

Principle of Mutual Advantage as a Legal Basis of the GATT/WOT

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Abstract: *Purpose: The objective of this article is to study the principle of mutual advantage as a legal basis of the GATT/WTO. Design/methodology/approach: The analysis is primarily based on initial sources of the international law. The article uses general scientific methods such as: analysis and synthesis, system structural, formal logical, historical methods, and special methods: legal dogmatic, comparative legal. Findings: The study has shown that the Marrakesh Agreement Establishing the WTO 1994 and annexes thereto are based, among others, on the principle of mutual advantage that had undergone a long way of development as one of the principles of the international trade, and the WTO institutional mechanisms provide for compliance with it in the interstate relations. However, even today there appear contradictions between the states concerning understanding and implementation of the principle of mutual advantage. The example is the last WTO round “Doha Development Agenda” that cannot come to the end due to contradictions between the states concerning implementation of the principle of mutual advantage. Research limitations/implications: The principle of mutual advantage shall be studied in the activities of other international economic organizations. Social implications: Social implications consist in attracting the attention of the world community to the necessity to comply with the principle of mutual advantage in the international trade, to the problems of violation of the principle in the international trade, to the cases of the international trade non-equivalence and its unfair consequences. Originality/value: The article for the first time provides an investigation of the principle of the international economic right – the principle of mutual advantage in the Constitution and practice of the World Trade Organization. This study found out the formalization of the principle in the WTO Constitution and all annexes there to, and also that the contradictions on understanding and implementation of the principle of mutual advantage by the countries often presented barriers to the international trade.*

Keywords: international economic law, principle of mutual advantage, General Agreement on Tariffs and Trade, World Trade Organization, international trade

1. Introduction

Multilateral trade system has become an important part of the postwar arrangement of international economic relations that promoted for economic development and international peace and stability.

Before the World War II, the global community had suffered from perturbations in the economy due to the Great Depression that resulted in slow down in production and trade. It was obvious for everybody that the economies of the countries of the world were related and liberalization of the international trade was the insurance of development of the international economy and each state, in particular.

Thus, in February 1946, the United Nations Economic and Social Council (ECOSOC) adopted there solution on convocation of the UN Conference on Trade and Employment at its first session.

According to I.V. Zenkin, “To prepare the ITO (International Trade Organization) Constitution, the Preparatory Committee had been set up at the Conference to develop the ITO Constitution during 1946-1947 that has not come into effect but has been implemented in the Havana Charter and GATT-44” [1, p. 18].

S.H. Osyka, the researcher, points out the following among the main objectives of the ITO, “Providing for decrease in tariff and non-tariff barriers to trade and elimination of discriminatory treatment in the international trade on reciprocal and mutually advantageous basis” [2, p.223]. Therefore, the mutually advantageous cooperation had to be the basis of the ITO.

Since January 1, 1948, the text of the GATT to be effective until commencement of the ITO Constitution has come into effect. However, the ITO Constitution signed by the State Members of the UN Conference on Trade and Employment has not been ratified by a new (republican) US Congress and other states due to the relevant US policy, and respectively, has not come into effect. FATT remained the only multilateral document regulating the international trade, and such an organization considered progressive for its period as the ITO has not been set up [3,]. The mutually advantageous tariff concessions resulted from negotiations were reflected in the General Agreement on Tariffs and Trade (GATT) that remained in force, as amended, till the end of 1993.

Thus, the preamble of the Agreement on Tariffs and Trade (herein after referred to as GATT-47) states that “the Parties shall recognize that their trade and economic relations should be aimed at improving the living standard, ensuring full employment and continuous growth in real income and efficient demand, and shall wish to promote for these purposes by concluding mutual and beneficial agreements aimed at significant decrease in tariffs and other barriers to trade and elimination of discriminatory treatment in the international trade” [4].

However, GATT-47 demonstrates that there were the possibilities of non-compliance with the principle of mutual advantage for the states. And the main reason was the phenomenon of “free riding” [2, p. 35]. Therefore, under the conditions of the warning about the most-favored-nation treatment provided in the free form (without the demand for reciprocity), GATT-47 turned out to be a commonwealth of states where 2/3 of participants made use of advantages from obligations undertaken by 1/3 of members. Thus, the states often ignored the principle of mutual advantage and got one-

sided advantages from the signed agreements that we think was a great drawback of this intergovernmental economic institution.

This drawback was not a single one, and, consequently, the necessity to reform the GATT has brewed. Thus, the Uruguay Round of the GATT ended up by signing the Final Deed in Marrakech (Morocco) on April 15, 1994, and setting-up a new standing international organization – the World Trade Organization (WTO).

In fact, the WTO has made it impossible for the states to get one-sided advantages and ignore the principle of mutual advantage of the parties. The WTO legal system provides for balance between the rights and advantages resulting from the membership and the obligations it assumes. The WTO acts as an international forum for trade negotiations, trade dispute settlement, continuous monitoring of the national trade policies of the WTO Member States [1, p.33].

Thus, the WTO Constitution states, “In their wish to promote for the objectives of this agreement and by making bilateral and mutually beneficial agreements aimed at significant decrease in tariff and other barriers to trade, as well as elimination of discriminatory treatment in the international trade relations, the Parties to this Agreement shall agree on establishing the WTO” [5].

A fullest of the so-called Multilateral Trade Agreements¹ given in the first three appendices shall be mandatory for the WTO members, in addition to the Agreement Establishing the WTO.

1) Agreements on Goods Trade Regulation (Appendix 1A)

Thirteen documents of Annex 1A to the Agreement Establishing the WTO include: GATT-94 based on GATT-47 and 12 other agreements (primarily, with individual annexes) – up-to-date interpretation and implementation of treatment of the GATT-47 particular provisions.

The GATT-94 is based on GATT-47 (hereinafter referred to as the Agreement) being a source of principles and methods for the international trade regulation and referred to in a similar way as to GATT-94. The Member-States rely upon the assumption that the trade liberalization as the main objective of the Agreement shall provide for common and, if appropriate, mutual (in the most general sense) advantage of the international community members with common international trade and Marrakesh agreements. The liberalization of the Agreement is directly implemented in such articles of the Agreement as General Most-Favored-Nation Treatment (Article I); Schedules of Concessions (Article II); National Treatment in Internal Taxation and Regulation (Article III); Freedom of Transit (Article V); General Elimination of Quantitative Restriction (Article XI) and some others. According to these articles, the Contracting Parties, by means of the rules of using and implementation of the most-favored-nation treatment, freedom of transit and

¹These documents are mandatory for all WTO Member States and supplement two optional agreements of Annex IV.

other principles and measures, shall rely upon that the liberalization must be conducted, firstly, on the general non-discriminatory basis, and secondly, with a flexible consideration of interests of the states, including special needs of the developing countries.

With its general orientation towards liberalization, the spirit and letter of the Agreements are based on that the Contracting Parties as sovereign states shall, firstly, undertake general commitments on liberalization recorded in the Schedule of Concessions and acceptable for their economies, and secondly, reserve the right to take any restricting measures for reasons of public morality and health protection and other security issues (Article XX “General Exceptions” and Article XXI “Security Exceptions”), and thirdly, continue using a wide range of national measures for foreign economic activity regulation which they must coordinate and reform by the international trade promotion on a gradual and mutually advantageous basis.

In addition to the text of GATT-47, the integral parts of GATT-94 shall be six Agreements on interpretation of the GATT-47 critical issues which as of 1994 had to be updated or specified in details. Thus, each of the agreement is intended to promote for better implementation of the principle of mutual advantage. In particular, they refer to the most-favored-nation treatment procedure, non-discrimination and transparency principle, trade efficiency and transparency improvement, and mitigated negative consequences related to the changed trading conditions between the WTO member states whether involved into any intergovernmental preference systems or not, i.e. free economic areas or customs unions, improved balance of negotiating power of exporting and importing states, and terms of discharge from obligations.

- The Agreement of Agriculture, Annex 1A [6], has become the encoded basis for liberalization of agricultural trade and general commitments of the WTO members with regard to its implementation. We think the Agreement fully complies with the principle of mutual advantage. As a long-term task, its preamble declares the creation of fair and market-oriented agricultural trade system by means of material and gradual minimization of support and protection of the agriculture for the agreed period of time in order to correct and avoid restrictions and distortions in the world agricultural markets. The Agreement covers the food and other agricultural trade, including trading in cotton, linen, silk, leather and skin listed in Annex Дюогоди². For Ukraine, this Agreement is of particular importance, as it has a significantly developed rural sector, and implementation of this Agreement will have a material impact on the agricultural production.

- The Agreement on the Application of Sanitary and Phytosanitary Measures, Annex 1A [7], was signed as the collateral agreement to the Agreement of Agriculture. Its preamble declares that the member states shall recognize the right of each state to apply the required measures to protect life and health of a human being, animals or plants provided that these measures are not applied as the means of intractable or unjustified discrimination between the WTO

²The Agreement does not cover fish and fish products trade as specified in Annex 2 to the Agreement of Agriculture

members or as the latent restriction of the international trade. The objective of the Agreement is to create a multilateral basis for the rules to regulate development, introduction and application of sanitary and phytosanitary measures which could mitigate their negative effect on the international trade that promotes for implementation of the principle of mutual advantage in the interstate relations.

- The Agreement on Textiles and Clothing, Annex 1A[8], shall regulate the relations in the textiles and clothing market that is rather specific as its assortment is constantly increasing the consumer demand is variable, and the product cost, among others, is made up of the cost of labor force and intellectual property rights. Therefore, such products are manufactured at the lowest cost in the countries where the raw materials and labor force are cheaper, that is in the developing countries. In GATT-47, there was a violation of the principle of mutual advantage in the relationships between the textiles and clothing exporters and importers. The parties to the Agreements were the developed importing countries, on the one hand, and the main exporting developing countries, on the other hands, and the latter, under dictation of the developed countries, had to accept "willful" export restrictions while the developed importing countries determined the quantitative quotas for every exporting country. These specific restrictions were stated in the bilateral explicitly quoted and restricting import-export agreements which contradicted both the principle of the mutual advantage, in particular, and GATT-47 principles, in general. The objective of the Agreement on Textiles and Clothing in the WTO frameworks has become liberalization and provision of equal and fair competitive conditions for all member states. As of the effective date of the Agreement, for a member, it integrates at least 16% of its textiles and clothing import in the GATT-94 frameworks (i.e. reliefs from protectionist measures). Further on, each member cancels its quantitative and other non-tariff restrictions for its textiles and clothing import for 10-year period according to the specifically agreed list of goods (each state having its own program). This process is subject to continuous monitoring to be performed, firstly, by the exporting countries concerned and, secondly, by the Monitoring Body. The Agreement is adopted as temporary and prolonged every 12 months.

- The Agreement on Technical Barriers to Trade, Annex 1A[9], shall be applied to restrict malpractice by using trade barriers as the means of unfair competition and to comply with the principle of mutual advantage. The main objective of the Agreement is to prevent discrimination and not to restrict trade because of unjustified and non-transparent application of trade barriers. The transparency is provided by scientific justification of every trade barrier by every state that introduces them. When there are no conditions existing anymore which were the basis for specific barriers to trade, the state must cancel them. The important provision of the Agreement is compliance with the principles of the most-favored-nation treatment for the goods from all member states and ensuring their national treatment. The issue of standards inconsistency is recommended to solve in compliance with the internationally adopted rules and standards. The Agreement also contains the recommendative Good Practice Procedure for Standards Preparation, Adoption and Compliance (Art. 4 of the Agreement and

Annex 3 hereto) providing favorable conditions for the developing countries which allow for them not to follow the standards unacceptable with regard to their development for a certain period of time, as well as use the international benefit in development of own standardization systems that is also the representation of the principle of mutual advantage.

- The Agreement on Trade-Related Investment Measures (TRIM)³, Annex 1A [10], is aimed at avoiding the use of investment measures which violate or restrict the GATT/WTO requirements and attainments in commodity trade liberalization. Therefore, the objective of the Agreement is the trade-related investment measures (TRIM) of the member states, and the subject is the agreements of the member states' commitments not to allow for such measures to be non-compliant with this Agreement and general principles of the WTO. According to Article 2 of the Agreement, none of the WTO members should apply TRIM contradicting the Articles of the GATT-94 Nos. III "National Treatment" and XI "General Elimination of Quantitative Restrictions" that is also aimed at complying with the principle of mutual advantage.

- The Agreement on Implementation of Article VI of the GATT-94, Annex 1A[11], provides for the rules for minimizing the possibility to introduce unjustified anti-dumping measures. The anti-dumping measures can be introduced only based on the results of the appropriate investigation initiated by application of the concerned entrepreneurs of the applying country. The anti-dumping duty must not be a penalty but compensation with a main purpose of loss elimination. The favorable conditions are given for the developing countries considering the peculiarities of their economy and price formation that is the representation of the principle of mutual advantage.

- The Agreement on Implementation of Article VII of the GATT-94, Annex 1A[12], contains the agreements on interpretation and fulfillment of the rules for determining the goods customs cost. The important provision of the Agreement is the commitment of the state customs bodies to inform the importer about the customs cost and the used calculation method in written, if required by the importer, that makes this procedure more transparent.

- The Agreement on Preshipment Inspection, Annex 1A[13], was concluded to reach a compromise between the entrepreneurs' interests and regulating authorities' obligation for the purposes of the best compliance with the principle of mutual advantage in their activity. The inspection is used to detect, using special services, any abuse by the exporters who aim at evading the duly paid duties and levies that is realized in collusion with a foreign buyer concerning the goods underpricing or overpricing as indicated in the accompanying documentation. Comprehensive inspection of the goods quality and quantity as well as compliance of its real characteristics and price with those declared in the accompanying documentation, and observation of marking requirements and other standards shall be conducted.

³TRIM – Trade-related investment measure

- The Agreement on Rules of Origin, Annex 1A[14], shall bind the states to adopt explicit and predictable rules of origin and use them in a way they would not neglect or prejudice the Members' rights, would be of non-discriminatory nature and would not themselves create unjustified barriers to trade. The country of origin shall be defined with the aim of using tariff and non-tariff measures for goods flow regulation in the state customs territory, as well as ensuring the goods accounting in the foreign trade statistics. The key problem here is the abuse related to indication of more prestigious countries of origin for the goods manufactured in other countries. The International Convention on the Simplification and Harmonization of Customs Procedures 1973 developed by the World Customs Organization was the first to define the general principles for regulation of rules of origin. Transparency in the goods origin promotes for real mutual advantage and implementation of the principle of mutual advantage.

- The Agreement on Import Licensing Procedures, Annex 1A [15], sets forth the transparency and compliance of the licensing procedures with the GATT-94 purposes, as well as efficient mechanism of consultations and operational, effective and fair dispute settlement arising from the Agreement as the main objectives. The Agreement defines the main rules for the states to follow in import licensing. All the information concerning the application procedures must be published in sources the state should inform to the Import Licensing Committee.

- The Agreement on Subsidies and Countervailing Measures, Annex 1A[16], is aimed at updating the provisions of Article XVI "Subsidies" of the GATT-94, in particular, at providing the international trade with more relevant criteria for using the countervailing measures and creating flexible and variable mechanism to agree on the member states' positions in order generally to improve the gained efficiency of the benefit from cooperation. The main criterion for implementation of the countervailing measures by the state is the violation of its economic interests by the subsidized import. The Agreement regulates the procedure for introduction of compensation duties by stages. According to Part VI (Art. 24) of the Article, the Subsidies and Countervailing Duties Committee shall be established to supervise the practice of subsidized export. The Agreement also provides the dispute settlement procedure that consists in applying to the WTO Dispute Settlement Body.

- The Agreement on Safeguards, Annex 1A[17], is also aimed at preventing from violation of the principle of mutual advantage. It describes the introduction of safeguard measures by the state in the situation when the goods are legally imported in the quantities that inflict loss to its economy. The Agreement specifies the loss in the national economy as the ground for safeguard measures and contains the procedure for introduction of safeguard measures. If necessary, the importing state can introduce the safeguard measures without investigation but no more than for 200 days. If the investigation does not establish the relation between the increased import and import loss, the funds received from the increased duty are to be paid back to the exporters. In the course of safe guards implementation, the principle of transparency and special control should be

followed wherefore the Agreement provides for establishment of the WTO Safeguards Committee (Art. 13 of the Agreement). The described mechanism of the Agreement shall actually be the mechanism for compliance with the principle of mutual advantage.

When characterizing a whole set of agreements of Annex 1a, it should be noted that they generally both in their idea and in words comply with the principle of mutual advantage. The GATT-47(94) preamble presents the wish of the governments of the state founders to promote for the purposes of the Agreement by making mutual and beneficial agreements aimed at significant reduction in tariffs and other barriers to trade and elimination of the discriminatory treatment in the international trade. The mutuality and mutual benefit as the basis for cooperation between the Contracting Parties are also specified in clause 3 of Article XVII "State Trading Enterprises" where the Contracting Parties treat the negotiations on the reciprocal and mutually advantageous basis as a key factor for restriction or mitigation of the barriers which can be created by such enterprises. Clause 2 of Article XXVIII "Modification of Schedules" also states that in negotiations and agreements "the contracting parties concerned shall endeavor to maintain a general level of reciprocal and mutually advantageous concessions not less favorable to trade than that provided for in this Agreement prior to such negotiations", and Article XXVIII b "Tariff negotiations" states the importance of reciprocal and mutually advantageous treatments during negotiations aimed at reduction in the general level of tariffs and other levies.

Part IV "Trade and Development" of the GATT-94 dedicated to the issues of sustainable development considering specific needs of the developing countries also explicitly uses the criterion of advantage but in the context of facilitation for the developing countries: thus, clause 4 of Article XXXVI "Principles and Objectives" specifies the necessity to implement stable, fair and favorable prices for the goods from the developing countries that should provide for dynamic and stable growth of real export receipts for these countries.

As we can see, the explicit reference to the criterion of advantage in the text of the GATT-47 (GATT-94) addresses two substantial levels of its application: reciprocity-based advantage as a general cooperation criterion in the course of the international trade liberalization (primarily, between relatively equal partners) and one-sided advantage as a compensation for past colonial heritage by the developed countries to the developing ones and assistance to the latter in order to eliminate imbalance between the economies of particular regions and states that is dangerous for sustainable development of the common humanity.

The variety of levels of the criterion of advantage is indirectly implemented in many Articles of the Agreement of the GATT-94 which cover or specify the principle of mutual advantage. In particular, the principle of mutual advantage in the interstate relations is implemented in the common commitment of the Contracting Parties to observe the most-favored-nation treatment while realizing these liabilities via the Lists (Schedules) of Concessions of the Contracting Parties. Generally, the most-favored-nation treatment is described in clause 1 of Article 1 of the GATT-94 as follows:

any preferences (advantage, favor, privilege or immunity) granting by one contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties. These preferences refer to all elements of legal and institutional regulation of the goods international flow by the state granting the preferences, namely: any duties or charges imposed on import or export (or related thereto) or imposed on the international import or export payments, as well as the method of calculation and imposition of such duties and charges, and rules and import and export customs clearances. Clauses 2-4 of Article I of the GATT-94 contain the provisions which can be considered as an independent principle agreeable with the principle of mutual advantage and general most-favored-nation treatment: it consists in that the general dynamics of introducing the liberalization preferences in the most-favored-nation treatment should not interfere with the already existing preferential agreements preserving their status of special and high-priority norms (with regard to the general most-favored-nation treatment); this provision is described in details in Article XXIV "Territorial Application. Frontier Traffic. Customs Unions and Free Trade Areas" of the GATT-94, as well as in one of six agreements (On Interpretation of Article XXIV of the GATT-94) being an integral part of this complex document.

The definition of the most-favored-nation treatment in the context of its implementation is given in clause 1 (a) of Article II "Schedule of Concessions": "each contracting party shall accord to the commerce of the other contracting parties treatment no less favorable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement". The List (Schedule) of Concessions means, on the one hand, specific liabilities of the members states: ideally, the liberalization in the GATT/WTO system consists in that the each member state gradually update its list towards the reduction in tariff rates and elimination of restricting measures. On the other hand, the Schedule of Concessions summarize specific stage of negotiation process where the states try, by multilateral and bilateral negotiations, firstly, to establish the recommendative levels of concessions for each state in the expert review treatment, and secondly, to convince each other to record such levels in the Schedule, thus undertaking the liability not to exceed them within the current tariff legislation, that is why the values recorded in the Schedule are also called "bound" [18, p. 190]. The states shall endeavor to record rather high bound tariffs in order to leave the space for maneuvering: within the current legislation they usually establish the customs tariffs that are lower than the bound ones thus demonstrating their good will to liberalization.

2) General Agreement on Trade in Services (Annex 1B) GATS

In the up-to-date international trade, the increase in importance and relative significance of services, their variety and resource consumption in this sphere is considerably higher than these factors in commodity trading, and this gap is constantly increasing.

In the post-war international economic order, the criterion of advantage in the evaluation of the "invisible trading"

(services) for the first time was implemented in the Charter of Economic Rights and Duties of States, Article 27, in particular, states: "1. Every State has the right to enjoy fully the benefits of world invisible trade and to engage in the expansion of such trade. 2. World invisible trade, based on efficiency and mutual and equitable benefit, furthering the expansion of the world economy, is the common goal of all States" [2].

In the course of Uruguay round in September 1986 in Punta del Este, the issue of adoption of the universal agreement on services regulation was reviewed for the first time. In Montreal (December 1988), the key principles to be implemented by such agreement were determined, in particular: the principle of transparency; gradual liberalization; national treatment and most-favored-nation treatment; free market access; increased participation of the developing countries; preservation of exceptions and the right of the states to safeguards; advantages of national regulation in some spheres [1, p. 264]. It can be seen that some of the principles mentioned are mutually contradicting, but their compromise provides for specificity of the services market regulation and liberalization in the WTO system. Among the special principles listed above, the principle of mutual advantage that is of general nature in relation to the others is not directly determined. However, the text of the General Agreement on Trade in Services, as well as some of its annexes explicitly specifies the member states' liabilities to follow this principle that, in its turn, only shows the general focus of this Agreement, like all Marrakesh agreements, on the mutual advantage as the main principle of the international economic cooperation.

The General Agreement on Trade in Services adopted on April 15, 1994, as a part of Marrakesh set (Annex 1B) [19], is one of the main components of the "integrated multilateral trade system" that is the commonwealth of WTO member states. The Agreement has also institutionalized the global regulation of trade in services: one of three WTO special councils, the Council for Trade in Services (Art. XXIV of the GATS) that should operate under the guidance of the WTO General Council (clause 5, Article IV of Marrakesh Agreement) is a special body regulating the liberalization of the international trade I services.

GATS is the first international compulsory agreement covering all spheres of regulation of the international services market but it is a framework agreement and its main objective is to ensure the coordinated liberalization of the international trade in services. The GATS norms are special (lex speciales) with regard to the norms of the GATT-94 which are general norms (lex generales): in case of conflict between these norms, the GATS special norms shall prevail [18, p. 286].

The frame character of the GATS provides for necessity to fill its principles and provisions with more specific agreements. In view of this, the important role belongs to the Council for Trade in Services that arranges the adoption of such agreements in services as annexes to GATS (there are eight now).

As was already mentioned above, the text of the Agreement includes specific references to the principle of mutual advantage. Thus, Part IV "Further Liberalization", Article XIX "Negotiation of Specific Commitments", sets forth that the negotiation process aimed at reduction or elimination of measures having negative impact on trade in services should facilitate the interests of all participants based on mutual advantage and ensuring general balance of rights and obligations. Article XXI "Changes to the Schedules" specifies the right of the member which favors can be affected by changes to the schedule of concessions by other member to enter negotiations in order to agree on the necessary compensatory measures. In the course of negotiations and in the Agreement, the Members concerned shall preserve the general level of mutually advantageous commitments no less favorable than that provided for in the Schedules of Specific Commitments prior to such negotiations.

Pursuant to clause 3 of Article XXIII "Dispute Settlement and Agreed Solutions", if any Member believes that a certain benefit it reasonably expected to get under specific commitments of the other Member is reduced due to application of any measure which do not contradict the provisions of this Agreement, it can address to the Agreement on Dispute Settlement (Annex II to Agreement Establishing the WTO). If the Dispute Settlement Body determines that the measure neglects or mitigates such a benefit, the Member affected by changes shall have the right for mutually acceptable settlement based on paragraph 2 of Article XXI that can include changes or revocation of the measure under consideration. If the Members mentioned cannot reach an agreement, Article 22 of the Agreement on Dispute Settlement shall be applied. If there is an arbitrary decision and a Member who made changes does not abide this arbitrary decision, a Member affected by these changes based on the arbitrary decision can change or revoke the material equivalent benefits it granted to the Member that made changes (clause 4 of Article XXI).

It should be noted that GATT had no such procedure and all disputes were settled by consultations and then by special working groups that was inefficient.

One of the examples of violation of the principle of mutual advantages and inefficiency of its protection within the GATT can be the case of the EEC against the USA in 1973. The dispute consisted in that the EEC blamed the USA in providing the tax deferrals for the domestic international sales corporations (DISC) to stimulate export. The EEC considered such deferrals as export subsidies that contradicted the provisions of Article XVI(4) of the GATT. In self-defense, the USA declared that the Law "On Tax Deferrals" was adopted in order to equalize the competition conditions between the American and European companies that did not pay taxes on the agreements concluded through off-shore territories and submitted counter-claims against Belgium, France and Denmark. The arbitration group for claim review was set up only in 2.5 years. It consisted of three representatives of neutral countries and two experts in taxation. In November 1976, the arbitration group prepared four reports according to which both the acts of the USA and the acts of the EEC were recognized non-compliant with the GATT provisions. At that time, the reports were prepared

without the GATT legal specialists and were too non-convincing. The EEC blocked the adoption of reports by the GATT Council, and the USA, in their turn, declared that they would accept the report criticizing the USA provided that that EEC also accepts the reports criticizing taxation systems of its members. The reports remained blocked for four years until the EEC agreed to unblock them, and the USA and EEC reached an understanding that the laws of the member states could not be changed.

In the framework of the Uruguay Round in 1989, the decision on "improvement of rules and procedures for dispute settlement of the GATT" was adopted that contained the provision on arbitration review of disputes, as well as the provision aimed at complying with the principle of mutual advantage, namely, the decisions that were adopted pursuant to Articles XXII and XXIII of the GATT or in the framework of arbitration review cannot cancel or reduce advantages of the contracting parties of the GATT. In the beginning of 1990s, the GATT declares new principles of dispute settlement system. Based on the consequences of the Uruguay round, the dispute settlement procedure has been improved and reflected in the Understanding of the Rules and Procedures Governing the Dispute Settlement (URPGDS) containing 27 articles and 4 annexes. Pursuant thereto, the WTO Dispute Settlement Body had been set up that began functioning more efficiently considering all preliminary procedural shortcomings by settling the disputes on the issue of mutual advantage between the countries.

One more confirmation of application of the principle of mutual advantage in the enlarged sense [20, 70] is the dispute review within the WTO between the developed countries and developing countries [21, 71]. Thus, the preferences are granted to the developing countries, in particular, according to Art. 3.12 of the URPGD if the claim is submitted by the developing countries against the developed country, the first one, at its own will, can select the provision of the decision of 1966 used in relations between the developed countries and developing countries instead of clauses 4, 5, and 6 of Art. 12 of the URPGDS. In case of collision between clauses 4, 5, and 6 of Art. 12 of the URPGDS and Decision of 1966, the latter shall be applied. If a claim is submitted against the developing country, the period of consultations before the arbitration group meeting can be prolonged. Also, it provides that one of the members of the arbitration group shall be a representative [18, 255]. The above mentioned makes it possible to state that within the framework of the WTO the compliance with the principle of mutual advantage and prevention of its violation by any of the parties are the top priorities of the countries.

Part VI "Final Provisions" contains Article XXVII "Denial of Benefits" defining the right of the Member to deny the benefits of this Agreement if the services are provided by the operators related to the state but not to the Agreement member.

Clause 4 of the Annex 4 to GATS "On the Movement of Natural Persons Supplying Services under this Agreement" states that in the course of implementation of its right to use measures to regulate the entrance of the natural persons to

their territories, the member states shall not use them in a way to neglect or damage benefits for any member under the particular commitment [19].

Pursuant to clause 11 of the Annex to the GATS "Understanding on Commitments in Financial Services", every Member, by implementing the non-discriminatory measures on regulation of financial services market, "shall endeavor not to limit or restrict the present degree of market opportunities not the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does no result in unfair discrimination against financial service suppliers of the Member applying such measures" [19].

The implied aspect of the principle of mutual advantage is the provision on the most-favored-nation treatment (Article II), transparency (Article III), access to markets (Article XVI), national treatment (Article XVII), significant powers of the states individually to define the sectors with different liberalization treatments (Article XX "Schedules of Specific Commitments").

3) Regulation of Trade-Related Intellectual Property Rights in the Agreement on TRIPS

In the up-to-date international commercial relations, the most goods and services have the intellectual property right as one of the components. Today, a material share in the world trade (about 5%) takes the counterfeit products where the usage of the unpaid protected intellectual property rights is uncontrolled [18, p. 16]. A share of arbitration and court disputes is rapidly growing both at the domestic and global level with regard to violation or interpretation and use of the intellectual property rights [18, p.18].

This also provided for adoption of the special Agreement on the Trade-Related Intellectual Property Rights (TRIPS), as a part of the Marrakesh set [22], that ensures systemic unity of international legal norms and intellectual property rights regulating mechanisms that began developing since the end of XIX. TRIPS is the first agreement aimed at liberalization of all aspects of trade-related intellectual property rights.

The TRIPS preamble sets forth the dual objective: on the one hand, to provide for efficient and proper protection of intellectual property rights, and on the other hand, not to allow the measures and procedures aimed at ensuring the intellectual property rights to become barriers to legal trade [23, 250].

The principles set out in Part I of the Agreement include the following: 1) the right of the member states to change the general treatment to improve the protection; 2) the right of the states to maintain their public order by using the restricting measures provided that these measures must comply with TRIPS; 3) the commitment to provide the national treatment; 4) the commitment to provide the most-favored-nation treatment that according to TRIPS compared to the WTO general approach is of conditional character that is provided on the reciprocity basis.

The Agreement on TRIPS does not explicitly refer to the principle of mutual advantage, only Article 7 "Objectives" states that the protection and control over compliance with

the intellectual property rights should provide for introduction of advanced innovations as well as transfer and expansion of technology for mutual benefit of manufacturers and users of technology knowledge, and promote for social economic well-being, as well as the balance of rights and obligations. This principle implies the commitment of national treatment (Article 3) and most-favored-nation treatment (Article 4) [22].

Part III sets forth the main principles and measures for intellectual property rights protection which, as a question of procedure, ensure at least implicit compliance with the principle of mutual advantage. The general commitments in this sphere (Section 1, Article 41) provides that the members use the efficient measures against any actions infringing the intellectual property rights and preventing from such violations in future thus avoiding the creation of the barriers to legal trade and ensuring the guarantees against abuse (clause 1, Article 41).

The procedures related to the intellectual property rights protection should be fair and equal for everyone. They must not be unreasonably complicated, the cost of their implementation must not be high or accompanied by significant material losses, contain unreasonable time restrictions or unjustified delays (clause 2, Article 41).

The case proceedings must be available and understandable (clause 3, Article 41). The Parties should have an opportunity to appeal administrative decisions and decisions at first instance, but there should be no liabilities to appeal the criminal proceedings (clause 4, Article 41).

The Agreement on TRIPS is based on the principle that the intellectual property rights belong, first of all, to the private right. This means that the state bodies undertake the actions on the intellectual property rights protection only based on the will of a person that can pretend for such protection. But the subjects that shall follow the WTO rules (the TRIPS rules in this case) are the states undertaking the commitments to issue appropriate legislation and setup relevant institutions to implement undertakings on TRIPS. The beneficiaries of these international standards set for thin TRIPS shall be the persons originating from the member states.

Part IV "Undertakings for Transitional Period" is of interest from the point of view of compliance with the principle of mutual advantage. Provision of Article 65 of this Part shall give the right to the members not to use the norms of the Agreement during the year, to the developing countries and to the countries being at the stage of transition from centrally planned to market free entrepreneurial economy, this period can be extended to four years (except for provisions on the national treatment, most-favorable-native treatment, and membership commitments under conventions concluded under the guidance of the World Intellectual Property Organization). For the least developed countries, the transitions period of upto 10 years is provided (Article 66). The developed countries should ensure, upon request and on mutually agreed terms, the technical and financial cooperation for the benefit of the developing member states and the least developed member states (Article 67), such

cooperation should include assistance in preparation of laws and rules on protection and control over the compliance with intellectual property rights, as well as assistance in creation and development of national agencies and institutions related to this sphere, including staff training ones.

The Agreement binds the member states to cooperate in order to eliminate violations of intellectual property rights in the international commodity trade (Article 69 "International Cooperation"). They must, in particular, promote for information exchange and cooperation between the customs authorities in relation to the trade in goods with fabricated trademarks and pirate copies of products.

Therefore, every Annex to the Marrakesh Agreement contains references to the required compliance with the real mutual advantage in the international trade relations and provides the mechanisms of such compliance.

The WTO decision-making mechanism actually excludes the adoption of unequal treaties contradicting the principle of mutual advantage of the parties, as the decisions are made by consensus pursuant to Art. IX of the Agreement Establishing the WTO. Also, the procedure for making amendments to the Agreement Establishing the WTO becomes more complicated that, we think, also promotes for preventing the exclusions and one-sided advantages.

Recently, material disputes on mutual advantage have arisen between the member states within the WTO. The fourth conference of the WTO ministers (Doha, November 2001) was called "Doha Development Agenda". This program provided for international trade liberalization, expansion of opportunities for the developing countries and receipt of various benefits as a result of their positive discrimination, however, the objectives set have not been implemented as it had been planned due to material contradictions between the countries [24, 65].

Pursuant to the Declaration of the Ministers of the Doha Round, it was planned to consider and make decisions concerning access to the industrial goods market, rules for subsidies and anti-dumping, agriculture, environment, services, regional trade agreements as well as the "Singapore issues".

It was planned to make interim summary of the round in 2003 at the V Ministerial Conference in Cancun (Mexico), but the reappeared material contradictions on the access to the industrial goods market, agriculture and the "Singapore issues"⁴ between the developed countries and developing countries [25, 60]. The developing countries were primarily not satisfied with the subsidies of their own agricultural manufacturers by the developed countries (mainly, west countries)[26, 952]. Little progress in negotiations on the access to the industrial goods market and agricultural market was noticed only in summer 2004 [27, 51]. However, just little progress towards mutually acceptable decisions was

⁴The "Singapore issues" meant the issues in regulation of investments, competition, and transparency in implementation of state purchase and simplification of trading procedures.

notices, and reaching the real undertakings was rather delayed. The VI Ministerial Conference in Hong Kong in December 2005 by formalizing the prior agreed undertakings and selecting the ways for further dispute settlement made it possible to avoid complete failure of negotiation process and preserve the capability for its continuation. But the success was moderate and a new round of negotiations had no positive perspectives.

During 2006-2007, completion of the round was delayed several times due to sharp contradictions on the above items between the participants. Let's consider the example of contradiction between India, Brazil and the USA. Thus, the first two countries recognized the USA position with regard to agrarian subsidies and opening the markets for industrial goods and services as absolutely unacceptable. This issue remained unsolved in spite of efforts of other developing countries to reach a compromise.

The negotiations held in Geneva in summer 2008 again showed the contradictions between the USA, on the one hand, and India, China and Indonesia, on the other hand, with regard to agricultural products import conditions that make it possible for the developing countries unilaterally to introduce special safe guards to protect domestic manufacturers. Further on, the discussion concerning the states' non-compliance with the principle of mutual advantage has significantly strengthened. Thus, according to G. Brown, the UK Prime Minister, a global financial crisis turned out to be the trade crises and the states are recommended to refuse from the protectionist policy and complete the Doha negotiation round on the world trade liberalization within the WTO as soon as possible. The countries with export-oriented economy will have the most losses, and if not to refuse from the protectionist policy and increase trade financing, the recovery of the world economy from recession can be significantly delayed.

In its Resolution No. 66/185 dd 2012, the UN General Assembly "expresses a serious concern at the lack of progress within the Doha Round of the World Trade Organization negotiations, reiterates the call for the necessary flexibility and political will in order to break the current impasse in the negotiations...". Such a practice of negotiations shakes faith in the WTO and makes the perspectives of the international trade liberalization remote in future.

Among the main problems of the Doha Round were the following: problem of subsidizing the agriculture by the developing countries, use of safeguarding barriers by the developing countries, issue of anti-dumping measures, access to industrial commodity markets [28, 215].

The main objective of the developing countries during the Doha Round was the decreased support of agriculture by the developed countries. It is worth noting that lack of agreements on this issue existed also in the relationships between the developed countries, particularly, between the EU and USA. Thus, in 2006, this issue was especially focused on and became the reason for the negotiation process stoppage.

The USA subsidize the cotton manufacturers to a great extent that has a negative impact on the economic status of the African countries specialized in cotton manufacture and export (for example, Chad). However, the states concerned have not succeeded to influence the USA position on this issue.

The objective of the developed countries at the Doha Round was improvement of access to the markets of the developing countries (India, Brazil) for their goods and services. But the developing countries took it slow to decrease tariffs as they were afraid of deterioration in their economic status. High export tariffs in the developing countries give them extra competitive advantages that have a positive impact on their economic status (for example, India, Brazil).

The Parties have not also come to an agreement concerning the anti-dumping issue. The unsettled disputes on this issue have arisen between the developed countries (the EU and USA, on the one hand, and Japan, on the other hand). In particular, the first group of countries tried to specify certain provisions instead of negotiating, and Japan aimed at mitigating the abuse of anti-dumping measures [21, 70].

Some states proposed to specify the WTO Anti-Dumping Code (Article VI of the GATT-1994/WTO) in the part relating to the rules of goods determination, cost evaluation, export price evaluation, etc., but they were not supported by the first group of states.

There were also other issues on which the parties could not come to an agreement, and this confirms once again that the disputes on the mutual advantage are common in the WTO practice, as the state often strive to obtain one-sided advantages by ignoring the principle of the mutual advantage.

Understanding between India and the USA in November 2014 on "Simplification of Trade Procedures" can be considered as a positive step of the Doha Round. Its objective is to reduce costs for customs treatment and administration. This shall facilitate access to the developing countries markets. The USA blamed India in reprocessing of supplies for national reserves that can be exported. After negotiations, the USA agreed to make a "peaceful provision" for India that will be effective for an indefinite period of time [28, 216].

For the developed countries, the Doha Round has become a new stage in the world market liberalization, including the developing countries markets.

The developing countries aimed at eliminating the discriminatory restrictions in the international trade, enhancing the competitive ability of the national goods manufacturers, strengthening the own economy.

The mechanism providing to compliance with the principle of mutual advantage, namely, decision-making by consensus, slowed down the decision-making in the frameworks of the Doha Round due to the parties; failure to come to an agreement. This speaks for contradictions on mutual advantage between the parties. One of the objectives

of the Round was to settle the disputable issues, but not all the states were interested to do it due to the opportunity of wide interpretation of articles for their benefit.

Thus, the difference in approaches of the states to the objectives of the Doha Round, different understanding of the concept of the benefit and failure to come to an agreement have become the reasons for failure to complete the Development Round.

2. Conclusions

Marrakesh Agreement Establishing the WTO 1994 and annexes there to provides for a complex of attainments of the developed international community regulating in its activity by a presumption that the peaceful cooperation, including trade, is mutually advantageous [28, 125]. The principle of mutual advantage has become a basis for the WTO activity, and the WTO institutional mechanisms provide for complying with it in the interstate relations within the organization. The practice of the last WTO round "Doha Development Agenda" reflects the contradictions on implementation of the principle of mutual advantage between the countries that, we think, slows down the development of the world economy and economies of particular states. The dispute settlements between the states and dialogue managing into a meaningful activity based on the principle of mutual advantage within the Doha Round are possible and will have a positive impact on the development of the world economy.

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