and development of ideas about sources and forms of the law which in process of evolution of the law and the state also constantly change, develop and improve.

The term "source of law" appeared in law more than two thousand years ago. It was introduced by Tit Livy, the author of "The Roman History", who called the laws of XII tables (sonsomnipruris) as "the source of all public and private law» [2].

The Laws of XII tables, being common law of the Roman community, historically were one of the first forms of the law and they formed a basis for formation and development of Roman Law.

There was never a uniform point of view on the concept "source of law" in the legal doctrine. During the different historical periods this question was discussed. There is no common understanding of the term " source of law" in jurisprudence [3].

However, the implementation of the concept of the law state in the Republic of Kazakhstan implies the existence of reasonable sources of law concept.Therefore,