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THE MULTIFACETED LANDSCAPE OF WTO LAW: A COMPREHENSIVE EXAMINATION OF ITS PRINCIPLES, RULES AND INSTITUTIONAL STRUCTURE

Abstract: This paper examines the fundamental tenets, regulations, and institutional framework of the World Trade Organization that constitute the intricate landscape of WTO jurisprudence. The author delves into the intricate and specialized character of WTO law, elucidating a diverse array of topics pertaining to the intersection of international trade and legal principles. Particular emphasis is placed on the foundational principles of equitable trade and the WTO, encompassing matters of legal pluralism and non-discrimination. Drawing upon a comprehensive examination of the multilateral panorama of WTO legislation, the presented paper makes a substantial contribution towards fostering a more profound comprehension of international trade regulation, trade transformation, and extant clearances.

Keywords: International trade, basic rules of WTO, trade without discrimination

JEL classification: F13, F53, K33

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მსოფლიო სავაჭრო ორგანიზაციის იურისპრუდენციის მრავალმხრივი ლანდშაფტი: პრინციპების, წესებისა და ინსტიტუციური სტრუქტურის ანალიზი

აბსტრაქტი. წინამდებარე ნაშრომი განიხილავს მსოფლიო სავაჭრო ორგანიზაციის პრინციპებს, წესებს და ინსტიტუციურ სტრუქტურას, რომლებიც ქმნიან მსო-ის იურისპრუდენციის მრავალმხრივ ლანდშაფტს.

ავტორი იკვლევს მსო-ის სამართლის კომპლექსურ და სპეციალიზებულ ხასიათს, განიხილავს საერთაშორისო ვაჭრობასა და სამართალთან დაკავშირებული საკითხების ფართო სპექტრს. განსაკუთრებული ყურადღება გამახვილებულია სამართლიანი ვაჭრობისა

და მსო-ის ძირითად პრინციპებზე, მათ შორის სამართლებრივი პლურალიზმისა და დისკრიმინაციის აკრძალვის საკითხებზე.

მსო-ის კანონმდებლობის მრავალმხრივი ლანდშაფტის ანალიზის საფუძველზე, წარმოდგენილი ნაშრომი ხელს უწყობს საერთაშორისო ვაჭრობის რეგულირების, ვაჭრობის ტრანსფორმაციისა და არსებული გამოწვევების უფრო ღრმა გააზრებას.

საკვანძო სიტყვები: საერთაშორისო ვაჭრობა, მსო-ის ძირითადი წესები, ვაჭრობა დისკრიმინაციის გარეშე.

Introduction and review of literature

In today's highly interlinked and globalised world, managing international trade has become crucial for global growth and equity. International trade rules play a vital role in deterring trade restrictive measures, providing security and predictability for traders and investors, addressing the challenges of globalization, and promoting fairness in international economic relations. In this regard, The World Trade Organization is the key organization that regulates international trade and economic relations throughout the world. In the WTO, the political behaviour of well-organized societies impacts the whole region. Its legal doctrine covers fundamental norms, including non-discrimination, market access, unfair trade practices, conflicts between trade liberalization and public values, special treatment for developing countries, and dispute resolution mechanisms. Understanding the multilateral trading system and the role of legal pluralism in the context of globalization is essential to effectively promote a sustainable world trade and economy.

Given this context, the author poses a number of questions about the WTO: What is behind the success of the World Trade Organization, what is the role of legal rules, particularly international legal rules, in facilitating international trade? What is the significance of bilateral, regional, and multilateral trade agreements in international trade law? Why is an effective dispute settlement system critical to the operation of the WTO?

In order to answer these and many similar questions, the author will undertake a comprehensive examination of the historical, legal, and economic framework of the World Trade Organization. This analysis aims to elucidate the collaborative efforts of states as they embarked on establishing an international mechanism that advances the objectives of sustainable world trade and the economy.

Transnational Legal Frameworks: Regulating International Trade

Globalization and international trade need to be properly managed if they are to be of benefit to all humankind. Former GATT and WTO director-general, Peter Sutherland, wrote in 1997: 'The greatest challenge facing the world is the need to create an international system that not only maximizes global growth but also achieves a greater measure of equity, a system that both integrates emerging powers and assists currently marginalized countries in their efforts to participate in worldwide economic expansion. The most important means available to secure peace and prosperity into the futures is to develop effective multilateral approaches and institutions [1].

But what exactly is the role of legal rules and, in particular, international legal rules in international trade? How do international trade rules allow countries realize the gains of international trade? There are basically four related reasons why there is a need for international trade rules. First, countries must be restrained from adopting trade-restrictive measures both in their own interest and in that of the world economy. International trade rules restrain countries from taking trade-restrictive measures. National policy-makers may come under considerable pressure from influential interest groups to adopt trade-restrictive measures in order to protect domestic industries from import competition. Such measures may

benefit the specific, short-term interests of the groups advocating them but they very seldom benefit the general economic interest of the country adopting them. ‘Governments know very well, that by tying their hands to the mast, reciprocal international pre-commitments help them to resist the siren-like temptations from rent-seeking, interest groups at home’[2]. Countries also realise that, if they take trade-restrictive measures, other countries will do so too. This may lead to an escalation of trade-restrictive measures, a disastrous move for international trade and for global economic welfare. International trade rules help to avoid such escalation. Second and closely related reason why international trade rules are necessary is the need of traders and investors for a degree of security and predictability. International trade rules offer a degree of security and predictability. Traders and investors operating, or intending to operate in a country that is bound by such legal rules will be able to predict better how that country will act in the future on matters affecting their operations in that country. A third reason why international trade rules are necessary is that national governments alone simply cannot cope with the challenges presented by globalization. International trade rules serve to ensure that countries only maintain national regulatory measures that are necessary for the protection of the above key societal values [3].

Furthermore international trade rules may introduce a degree of harmonization of domestic regulatory measures and thus ensure an effective, international protection of these societal values. As fourth and final reason why international trade rules are necessary is the need to achieve a greater measure of equity in international economic relations. Without international trade rules, binding and enforceable on the rich as well as the poor, and rules recognizing the special needs of developing countries, many of these countries would not be able to integrate fully in the world trading system and derive an equitable share of the gains of international trade.

However, for international trade legal rules to play these multiple roles, such rules have, of course, to be observed. It is clear that international trade rules are not always adhered to. All countries and their people benefit from the existence of rules on international trade making the trading environment more predictable and stable. However, provided the rules consider their specific interest and needs, developing countries, with generally limited economic, political and military power, should benefit even more from the existence of rules on international trade. The weaker countries are likely to suffer most where the law of the jungle reigns. They are more likely to thrive in a rules-based, rather than a power-based, international trading system.

International trade law consists of, on the one hand, numerous bilateral or regional trade agreements and, on the other hand, multilateral trade agreements. Examples of bilateral and regional trade agreements are manifold [4]. The NAFTA and the Mercosur Agreement are typical examples of regional trade agreements. The Trade Agreements between the United States and Israel or the Agreement on Trade on Wine between the EU and Australia are example of bilateral trade agreements. The number of multilateral trade agreements is more limited [5]. This group includes, for example, the 1983 International Convention on the Harmonized Commodity and Coding System (The Brussels Convention) and the 1973 International Convention on the simplification and Harmonization of customs procedures, as revised in 2000 (the Kyoto Convention). The most important and broadest of all multilateral trade agreements is the Marrakesh Agreement Establishing the World Trade Organization, concluded on 15 April 1994. It is the law of this Agreement, the law of the WTO.

The author claims that the WTO by virtue of its competence, is undoubtedly one of the key organizations that regulates international trade and economic relations almost all over the world. It is also a crucial legislative body in modern international relations, which, despite widespread criticism, is an exemplary successful international organization.

Key Tenets and Fundamental Norms of WTO Legal Doctrine

The legislation of the World Trade Organization (WTO) is intricate and specialized. It encompasses a wide array of matters, encompassing tariffs, import quotas, customs formalities, intellectual property rights, food safety regulations, and national security measures. However, six categories can be discerned:

1. The principle of non-discrimination;
2. The regulations pertaining to market access, which include transparency rules;
3. The regulations governing unfair trade practices;
4. The regulations addressing conflicts between trade liberalization and other societal values and interests;
5. The regulations concerning special and differential treatment for developing countries; and
6. Several pivotal institutional and procedural rules related to decision-making and dispute settlement [6].

These basic rules and principles of WTO law make up what is commonly referred to as the multilateral trading system. Referring to this system, Peter Sutherland and others wrote in 2001: 'The multilateral trading system, with the WTO at its centre, is the most important tool of global economic management and development we possess. The WTO has complex institutional structure which includes: (1) at the highest level, the Ministerial Conference, which is in session only for a few days every two years; (2) at a second level, the General Council, which exercises the powers of the Ministerial Conference in between its sessions; and the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB), which are both emanations of the General Council; and (3) at lower levels, specialized councils and manifold committees, working parties and working groups.

In this area author considers the WTO dispute settlement. One of the most remarkable and successful aspects of the WTO is its automatic and compulsory dispute settlement system. It is one thing for countries to agree to a treaty and quite another to enforce compliance with that treaty. The WTO agreements provided for many wide-ranging rules concerning international trade in goods, trade in service and trade-related aspects of intellectual property rights. In view of the importance of their impact, economic and otherwise, it is not surprising that WTO members do not always agree on the correct interpretation and application of these rules. Members frequently argue about whether or not a particular law or practice of a member constitutes a violation of a right or obligation provided for in a WTO agreement. The WTO disposes of a remarkable system to settle such disputes between WTO members concerning their rights and obligations under the WTO agreement. The WTO dispute settlement system has been operational for twenty-three years now. In that period, it has arguably been the most prolific of all international dispute settlement systems. In almost a quarter of the disputes brought to the WTO system, the parties were able to reach an amicable solution through consultations, or the dispute was otherwise resolved without recourse to adjudication. In other disputes, parties have resorted to adjudication.

Under international law, states can only be brought before an international court or tribunal if they have consented to the jurisdiction of that court or tribunal. In many cases, this implies that breach of a treaty cannot be challenged in third-party adjudication, or that when a dispute arises it can be settled in a judicial fashion only with the explicit consent of both parties. In the WTO the situation is dramatically different. Whenever a WTO member has a complaint against another WTO member for any matter falling under any WTO covered agreement (as defined in DSU Article 1) [7]), it can invoke the WTO's dispute settlement system, without needing the approval of the defending party. This remains the case even if the matter raised not only involves trade but also more sensitive questions such as health or environmental protection, public morals, or national security. As compared to most other international adjudication regimes, WTO dispute settlement has detailed procedural rules, an appellate process, and back-up arbitration mechanisms to deal with non-implementation and the calculation of trade sanctions in

response to continued non-compliance. Most important, WTO members have frequently used the dispute settlement system (between 1995 and April 2011, 424 disputes have been filed) [8] and in the large majority of cases (with some notable exceptions) the system has managed to resolve the dispute. A better understanding of the WTO dispute settlement system not only allows one to formulate and guide complaints through the multiple stages of enforcing trade agreements at the WTO, be it in pursuit of government or private client interests, but it also offers a fascinating study of state-to-state adjudication and international law enforcement more broadly.

An effective dispute settlement system is critical to the operation of the WTO. It would make little sense to spend years negotiating detailed rules in international trade agreements if those rules could be ignored. Therefore, a system of rule enforcement is necessary. In the WTO that function is performed by the Understanding on Rules and Procedures Governing the Settlement of Disputes (usually called the “Dispute Settlement Understanding” or simply the “DSU”). As stated in Article 3.2 of the DSU, “the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system”[9]. In the commercial world, such security and predictability are viewed as fundamental prerequisites to conducting business internationally. The DSU is effectively an interpretation and elaboration of GATT Articles XXII and XXIII, which were not modified in the Uruguay Round. As noted above, these articles were the basis for dispute settlement in the GATT system, and since all of the agreements annexed to the Marrakesh Agreement Establishing the World Trade Organization rely on GATT Articles XXII and XXIII or very similar provisions as a basis for dispute settlement, they are the basis for dispute in the WTO system as well. Article XXII provides that one WTO Member may request another Member to consult with respect to any matter affecting the operation of the agreement. Generally speaking, Article XXIII provides for consultations and dispute settlement procedures where one Member considers that another Member is failing to carry out its obligations under the agreement [10]. One of the reasons for the success of the WTO, in the author’s opinion is the effective implementation mechanism of international agreements between the member states, the unimpeded functioning of which has been guaranteed by the Dispute Settlement Mechanism established at Uruguay Round. Its effectiveness is confirmed by interstate disputes in the WTO, the sentences of which are always distinguished by an effective enforcement mechanism [11].

International trade is predominantly governed by the rules established by the World Trade Organization. Among these rules, non-discrimination principles hold significant importance. Essentially, these principles require WTO member countries to avoid discrimination against products from other member countries in trade-related matters, known as the most-favored-nation (MFN) rule [12]. Additionally, subject to certain permitted limitations on market access, member countries are expected to refrain from favoring their domestic products over products from other member countries, which is referred to as the national treatment rule. Interpreting these non-discrimination rules can be quite challenging. Their potential scope is so extensive that it has been deemed necessary to establish several exceptions, which themselves pose difficulties in interpretation. Consequently, one of the main challenges faced by the WTO dispute settlement mechanism is to strike the right balance between these non-discrimination rules and their exceptions. Non-discrimination is a fundamental concept in WTO law and policy, and it is upheld through two primary principles: the MFN treatment obligation and the national treatment obligation. In essence, the MFN treatment obligation prohibits countries from engaging in discriminatory practices against other countries, while the national treatment obligation prevents countries from discriminating against foreign countries in favor of their own [13].

Considering the mentioned context, the issue of legal pluralism is also important. The concept of legal pluralism is central to understanding the incorporation of diverse legalities within social fields. This multiplicity of legality is often perceived as a difference in the context of globalization, leading to frictions in various systems. While some traders aim to eliminate these frictions, others view them as

alternative sources of expression and order that should be preserved and promoted. In this regard, the author proposes the notion of inter-legality as a subsuming phenomenon. The term "inter-legality" is derived from the postmodern concept of intertextuality, as suggested by Bonaventura da Sousa Santos [14]. According to the author, globalization is expected to amplify the phenomenon of inter-legality, expanding its reach worldwide as more countries engage in global flows of goods, people, money, information, and services. Inter-legality also permeates deeper into localities as foreign suppliers seek not only to export finished goods but also to provide services and invest locally. Within the World Trade Organization (WTO) agreements, there remains a focus on cross-border supply of personal services and intellectual resources. Technological advancements further enhance the dimensions of this supply. Moreover, the agreements address the inter-legality associated with establishing a commercial presence or the presence of natural persons within a locality. Foreign entities encounter a diverse range of legal arrangements established for domestic production, provision, and socially significant activities such as legal services, agriculture, and media communications. These local legal arrangements encompass legislative measures, judicial and administrative norms, and a myriad of unofficial customs and practices.

The author argues that foreign legality does not necessarily revolve around any specific nation-state. Globalization studies reveal the emergence of legalities that are more fluid and self-referential. For instance, there is growing interest in the re-emergence of a supra-national *lex mercatoria* in the business realm. This *lex mercatoria*, based on transnational contracts, model codes, and private arbitration, imparts its own legal character to financial transactions, licensing agreements, strategic alliances, and corporate mergers [15]. Through electronic commerce, these legal arrangements may assume even more transient and intangible forms. Similarly, the local legalities encountered by foreigners are not solely rooted in the official public laws of nation-states. Local legalities encompass a range of private and public legalities and are not synonymous with national sovereignty. Local legalities can include customary arrangements made by indigenous peoples to manage and share native resources. The recognition and support accorded to these private and unofficial legalities vary across different nation-states.

Although globalization may lead to convergence or homogeneity in law, it is crucial to understand why differences persist. Global suppliers often find that they must negotiate the richness of local diversity for various reasons. They rely primarily on the legal support of nation-states to pave the way and protect their interests. Paradoxically, the same process of globalization undermines the competence of national jurisdictions upon which these suppliers depend for support.

The author claims that the current legal framework of the WTO is based on mandatory changes, improvements and adaptations against the background of globalization. It makes trade relations more flexible, reduces trade tensions, thus proving its clear advantage over GATT legislation. According to the author, the WTO plays an important role for the intergovernmental community, given its substantial jurisdiction and the existence of an effective mechanism for multilateral international agreements concluded within its framework. Its importance in modern international relations is especially evident in view of the list of areas covered by this organization, including intellectual property, environmental protection, technical barriers to trade, investment mechanisms and other important aspects.

Conclusions

Summarizing the results of the research, the author believes that the challenges generated by ongoing globalization create a qualitatively new picture, requiring a significant transformation of the subjects of international law as actors. To ensure the formation of a competitive strategy, the clarity of the strategic objective will be critical in achieving the goals of the WTO. The author states that the role of the World Trade Organization in ensuring stable and fair trade is of immense significance. The growth of trade is largely attributed to the free trade system. Consequently, the WTO, leveraging its authority, should play a facilitative role in rule-making for trade liberalization, resolving disputes among its member states, and monitoring the implementation of WTO agreements. Given the comprehensive nature of globalization,

the WTO should actively advocate for reforms. These reforms aim to restore and ensure confidence in the WTO, positioning it as the most reliable intergovernmental organization both within its member states and in the international community. Ultimately, these efforts will foster fair trade, stimulate economic revival, and enhance overall welfare, aligning with the interests of all involved actors.

Finally, in the background of globalization, the World Trade Organization needs a simpler and more stable legal framework that will be free and equal for all its member countries. This is necessary to safeguard the stability and authority of multilateral rules. The author's point is that the law and politics framework may be a better way to look at the evolution of the system because firstly, a lot of politics, especially consensus decision-making, is what enables a strong dispute settlement mechanism (more politics enables more law); secondly, stronger politics is required to back up a forceful dispute settlement mechanism (more law needs more politics). Following this paradigm, the imbalance that a lot of people see between the judicial branch and the political branch of the WTO (automaticity in the dispute process versus consensus in the political process) is, in the end quite logical and easy to explain: if there is a strong dispute system, that is, if there is a lot of law, then there is lot of politics. So, consensus is required. The WTO needs more politics, more contestation and more openness.

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