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Abstract. In global processes of international trade, treaties, trade conventions and international trade conventions play an important role in the improvement of macroeconomic situation and increase of the growth of income. The regulations of World Trade Organization (WTO) are equal for all its Member States. The author's primary objective was to study the documents of WTO and assess their impact on the world trade organization, largely through the medium of two latest multilateral agreements: the general agreement on trade in services (GATS) and the agreement on trade-related aspects of intellectual property rights (TRIPs). Thereby the article may serve as a useful resource for students.

Keywords: General Agreement on Tariffs and Trade, *Most Favoured Nation*, Human Rights, Principle Non-Discrimination, World Trade Organization, International Law.

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Gruzija

Starptautisko tirdzniecības tiesību institūts

Anotācija. Globālos procesos starptautiskai tirdzniecībai, parastas tirdzniecības vienošanām un starptautiskās tirdzniecības konvencijām ir svarīga nozīme makroekonomiskās situācijas uzlabošanā un ieņēmumu pieaugumu palielināšanā.

Vispasaules Tirdzniecības Organizācijas (VTO) nolikumi ir vienādi visām tās dalībvalstīm.Darba pamata mērķis ir – Vispasaules tirdzniecības organizācijas dokumentu tekstu izpēte un to ietekmes novērtēšana, galvenokārt, pamatojoties uz diviem jauniem daudzpusējiem līgumiem. Viens no tiem ir Ģenerālā vienošanās par pakalpojumu tirdzniecību (GATS), otrs – Vienošanās par intelektuālā īpašuma tiesību tirdzniecības aspektiem. Tādējādi, mans zinātniskais darbs var kalpot par noderīgo informācijas avotu studentiem.

Atslēgas vārdi: ģenerālā vienošanās par pakalpojumu tirdzniecību, vislielākās labvēlības režīms, Cilvēktiesības, nediskriminēšanas princips, Vispasaules Tirdzniecības Organizācija, starptautiskās tiesības.

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Аннотация. В глобальных процессах, обычные международные торговые договора и Конвенции по международной торговле играют важную роль, позитивно влияя на макроэкономическую ситуацию и способствуя расширению роста доходов.

Положения Всемирной Торговой Организации (ВТО) в равной степени распространяются на все Страны-члены ВТО. Основная цель моей работы заключается в изучении текстов документов Всемирной торговой организации и оценки воздействия, в основном, двух ее новых многосторонних соглашений. Это Генеральное соглашение по торговле услугами (ГАТС) и Соглашение по торговым аспектам прав интеллектуальной собственности (ТРИПС). Тем самым, моя научная работа может служить в качестве полезного источника информации для студентов.

Ключевые слова: Генеральное соглашение по торговле услугами, режим наибольшего благоприятствования, права человека, принцип недискриминации, Всемирная Торговая Организация, международное право.

Introduction

In today's highly interlinked and globalised world, it is essential for each country to ensure economic stability so that both local communities and communities living in the neighboring countries could feel safe. In this global process international trade plays a very important role for economic development. Despite a considerable decline in trade barriers in the past fifty years, there still exist significant barriers for trade across the world. This is especially puzzling given the fact that, once we take the retaliation by the trade partners into account, these tariff barriers are typically welfare reducing even for the large countries. This puzzle has been explained by several political economy models in the course of research work. The author have decided to look at the provisions and implications of WTO agreements from a different angle [1]. Our understanding can be advanced if we consider the roles they are playing in the globalization of law. To do so, we shall need to draw on the assistance of theoretical concepts from the field of the socio-legal studies. The author thought that an understanding would be aided by an empirically minded idenfication of the operation and impact of the agreements.

The goal of the present research is to overview problems in the sphere of trade among legalities, and to provide readers with an overview of some documents of World Trade Organization and the Principle of Non-Discrimination in International Trade.

The object of the research is World Trade Organization (WTO) which officially commenced its activity on 1 January 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT), which commenced in 1948. With 150 member countries, and 29 currently in the process of accession, the World Trade Organization (WTO) is the most important body governing international trade.

The objective of the research: is to discuss international trade and legislation, to analyse the core of legal pluralism and inter-legality, WTO interface between legalities and finally International standards of the Principle of Non-Discrimination. International trade is conducted mainly under the rules of the World Trade Organization. Its non-discriminating rules are of fundamental importance. In essence, they require WTO members not to discriminate among products of other WTO members in trade matters (the most favoured-nation rule) and, subject to permitted market-access

limitations, not to discriminate against products of other WTO members in favour of domestic products (the national treatment rule). The interpretation of these rules is quite difficult. Their reach is potentially so broad that it has been felt that they should be limited by a number of exceptions, some of which also present interpretative difficulties. Indeed, one of the principal conundrums faced by WTO dispute settlement is how to strike the appropriate balance between the rules and exceptions [2].

Non-discrimination is a key concept in WTO law and policy. There are two main principles of non-discrimination in WTO law: the most-favoured-nation (MFN) treatment obligation and the national treatment obligation. In simple terms, the MFN treatment obligation prohibits a country from discriminating between countries; the national treatment obligation prohibits a country from discriminating against other countries. So in this scientific work the author also examines these two principles of non-discrimination as they apply to trade in goods and to trade in services [3].

Legal pluralism and inter-legality

The first is the concept of legal pluralism, the idea that social fields are likely to incorporate a multiplicity and diversity of legalities. We shall identify several varieties of legality further on. Under conditions of globalization, such legal diversity often comes to be regarded as a difference. From the viewpoint of some traders, this difference gives rise to systems frictions. They would like to see such friction eliminated. But for others it represents alternative sources of expression and ordering that ought to be preserved and promoted. We shall be suggesting that the subsuming phenomenon is one of inter-legality [4]. Inter legality is an uncommon term which Bonaventura da Sousa Santos derived from postmodernizm's literary interests in inter-textuality. Globalization can be expected to widen and deepen the phenomenon of inter-legality. Such inter-legality is spreading wider across the world as many more countries open up to the global flows of goods, people, money, information and services. Inter-legality is also extending deeper down into the layers of each locality as foreign suppliers seek not only to ship finished goods but also to provide services and make investments. In Keeping, we shall see that the WTO agreements are still concerned with cross-border supply of personal services and intellectual resources. This supply taking on added dimensions, is greatly enhanced by technological innovations. In adition, the agreements are concerned with the inter-legalities involved in the establishment of a commercial presence or the presence of natural persons within the locality. In establishing this presence, a foreigner encounters a rich variety of legal arrangements which have been made for domestic production and provision, indeed for socially significant activities such as legal services, farming and communications media. These local legal arrangements involve not only legislative measures but also judicial and administrative norms and all manner of unofficial customs and practices.

We think that the foreign legality need not be centred on one nation state or another. The studies of globalization show that certain emerging legalities are much freer, floating and self-referential. There is interest for instance in the re-emergence of a supra-national *lex mercartoria* in the business field [5]. Built on transnational contracts, model codes and private arbitration, it gives its own legal character to financial transactions, licensing agreements, strategic alliances and corporate mergers. Through the media of electronic commerce, these legal arrangements might assume even more ethereal and transitory manifestations. Thus, the local legalities which foreigners may encounter need not be grounded on the official public laws of the national states. We need not treat local legalities as entirely synonymous with national sovereignty. Local legalities might be said to embrace a host of private as well as public legalities. When the laws in the statute books converge, the foreigner only encounters further layers of normative ordering. This ordering can run to the closed cooperative relationship which develops between local businesses when they organize the production or distribution of services. Alternatively, it might be found in the customary arrangements which indigenous people make to manage and share native resources. These private and unofficial legalities receive various degrees of recognition and support from the national state.

The author does not think that globalization produces convergence or homogeneity in law.

While, certainly this tendency is present in globalization, research shows why the difference remains sustainable. For a variety of reasons, global suppliers find that they still have to negotiate the richness of local diversity. They need to call on the legal support, primarily of the national state, to open a path for them and safeguard their passage. But, perversely, the same process of globalization has the effect of undermining the competence of the national jurisdictions to which they turn for support.

The WTO Interface between legalities

These features of globalization stimulate the efforts to enter into agreements such as WTO agreements. The author argues that, if we are to understand the agreements and their role in the globalization of law, we need to add a less familiar concept of the interface to our array of conceptual tools [6]. Like a software interface of computer technology, our interface operates to connect legalities, to make them work together, but it is not necessary to suggest a full integration of the legalities which are interacting or even ordering them in a strictly hierarchical fashion. We might also expect the WTO interface to favour global legalities over local ones. We need to gauge the implications of looking for certain traditional ways of dealing with these endeavours and services (certation legalities) as barriers to trade. The emphasis is placed on national governments to refashion their regulations as trade – neutral measures or as legitimate exceptions to the norms of trade law. This means that, at the least, local legalities must be mindful of and receptive of the legalities which foreigners bring with them. They should become more cosmopolitan. But we cannot expect all the legalities to survive in a harmonious coexistence. The WTO is pushing in a particular direction.

The WTO agreements can be linked to a neoliberal agenda of regulatory reform. The objective is not just to ease conflicts between foreign and local legalities but to promote efficient regulation around the world. This agenda extends beyond free trade in the sense of breaking down barriers at the border. Its program for reform behind the border seeks to achieve two more ambitious goals. It aims to ensure that markets are accessible to foreign commercial suppliers while at the same time they are secure for their investments. There are different ways of characterising this package of reforms. They can be seen as a blend between access and security, liberalisation and control, free and fair trade, or deregulation and re-regulation [7].

Such a program requires a re-orientation, not just of legalities which were designed to protect local industries form foreigh competition, but ultimately of a wide range of legalities with preoccupations other than trade, such as professional conduct, natural heritage and media diversity. One immediate target of the agreements is the kind of nationally based, industry-specific legislation which limits foreign participation, guarantees space for local and less powerful producers, and insists on meeting public service obligations. We can expect the agreements to challenge these regulatory legalities and enlarge the scope for more generic bodies of business law, such as private property and contractual rights to operate in their place. But the new agreements go further than this, as they begin to prescribe the content of that business law directly. The laws of intellectual property and competition provide two early tests of the prescriptive nature of that content.

However, we should appreciate that, in keeping with the nature of mediation, the agreements remain tentative in their approach to industry specific regulation. Similarly, their specifications of business law remain incomplete. Moreover, it is not their view to treat intellectual property or even competition law solely as business law. Therefore, we would not portray the agreements as single minded. In particular, we would like to see whether they lend support to independent and alternative producers, those producers, we might say, who cannot make use of the same powers of capital and technology as the largest operators in a laissez-faire global market. What we are asking for is the breadth of access which the agreements give to the rules and resources of globalization.

Non-discrimination

Non-discrimination is a key concept in WTO law and policy. There are two main principles of non-discrimination in WTO law: the most favoured nation (MFN) treatment obligation and the national treatment obligation. In simple terms, the MFN treatment obligation prohibits a country from discriminating between countries; the national

treatment obligation prohibits a country from discriminating against other countries. Discrimination between, as well as against, other countries was an important characteristic of the protectionist trade policies pursued by many countries during the economic crisis of the 1930s. Historians now regard these discriminatory policies as an important contributing cause of the economic and political crises that resulted in the Second World War. Discrimination in trade matters breeds resentment among the countries, manufacturers, traders and workers which are discriminated against. Such resentment poisons international relations and may lead to economic and political confrontation and conflict [8]. The importance of eliminating discrimination in the context of the WTO is highlighted in the Preamble of the WTO Agreement where the 'elimination of discriminatory treatment in international trade relations' is identified as one of two main means by which the objectives of the WTO may be attained.

There are two main principles of non-discrimination in the WTO: the most-favoured-nation (MFN) treatment obligation and the national treatment obligation. In simple terms, the MFN treatment obligation prohibits a country from discriminating among other countries; the national treatment obligation prohibits a country from discriminating against other countries. These principles of non-discrimination apply not in the same manner with respect to trade in goods, as well as trade in services. The key provisions of the GATT 1994 that deal with non-discrimination in trade in goods are laid down in Article I, on the MFN treatment obligation, and Article III, on the national treatment obligation. The key provisions on non-discrimination in the GATS are given in Article II, on the MFN treatment obligation, and Article XVII, on the national treatment obligation [9].

The principal purpose of the MFN treatment obligation in Article I of the GATT 1994 is to ensure equality of opportunity to import from, or to export to, all WTO Members. There are three questions which must be answered to determine whether or not there is a violation of the MFN treatment obligation of Article I:1, namely:

- the measure at issue confers a trade 'advantage' of the kind covered by Article I:1;
- the products concerned are 'like' products; and,
- the advantage at issue is granted 'immediately and unconditionally' to all like products concerned.

As is the case with the MFN treatment obligation under the GATT 1994, the principal purpose of the MFN treatment obligation of Article II: 1 of the GATS is to ensure equality of opportunity for services and service suppliers of all other WTO Members. There are three questions which must be answered to determine whether or not the measure violates the MFN treatment obligation of Article II: 1, namely:

- the measure at issue affects trade in services;
- the services or service suppliers concerned are 'like' services or service suppliers; -and, less favourable treatment is accorded to the services or service suppliers of a Member.

To answer these questions, we examined the norms and processes of the agreements. A particular interest here is how law is used to enhance the WTO's own capacity to mediate as well as to discipline the relationships between legalities. The agreements do not decide which national jurisdiction is to apply in the way that traditional conflict of law doctrines does. We see that this kind of choice is becoming increasingly problematic. Instead, the agreements proceed from a principle of non-discrimination. This principle has two component norms, called most favoured nation treatment and national treatment. The essence of non-discrimination is that national legalities treat foreigners no less favourably: the point of comparison for most favoured nation treatment being the treatment of other foreigners, the point of comparison for national treatment being the treatment of locals. The liberal norms of non-discrimination may seem innocuous and unobjectionable to apply. It is said in particular that both most favoured nation treatment and national treatment do not prescribe the content of a host country's regulatory standards. They only need to apply the standards they choose to adopt equally among foreigners and locals. When the norms are applied in the fields of personal; servicing and intellectual endeavours, that require treating foreigners no less favourably, a certain tendency emerges that tends to narrow

the regulatory legalities or modalities which are available to national governments when they pursue their preferred policies. National treatment is significant because countries do wish to apply restrictions to foreigners they have sought to treat differently. They wish for instance to protect local industries from foreign inroads or to assert regulatory competence over foreign operators. National treatment may say that formally identical treatment can actually constitute less favourable treatment, for example if the foreigner finds it more onerous to meet the same requirement as the local. Such standard means that foreigners cannot be treated simply according to local legalities. It requires the local legality to make concession to the foreigner's legality.

Conclusion

Finally the author comes to the conclusion that in liberalising supply in sectors like finance, law and communications together with such modes as the movement of people and direct foreign investment, the WTO is altering the balance in favour of transnational business. It is still not clear enough how ready the WTO is to support the kind of re-regulation needed to ensure that these businesses do not cease to be.

WTO legislation and regulations are very important for all its member countries. Also WTO is the guarantor of economic stability. But we think that in today's global world it is necessary to create a stable, simple and liberal legislation, which will guarantee the protection of human rights in order to avoid discriminatory facts, which is a biggest problem worldwide. In this sphere the author's analysis shows that agreements work on the content of legalities in a number of ways. For example, the agreements make exceptions for certain non-conforming regulatory measures, but the measures must nonetheless satisfy disciplines which the agreements prescribe. Thus the treatment of a foreigner may be deemed satisfactory, if it is part of a formal procedure for the recognition of the home country legality, or when it is in line with an agreed international standard.

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