Research Journal of Applied Sciences 10 (12): 937-939, 2015
ISSN: 1815-932X

The Role of the WTO Law in International System

Nataliya Y. Tyurina
Kazan (Volga Region) Federal University, Kremlevskaya Str., 18, 420008 Kazan, Russia

Abstract: The World Trade Organization (WTO) is growing by its membership and its impact on the international life is increasing. The links between WTO law and regulations in non-trade areas take more and more place in international system. Its effect in protection of human rights and environment is worth mentioning as important factor of the international legal order. Harmonization of national laws according to WTO provisions and the way it is done seems to be a move to priority of international law in national legal systems. The conclusion of the research is that the WTO law encounters a number of problems which are common for different spheres of international regulation and it may be helpful in overcoming them correlating with general principles and other rules of international law.

Key words: WTO law, international law, non-trade interests, human dimension in international trade, ecological dimension in international trade

INTRODUCTION

Economic relations constitute an important part of interaction between states. The researchers point out that 90% of activity, regulated by international public law, bare economic character and that international law of the 21th century is expected to become first and foremost economic law, rapidly developing in response to the needs of trade liberalization. Since, the World Trade Organization (WTO) provides for the institutional framework for international trade liberalization the WTO law is becoming an instrument, the use of which can be traced not only within the scope of trade matters but in a broader area thus effecting the states' behavior in different spheres of international life.

THE CONCEPT OF WTO LAW

Legal scholars use the term "WTO law" as relating to a large set of normative prescriptions constituting the contents of the documents, adopted by the members of WTO and earlier by participants of the General Agreement on Tariffs and Trade (GATT). They include the Marrakesh Agreement 1994, establishing the WTO and other multilateral agreements, enumerated in the Annex 1 to the understanding on rules and procedures, regulating the dispute settlement (covered agreements) and the documents outside this list (materials of uruguay round of multilateral trade negotiations, decisions of dispute settlement body, unilateral acts, customary law and the acts that may appear in future) (Pauwelyn, 2001). These set of rules gives reason to consider the WTO law as an autonomous legal system and some times as a system which is not an international law in general understanding. It is specific for the fact that too many spheres of national economy are being subjected to its effect. However, speaking about the autonomy, it is necessary to distinguish between a separate system enjoying the lack of dependence upon any broader legal order and the subsystem, recognizing the general rules of a higher force and correlating with the rules of the same level if their objects of regulation coincide. In the aspect of subsystem WTO law is considered as a part of international trade law.

Proceeding from the Vienna Convention on the law of international treaties, 1969 the agreements which are the main source of the WTO law meet the requirements of the document specified as "international treaty" (Tyurina, 2014). Being international treaties the WTO agreements shall not come into collision with jus cogens rules of general international law as it is stated in the UN Charter (Article 103). The WTO law, particularly Article 21(c) of the GATT) also says that "nothing in this agreement shall be construed to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security".

The relation between the WTO rules and other international rules on the horizontal level is not considered by the WTO law, except for the TRIPS where in respect of criteria for eligibility for intellectual rights protection Article 1.3 refers to the Paris Convention, the Berne Convention, etc. Meanwhile in certain cases on different issues from the practice of dispute settlement we can also find the examples of references to the rules of international treaties (not "covered agreements").

THE SCOPE OF THE WTO LAW

The WTO law is primarily the law regulating international trade and its main economic function is the strengthening of the word trading system providing the basis for the economic prosperity and the growth of living standards in national states. This function is said to be initial, undisputable and enhancing with the growth of economic interdependence. However, since the trade relations cross over with certain non-trade interests, the latter are also being involved in its orbit. Two of multilateral agreements in the WTO law.

TRIPS and TRIMS (Trader-Related Investment Measures) give a direct evidence of this fact. In addition, the WTO law includes the rules concerning the issues of human rights, ecology and offers the way of harmonization of national laws.

Human rights: The world history gives a number of evidences that international trade and human's right law have been developing hand to hand. Since, ancient times the belligerent states protected traders by granting them special mandates. Being deeply interested in international trade the medieval feudal states began to recognize the rights of aliens thus contributing to humanization of social relations. The hague peace conferences 1899-1907 accumulating the historical practice, considered international trade as the object of protection. The preamble to the convention relating to the status of enemy merchant ships at the outbreak of hostilities, 1907 directly declared that its aim was to ensure the security of international commerce against the surprises of war. In a number of international legal documents of late the terms "human rights" and "international trade" often go together. Thus, the resolution of the UN assembly, December 19, 2006, appeals to refrain from any unilateral measure not in accordance with international law and the charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of all human rights.

Proceeding from the objectives of the GATT and Marrakesh agreement, stated in the preambles, the right of states for trade measures and the obligations in favor of liberalization shall be tested by human dimension that is consequences for human rights. This also follows from the Artticle 20(b), ГАТТ; Article 19, GATS, Article 13, agreement on government procurement; Article 27.2, TRIPS, allowing the reservations to general rules in favor of human rights. In the course of dispute settlement the panel once pointed out that Article 20(b), definitely recognizes the priority of peoples' health over the objectives of liberalization (Dommen, 2002).

Ecological dimension: Ecological problems seem to be the most crucial point in the WTO law. Sustainable development proclaimed in Marrakesh agreement as the WTO objective requires contributing in the settlement of ecological problems. Meanwhile, individual interests of states and business often run contrary the interests of ecological security. To solve this controversy in favor of the world community, it is necessary to recognize the priority of international ecological principles over trade liberalization. However, this approach may result in a negative effect for less developed countries and violation of mutual benefit principle. Besides, the scholars point out that there are limits to what the WTO can do to further sustainable development. In particular, it cannot improve domestic environmental standards and ensure that they are effectively enforced.

Article 20, GATT, providing for general exceptions, does not definitely mention protection of environment as a circumstance preconditioning the exception. As a result the references to this study in the procedure of dispute settlement in many cases were not recognized duly applicable.

Harmonization of national laws: The scope of WTO law is worth of special attention proceeding from not only the object of legal regulation but also the issue of globalization. Maintaining of trading order with ever-growing number of the WTO participants requires special imperatives, the most important constituting the contents of study XYI of the Marrakesh agreement, demanding from each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in annexed agreements. Since, liberalization of international trade depends on national regulation of external economic activity national laws are of the first rate importance for the achievements in this area.

Though, implementing the rules of international law in national legal systems is a well-known way to fulfil international obligations, the wording of the study is unfamiliar for international law documents. The corresponding principle of international law pacta sunt servanda is understood as the obligation to follow the treaty provisions in good faith, however, it gives a free hand to choose the way, how to do it and therefore, it has never been interpreted as proclaiming the priority of international law over national legislation. States usually establish in their national constitutions the obligation concerning international treaties in different wording and with various consequences for their national legal systems. It is different with Article XYI, expressly prescribing what shall be done. To "ensure conformity" does not leave any alternative for the means of fulfilment

and to this point, the WTO law seems to be less liberal than the rest of international law. Nevertheless, the states had to agree to this point with the view to get more benefit due to the world trade order provided by WTO. The wording is also important because actually, it establishes the priority of the WTO law which is international law, not as some states did it on national level but on international level.

The provision of conformity became also the condition for accessing states compelling to preliminary implementation of the WTO law in national legal systems, though the requirement of preliminary implementation is not expressed but implied and due to it the WTO law comes into force for the states only making their way to the WTO. Even if a state reveals no intention to become the WTO member, it may not escape obeying WTO law getting into trade agreements with the WTO members as it happened with Russia before its access to the WTO.

The WTO imperatives became an additional argument in the scientific discussion about state sovereignty for those who stress that the old concept of sovereignty had gradually eroded as states accept more and more limits on their freedom (Dommen, 2005). However, to the researcher's opinion (Knox, 2004), state sovereignty has not exhausted itself as an inherent attribute of a state or a concept of international law. The weak point of traditional concept that gave rise to nihilism in relation to state sovereignty, seems to be the interpretation of this notion as full independence. To the researcher's opinion in the modern concept it is necessary to put an accent to the right of free choice within the limits of the obligations taken by states in good will. Participation in the WTO may be a forced step in globalizing trading system but being compelled by the circumstances, the states are not deprived of the right to make their sovereign choice.

CONCLUSION

With its non-trade functions in addition to the universality as trade regulator, the WTO law proves to be a substantive instrument for maintaining and strengthening international legal order, harmonizing national laws and advancing the priority of international law in the national legal system. The thing that provides for its potential is nevertheless the general principles and regulations of international law that gave birth to the WTO law in the process of its development. Now they both have become mutually supporting and to make the best of it is the task for the benefit of mankind.

REFERENCES

Dommen, C., 2002. Raising human rights concerns in the World Trade Organization actors, processes and possible strategies. Hum. Rights Q., 24: 1-50.

Dommen, C., 2005. Trade and human rights: Towards coherence. Int. J. Hum. Rights, 2: 6-25.

Knox, J.H., 2004. The judicial resolution of conflicts between trade and the environment. Harv. Environ. Law Rev., 28: 1-46.

Pauwelyn, J., 2001. The role of public international law in the WTO: How far can we go. Am. J. Int. Law, 95: 535-578.

Tyurina, N., 2014. Regional economic integration and state sovereignty. InterEULawEast-J. Int. Eur. Law Econ. Market Integrations, 1: 43-50.