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THE ZEROING METHOD FOR DETECTING DUMPING IN DISPUTE SETTLEMENT IN

THE WTO DISPUTE SETTLEMENT BODY

In 2015, Kazakhstan became de jure a full 162-member WTO member. The primary goal of the accession was to stimulate and give more opportunities for the export of domestic goods to other country-members of the WTO. Thus, our national market has become more accessible to most countries in the world. However, along with the opportunities come the risks. Risks are manifested in aggressive trade policies and unfair competition, which are contrary to the WTO rules and affect disputes. One of the main objects of the dispute is dumping of prices in international trade. As of June 2017, since the inception of the mechanism WTO disputes (January 1, 1995) by the member countries The WTO initiated a total of 496 disputes. The most frequent plaintiffs or complaining parties were the United States (108), the EU (95), Canada (34), Brazil (27), Mexico (23) and India (21). The most frequent respondents in the trade disputes of the WTO were the US (in 24 cases) and the EU (in 99 suits). Based on the data provided, the US and EU were plaintiffs in 40%, and defendants in 45% of cases of the total number of disputes. According to the statistical analysis of trade disputes, Leitner and Lester, other countries are increasingly becoming active participants in the dispute resolution system, including developing countries. According to the analysis, between 1995 and 2000, America and the EU initiated exactly half of all disputes in the WTO, while in the period of from 2001 to 2013 these countries initiated only 27% cases of the total number of disputes, while more than half of cases were initiated by developing countries. When filing a complaint, a WTO member country must specify agreements WTO, which it considers to be violated. Of the above, anti-dumping regulation is the subject in 122 cases. This shows how important and frequent is the issue of protecting the domestic market from dumping and the important role of the WTO in the eradication of such disputes[1]. Legislation of Kazakhstan in the field of dumping regulation is generally harmonized with the world standard practice and WTO agreements of 1994. But there are countries that apply different norms, sometimes contrary to their obligations under the WTO treaty. One such practice is the US zeroing method, which has been repeatedly challenged by the WTO Dispute Resolution Authority. For the disclosure of the concept of the method of zeroing as a way to determine dumping, it is necessary to compare all methods, including those that are recognized as fair.

Establishing the fact of dumping involves studying many issues. Regarding the relevant normative material, the researchers distinguish such categories as "averaging", "ordinary course of trade", "sales below cost", "compound cost", "level of trade", "exchange rates" [2].

The publications also give various formulas for calculating the dumping difference [3]. If you look at the process schematically, then to establish the dumping it is necessary:

- determine the price of goods on the market of export, known as normal value;
- determine the price of goods on the market of the state of import, known as the export price;
- compare the normal value and the export price.

Determining the normal cost. The provisions of paragraph 1 (a) and (b) (i) and (ii) of Art. VI GATT, art. 2.1 and 2.2 of the 1994 Anti-Dumping Code indicate that the normal value can be determined on the basis of:

- commodity prices in the export market;
- the price at which the goods are sold to a third state;
- the composite value of the goods, which is calculated on the basis of production costs, plus sales costs, general and administrative expenses, as well as profit. The first method is basic. The second and third methods of determining the normal value are used if certain conditions are not met. In paragraph 10 of the report of the Panel of Experts on Anti-Dumping and Countervailing Duties, it is noted that paragraph 1 (b) (i) and 1 (b) (ii) of the GATT prescribe an alternative and equal criterion to be used at the discretion of the State of import, but only after that, as it could not establish the normal value of item 1 (a) of Art. VI [4]. For countries with a non-

market economy / with a complete or in substantial terms a complete monopoly of trade uses special methods. The impossibility of using the full trade monopoly to compare prices in states with full or in essential features was recognized as yet in Annex I to the GATT. The main method for them is the use of prices in a third state with a market economy. A state with a non-market economy can be defined as a foreign country that does not operate on market principles of cost structures and prices (paragraph 1 of Article 2 of the Malaysian Act No. 504, "On Compensatory and Anti-Dumping Duties", 1993). The definition of "surrogate" is also used to refer to such a third state. In theory, a surrogate state is defined as having a comparable economy and being a significant producer of the investigated commodity [5].

There are some features of determining the normal cost of delivering goods from states with a non-market economy / with a complete or in substantial features a complete trade monopoly. In paragraph 7 (b) of Art. 2 of Council Regulation (EC) No. 1225 of 2009, "On Protection Against Dumping Imported Goods from Non-Member States of the European Community", establishes that in anti-dumping investigations concerning imports from Kazakhstan and any non-market economy that is a WTO member as of the date of initiation of the investigation, the normal value is determined in accordance with clauses 1-6, if known on the basis of a *duly justified claim of one or more producers subordinate to the investigation*, and in accordance with procedures fixed in the "C" that the conditions of a market economy prevail for a given manufacturer or producers with respect to the manufacture and sale of a related similar product. In this case, it is obvious that the methods used to determine the normal cost of a state's membership in an international organization are obvious.

Decisions of the WTO Dispute Settlement Body found that using the so-called zeroing method in anti-dumping investigations does not comply with international trade rules, but the US refuses to change its practice of calculating dumping margin. Thus, new efforts are needed to change this practice.

Historically, the US has actively used anti-dumping and countervailing duties (laws on protective measures in trade) against foreign firms and countries that, in their opinion, use unfair trade methods. Recall: antidumping duties can be imposed on the import of goods sold in the US market at prices lower than the prices of this product in the domestic market of the exporting country or the cost of goods in the country of origin. Compensatory duties can be imposed on imported goods to which government subsidies have been granted. In both cases, the main factor is that such imports cause significant damage to the competing domestic industry. Article 123 The Uruguay Round Agreement Act is the legal basis for the WTO is the uncoordinated legislation of the United States. According to the new methodology Section 123, the United States there will usually be a weighted average fee prices, and will compensate for cases of "negative" discharge to "positive" discharge, thereby eliminating nulling. We never rule out the possibility that the US, in some cases, resorts to The approach in the reviews differs from the average weighted mean. However, there is no indication on this plan that the use of such different approaches were widespread [6].

During the consideration of complaints filed against the US by the EU, Japan, Canada, Ecuador, Brazil, Thailand and other countries, the WTO Dispute Settlement Body found that the practice of zeroing does not comply with anti-dumping rules, since it leads to distortion of the prices of individual export transactions, This method does not take into account all the comparisons between normal value and export prices. Ignoring the results of comparisons on a number of transactions, the United States violated the requirement of "fair comparison", which was proclaimed in Article 2.4.2 of the Anti-Dumping Agreement [7].

Such unfair trade practices weaken confidence in the US, and also reduce the US influence in multilateral trade negotiations. At the same time, the United States can be retaliated by trading partners, against which these measures were applied. Nevertheless, the US refuses to accept the WTO recommendations on bringing the methodology for determining the dumping margin in line with the rules of international trade.

However, the longer the US will resist or ignore these recommendations, the greater the likelihood that countries that have submitted complaints will receive the right to impose return fees or other punitive measures in relation to US goods. The US insists that the law has been misconstrued and intends to use the multilateral trade negotiations of the Doha Round to include the WTO rules allowing the use of a zeroing method.

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