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THE HISTORICAL AND LEGAL ANALYSIS OF SETTLEMENT OF DISPUTES WITHIN THE WORLD TRADE ORGANIZATION

Abstract. The relevance of a subject of research is caused by the fact that the constant growth of number of the considered disputes of the WTO gradually develops and complicates the system of law of the WTO. The mechanism of settlement of disputes and also the mechanism of control of execution of decisions are the basic elements providing stability and effective functioning of system in general. The research of the matters is necessary for full-fledged assessment of activity of the WTO because today the WTO plays a role of the stabilizer of the international economic relations in the sphere of trade and the mechanism of settlement of disputes is a guarantor of stability of all international trade system.

In this article, the authors give a historical and legal analysis of the dispute settlement within the WTO, the results of the study clearly set out the main concepts, principles, and peculiarities of the dispute settlement mechanism in the WTO based on the analysis of resolved disputes between various WTO member countries.

Since Kazakhstan, since July 27, 2015, is a full member of the WTO, the given access to international mechanisms and institutions for resolving disputes within the WTO will make it possible to effectively use this opportunity to protect its national interests, in accordance with WTO rules and norms.

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

Аңдатпа. Зерттеу тақырыбының өзектілігі болып ДСҰ-мен қаралатын даулар санының үнемі өсуі нәтижесінде ДСҰ-ның құқықтық жүйесі біртіндеп дамып және күрделеніп келе жатыр. Дауларды шешу механизмі, сондай-ақ шешімдердің орындалуына бақылау жүргізу механизмі тұтастай алғанда жүйенің тұрақтылығы мен тиімді жұмыс істеуін қамтамасыз етудің негізгі элементтері болып табылады. Осы мәселелерді зерттеу ДСҰ іс-шараларын толық бағалау үшін қажет, себебі ДСҰ бүгін сауда саласында халықаралық экономикалық қатынастарды тұрақтандыру рөлін атқарады және дауларды реттеу механизмі халықаралық сауда жүйесінің бүкіл жүйесінің тұрақтылығының кепілі болып табылады.

Осы мақалада авторлар ДСҰ шеңберінде дауларды реттеудің тарихи-құқықтық талдауын береді, зерттеудің нәтижелері ДСҰ-ға мүше елдердің арасындағы шешілген дауларды талдау негізінде ДСҰ-да дауларды шешу механизмінің негізгі ұғымдарын, қағидаттарын және ерекшеліктерін нақты анықтайды.

2015 жылы 27 шілдеден бастап Қазақстан ДСҰ-ның толыққанды мүшесі болғандықтан, ДСҰ шеңберінде дауларды шешудің халықаралық механизмдері мен институттарына қолжетімділік нәтижесінде ДСҰ нормалары мен ережелеріне сәйкес, ұлттық мүдделерін қорғауға мүмкіндік береді.

Түйін сөздер: Дүниежүзілік сауда ұйымы, Дауларды шешу бойынша Орган, аралық топ, дауларды шешу, кеңес беру.

Абстракт. Актуальность предмета исследования обусловлена тем, что постоянный рост числа рассматриваемых споров ВТО постепенно развивается и усложняет систему права ВТО. Механизм разрешения споров, а также механизм контроля исполнения решений являются основными элементами обеспечения стабильности и эффективного функционирования системы в целом. Исследование этих вопросов необходимо для полноценной оценки деятельности ВТО, поскольку сегодня ВТО играет роль стабилизатора международных экономических отношений в сфере торговли и механизм разрешения споров является гарантом стабильности всей системы международной торговли.

В данной статье авторами дан историко-правовой анализ урегулирования споров в рамках ВТО, в результатах исследования рассмотрены основные понятия, принципы, особенности механизма разрешения споров в ВТО на основе анализа разрешенных споров между различными странами-участниками ВТО.

Поскольку Казахстан с 27 июля 2015 года является полноправным членом ВТО, то предоставленный доступ к международным механизмам и институтам разрешения споров в рамках ВТО позволит эффективно использовать эту возможность для защиты своих национальных интересов, в соответствии с правилами и нормами ВТО.

Ключевые слова: Всемирная торговая организация, Орган по разрешению споров, третейская группа, разрешение споров, консультации.

Introduction

Nowadays, the World Trade Organization (further – the WTO) plays the most important role in the international integration and has powerful authority on the sphere of international trade. Within the WTO a huge number of important decisions concerning international trade relations is accepted.

As our President N.A. Nazarbayev has told that accession to the WTO provides to our enterprises access to the foreign markets, and consumers – a wide choice of goods and services. Today 90 percent of our trade are the share of WTO member countries. Therefore this decision is very important for us. Kazakhstan becomes even more attractive as for foreign and domestic investors. The state has an opportunity for creation of new productions and jobs.

Positions on the questions, most sensitive for our economy, have been coordinated. It both questions of agriculture, "the Kazakhstan contents", and market of financial services and telecommunications. It was succeeded to combine requirements of the WTO and EAEU, proceeding at the same time from national interests". After accession to WTO of a measure the supports given by the state have to correspond to the international rules. At the same time the Kazakhstan enterprises have to learn to compete by rules of the WTO (Назарбаев, 2015: http://atameken.kz/ru/news/18804-nursultan-nazarbaev-vstuplenie-v-vto-budet-sposobstvovat-integracii-kazahstana-v-mirovuyu-ekonomiku).

Extremely important role for the law of the WTO is played by the mechanism on settlement of disputes. At the moment there are 164 members of WTO. In this regard the number of the disputes about observance of the obligations provided by "the captured agreements" by the states increases. In the WTO it is provided both the special mechanism of settlement of disputes and the mechanism of control of execution of such decisions. These mechanisms represent an instrument for ensuring of efficiency of activity of the WTO. Without research of this sphere it is impossible to carry out the comprehensive analysis of activity of this organization.

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 (Amırbekova A., Galyamov R.: 2016, 333).

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 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 emergence of disputes per se between the states has been carried out. By means of a method of scientific modeling options of 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 economy on most of which often there are disputes further to pay closer attention to all questions. The main conclusions have been received as a result of use the large volume of practice of the WTO in the field of settlement of disputes: work contains the analysis of a large number of decisions on settlement of disputes and also the documents concerning execution of these decisions.

Results and Discussion

Formation of system of settlement of disputes

The trade conflicts between the states in the XX- XXI century became means of achievement of definite geopolitical purposes.

From the moment of formation of the states and activation of international trade the centralized power took great pain to protect the producers and to win new sales markets. "Fighting" took place in trade constantly since antiquity, and may be from a primitive system. Besides, practically in any interstate military conflict there is always an opportunity to allocate an economic component.

The first known application of trade sanctions belongs to 432 – 430 BC when the Athenian authorities have imposed a ban on trade with the area the Shrew and as a result the Peloponnese wars happened.

Among the reasons of World War II the trade conflicts of the European countries, the USA and Japan among themselves are also called. "Practically any well-founded research of the reasons of fighting in the Pacific Ocean during World War II distinguishes from them embargo against Japan and trade negotiations which were conducted up to bombing of Pearl Harbour base.

In 1854 by forces of the admiral Perry of the USA "have opened" the market of Japan, having actually forced her to sign the trade agreement which provided establishment of a limit on the import duties of Japan of 5% for the majority of goods while the average tariff for the goods imported to the USA was 30% (J. Fallows: 2012. http://www.theatlantic.com/magazine/archive/2012/12/how-the-world-works/5854/2/).

After completion of World War II the international community has addressed liberalization of world trade again. 45 thousand tariff concessions which have made each other 23 countries and also emergence of the General Agreement on Tariffs and Trade in 1947(futher – GATT 1947) became result of post-war negotiations (The General Agreement on Tariffs and Trade 1947: https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm).

Despite certain achievements of the mechanism of settlement of disputes within GATT, it sparked criticism from experts in connection with wide use of non-judicial means of settlement of disagreements (so-called "diplomatic means") while, according to them, more tightly regulated mechanism would be more useful to GATT.

In 1975 – 1976 the conflict between Great Britain and Iceland concerning catching of a cod took place. Iceland, having threatened to close NATO military base in Keflavika, has achieved that the British fishermen were forbidden to approach coast of the island state closer, than on 200 miles. In general, the conflicts in fishing branch are frequent and very fierce. Besides a dispute of Great Britain and Iceland, it is possible to give "crab war" between North and South Korea as examples; the conflict because of catching of squids about the Falkland Islands which has begun in 1994 between Great Britain and Argentina.

In 1980 "automobile war" between the USA and Japan which corporations actively got on the American market of cars began. After introduction of the import duties price for cars in the USA has grown by 40%.

In 1993 between the EU and the Latin American countries which were supported by the USA protecting the interests of the multinational corporations "banana war" has burst. The main reason was release from duties of suppliers from the former European colonies and introduction of a tax in 176 euros for ton of the bananas delivered from the countries of Latin America. It was the longest trade conflict which has ended on December 15, 2009 due to the negotiations in Geneva. According to the contract signed by the parties, the European Union has undertaken to lower duties to 148 euros and then to 114 euros (Geneva agreement on trade in bananas- December, 2009: http://docsonline.wto.org/DDFDocuments/t/wt/l/784.doc).

In 1999 Europe and the USA argued concerning the American beef which according to the European Union, has been grown up by means of hormones. In reply the USA has raised taxes on the European goods. The conflict has been resolved in August of the same year with mediation of the WTO, the EU recognized improvement of quality of beef from the USA.In completion of historical digression, it is worth to say about another type of trade wars – wars for energy resources. Some experts claim that, for example, oil reserves were the main reason of war in Iraq (Clark W.: 2003, http://www.globalresearch.ca/articles/CLA302A.html).

Especially the USA actively participates in trade conflicts Besides already mentioned disputes over an occasion of chicken meat, cars, a salmon and bananas, they have experience of participation in "apple war" with Mexico which in 1997 has entered a compensation tariff for import from the USA of some grades of apples. It was the response to the "tomato war" lost by Mexico 1996 when Washington has established the minimum price at which tomatoes could be exported on the American market (Щебарова Н. Н.: 2015, 19).

Trade disputes take a variety of forms, including trade remedy cases brought under a country's own national laws – with oversight via the relevant WTO Agreements – and disputes before an international body like the WTO over whether a country has breached its trade agreement obligations. National trade remedy proceedings are essentially private rights of action, allowing domestic industries to petition their government to impose measures to offset the effects of unfair trade activity. Dispute settlement at the WTO, on the other hand, is an action taken by a government challenging the actions of another government. The bulk of WTO dispute settlement cases have always, and continue to this day, to involve challenges to a member government's use of its trade remedy laws. This continued trend is itself noteworthy, in that there are so many other more interesting disputes that could be the subject of dispute settlement – for example, non-tariff barriers that are blocking foreign market access, or lax enforcement of intellectual property rights. Part of the reason for this phenomenon is that countries are very defensive about their use of their trade remedy laws, and therefore are not inclined to halt their use without a fight. This reflects an important distinction in trade disputes as compared with investment arbitration: because WTO dispute settlement is government to government, it retains an element of diplomacy that cannot exist in investment arbitration where private litigants are involved. In fight for the markets and economic superiority today all arsenal accumulated for centuries is used because it is insufficiently just to offer qualitative goods at low price. The WTO plays one of key roles in these processes, regulating conducting similar wars, creating rules of the game.

Jurisdiction of the WTO concerning settlement of disputes

The World Trade Organization has begun the activity since January 1, 1995.

It is necessary to notice that the WTO provides for the states entering into this international organization a number of economic and legal advantages, among which:

– more favorable conditions for access to the world markets of goods and services on the basis of predictability and stability of development of trade relations with the WTO member-states;

– access to the mechanisms of the WTO on settlement of disputes providing protection of national interests and elimination of discrimination; regulation of trade in mainly tariff methods;

– refusal of use of quantitative restrictions;

– realization of the current and strategic trade and economic interests by effective participation in multilateral trade negotiations at development of rules of international trade

One of main goals as it was said of the WTO is ensuring operation of the mechanism on settlement of disputes between members of the WTO.

As a result of the Uruguay Round, which lasted from 1986 to 1994, and is considered as the most successful, General Agreement on Tariffs and Trade 1994 (further-GATT) the Marrakech Agreement on the Establishment of the WTO and a number of Appendices to this Agreement, which are referred to as "covered agreements", have been adopted and are included in the so-called "single undertaking" package (General Agreement on Tariffs and Trade -1994: https://www.wto.org/English/docs_e/legal_e/06-gatt_e.htm). These agreements are binding for all WTO members.

Generally, one of the distinctive features of the GATT is the new procedure for dispute resolution between member states in the WTO: the "Understanding on Rules and Procedures Governing the Settlement of Disputes" (DSU) (Understanding on Rules and Procedures Governing the Settlement of Disputes: https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm). There are those who state that the DSU might give a legal right to member states to defend their international and domestic trade by the means of imposition of certain measures, and reply to the unfair trade when other members fail to execute WTO legislation.

Qureshi believes that the dispute settlement system's significance for developing countries is very high. Firstly, as it was mentioned above, it provides them with legal rights. Secondly, it represents a "check against economic hegemony". Lastly, "it is a mechanism to ensure that systemic changes brought about through the WTO jurisprudence do not undermine developing country interests and concerns" (Asif H. Qureshi: 2003, 175).

However, Shaffer and Melendez-Ortiz support the view that WTO legislation prevents the use of DSS by members (especially developing countries), who do not have legal and financial capacities (Shaffer G.: 2010, 13).

This happens due to the fact that the system of dispute settlement requires the complicated procedure of "making claims", has limited submission times, an "appellate review system", as well as arbitration over execution and compensation awards.

The rules and procedures of this DSU shall also apply to consultations and settlement of disputes

between members regarding their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization and this Accord, taken alone or in association with any other of the agreements covered.

Peter van den Bossche defines the mechanism for resolving WTO disputes as "an obligatory and exclusive system that has a wide scope, including all issues on the settlement of disputes between members of the WTO on the compliance of the obligations assumed with the provisions of" covered agreements (Van den Bossche P.: 2013, 305).

Each member of the WTO recognizes as obligatory for itself a dispute settlement system in the WTO therefore the consent of the state which actions presumably violate obligations under agreements of the WTO to application of procedures of settlement of disputes isn't required. From the analysis of Art. 23.1.of the DSU it is clear that members of the WTO cannot take sole actions, they must address in DSB in case of doubts about respect of norms of the WTO by other state. Members of the WTO have no right to draw unilaterally a conclusion about existence of violations of norms of the WTO, cancellation or reduction of benefits or difficulty of achievement of the goals of the covered agreement (Art. 23.2. (a) DSU). The specified norm was a subject of consideration of Panel which has noted that in case of application by the member of the WTO of unilateral actionsbigger harm is done to both other member states, and the market in general. In the conclusions the group has emphasized that the WTO but not the certain member state has the right to define whether there was a violation of norms of the WTO or not.

The fact that the international trade disputes following from norms of GATT and the WTO weren't considered by either the International Court of Justice, or any other international jurisdictional institution, and were a consideration subject within the WTO confirms interpretation of Art. 23 of the DSU about exclusive jurisdiction of the WTO.

For all time of settlement of disputes in the WTO one more aspect of jurisdiction concerning questions of differentiation of jurisdiction of the national and international bodies was shown, by using conventional in science of international – a dispute on domaine réservé. So, in case "India – Protection of patents for pharmaceutical and agrochemical products" in the appeal India has declared absence at Panel of the right to do the conclusions about the national law by means of which requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (further – TRIPS) are fulfilled (India – Patent Protection for Pharmaceutical and Agricultural Chemical Products: WTO Doc. WT/DS50/AB/R, 1998).

However, the Appellate Body has specified that in this case the group didn't give interpretation of the law of India; the group considered the law of India only for establishment of implementation of her obligations within the Agreement of TRIPS. The Appellate Body thus has specified that those acts of the state which are adopted within a coverage of agreements of the WTO and for implementation of obligations of the state under these agreements are excluded from the sphere of domaine réservé of the state and can be a consideration subject within the mechanism of settlement of disputes of the WTO.

In spite of the fact that the disputes in the sphere of international trade resolved within the WTO have a commercial basis and are connected with the enterprise purposes (key among them – generation of profit) specific individuals, legal or physical, the system of settlement of disputes created within the WTO provides that in the course of settlement of dispute only members of the WTO are able to participate. Respectively, the WTO State Parties within the system of settlement of disputes are presented by the governments. Only the governments of member countries on behalf of members of the WTO have the right for initiation of procedures of settlement of disputes, giving of representations, complaints, statements and other documents. Representatives of the governments of members of the WTO participate in meetings, hearings within settlement of disputes.

In this regard there is a question how those persons whose commercial interests are infringed by the disputable situation considered within the mechanism by the WTO (further – "Interested persons"), can influence results of consideration of a dispute, participate in this procedure. Because these enterprises or businessmen – the persons who are directly interested in the outcome of the case (for example, in cancellation of the trade restrictions contradicting rules of the WTO). Participation of representatives of Interested Persons of member states of the WTO in consideration of disputes is directly not provided by the DSU. In practice it turns out that Interested Persons, choosing the strategy of behavior for protection of the commercial interests, proceed from the principle "what isn't forbidden, it is authorized" and use the opportunities given by both internal, and international law, in particular different options of indirect participation in process on settlement of disputes in the WTO.

First, Interested Persons actively address the governments of the states, which violate DSU, demanding from them to stop violation of rules of law of the WTO, and to the government of the state (the state of registration of legal entity). In this case the member of the WTO, participating in procedures of settlement of disputes, represents the interests and protects the rights of the domestic enterprises. Examples when consideration of a dispute within the WTO has been initiated by individuals, so, the largest Japanese producers of steel – Nippon Steel Corporation, are widely known to NKK Corporation, Kawasaki Steel Corporation – initiated the appeal Japan within the procedure of settlement of disputes of the WTO the anti-dumping measures of the USA entered concerning import of some names flat carbonaceous hot-rolled mill products.

Secondly, Interested Persons can admit not direct, but so-called "behind-the-scene" participation in consideration of disputes in the WTO (active assistance to the government), for example, by rendering to the government services in providing special, industry information, research of the facts and collecting proofs and also legal support within work on preparation and conducting trial to the WTO. Among the known examples of rendering by Interested Persons of similar support to the governments it is possible to call assistance of the Kodak and Fuji companies in Japan – Measures Affecting Consumer Photographic Film and Paper (Panel Report, Japan – Measures Affecting Consumer Photographic Film and Paper, WT/DS44/R), or the Bombardier and Embaer companies in Brazil – Export Financing Programme for Aircraft. In this regard the position of Appellate Body on the one whom the states can attract to their representation within the procedure of settlement of disputes in the WTO deserves special attention.

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 character of the procedure. The Appellate Body, however, has noted that nothing in texts of agreements of the WTO and also in usual rules of international law, and in practice of settlement of disputes by the International Courts of Justice forbid to the member of the WTO independently define the persons for hearings in Appellate Body. However it has explained that it doesn't affect consideration of a dispute Panel. Following the above-stated conclusion of Appellate Body, at case "Indonesia – Cars" the Panel has allowed private advisers to be present at meetings as a part of delegation of the member state. Thus, Interested Persons can attract to representation of interests of the state, both when considering the case by Panel, and within oral hearings in Appellate Body, lawyers, competent of the field of the international commercial law, even if they aren't in public service (European Communities Regime for the Importation, Sale and Distributions of Bananas: WTO Doc. WT/DS27/15, 1998-2012).

Also within consideration of another matters , for instance in the case EU-Asbest 28 (European Communities — Measure Affecting Asbestos and Products Containing Asbestos: WTO Doc. WT/DS135/AB/R, 2001) and "the USA – Countervailing duties for production from lead and bismuth from Great Britain" (United States Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom: WTO Doc. WT/DS 203/AB/R, 2013), the Appellate Body has specified that the Panel has a right, but not a duty to take reports of amicus curiae (friends of court) into account. In Ancient Rome amicus curiae were called the persons who didn't have direct interest as a result of consideration of the case and presenting on own initiative to court the reasons on matters of law or the fact.

Fortunately, any member can file a complaint with the WTO against another member they believe is dumping, unfairly subsidizing or violating any other trade agreement. If the WTO decides the case is valid, it has the authority to levy sanctions on the offending country.

The staff will then investigate to see if a violation of any multilateral agreements has taken place.

Not surprisingly, the United States has been either a complainant or defendant in about half the WTO disputes. The Office of the United States Trade Representative (USTR) represents the United States in these cases. As China's economy grows, it is involved in more trade disputes.

The benefit of the WTO process is it prevents the damaging consequences of trade protectionism. That's when countries retaliate against offending country's dumping, tariffs or subsidies. That creates a downward spiral which hurts both countries' economic growth.

Trade protectionism helped extend the Great Depression, where global trade fell by 25%. Nations can apply to the WTO to resolve their dispute instead of raising tariffs.

In July 2016, the United States filed a dispute with China. It claimed China was taxing exports of high-demand raw materials.

These include antimony, graphite, and magnesia. China mines more than two-thirds of the world's supply of each of these metals. The export tax increased the prices of these exports between 5% to 20%. That put U.S. high-tech companies, such as Qualcomm and DJO Global, at a disadvantage. They must pay more for these essential raw materials than Chinese-based companies. That makes their prices higher on the global market. Their only solution is to open Chinese-based manufacturing plants. That takes jobs away from American workers (Amadeo: 2018).

The DSU has a new unified dispute resolution mechanism. The rules and procedures contained in the DSU apply to all types of disputes arising from the areas of regulation of all "covered agreements" that are part of the WTO agreement system.

In the system of law of the WTO the creation of the Dispute Settlement Body is provided.

The General Council of the WTO performs functions of the DSB. Thus, DSB consists of representatives of all member states of the WTO.

According to article 2 of the DSU the Body for settlement of disputes possesses a wide range of powers: "DSB has powers to create Panels, to accept reports of Panels and Appellate Body, to control implementation of decisions and recommendations and to allow stay of concessions and other obligations which follow from the covered agreements".

It should be noted that DSB directly isn't engaged in consideration of disputes between member states. The main goals of DSB are to control over the course of consideration of a dispute and execution of decisions and also ensuring functioning of DSB's provisions.

Creation of DSB has allowed to regulate the mechanism of settlement of disputes of the WTO. By means of this mechanism any member state of the WTO can try to obtain observance by other members of the WTO of the assumed liabilities and demand cancellation of an unreasonable measure or other violation of their interests.

On the basis of provisions of DSB it is possible to allocate the main stages of settlement of dispute: carrying out consultations, consideration of a dispute by Panel, consideration of a dispute by Appellate Body.

Besides the main stages of consideration of a dispute in the WTO there is also a number of additional conciliatory procedures, such as good offices, conciliation procedure and mediation.

1) Additional procedures of the mechanism of settlement of disputes of the WTO

These procedures have a voluntary nature, that is can be applied only by mutual consent of the parties.

I.I. Lukashuk defines "good offices" as activities of the third party for establishment of direct contact between the parties of a dispute (Лукашук: 2005).

In other words, when electing this conciliatory procedure, the third party doesn't take part in consideration of a dispute, and renders only assistance in negotiation. For example, provides the place for negotiation. During mediation the third party takes an active position in the course of settlement of a dispute (Колосов: 2009).

However, the intermediary independently doesn't study a circumstance of the considered dispute, and listens to positions of the parties and makes the offers, proceeding from the provided information. The decision intermediaries aren't obligatory for the parties of a dispute.

Conciliation procedure also provides active participation of the third party, besides in this case the third party is allocated with powers on studying of circumstances of the considered dispute (Трунк-Федорова: 2005).

As it has been noted above, these procedures have a voluntary nature and can be applicable only in cases of mutual consent of the parties. So, applications of these procedures in practice is carried out extremely seldom.

Stages of a dispute consideration within the WTO:

1) Consultations

According to article 4 of the DSU the first stage of settlement of dispute is consultations.

Cases when member states of the WTO can resort to the mechanism of settlement of disputes are the following:

1) In case actions of other member state of the WTO violate provisions of «covered agreements», thereby complicating achievements of any purpose of this agreement for the first state, either canceling or reducing this or that advantage provided by this agreement;

2) In cases of application by the state of the measure which isn't connected with violation of provisions of «covered agreements», but also involving the consequences provided by point 1;

3) In any other situation which also involves cancellation and reduction of benefits.

Thus, the member state of the WTO can initiate a stage of carrying out consultations if it considers that cancellation or reduction of benefits takes place.

The state requesting carrying out consultations needs to notify DSB and the relevant Council and Committees of the WTO. The state to which the request for carrying out consultations has to perform

the following operations: firstly, to answer a request within 10 days; secondly, to enter negotiations within 30 days from the moment of receiving request for carrying out consultations if the parties haven't agreed about other.

If the state which has received inquiry doesn't execute one of decree circumstances, then the state – the applicant has the right to demand immediate establishment of Panel (the following stage of the procedure of settlement of dispute). Also, if consultations have begun, but within 60 days, the parties haven't come to the common decision, then the state applicant also has the right to pass to the following stage of settlement of dispute.

Main objective of consultations, according to Peter Van den Bossche is, that carrying out consultations helps the parties of a dispute to understand actually current situation and to realize the legal requirements entering a dispute subject. Besides, consultations allow to resolve a dispute in the diplomatic way that involves successful resolution of conflict, without resorting to other procedures within the WTO.

Consultations are an obligatory stage. Nikulin E.N. defines this stage as an obligatory preliminary stage of consideration of a dispute within which about 53% of disputes areresolved (Nıkýlın: 2014, 78).

If during carrying out consultations states couldn't agree about the uniform decision, then the party applicant has the right to demand creation of Panel for settlement of dispute.

2) Consideration of a dispute by Panel

Panels are formed of highly qualified specialists who taught the international commercial law or trade policy, or had publications in this area, or served as the senior officials concerning trade policy of one of WTO member states. These requirements to candidates are established in the article 8 of the DSU.

The Panel is formed by the Secretariat which proposes to the parties of a dispute nominated for the choice as Panel. Also in compliance with article 8 citizens of the states of a dispute, or the citizens acting in this dispute as the third parties can't be a part of Panel. So, according to S.Yu. Kashkin "The persons designated by members of Panel irrespective of the official capacity faces, are obliged to carry out the tasks only in personal quality and not tied by any instructions from members of the WTO" (Kashkın: 2014, 112).

Powers of Panel are defined in the special document on competence – Terms of reference.

Main objectives of Panel are to study the question submitted to DSB and to draw conclusions which will help DSB to formulate recommendations or to make the decision.

The Panel acts ad hoc,which means that it is not permanent body like Appellate Body, and is created for consideration of each concrete case.

It is connected, first of all, with the requirement about national identity of candidates for the structure of Panel and also with criteria of the professional qualities necessary for selection (Baimagambetova Z.M., Gabdulina A.: 2017, 70).

Considering that such countries as the EU and the USA, most often act as the parties of a dispute or the third party in consideration of a dispute, it is obvious that citizens of these countries extremely seldom become members of Panel (Cottier Th.: 2003, 187).

Firstly, within 20 days from the moment of decision about creation of Panel, it accepts the document on the powers. Secondly, within 20 days the issue of the structure of Panel is resolved. Considerations of a dispute by Panel can't exceed 6 months, however, this term can be prolonged, if extra time is required, but the term of consideration of the case can't exceed 9 months. At the end of consideration of a dispute by Panel the final report is created and sent to the DSB for a statement.

So, article 15 of the DSU has provided drawing up the interim report which comprises: descriptive part and conclusion. The interim report is sent to the parties of a dispute and if during the term established by Panel, the parties don't direct the comments, then this interim report is recognized as final. The final report is subject to the approval by the method of negative consensus.

The final report has to be approved not less than 20 days from the moment of distribution between member states in time, but this term can be prolonged up to 60 days. However, the report can be not approved in case if the party or both parties have reported about the desire to appeal against the report of Panel in Appellate Body.

3) Appellate Body

Activity of Appellate Body and order of appellate procedure is regulated by the DSU and the Document "Working Procedures of the Appeal".

Only the parties of a dispute have rights for the appeal; all third parties can only furnish written explanations on matter, and in cases of need to be listened in Appellate Body.

The parties have the right to appeal against the decision of Panel only on matters of law. The Appellate Body doesn't consider and doesn't estimate the actual circumstances of a dispute. In other words, the Appellate Body can't "go beyond" the report of Panel and can't estimate the actual

circumstances of this dispute; and also can't return case for new consideration of Panel.

According to article 17 of the DSU, the Appellate Body can confirm, change or cancel withdrawals of Panel on settlement of a dispute. The Appellate Body includes persons, who have proved the competence in law, international trade and in the general questions falling within the scope of "covered agreements".

The Appellate Body consists of seven members, but each concrete case is resolved by three members of Appellate Body, one of whom is a chairman.

Members of Appellate Body are elected for the term of 4 years, however, this term can be prolonged for 4 years. The Appellate Body has to resolve the complaint within 60 days, however this term can be prolonged, but can't exceed 90 days.

Appellate Body, as well as Panels submit recommendations in the form of reports for further acceptance by DSB.

It should be noted that trial in Appellate Body is confidential, along with consideration of a dispute by Panel and consultations.

It is necessary to consider a question of confidentiality of process of settlement of dispute in more detail.

The procedure of consideration of a dispute within the WTO is confidential. Only the representatives of parties are able to be when considering the case (Smbatıan: 2014, 63).

Intermediate reports and also final reports of Panel and Appellate Body are confidential until they aren't submitted to the parties of a dispute. Reports become available for public acquaintance when they are submitted to members of the WTO.

Even during the initial stage of the DSU mechanism for resolving disputes, the consultations stage, there are problems with the degree of clarity required in requesting consultations. Articles 4, 6 and 7 of the DSU require that the parties requesting panels, should the consultations stage fail to yield a compromise, fully explain the basis of their complaints. Once claims go to a panel, parties cannot revise them at a later time. Such a requirement only makes sense in ensuring the fairness of the panel hearings. To draw a parallel, United States Federal Courts prohibit the altering or amending of pleadings once entered unless such an amendment would not unduly prejudice the other party. Unfortunately, the current DSU fails to state how clear complaints must be during the consultations stage." This is a substantial shortcoming of the entire DSU process. It is fundamentally unfair if one party enters into an attempt to avoid the formal dispute settlement process without being fully informed.

Disclosure of given information can entail negative consequences for policy or economy of the concrete state and its citizens, that is why the principle of confidentiality is designed to protect the most important information about circumstances.

So, for example, the USA is among the countries supporting the solution of this problem aside providing more transparency of the procedure of the WTO.

However, in the statement for reforming of system of settlement of disputes, they also provide need of maintaining confidentiality of information. On the website of the Trade Mission of the USA the document containing offers on improvement of system of settlement of disputes of the WTO and their position about confidentiality and transparency is published. This position is expressed in need of modification of the DSU, which will allow to provide openness of statements of the parties of a dispute and also to provide publicity of consideration of a dispute of Panel and Appellate Body, by publication of the written version of the course of consideration of the case by Panel and hearings of Appellate Body, but only in that part which doesn't contain confidential information.

Thus, the approach offered by the USA seems to be the most compromise. The principle of confidentiality of the procedure of consideration of disputes in the WTO can't be completely liquidated as it will cause negative impact on the political and economic interests of the states – the parties of a dispute. However, publication of the written version of hearings and also statements of the parties, will allow to provide public control over the course of consideration of the case.

However, during the Uruguayan round, big support was got by the position maintaining the principle of confidentiality. Confidential character of the procedure of consideration of a dispute allows avoiding political pressure from the most developed states, to exclude lobbying of interests of this or that country by consideration of a dispute and also to provide adoption of the reasonable and objective decision independent of a world political situation.

According to the article 19 of the DSU if the Panel or Appellate Body come to a conclusion that the measure applied by one state doesn't correspond to "covered agreements", then they make decisions and recommendations (further – decisions) about reduction of this measure in compliance with the obligations within the WTO.

As it has been noted earlier, Panels and Appellate Body make decisions in the form of the final report which is sent to DSB for a statement.

Thus, DSB doesn't make decisions as by rules of negative consensus, adoption of recommendations has automatic character. Feature of "negative consensus" is that for adoption of decision only the "silent" consent of the states – members of the WTO is necessary.

Thus, practical use of the principle of "negative consensus" gives automatic character to all procedure of settlement of disputes in the WTO, it is difficult to present that the state – the member of the WTO in advantage which that has been passed or other the decision will express the disagreement with adoption of this decision.

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

Conclusion

In this work it is shown that in the second half of XX-nd century many states of the world have begun to use widely regulation of the international trade relations by means of multilateral contracts. For the purpose of development of the international economic cooperation in 1947 they have signed the General Agreement on Tariffs and Trade, and in 1994, on its basis – the Agreement on creation of the World Trade Organization.

Nowadays, The World Trade Organization is the most powerful international economic organization. Its universal character is shown in the whole range of the international agreements devoted to various aspects: the organization of foreign trade, ensuring equal access to the markets, freedom of movement of goods, services, legal regulation of technical barriers in trade, protection of the competition, regulation of industrial policy and agriculture in member states and also other the questions, major for modern economic law and order.

Within the WTO the Arrangement on the rules and procedures regulating settlement of disputes has been accepted. Many problems which have appeared as a result of the practical application of GATT-47 have been solved due to systematization of practice on settlement of disputes, establishment of terms of procedures of dispute settlement. Besides, one of the main GATT-47 problem , concerning use of the principle of «absolute consensus» also has been solved by introduction of new rules about adoption of proceeding decisions by means of so-called «negative consensus» which has given automatism to all system of decision-making of DSB.

The authosr has mentioned certain problems facing developing countries in WTO litigation. Some developing countries are reluctant to enter into discussions with developed countries. This happens because of several factors. The first factor is lack of legal capacity, such as the shortage of competent specialists, lack of legal expertise in WTO law, and no clear division of responsibility between public bodies within the government structures. The second factor is lack of domestic resources in terms of both finance and duration of proceedings. Participation in disputes is very expensive and might take a very long time. Consequently, the duration of the dispute process might lead to significant expenses being incurred. The third factor involves political issues or the fear of political and economic pressures that emerge when developing countries cannot join discussions critically due to the on-going concurrent financial support from developed countries. The fourth factor concerns language barriers. The complexity of processes does not fully allow representatives of developing countries to equally compete in foreign languages with native speakers during disputes. They struggle to reply and analyze opponents` arguments as quickly as native speakers, even if fluent in the languages of the WTO: English, French and Spanish.

To resolve such problem the budget of the WTO and the number of its experts needs to be expanded in order to successfully provide equal opportunities to all its participants. Not all states are informed about their rights for consultation with well-qualified specialists. The DSB should explain states their rights and opportunities concerning participation in the WTO disputes.

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