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# TRADE POLICY REGULATION MECHANISMS OF STATES WITHIN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION

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## ABSTRACT

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## GENERAL CHARACTERIZATION OF THE THESIS

**Relevance and degree of development of the research topic.** In the conditions of globalization of international economic relations and the expansion of economic integration at both regional and global levels in the world, ensuring the effective participation of each country in the system of international commercial and economic relations is a necessary condition for a successful foreign economic policy. States, as subjects of international law, assign a special role to the WTO in solving this problem.

Dynamic development of international economic relations including international trade in goods, services and intellectual property (including also investment-related transactions) in conditions of globalization, resulted in that the WTO has become a media of economic growth around the world. Currently, only a small part of international trade flows takes place outside the WTO system

The Final Act of April 15, 1994, emboding results of the Uruguay Round of trade negotiations conducted under the GATT comprises the legal basis of the WTO's activities. The system of norms and rules created within the framework of the WTO plays a benchmark role in the legal regulation of international trade. The WTO acts as a center for development of legal principles, terms and conditions governing international trade. It fulfills member-states' trade policy review and law-making functions in the sphere of international trade. Research of the legal bases of the WTO's activities and various mechanisms thereof is specifically important for the Republic of Azerbaijan given its observer status.

On June 23, 1997, Azerbaijan submitted an official application to the WTO Secretariat and declared its intention to become a WTO member[1]. The Republic of Azerbaijan has been negotiating

[1] WTO website: [Electronic resource] URL: https://www.wto.org/english/thewto_e/acc_e/a1_azerbaidjan_e.htm

for a long time to join the WTO and is preparing to become a member thereof. From the moment of its membership, Azerbaijan can use the opportunities available in this organization to protect its interests in the field of international trade. The success of the trade policy of each WTO member-state mainly depends on how effectively that country can use the legal mechanisms operated within the organization. In this regard, the possible accession of the Republic of Azerbaijan to the WTO can have a positive impact on the future economic development of the country as a whole. In view of the above, the WTO activities needs to be carefully and detailly studied in order to be prepared for the consequences of the accession of the Republic of Azerbaijan to the WTO.

At the same time, it also becomes important, from the point of view of foreign trade goals, to establish appropriate procedures and legal environment capable of ensuring the achievment of the development interests of a country and preventing capture of the foreign trade policy by private interests. Therefore, the legal regime and procedures should be shaped in a way enabling formulation and implementation of trade measures aimed at achievement of the community interests rather than the interests of the private interest groups.

It should be noted specifically that study of the norms and rules applicable within the WTO framework and exploration the experience of their application aquire utmost importance in ensuring the interests of the country to the maximum extent possible in the accession process. Hoüeverç the importance of study of interaction between the rules, practices and institutions comprising the WTO law and the trade regimes of the member-states may not be limited to the accession process, but also becomes important for the purposes of defining possibilities for pursuing trade policy in accordance with the country's development interests after the accession and adaptation the same to the WTO law.

The activities of the WTO and the WTO law, as well as its application mechanisms have been studied from various aspects to

a significant degree in both domestic and foreign scientific literature. There has been a number of scientific researches in foreign scientific literature in respect of the impact of the WTO law and institutions on formulation of trade policies of the member-states. Much more attention has been paid in the English-language literature to the research of the restrictions set by the WTO law on the implementation of trade policy measures by the states, as well as the opportunities given to the states in the formation and implementation of the trade policies, however, these issues have not been studied in comprehensive and combined manner and, specifically, no extensive studies have been conducted in relation to the transition economies.

Works of I. V. Zenkin, Y. V. Zakharova, V. I. Rusakovich, I. I. Dumulen, V. M. Shumilov, A. V. Dayneko, A. A. Khristoforov, M. P. Trunk-Fyodorova, T. V. Yevdokimova, etc. can be shown as examples of research in WTO law in the post-Soviet countries.

In the legal literature of Azerbaijan a limited number of issues has been explored in the textbooks "International Economic Law"[2] by A. I. Sadikhov and "International Economic Law"[3] by E. A. Aliyev. Little attention has been given in the domestic scientific literature to research of the options for the formulation of the trade policy measures consistent with the WTO law in a way most appropriate to the development interests of the states and researches did not cover the issues of formulation and application of the trade measures as relevant to the distinct aspects of the WTO law and institutions. Therefore, the role of the WTO law and institutions in the formation of the trade policy of the member-states and the possibility of formulation of the WTO law-compliant trade measures in a way consistent with the interests of the member-states have not been explored. A comprehensive study of the WTO law and practice in this aspect has received little attention

[2] Sadıxov, Ə. İ. Beynəlxalq iqtisadi hüquq / Ə. İ. Sadıxov. – Bakı: «Bakı Universiteti» nəşriyyatı, – 2008. – 396 s.

[3] Əliyev, E. Ə. Beynlxalq iqtisadi hüquq. Dərslik / E. Ə. Əliyev. – Bakı: Adventa, – 2013. – 443 s.

in the scientific literature, and studies have not covered all matters in combined manner that relate to the mentioned aspects of the WTO law and institutions.

It should also be noted that existing scientific researches is mainly related to the experience of the developed countries. There is also a significant amount of research that considers the needs of developing countries. However, studies dealing with transition economies are few and not comprehensive. Another characteristic aspect of the research works conducted is that the issuees in question have been studied in terms of economics and from the point of view of social and political consequences. Therefore, less attention has been paid to the study of legal aspects as compared to economic and political aspects. The main goal of the current thesis is to eliminate these mentioned gaps.

It also woth mentioning that the issues related to the topic have been investigated in a number of studies by the author. Thus, the features of the WTO as an institutional form of regulation of international trade, legal regulation of trade in agricultural products, technical barriers to trade, trade in services, role of the dispute settlement mechanism in ensuring the WTO law, the WTO jurisprudence, preferential trade issues were investigated by the author in terms of their impact on domestic trade regulations. The author published the results of his research in Azerbaijani, Russian and English. Among the studies carried out in Russian, there are an analysis of the legal regime of exceptions and remedies from the general rules of GATT - 1994 and an analysis of the issues of sovereignty of states in International Public Law and the extent of their domestic competence determined by International law. Among the works written in English, which are directly related to the topic of the dissertation, the articles devoted to the study of the effects of the membership in the WTO on the domestic legal system and trade policies of the members the analysis of the legal consequences of the membership, the WTO disputes setlement and the WTO jurisprudence may be shown. it is possible.

**Object and subject-matter of the research**. The object of

research of the Thesis is the legal relations arising in connection with the mutual institutional effects between the WTO law and the formation and implementation of trade policy measures by the member-states.

The subject-matter of the research is the characterization of the trade policy regulation mechanisms of the member-states within the normative and institutional framework established by the WTO law, as well as the possibilities of introducing economic and social development-oriented trade policies by the member-states and candidates for membership in accordance with the WTO law.

**Goals and objectives of the research.** The purpose of the research is the characterisation of the mechanisms of formation and implememnation trade policies by the WTO member-states and candidates for membership oriented at the econimic and social development within the institutional and legal framework established by the WTO law and formulation of general recommendations on the means and ways formation of such a trade policies based on the comprehensive analisys of the institutional and legal foundations of the WTO system, as well as the study of the practice of implementation of the WTO agreements. The selection of the goal specified above conditioned the determination of the tasks mentioned below:

- characterization of the main aspects of the WTO law and its institutional framework;
- analysis of the WTO rules and dispute resolution mechanisms;
- determining the legal and institutional aspects of the WTO system that affect the formation of trade policies and the application of trade measures by the member states;
- study of the legal regime applied in connection with the formulation and application of trade policies by member states;
- analysis of the main legal and institutional effects arising from the WTO agreements;
- characterization of exceptions and exemptions from the obligations provided for by the WTO law;
- study of the consequencies of mutual institutional influences

between the WTO law and the trade policies of the member states;

- studying and summarizing the experience of the WTO members in trade policy formulation and implementation;

- characterization of the changes that membership in the WTO may require in the domestic legal and organizational structure of a member state;

- identification of deficiencies and shortfalls in the internal legal systems and institutional structures that may arise in connection with the membership in the WTO; based on the analysis of the experience of the WTO members;

- taking into account the candidate status of the Republic of Azerbaijan, formulation of recommendations and proposals regarding legal adaptation and institutional changes that may be considered necessary and appropriate in connection with WTO membership,.

**Research methods.** The dialectical cognitive method formed the philosophical methodological basis of the research. The general scientific theoretical research methodology included functional, systemic and structural analysis and synthesis, abstract generalization, induction and deduction, historical, logical, and formalization methods; whereas methods legal analogy and comparison, as well as legal modeling and forecasting were applied as special scientific method of legal research.

The complex nature of the topic has determined not only the study of legal literature, but also the literature of other fields of science, including economics, international trade and politics. In addition, the author used analytical literature and statistical data, as well as periodical press and Internet resources.

In the research process, the author used the sources of the WTO law, decisions of the WTO bodies, international and domestic legal and normative acts, the WTO dispute settlement practice and other sources of interpretation of the WTO law. In order to achieve a comprehensive analysis of the research topic, sources of international and domestic law, as well as theoretical materials were examined in terms of the effects on the internal competence

of the states and impacts on the trade policies of the member-states were evaluated in terms of their social and economic development.

**Main propositions of the research**. A number of scientific propositions and practical recommendations were put forward in the Thesis. The scientific propositions form a comprehensive interpretation of an important scientific problem, and the practical recommendations define the possibilities of practical use of the provisions of the WTO law for the purposes of formulating and implementing a trade policy aimed at social and economic development:

1. Membership in the WTO results in long-term effects on the country's economy, and these effects concern primarily the legal regulation of trade relations. WTO membership, creates a need to constantly adapt the applicable trade policy measures to the WTO requirements because of limitation of possiilities of enacment of regulations on the markets following the WTO accession.

2. Time, duration and purposes of a WTO-law compatible measure depends on the pecuiliarities of objectives and the targets to be attained under specific political and economic conditions and needs to be determined individually in each case. The trade policy in such case needs to be purposefully coordinated with the general macroeconomic measures, such as tax policy, labor market regulations, investment rejime, monetary policy etc. in order benefitting from the WTO rules and achievement of economic and social development goals be possible, otherwise there are sufficient chances of the WTO membership to become a source of economic and social tension.

3. Disruption of market conditions for members admitted to WTO membership, in particular, problems in the financial and labor markets (for example, a decrease in credit resources, foreign capital gaining dominant positions in the financial markets, a decrease in production volumes (due to the entry of cheaper imported goods into the market), and thereby increase in the level of unemployment), balance of payments problems, disproportionality in the distribution of material goods, usurpation

of the benefits arising from the application of WTO rules by interest groups (due to the weakness of the state and public institutions), economic remission, etc. may cause serious economic and social risks. Prevention of the realization of such risks or, if they do happen, their quick elimination requires that the most acceptable legal conditions that are in the interests of the country are negotiated during the accession negotiations and after the admission to the membership, requires adaptation of the legal regulation and institutional structure as relevant.

4. Adoption of all or only a part of the elements of the trade regime allowed to be used/applied under the WTO which would be in the national interests to the maximum extent possible as well as application of particular rules and extent and manner of application aquies utmost topicality. The solution of this issue depends on the specific political, economic and social situation of the states, their organizational structure, the level of adaptation to the WTO rules, as well as the quantity and quality of the fianacial and intellectual resources involved in solving these issues.

5. In order to be effective as a WTO member, it is a condition that government structures are completely free from corruption, operate in conditions of openness and transparency, and eliminate the possibility of illegal influence by special interest groups on these structures. Ensuring that the influence of special interest groups is exercised through legal avenues of parliamentary lobbying, or using formal means within the framework of information or appeal (application/request/claim) procedures in accordance with the WTO law is necessary in terms of the ability to operate effectively in the WTO system. This, in turn, requires full openness and transparency of the state structures. At the same time, it necessitates free information flows in the member state to the highest possible degree and ensuring the highest possible degree of accessibility to information.

6. The most effective trade policy measures that can be applied flexibly by the WTO members to protect domestic industries and/or service suppliers are safeguards. Safeguards allow states to

suspend (temporarily refuse to perform obligations) obligations under the conditions stipulated by the WTO agreements that enable the use of those instruments, and such refusal of obligations is not considered a violation of obligations. Safeguards (waiver options) are designed to solve macroeconomic problems faced by member-states and contest unfair competition, but they can also be used to protect domestic producers and service providers from foreign competition. The WTO agreements provide general rules on the use of safeguards, and although those rules limit states in the field of domestic regulation, they also allow room for maneuver. The maneuvering possibilities in the domestic legal system arise due to the fact that the procedural rules for the application of the WTO law can be freely determined by the states, and the states can use such regulatory freedom for the purpose of protecting domestic producers/suppliers.

7. The WTO agreements also provide for responsibility for lawful actions. This occurs when the application of any normative legal act or trade measure legally adopted by a member-state results in reduction or nullification of the benefits obtained or intended to be obtained by any other member-state.

8. The range of the trade measures, including safeguards and other means of protection provided for by the WTO agreements used by the developed and developing countries for the protection of their domestic markets varyed significantly. Developed countries generally preferred opportunities related to unfair competitionç ühereas the application of these tools in developing countries have been less common due to the inadequacy of institutional structure and human resources, as well as the permissibility of the application of measures that are easier to apply. It should also be noted that such opprtunity is not granted to the countries who does not enjoy the status of a developing country.

**Scientific novelty of the Thesis work**. The Thesis from one hand constitutes the first comprehensive research in the literature of international law where the institutional mechanisms of the

formation and implementation of trade policy by the WTO member-states are studied as a matter of the doctrine of international law, and from other hand provides generalized recommendations regarding their application based on a study and analysis of their outcomes. The findings obtained as a result of the research are general and can be used by all states, including Azerbaijan which is in the process of accession to the WTO, both during and after the accession process. In the Thesis:

- problems related to the adaptation of domestic law to the WTO law are highlighted;
- different conceptual views and approaches put forward in the legal doctrine related to the rights and obligations of the member-states in connection with the membership and the characterization of the legal regime of the member-states are analyzed, systematized and summarized;
- role of the legal and institutional mechanisms included in the WTO law is examined from the point of view of the interests of the states at different levels of development, in terms of the interests of the new members, taking into account the candidate status of the Republic of Azerbaijan;
- impact of the WTO membership on the domestic legal systems of the member-states, the obligations and restrictions arising from the membership are analyzed in terms of their effect on the trade regime formation process, and the effects of the obligations on the trade policy and regime are highlighted;
- content and essence of the rules of both the WTO law and domestic legal systems governing application of trade measures, conceptual views on and practice of application of trade measures are highlighted from the point of view of the purposes of use by the states and the analysis of their results are summarized and systematized;
- the most beneficial ways of using provisions of the WTO law regulating trade policy formation by the member-states in terms of their development interests, the conditions for the application of the trade policy measures by the member states in accordance

with the WTO law are examined, the measures that can be implemented in specific conditions in accordance with the WTO law, are described in a general manner.

- important decisions of the DSB that establishe the interpretation, development and description of the WTO law related to the application of trade policy measures are evaluated, the role of dispute resolution practice in the regulation of trade policy is explored;
- problems that candidate states, including also Azerbaijan, may encounter in the accession negotiation process and the ways and means of overcoming thereof are examined;
- examination of the WTO law in the above-mentioned way based on the existing literature and normative array constitutes a new research direction and method in itself, which is one of the factors that determine the scientific novelty of the work.

**Theoretical and practical significance of the research**. The propositions and outcomes of the research may be used for the improvement of the domestic legal regulation, adaptation of the fulfilment of public functions to the WTO law in both law-making and law-enforcement areas, in accession negotiations, preparatory work for the accession and the formation of the position of the Republic of Azerbaijan, as well as development and delivery of general and special educational courses in the future in such fields as international law, trade and internal regulation of investments, formation and maintenance of competitive conditions in the market, international and domestic legal regime of intellectual property rights, settlement of disputes, etc.

**Probation and implementation of the Thesis**. The Thesis was discussed at the meeting of the departments of International public law, International private law and European law of the Baku State University and was recommended for the defense.

A number of results of the Thesis were presented and discussed at international and domestic conferences, "round table" type discussions, as well as delivered in lectures. The main theoretical and practical results of the Thesis are described in the author's

scientific publications, articles published in scientific journals recommended by the Higher Attestation Commission under the President of the Republic of Azerbaijan for the publication of the results of the Thesis.

The results of the Thesis have been tested in the process of preparation of lectures at the Faculty of Law of the Baku State University on educational subjects and courses such as International public law, International economic law, legal regulation of international trade, etc.

**The organization where the dissertation work was carried out -** The dissertation work was carried out, discussed and recommended for defense at the "International Law" department of the Faculty of Law of the Baku State University,.

**The structure of the Thesis.** The Thesis consists of an introduction (22 267 characters), three chapters covering 12 paragraphs, a conclusion, a list of references and a list of abbreviations with a total of 255 260 characters. The first chapter (45 535 characters) examines the characteristics of the WTO as a structered institution, provides a general analysis of the WTO law, examines the requirements for the WTO membership, and analyzes the mechanism for the WTO law enforcement. The second chapter (96 615 characters) examines the exceptions and exemptions from the WTO rules, as well as the possibilities of exemption from the obligations and explaines the conditions of their application. In the third chapter (65 228 characters), the rules created within the framework of the WTO and the obligations undertaken are evaluated from the point of view of development, and possibilities for actions permissible under the framework as defined by the applicable WTO rules, as well as the possibilities to deviate from that framework, are examined. In the concluding section (24 615 characters), generalizations on trade policies and measures that can be implemented by the WTO members are presented based on the results of the study.

## MAIN CONTENTS OF THE THESIS

In the **Introduction** part of the Thesis, the relevance of the topic, level of elaboration, goals and objectives, methods of the research, defended provisions are stipulated, the scientific novelty, theoretical and practical importance of the research, probation and application of the research work, name of the organization where the dissertation work is performed, volumes of the structural sections of the dissertation separately and information about the total volume in characters is presented.

The first chapter is entitled "**WTO law - elements and features**" and consists of four sections.

In the **first section**, the features of the WTO system (institutional structure and rules) are examined and it is demostrated that the WTO represents a single legal framwork for all of its members. An institutional system covering goods, services, intellectual property and investments emerged as a result of the Urugway round negotiations and is enforced by an international institution. The dispute resolution system, which is one of the main elements of the WTO law, forms an enforcement mechanism ensuring mandatory implementation of the rules established by the WTO law. Trade in goods and services, trade-related issues of intellectual property protection, trade restrictions affecting the investment regime, trade with agricultural products and other elements of the WTO law are analysied in light of institutionalization of regulation of trade relations.

The WTO, as an institutional form of legal regulation of international trade, provides for the application of trade rules as a single undertaking and ensures their mandatory implementation.

Market opening commitments are reflected in two types of commitment schedules: (1) GATT schedules containing commitments on tariff rates and non-tariff restrictions on trade in physical goods, and (2) GATS "commitments" on trade liberalization in services.

With the aim of liberalisation of foreign trade, the WTO law

defines permissible trade restricting policy instuments and establishes the terms and conditions of their application. On this basis, it can be stated that the WTO was created for political purposes. The objectives of the application of the WTO law officially include, among others, the following:

- protection of the interests of small and weak countries against the discriminatory trade policy measures of large and powerful countries (although in practice this does not always happen),
- neutralization of demands and pressures of local interest carriers who demand special privileges. It is aimed at creation of genuine competition conditions in the markets and prevention of monopolistic activities.
- harmonisation of domestic laws, standards and regulations.

The functions of the WTO provided for in the agreement establishing the WTO are closely related to its objectives: (i) "common institutional framework" (Marakesh Agreement: II), (ii) mechanism for bringing states together, (iii) "negotiating table", (iv) space for exchanging "concessions", (v) trade policy monitoring (TPRM), (vi) dispute resolution mechanism and enforcement of trade regulations, (vii) relations with the IMF and the World Bank.

The WTO law requires member-states to refer to the dispute settlement mechanism in the event of a dispute. Both legal and political features are characteristic for each stage of the dispute resolution mechanism, but the process is generally legal in nature. Thus, although conducting negotiations constitutes an obligation, the negotiation process itself has a political character. The purpose of the mechanism - achieving an acceptable result for the parties is indicative of its political nature. However, specific legal obligations and mandatory procedure are the evidence of the legal character of the process.

The function of maintaing relationship with the IMF and the World Bank is related to the similar economic consequences of trade and currency restrictions. Exchange rate changes have the ability to produce the effect of changes in customs duties – e.g. devaluation increases the tariff rates, revaluation has the effect of

reducing the same, and the plurality of exchange rates has the ability to give a subsidy effect, for this reason, the relationship with IMF are specified as a function.

The principle of "non-discrimination", which is the basis of the WTO law, applies unconditionally to all trade flows, goods, commodities and situations, save for a number of exceptions. Non-discrimination is manifested in the WTO law in the form of the "most favored nation" and the "national treatment" principles.

Exceptions to the most favored nation rule refer to the right to create a different legal regime within a free trade area or a customs union, another one refer to the power to apply preferences to certain territories and states, and the third relates the possibility of deviation from this rule for a limited time and only once upon joining the GATS. An exception to the national treatment principle is represented in the form of its application under the GATS: it is not applied as a general rule, but as a concession on services.

In the **second section**, a legal characterisation of the membership in the WTO is provided, the accession process is examined and the effects of commitments on the foreign trade policy are highlighted. It is indicated that conditions to be agreed upon during accession mainly include trade concessions and domestic trade regulations. Other issues of interest for the existing members (e.g. transparency of legislation, anti-monopoly policy, state-regulated prices, state trading, etc.) may also be negotiated. Members shall adapt their domestic legal systems to the WTO law. The WTO law requires "single undertaking" of all the agreements; no reservations are allowed. A member may refuse to apply the WTO agreements with respect to any other member due to political motives. For example, Azerbaijan can apply this provision in relation to Armenia (if both of them become members of the WTO).

One more question that arises in connection with membership is the of direct application of the WTO rules within the domestic legal systems. The author believes that for countries that demonstrate a monistic approach to international agreements (Azerbaijan is one of such countries), Marrakesh agreements are directly enforceable within their domestic legal systems.

İf the economy of a candidate state is affected by factors other than those which are characteristic for the open markets, such a candidate state may be required by the existing members to appy market tools, although the WTO instruments do not contain any requirements both in respect of the market and dominant property forms. For example, China was required to eliminate monopolies and remove special privileges upon accession.

The **third section** is devoted to the analysis of the peculiarities of the dispute resolution system (DSS). The mechanism differs from the GATT system in that there is no possibility for the interested party to suspend the process. The panel establishment and composition, as well as decisions making on compromise and other issues has been almost automated. If the GATT mechanism required consensus to make decisions, the WTO mechanism requires consensus to reject decisions, which eliminates the dependence of the process on the parties to the dispute. The Dispute Settlement Understanding stipulates precise deadlines for each stage and does not allow extensions of deadlines. For urgent matters an expedited process is applied. Application of the cross-cutting countermeasures is possible. This section also looks at a number of specific aspects of the WTO jurisprudence, such as the principles of "*prima facie case*" and of effective disclosure (negative presumption), the doctrine of rational relationship, the use of the Appellate Body and panels practice as a source of substantive law, responsibility for lawful actions.

The second chapter is entitled **"Exceptions and exemptions from the performance of obligations - grounds and conditions"** and consists of five sections.

In the **first section**, exceptions and safeguards are considered. Safeguards and exceptions allow for waiver of obligations in certain circumstances for the protection of the more important interests of a WTO member. The allowed protection measures can be divided into 2 groups: (1) temporary suspension of implementation of obligations in the event of unforeseen circumstances and (2) exceptions to the general obligations (which are permanent in nature). Group 1 itself can be further divided into

2 sub-groups: (i) measures against "unacceptable" busines practices (dumping) or trade policy (subsidization) and (ii) measures for the protection of domestic industry upon the market deteriorattion or threat thereof. The latter may be applied in order to prevent or mitigate serious injury to domestic industry or in case of balance of payments difficulties. The 1st group of tools serve the purpose of protection of domestic producers from foreign competition, while the 2nd group is used when facing macroeconomic problems. This section mainly deals with the remedies and exceptions that belong to group 2 and also examines conditions of application of the special protection mechanism (SPM) provided for under the Agreement on Agriculture (AA). Although Article 4.2 of the AA makes possible application of the non-tariff restrictions to trade applicable on non-agrcultural physical goods on the agricultural products in the manner provided for by the relevant agreements, it also allows for one more protection tool, the special protection mechanism (SPM) (AA – Article 5).

**Second section** analyses possibilities of application of countervailing measures. Article VI, 4 (Subsidies and Countervailing Measures) and the Agreement on Subsidies and Countervailing Measures deal with subsidization and compensation for injury caused (or likely to be caused) by subsidized imports to domestic industry and determines the rules of application of such measures. The Agreement on Subsidies and Countervailing Measures concretises the provisions of Article VI:4 of the GATT and establishes the procedure for its application in cases of subsidization, Also, the conditions of application of the counterveiling measures, their terms, application procedure are explored in this section.

**Third section** analyzes GATT Article VI, 2 and the Anti-Dumping Agreement (ADA). These are applied in cases where the products of one country are sold in the market of another country at a price lower than the normal value, causing significant damage to the local industry or significantly delaying the creation of local industry or in cases posing such a threat. If it is determined that

dumping has been applied (an investigation is required to be conducted in order to determine this), an additional duty equal to the difference between the normal value and the dumped prices is allowed. The Anti-Dumping Agreement concretises the provisions of Article VI:2 of the GATT and defines the procedure for its application. Conditions for the application of anti-dumping measures, their duration, and the application procedure are also examined.

**Fourth section** presents an analysis of the protection/exemtion regimes provided for by the GATS. GATS has a number of rules regarding: (i) measures applicable in emergency cases, (ii) measures applicable in cases of unfair business activity (dumping) or trade policy (export subsidization), (iii) measures applicable for the protection of the "balance of payments" (iv) general exceptions, (v) exceptions in connection with the security matters and (vi) waiver of consessions. Emergency safeguard measures are provided for in Article X of the GATS. The conditions of application of such measures on trade in services as dependant on specifics of the services and service providers are examined in this Section. General exceptions provided for by the GATS Article XIV are of permanent nature and are aimed at the protection of public morals, public order, life and health of people, animals and plants of the environment and prevention of depletion of natural resources. Article XIV-bis allows application of exceptions for the protection of security interests. GATS also allows economic measures to be taken for the protection of international peace and security based on the UN Security Counsil resolutions under Chapter VII of the UN Charter, thus recognizing the suprimacy of the UN Charter rules. There are no restrictions limiting application of the discriminative measures in this sphere and therefore imposition of economic sanctions on enemy countries, including also boycotts and embargos. Under Article XXI, the WTO members could withdraw or replace commitmnents and consessions under certain conditions. The principle of non-discrimination applies to compensatory consessions. Number of provisions of GATS including those providing for the possibility

of withdrawal of consessions, may be used for the protection purposes, however, emergency safeguard measures (Article X) cannot be applied in cases where specific provisions are provided for by the GATS.

F**ifth section** provides an analysis of the interrelationship between Preferential Trade agreements (FTAs and Customs Unions) and the WTO law. PTAs create different and more liberal legal regimes than the WTO rules, defining broader or superior regulation (the WTO-plus) in certain areas (such as investment, environment, labor migration, intellectual property, competition, etc.) compared to the WTO and therefore play an important role in foreign trade strategies of states. PTAs are considered "legitimate" in terms of the WTO law if they meet certain conditions only. According to Article XXIV of the GATT, PTAs are considered legal under three conditions: (i) the level of trade restrictions shall not be higher than the level existing ptior to PTA, (ii) trade in goods produced in the territory of the PTA participants shall be “essentially” free of duties and (iii) restrictions between those States shall be abolished within a reasonable time.

Opportunities for the development of the system are related to the perspective of multilateralization through the application of preferences contained in PTAs to the WTO members.

Conflicts between the WTO and PTA based legal regimes are possible. Conflicts concerning the substantive law are mainly caused by violation of the WTO provision by a PTA or vice-versa. In such cases, application of Article 41 of the 1969 Vienna Convention on the Law of Treaties is possible. Article 41 of the Vienna Convention does not allow the violation of the rights of other members of a multilateral agreement and change of obligations towards such other members through the conclusion of a bilateral or regional agreement. Since the Vienna Convention is accepted as an expression of international customary law, it is also applicable to non-member states as an expression of customary law. Practice shows that PTAs, even when they conflict with GATT/GATS, may be accepted and applied as consistent with those agreements, so long as they are not declared "illegal" by the

WTO bodies or members and in such case they are considered "legal". This legal reality is crucial, as a large number of PTAs are applied as "legitimate" agreements despite their conflict with the GATT/GATS. Even the dispute settlement bodies do not question their legality and proceed from the presumption of their legality, as long as the dispute is not about the legality of a PTA.

Cases of overlap/conflict of procedural norms are related to the possibility of resolving a dispute both under the WTO and a PTA. This raises the issue of choice of venue. Such a situation can arise even if there is no conflict between the relevant provisions of the WTO and a PTA, because even if a situation is regulated by both treaties, the question of which agreement the situation should be resolved under remains open. Therefore, most of the PTAs have "exclusion of venue" clauses, which exclude the dispute from being reconsidered under either either agreement (WTO or a PTA) if it has already been dealt with under another agreement.

Third chapter is titled **"The WTO law and trade policy of member states - institutional impact and consequences"** and consists of 4 sections.

In the **first section**, the responsibilities of the member-states relating to the provision of various information, responses to inquiries, monitoring trade flows and submitting reports are connected with their participation in the activities within the WTO and their WTO membership are considered, as well as an analysis of the domestic effects of the WTO regulations is presented. Also, the effects of the membership in the WTO on the organization of state bodies and the requirements for organizational structure complying with the WTO requirements are analised. The requirements and criteria which are viewed necessary for an organization to meet in order to have necessary capabilities and functionality for the implementation of an effective trade policy designed so that to satisfy the requirements of the WTO law and at the same time to serve the goals of sustainable economic and social development are enlisted, the bases for the formulation of the trade policy measures, objectives thereof and issues related to their implementation are analysed.

Persue of a development oriented trade policies that would enable achivement of social and econimic growth goals, as well as the prevention of possible negative consequences of the application of the WTO rules, require that the organizational structure of state bodies that formulate and implement trade policy, as well as the interaction modes between them, are able to quickly adapt to changes in trade relations and the WTO regulations. It is necessary to carry out state activities in two directions - external and internal. The activity abroad is related to the ability to participate in the meetings of the numerous bodies of the WTO, because monitoring the changes occurring in the WTO system, reporting the state's position and protecting its interests require constant and continuous efforts. Countries that cannot provide such capabilities due to lack of resources cannot get the expected benefits, so they are forced to act as a bloc by pooling their resources. Although this gives positive results in a number of cases, it is not as effective as desired.

Domestic activity is related to the requirements of the WTO agreements in respect of the organization of state bodies. A number of agreements (GATS, TRIPS, etc.) provide for the establishment of judicial or arbitration institutions to which foreign suppliers may apply, as well as the adoption of relevant procedural rules. These rules and procedures shall ensure that individual appeals in respect of the administrative decisions are reviewed and resolved promptly, objectively and impartially. GATS also provides for the application of appropriate procedures for determining the qualification of professionals belonging to other member-states in sectors where specific commitments have been taken on professional services.

Safeguards and exemptions can only be applied in strict compliance with certain procedures. The envisaged procedures impose significant responsibilities on the bodies that will implement them. For the effective implementation of these mechanisms, it is necessary to adopt relevant laws, establish relevant bodies and equip them with adequate resources.

The burden of assessing the domestic impact of the

implemented measures and agreeing on measures aimed at ensuring the desired level of regulation is state-specific. It is up to a state to decide on application of a regulation or on the extent of application thereof.

A number of authors include protective measures such as anti-dumping and balance of payments measures or participation in regional agreements as measures that may detoriate the market conditions and therefore have a negative impact in terms of overall economic development.

**Second section** examines possibilities of using protection measures existent within the WTO system.

Anti-dumping has become most preferred protection measure. This is related to the fact that while the process of applying anti-dumping and countervailing measures can be easily initiated by domestic producers, the use of other protection measures is associated with institutional difficulties and requires stricter conditions for their application. Anti-dumping can be country-specific and sector-specific, which provides an advantage that general safeguards do not have. In addition, general measures give the affected states the right to seek reparations or to impose retaliatory measures. Such a right does not arise when an anti-dumping or a counterveiling measure is applied.

Remedies for balance-of-payments problems are a discretionary possibility allowed by the WTO law, not a legal requirement. For the WTO membership, it is not necessary to envisage the possibility of implementing balance of payments measures in the legal system of a memeber-state. However, possibility of using such right have a great importance.

Participation in the preferential trade agreements is a permitted, enforceable option under the WTO law, not a legal requirement. The burden of evaluating participation in any preferential trade agreement in terms of overall economic and social development in each specific case falls on individual states.

GATS provides fewer restrictions on implementation of the domestic policy than GATT. Commitments are essentially are comprised of non-discrimination: in services covered by specific

commitments - among foreign suppliers and in services where "horizontal" commitments have been taken, among all suppliers. Also, the GATS does not require changes in the regulatory structure or the creation of competitive conditions in areas where specific commitments have not been made. States can adjust the level of access to service markets individually for each individual type of service and have an opportunity to regulate areas that are not included in the schedules of specific commitments on their own discretion. The GATS allows for liberalization to be initially applied to a limited number of service sectors and even to certain types of transactions within these sectors.

Economic development goals require that liberalization in areas open to foreign suppliers be accompanied by a more effective investment regime and legal regulation. If liberalization is limited just to the opening of markets to foreign suppliers, it will not have the desired developmental effect in non-competitive markets.

Adherence to the WTO rules does not ensure the increase in the level of well-being, economic and social development, but only creates the basis for it. Achieving these goals may not be possible through membership in the WTO, but through appropriate organizational structure taking into account the membership requirements, as well as thoughtful decisions on the use of opportunities provided by the WTO law. Although the requirements are numerous, the freedom to decide about these requirements is not small. This last aspect is a key issue to consider in terms of the impact of the WTO system on trade policy and market access conditions.

In **third section**, the issues relating to the peculiarities of an organizational structure that would be appropriate for the purposes of formulation of the development oriented trade policy are explored.

On a range of issues the WTO obligations consist of general guidelines rather than specific rules. Members are free to define specific rules and procedures within the framework of such guidelines. Such rules and procedures can have different effects in terms of economic development, as well as in the long and short

term perspective. Therefore, the member-states are free to determine the rules and forms of utilisation of the opportunities provided by the WTO law or the gaps in it, their organizational mechanisms, trade policy tools and measures to be applied in order to reach their development goals or prevent the possible negative effects of the WTO membership. For this purpose, action is required in two dimensions: (1) formation of trade policy, coordination of various tools and instruments, evaluation of application results and (2) formation of organizational structure capable of formulating and implementing trade policy complying with such goals. Since the trade regime affects the entire economy, the formation of this regime should take place in such a way that all interests can be taken into account. This can only be possible if a structure is formed that can really take into account the economic interests of the entire country. The benefits and costs of trade policy are not distributed proportionally: while any trade regime typically benefits a small portion of the population, the costs are typically distributed across the entire economy. Therefore, trade policy-making institutions should be organized in such a way that the overriding of general economic interests by group interests can be prevented.

**Fourh section** analyzes the bases for the formulation of trade policy by the WTO members. Among such principles mentioned in the literature and based on good practices, the principal one is the "centralization" of trade policy. This principle requires that the functions of trade policy formation and implementation are structurally separated from each other. Other principles relate to the requirements of transparency, accountability and stability. According to these rules, the parties affected by a trade restricting measure should be given an opportunity to present their case in a transparent manner and have saying in the deliberations.

The existence of an independent institution capable of assessing the possible effects of trade regulations in advance and evaluating the outcome of their application can greatly help in the formation of the trade regime. Such an institution, as a rule, performs only the function of transparency, i.e. informs the government on the impact(s) of the specific trade rules on competition (market

structure, concentration, trade and investment regimes), as well as prepares and publishes periodic reports on the use of the WTO law. Such institutions do not become executive structures, their purpose is to highlight the issues and they have the power to conduct research on their own initiative.

The trade policy should be formulated in such a way as to ensure the maintenance of competitive conditions in the markets. Practice shows that existence of sound competition conditions in the markets is a prerequisite for economic development. However, conditions must be created for domestic suppliers to be able to compete with foreign suppliers, so that the restrictive measures that may be applied do not result in dominant position of foreign suppliers in the markets. From the point of view of the WTO law, the main issue here is avoidance of inclusion of such measures in the commitments schedules.

The regulation of technical barriers to trade also plays an important role in the formation of the trade regime. Harmonization of standards within the WTO is encouraged. This includes, in particular, internationally accepted product specifications, safety requirements, health norms, technical standards etc.

Developing and transition economies have inadequate infrastructure, unlike industrialized countries, in terms of institutions (legal and administrative systems) that can ensure the effective functioning of markets. In such cases, liberalization of the trade and investment regime can only result in economic growth and improved welfare when accompanied by infrastructure development and institutional reform.

It should also be taken into account that developing countries are better protected from the pressures that may be brought on them during accession process in comparison to the transition economies, as they can benefit from special and differential treatment rules.

In the **concluding** part of the dissertation, generalisations have been made of the conclusions attained as a result of this research and final conclusions have been presented. 21 conclusion have been presented in the dissertation.

**The principal provisions of the Thesis are reflected in the following scientific works of the applicant:**

1. Суверенитет и пределы внутренней компетенции Bakı Dövlət Universitetinin Aspirantlarının və Gənc Tədqiqatçılarının Elmi Konfransının Materialları. – Bakı: 25-26 aprel, – 1995 – səh. 125 (*Soveregnty and reserved internal competence // Materials of the Scientific Conference of the Aspitants and Young Reserchers of the Baku State University, ; Baku: April 25-26, - 1995, p.125)*

2. Beynəlxalq Publik Hüquqda Mülkiyyətin Hüquqi Təbiəti // Bakı Dövlət Universitetinin Gənc Tədqiqatçılarının İllik Elmi Konfransının Materialları, – Bakı: 1997, – səh. 45-46 *(Legal Nature of Property in International Public Law // Materials of Annual Scientific Conference of Aspirants and Young Researchers of Baku State University – Baku: 1997, – pp. 45 – 46)*

3. Beynəlxalq İqtisadi Hüquq fənni üzrə Tədris Proqramı // Baku Dövlət Universiteti: 1997, – 14 səhifə (*Study Program on the subject of International Economic Law // Baku State University: 1997, – 14 p.*)

4. Dünya Ticarət Təşkilatı çərçivəsində mübahisələrin həlli və çoxtərəfli ticarət qaydalarının icrasının təmin olunması // H. Əliyevin 80 illik yubileyinə həsr olunmuş elmi konfransın materialları,– Bakı: 25 aprel, – 2003 – səh. 178 – 191 (*Settlement of disputes within the framework of the World Trade Organization and ensuring the implementation of multilateral trade rules // Materials of the scientific conference dedicated to the 80th anniversary of H. Aliyev, - Baku: April 25, - 2003 - pp. 178 - 191*)

5. Dünya Ticarət Təşkilatının beynəlxalq ticarətin ümumi institusional bazası kimi bəzi xüsusiyyətləri // Beynəlxalq Hüquq və İnteqrasiya Problemləri, – Bakı: 2006, No. 4 (08), – səh. 225 – 236 (*Some features of the World Trade Organization as a general institutional basis of international trade // International Law and Integration Problems, – Baku: 2006, No. 4 (08), - pp. 225-236*)

6. Dünya Ticarət Təşkilatı çərçivəsində Kənd təsərrüfatı məhsulları ilə ticarətin hüquqi tənzimlənməsi // Beynəlxalq Hüquq və İnteqrasiya Problemləri, – Bakı: 2007, No. 3-4 (11-12), – səh.

115- 131 (*Legal regulation of trade in agricultural products within the framework of the World Trade Organization // International Law and Integration Problems, - Baku: 2007, No. 3-4 (11-12), - p. 115-131*)

7. DTT Hüququnda Ticarətə Texniki Maneələr // Beynəlxalq Hüquq və İnteqrasiya Probləmləri, – Bakı: 2009, No.1 (17), – səh. 94-99. (*Technical Obstacles to Trade in WTO Law // International Law and Integration Problems, - Baku: 2009, No.1 (17), - p. 94-99)*

8. Preferensial Ticarət və WTO Hüququ // H. Əliyev və Azərbaycan Respublikasının Beynəlxalq Əməkdaşlıq Siyasətinin əsas İnkişaf Tendensiyaları mövzusunda elmi-praktik konfransın materialları, – Bakı: 06-07 may, – 2010 – səh. 156-159 (*Preferential Trade and WTO Law // Materials of the scientific-practical conference on H. Aliyev and the Main Development Tendencies of the International Cooperation Policy of the Republic of Azerbaijan, - Baku: May 06-07, - 2010 - p. 156-159*)

9. Safarli, K. Y. Anti–Dumping regulations under the World Trade Organisation // K. Y. Safarli, – WTO Seminar, – Geneva: WTO, - July, – 2013, – 14 p.

10. Dünya Ticarət Təşkilatı (WTO) çərçivəsində xidmətlərlə ticarətin tənzimlənməsinin bəzi xüsusiyyətləri // M. Ələsgərovun 90 illik yubileyinə həsr olunmuş konfransın materialları, – Bakı: 02-03 oktyabr, – 2018, s. 102-109 (*Some features of the regulation of trade in services within the framework of the World Trade Organization (WTO) // Materials of the conference dedicated to the 90th anniversary of M. Alasgarov, - Baku: October 02-03, - 2018, - pp. 102-109*)

11. Правовой режим защитных мер и исключений из общих правил по ГАТТ 1994 (*QATT 1994 üzrə müdafi vasitləri və ümumi qaydalarıdan istisnaların hüquqi rejimi) //* Часопис Київського університету права, - Kiyev: 2022, No. 1, s. 280-286 (*Legal regime of protective measures and exceptions to the general rules of the GATT 1994 // Chronicles of the Kiev University of Law, - Kiyev: 2022, no. 1, pp. 280-286*)

12. Membership in the World Trade Organisation – Institutional Imlications and Impact on Domestic Trade Policies // Аналітично-порівняльне правознавство, - Електронне наукове видання, – 2024, No. 4, - Ужгород: Ужгородський національний університет, – pp. 716 – 739. (*Analytical and Comparative Jurisprudence, – Electronic Scientific Journal, Uzzhgorod, Uzhgorod National Univerisity)* URL: https://app-journal.in.ua/wp-content/uploads/2024/07/APP_04_2024.pdf

13. Safarli, K. Y. On Some Legal Implıcatıons of the Membershıp in the World Trade Organısatıon / Современная Юриспруденция: Актуальные Вопросы Теории и Практики: сборник статей VII Международной научно-практической конференции – Пенза: МЦНС «Наука и Просвещение». – 2024. – pp. 73-79. (*Modern Jurisprudenc: Topical Issues of Theory and Practice: Compendium of Articles of the VII International Scientific Practical Conference – Penza: International Center for Scientific Cooperaion "Science and Education". – 2024. – pp. 73-79*) URL.: https://naukaip.ru/wp-content/uploads/2024/05/MK-2045.pdf

14. Safarli, K. Y. On some aspects of the WTO Jurisprudence and Dispute Settlement Mechanism / Науковий вісник Ужгородського Національного Університету, Серія ПРАВО, Випуск 83, Частина 3, - Ужгородській Національній Університет, - 2024. – pp. 439-445. (*Scientific Herald of the Uzhgorod National University, Law Series, Issue 83, Part 3, - Uzhgorod Natial University, - 2024, - pp. 439-445*) URL: https://visnyk-juris-uzhnu.com/82-ch-3-2

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