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Dispute Resolution Under Wto Rules

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Abstract: The topic of Uzbekistan's accession to the WTO is extremely important and relevant for Uzbekistan today. The existence of a mechanism for resolving international trade disputes within the framework of the World Trade Organization (WTO) is one of the most significant advantages of this organization and is important not only from an economic but also from a political point of view. Throughout the existence of the WTO the universal dispute resolution mechanism, it has been possible to achieve greater transparency in the application of rules, create a precedent base and enable countries to defend their positions on the application of trade policy measures based on a generally recognized mechanism.

Keywords: WTO; GATT; investment climate; international trade; dispute resolution mechanism; multilateral trading system; WTO reform.

An international dispute is "a specific political and legal relationship that arises between two or more subjects of international law and reflects the contradictions existing within this relationship." Such a contradiction may arise with respect to "any fact, legal or political issue in which the claim or claim of one party is met with a refusal or counter-claim of the other"^. As for the WTO, any issues related to the operation or interpretation of agreements within the framework of this organization may be the subject of dispute between its members.

The specificity of dispute settlement in the WTO lies in the fact that both political and legal methods of settlement are involved here. Each of them applies certain techniques, which, depending on the circumstances and in accordance with the procedural rules, can be used sequentially, simultaneously or selectively (alternatively).

Political means include consultations, good offices, mediation and conciliation. The common features of these methods are the freedom of the disputing parties to choose the appropriate mechanisms, a certain flexibility in their application, as well as the control of the entire process by the parties to the dispute.

The full participation of any state in the World Trade Organization implies the possibility of using one of the main tools for protecting its interests – the WTO dispute resolution system. Why exactly does this institution make it possible to ensure a balance in relations between WTO members.

The peculiarity of the WTO dispute resolution system is that it is a regulated, but at the same time quite flexible mechanism through which any participating State can seek compliance with its obligations by other WTO members and demand the cancellation of an unjustified trade measure applied against it or the elimination of other violations of its interests.Of course, participation in such disputes presupposes the availability of significant economic and intellectual resources due to the complexity and duration of the proceedings. At the same time, the WTO dispute resolution system can be effective and accessible to absolutely all member States, regardless of their status and capabilities.

Legal basis for dispute settlement in the WTO.

The WTO Agreement on Rules and Procedures Governing Dispute Resolution (hereinafter referred to as the "Agreement" or "DRA", i.e. the Agreement on Dispute Resolution) It is an integral part of the package of WTO agreements. It is aimed at protecting the rights and obligations of members under the covered agreements "and clarifying the content of the provisions of these acts by interpreting them." In addition, a number of agreements on the subject of their regulation contain special or additional rules for the consideration of disputes, which together with the DRS form a system of WTO procedural rules.

The scope of the DRA is determined by its subject, object and temporary application. The subject matter of the DRA is understood to be the effect of this agreement in relation to an entity that has the right to apply to dispute settlement procedures. According to the Agreement, only a member of the organization is such. The DRA is not applied between two members if either of them does not agree to such application at the time of one of them's accession to the WTO." All disputes on trade in goods, services and trade-related aspects of intellectual property rights under WTO agreements fall under the objective application of the DRS.

Despite the fact that only the State, represented by its authorized government body, can act as a party to the dispute, interested companies and their groups are able to provide all necessary assistance and support. It should also be noted that any State can participate in a dispute under WTO rules in the following forms:

- as a complainant who initiated a dispute or joined another complainant;
- as a defendant applying the contested measures;
- as a third party that does not make separate claims, but believes that the decision in the case concerns its interests.

Stages of WTO dispute resolution:

1. Intergovernmental negotiations. At this stage, the Governments of two or more WTO member countries resolve a dispute between them without referring it to the WTO Dispute Resolution Body (DSB).

Negotiations take place, as a rule, in an informal setting and do not require the application of procedural rules. On the contrary, in order to achieve the necessary result in negotiations, the parties actively use the substantive norms of the WTO agreements, as well as references to existing precedents, to prove to the opponent the futility for him of further proceedings in the DSB.

At this stage, preparatory work on the formation and justification of one's position is extremely important, allowing one to achieve one's goals and ensure respect for one's interests already at the negotiation stage, without resorting to transferring the dispute to the DSB.

2. Consideration of the dispute by the DSB arbitration panel. If the parties have not reached an agreement based on the results of the negotiations, the dispute is referred to the DSB arbitration panel. This stage, unlike negotiations, is conducted according to a formal procedure, including consultations with the parties, clarification of issues, determination of jurisdiction, formation of an arbitration panel of three independent experts and the actual dispute resolution process.

The characteristic features of this stage are, firstly, its duration (9-12 months or longer, depending on the complexity of the dispute), and secondly, the possibility for the parties to use the entire arsenal of means to substantiate their position: WTO substantive and procedural norms, precedents, factual circumstances, expert opinions and other evidence.

At this stage, it is important for the Government of the State party to the dispute to be supported by qualified consultants (lawyers, economists, negotiators, experts, etc.), as well as governments of other States whose interests may be affected by the results of dispute resolution.

3. Consideration of the dispute in the appellate body. According to statistics, about 60% of the decisions of the DSB arbitration group are appealed to the appellate body, while the cancellation or modification of decisions made by the arbitration group does not happen often.

In contrast to the consideration of a dispute by an arbitration panel, the procedure of proceedings in the appellate body lasts on average 4-5 months and involves the study of exclusively legal issues without examining the factual circumstances related to the dispute.

It should be noted that the decisions of the appellate body are not subject to appeal and are the basis of WTO case law.

4. Execution of the DSB decision. The party that lost the dispute is given a certain period (usually 1 year) for the execution of the decision taken as a result of the proceedings – the cancellation or modification of the disputed trade measures or the elimination of other violations of its obligations under the WTO.

Usually, the decisions of the DSB are executed voluntarily, or questions about the timing and procedure for execution are settled through negotiations between the parties.

In case of non-execution or partial execution of the decision, the participant in the dispute, in whose favor it was made, has the right to file a complaint with the DSB arbitration group regarding the determination of the procedure for the execution of the decision.

If, as a result of consideration of this complaint, the decision of the DSB is still not enforced, the interested party has the right, with the approval of the arbitration group, to apply retaliatory trade measures against the offending State, determined and established in the amount of the prospective (future) annual amount of economic damage. Retaliatory measures may be applied until the decision of the DSB is executed and the established violation is eliminated.

In summary, it should be noted that the duration of disputes under WTO rules is on average 4-5 years after the start of consultations and before the obligation to implement the decision. Thus, it is obvious that the most constructive way to resolve disagreements between WTO members is to reach an appropriate agreement between the parties in the process of government negotiations.

International experience in dispute resolution under WTO rules.

All disputes resolved within the framework of the WTO can be divided into three main categories:

- disputes on trade in goods, which make up the bulk of all disputes arising and resolved under WTO rules (the applicable substantive law for these disputes is mainly the General Agreement on Tariffs and Trade – General Agreement on Tariffs and Trade, GATT);
- disputes on trade in services (General Agreement on Trade in Services – General Agreement on Trade in Services, GATS);
- disputes on intellectual property (Agreement on Trade–Related Aspects of Intellectual Property Rights, TRIPS).

The fundamental principles.

The settlement of disputes in the WTO is based on a number of principles. Article 3.3 of the DRA establishes the principle of urgent settlement as a prerequisite for the effective functioning of the WTO.

Based on the principle of an appropriate balance between the rights and obligations of members, the parties to the dispute should notify the Dispute Resolution Authority and other competent authorities of decisions taken by mutual agreement, so that any member can raise any issue on this decision.

The principle of positive dispute resolution means that the most preferable outcome of the process is a solution that is mutually acceptable to the parties to the dispute. In the absence of

such a decision, the next preferable means is to cancel the adopted measure, which is incompatible with the WTO agreements. If immediate cancellation is not feasible, compensation should be resorted to. In the event that the parties to the dispute are unable to agree on compensation, the last option for the plaintiff is to suspend concessions or other obligations towards the defendant. Thus, this principle establishes the order of measures in relation to the "guilty" party to the dispute.

The principle of unacceptability of unilateral actions prohibits a party to a dispute from qualifying the actions of the other party for their legality and taking appropriate countermeasures other than by settling the dispute within the framework of the DRA.

In conclusion, we emphasize once again that the WTO dispute resolution system is a civilized and effective mechanism for resolving trade disputes and disagreements between States, and success in such disputes depends mainly on the quality of work of specialists involved in preparing the positions of the parties involved in the negotiation process and the case proceedings. For Uzbek lawyers and advocates, this is a new vector for the development of their practices and competencies. In the near future, this kind of legal assistance will be in high demand.

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