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Challenges and Prospects for Legal Response Against Unilateral Trade Measures for Georgia

Abstract

The embargo imposed on Georgian products by the Russian Federation in 2006 posed a significant challenge to the country. Since Russia became a member of the World Trade Organization, Georgia has gained significant leverage to protect itself from unilateral trade measures. It is important for the country to make a legal assessment of the measures employed in the past against Georgia and to understand the prospects of protection from these measures. Also, in addition to the legal mechanisms established by the World Trade Organization, the role of free trade agreements, concluded by Georgia, in terms of protection against unilateral measures shall be highlighted, as the country has the freedom to reflect the protection mechanisms in future agreements. Recent developments, including the initiation of the Russian Federation to leave the World Trade Organization after the Russia-Ukraine war, further increase the role of protection of rights under international treaties.

Keywords: World Trade Organization, Chamber of Appeal, Free Trade.

აბსტრაქტი

2006-2013 წლებში რუსეთის ფედერაციის მიერ ქართულ პროდუქტებზე გამოყენებულმა ემბარგომ მნიშვნელოვანი გამოწვევის წინაშე დააყენა ქვეყანა. მას შემდეგ, რაც რუსეთი ვაჭრობის მსოფლიო ორგანიზაციის წევრი გახდა, საქართველოს გაუჩნდა მნიშვნელოვანი ბერკეტები ცალმხრივი სავაჭრო ზომებისგან თავის დასაცავად. ქვეყნისთვის მნიშვნელოვანია წარსულში გამოყენებული ზომების სამართლებრივი შეფასება და ამ ზომებისგან დაცვის სამომავლო პერსპექტივების გააზრება. ასევე, გარდა ვაჭრობის მსოფლიო ორგანიზაციით შექმნილი სამართლებრივი მექანიზმებისა, ხაზგასასმელია საქართველოს თავისუფალი ვაჭრობის შეთანხმებების როლი ცალმხრივი ზომებისგან დაცვის კუთხით, რადგან ქვეყანას აქვს თავისუფლება თავად ასახოს დაცვის მექანიზმები სამომავლოდ დასადებ შეთანხმებებში. ბოლო პერიოდში განვითარებული მოვლენები, რაც რუსეთ-უკრაინის ომის შემდგომ რუსეთის ფედერაციის მიერ ვაჭრობის მსოფლიო ორგანიზაციის დატოვების საკითხის ინიცირებას უკავშირდება, კიდევ უფრო ზრდის საერთაშორისო ხელშეკრულებებით უფლებათა დაცვის როლს.

საკვანძო სიტყვები: მსოფლიო სავაჭრო ორგანიზაცია, სააპელაციო პალატა, თავისუფალი ვაჭრობა.

Introduction

Despite the long history of globalization of international economic relations, the multilateral legal regime is one of the most important achievements of modern international trade.² Legal understanding of unilateral trade measures contradicts the multilateral trade regime. The latter is mainly based on the norms of the WTO. By general definition, unilateral trade measures

are legislative and governmental actions that determine the foreign economic relations of the country and are manifested in the form of economic countermeasures, sanctions, boycotts, blockades, or economic wars. In many cases, when referring to such measures, the term "embargo" is invoked, which is not directly determined within the system created by the agreements of the WTO

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² HERDEGEN M., *Principles of International Economic Law* (1st Edition), Oxford University Press, 2013, p. 20.

and reflects its content into specific legal provisions and principles.³

For the purposes of this article, unilateral trade measures are considered to be those trade measures that contradict the respective obligation of notification or cooperation under the international trade regime, are not used in accordance with the dispute settlement mechanism of the WTO, in some cases are used as a mechanism of economic pressure or are manifested in a form of a biased decision, which lacks transparency and justification, and is solely based on the elaboration of the country it receives. When dealing with powerful states, an effective legal response to these types of measures is a significant challenge for economically less developed countries, and Georgia is no exception. The previous experience of Georgia, which was mainly related to the unpredictable actions of its neighboring state – the Russian Federation, in 2006-2013, clearly demonstrated the challenges of legal response to unilateral trade measures.⁴ In 2012, the Russian Federation became a full member of the WTO. This creates significant ground for the resolution of trade disputes in a multilateral format. In this regard, it is important to review the agreement signed in 2011 *"Between the Government of Georgia and the Government of the Russian Federation on the basic principles for a Mechanism of customs administration and monitoring of trade in goods"*.⁵

³ NOLLKAEMPER A., Unilateralism/Multilateralism, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011, §2, p. 2.

⁴ HUFBAUER G.C., SCHOTT J.J., ELLIOTT K.A., MUIR J., *Economic Sanctions Reconsidered* (3rd Edition), Peterson Institute for International Economics, 2008, Table 1A.2, p. 38.

⁵ The agreement signed in 2011 "between the Government of Georgia and the Government of the Russian Federation on the basic principles related to the customs administration and monitoring mechanism of commodity trade"; available at: <https://www.matsne.gov.ge/ka/document/view/1512898?publication=0>; [20.05.2021].

This paper will present the legal problems that Georgia has faced in the past when unilateral trade measures were applied to it. A significant part will address the problems arising in trade relations between Georgia and Russia after 2013. A legal analysis of the unilateral trade measures used against Georgia will be provided, as well as perspectives of legal responses to the use of similar measures in the future. In parallel with the international regime created within the framework of the WTO, the relevant precedents of the dispute settlement body will be discussed in this paper.

In the modern international trade system, together with the regime of the WTO, free trade agreements have also acquired an important role. The modern trend related to the active use of free trade agreements, in addition to political and economic effects, also contains important legal nuances.⁶ The use of this type of agreements by Georgia, along with the diversification and finding of alternative markets, can be the basis for providing certain guarantees for responding to unilateral trade measures.

The events that took place in 2022, which were expressed in the form of a large-scale military confrontation on the territory of Ukraine, put the international trade system, including Georgia, in front of a new reality. In the background, the possibility of withdrawing from WTO is being actively discussed in the Russian Federation. This

⁶ KÖBELE M., Free Trade Areas, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011, §3, p. 2; HENCKELS C., Overcoming Jurisdictional Isolationism at the WTO – FTA Nexus: A Potential Approach for the WTO, *The European Journal of International Law* [EJIL] Vol. 19 no. 3, 2008, p. 574; HILF M., SALMON T.R., Running in Circles: Regionalism in World Trade and How It Will Lead Back to Multilateralism, in FASTERNATH U., GEIGER R., KHAN D.E., PAULUS A., SCHORLEMER S.V., VEDDER Ch., *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, Oxford University Press, 2011, p. 257.

can move the issue from the multilateral trade regime to the field of regulation of International Agreements.⁷

1. Unilateral trade measures in general international law

General international law has not established a unified approach to the application of unilateral trade measures. Despite several attempts, there is no general prohibition that would be associated with this type of measures.⁸

The representatives of the former Eastern Bloc and developing countries actively supported the idea of interpreting paragraph 4 of the Article 2 of the United Nations (UN) Charter in such a way that in the context of the prohibition of the use of force, the word "*force*" also implied economic pressure (Coercion). Finally, clarifications made during the *travaux préparatoires* of the UN Charter made it clear that the prohibition of economic coercion could not be the purpose of Article 2(4) of the UN Charter.⁹

The International Court of Justice (ICJ), in the case of Military and Paramilitary Actions in and Against Nicaragua (*Nicaragua v. United States*), provided a legal assessment of the US trade embargo, noting that such a measure could only constitute a possible violation of the 1956 US-

Nicaragua "*Agreement of Friendly Relations, Commerce and Navigation*", and not a derogation from the principle of non-interference established under the customary international law.¹⁰

From the arguments mentioned above, it is clear that general international law does not exclusively establish the right to free international trade between countries. Therefore, the use of unilateral trade measures for the purposes of general international law falls within the sovereignty of states.¹¹

Despite legal obstacles, developing countries are still trying to incorporate unilateral trade measures which are introduced as a form of economic pressure into general international law, and are advocating for its prohibition and its reflection in customary international law. The establishment of two important components well known to customary law, *opinio juris* and *state practice*, is an integral part of this process.¹²

Important evidence of the intent of the states (*opinio juris*) can be expressed in the resolutions of the UN General Assembly, especially if it is adopted by consensus. Stating a position on documents of this type can become a prerequisite for the development of a binding international law norm in the future. This argument was

⁷ Russia Plans to Exit World Trade Organization and Other Global Bodies, IISD, 6 June 2022; available at:

<https://www.iisd.org/articles/news/russia-plans-exit-world-trade-organization>.

⁸ CARTER B.E., Economic Coercion, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2009, §§1-11, p. 2-4.

⁹ DÖRR O., RANDELZHOFFER A., Ch. I Purposes and Principles, Article 2 (4), in SIMMA B., KHAN D.E., NOLTE G., PAULUS A., WESSENDORF N. (Eds.), *The Charter of the United Nations: A Commentary*, Volume I (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2012, p. 208-209.

¹⁰ ICJ, *Military and Paramilitary Activities in and Against Nicaragua*, Nicaragua v United States, Merits, Judgment, (1986) ICJ Rep 14, para. 244-245; available at: <https://www.icj-cij.org/public/files/case-related/70/070-19860627->

[JUD-01-00-EN.pdf](https://www.icj-cij.org/public/files/case-related/70/070-19860627-) [23.05.2021]; CARTER B.E., Economic Coercion, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2009, §9, p. 3.

¹¹ OHLER Ch., Unilateral Trade Measures, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2012, §14, p. 5.

¹² SHAW M.N., *International Law* (6th Edition), Cambridge University Press, 2008, p. 74; ICJ, *Continental Shelf* (Libyan Arab Jamahiriya/Malta), Judgment, ICJ Reports 1985, para. 27: available at: <https://www.icj-cij.org/public/files/case-related/68/068-19850603-JUD-01-00-EN.pdf> [23.05.2021]; ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, para. 64.; available at: <https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf> [23.05.2021].

supported by the ICJ in the abovementioned case of *Nicaragua* and in the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*.¹³

Based on the above, the resolutions of the UN General Assembly are of particular importance for strengthening the idea of prohibition of unilateral trade measures in general international law. For this purpose, several documents have been adopted within the framework of the UN, such as the UN General Assembly Resolution 58/198, titled "*Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries*"¹⁴; UN General Assembly Resolution 58/171 titled "*Human Rights and Unilateral Coercive Measures*"¹⁵; General Assembly Resolution 74/154 with the same name¹⁶ and UN Human Rights Council Resolution 40/3 titled "*The Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*".¹⁷ Also, an important document is the "*Charter of Economic Rights and Duties of States*", which was developed within the framework of UN General

Assembly Resolution 3281 (XXIX) and is a part of soft law.¹⁸

The main spirit of the documents addresses the practice of states and urges them to refrain from the use of unilateral economic coercion measures. In addition, the resolutions often use reference to the "*extraterritorial*" effect of unilateral measures, which indicates a tendency to consider the issue within the spectrum of the "*effects doctrine*"¹⁹ and the principle of non-interference established in general international law. However, it is difficult to determine the threshold when economic pressure becomes an act equivalent to interference.²⁰

It is important that the initiators of the resolutions within the UN are developing countries. The resolutions are not supported by the United States of America and some of the leading European countries, unlike the Russian Federation, which voted in favor of all of them. As for Georgia, it voted against Resolution 58/171 and Resolution 74/154 and did not attend the voting process related to Resolution 58/198.²¹ It is obvious that, in addition to the legal grounds, the political

¹³ TREVES T., Customary International Law, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2006, §§44-45; ICJ, *Military and Paramilitary Activities in and Against Nicaragua*, *Nicaragua v United States*, Merits, Judgment, (1986) ICJ Rep 14, para. ; ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, para. 70.

¹⁴ UNGA Res. 58/198 (23 December 2003), UN Doc A/RES/58/198.

¹⁵ UNGA Res. 58/171 (22 December 2003), UN Doc A/RES/58/171; available at: <https://undocs.org/en/A/RES/58/171> [24.05.2021].

¹⁶ UNGA Res. 74/154 (18 December 2019), UN Doc A/RES/74/154; available at: <https://undocs.org/en/A/RES/74/154> [24.05.2021].

¹⁷ UN HRC Res. 40/3 (21 March 2019), UN Doc A/HRC/RES/40/3; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/098/96/PDF/G1909896.pdf?OpenElement> [24.05.2021].

¹⁸ UNGA Res. 3281 (XXIX), (12 December 1974), UN doc A/RES/29/3281; available at: <http://www.un-documents.net/a29r3281.htm>

[24.05.2021]; BOON K., Charter of Economic Rights and Duties of States (1974), *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2013, §10, p. 3.

¹⁹ Chapter 14: Unilateral Measures, *Report on the WTO consistency of trade policies by major trading partners*, Subcommittee on Unfair Trade Policies and Measures, a division of the World Trade Organization Committee of the Industrial Structure Council, Ministry of Economy, Trade and Industry of Japan, p. 409-411.

²⁰ OHLER Ch., Unilateral Trade Measures, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2012, §17, p. 5.

²¹ UNGA Official Records, (22 December 2003), UN docs A/58/PV.77, p. 17-18; available at: <https://undocs.org/en/A/58/PV.77> [24.05.2021]; UNGA Official Records, (23 December 2003), A/58/PV.78, p. 4; available at: <https://undocs.org/en/A/58/PV.78> [24.05.2021]; UNGA Official Records, (18 December 2019), UN Docs A/74/PV.50, p. 23-24; available at: <https://undocs.org/en/A/74/PV.50> [24.05.2021].

context also plays a significant role in assessing the issue, otherwise, we get a picture when the Russian Federation, repeatedly criticized for its oppressive actions and use of political leverage in international trade,²² finds itself on the side of the defenders of the rights of countries coerced by similar actions. The position of the official representation of the United States of America in the UN emphasized that the resolution titled "*Human rights and unilateral pressure measures*" does not meet its original purpose while the use of sanctions against the violating countries greatly contributes to the accountability of the states for derogation from the obligation to protect human rights.²³

The discussed facts better analyze the problems of reflecting unilateral trade measures in general international law. Attempts by developing countries to make the latter part of customary international law have failed because there is no intent and consistent practice by states to support the issue. Moreover, in many cases, the motivations of the states for using unilateral trade measures are different, in some cases, it may be their response (as opposed to reprisals) to a violation of a legal obligation by another state or an action prompted by the need to adopt domestic legislation.²⁴ These types of actions may not conflict with the requirements established by the WTO regime, which will be discussed in more

detail in later chapters. As for general international law, on the basis of Article 41 of the UN Charter, the actions stipulated by the resolutions of the Security Council or the measures contained in Chapter 2 of the Articles on State Responsibilities may not qualify as unilateral trade measures conflicting with the international trade regime.²⁵

Generally speaking, it is difficult to identify the applicable law related to unilateral trade measures in the norms of general international law. In this regard, the regulatory framework created by the WTO constitutes *lex specialis* in certain aspects, however, it is fair to note that it constitutes part of public international law and operates together with it, including in terms of applicability of interpretation methods.²⁶

2. Unilateral trade measures and international trade regime

The use of unilateral trade measures without a transparent and multilateral platform is contrary to the international trade regime. The regime created within the framework of the WTO considers such cases when the measure used may not be characterized by unilaterality, although at a certain stage, it may not be adopted through a transparent procedure and through mutual cooperation. This includes, for example, security-related exceptions, where a country may withhold

²² MÄLKSOO L., Russian Approaches to International Law, Oxford Scholarship Online, 2015, p. 170-171.

²³ Explanation of Vote on a Resolution on Human Rights and Unilateral Coercive Measures, United States Mission to the United Nations, available at: <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-human-rights-and-unilateral-coercive-measures/> [24.05.2021].

²⁴ OHLER Ch., Unilateral Trade Measures, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2012, §1, p. 2.

²⁵ Responsibility of States for Internationally Wrongful Acts; International Law Commission [ILC], 2001, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [25.05.2021]; OHLER

Ch., Unilateral Trade Measures, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2012, §2 and 4, p. 2; United Nations, Charter of the United Nations, 1945, 1 UNTS XVI, Article 41, available at: <https://www.un.org/en/about-us/un-charter/full-text> [25.05.2021].

²⁶ PAUWELYN J., The Role of Public International Law in the WTO: How Far Can We Go?, in *The American Journal of International Law*, Vol. 95, No. 3, American Society of International Law, 2001, p. 539; MATUSHITA M., SCHOENBAUM T., MAVROIDIS P.C., HAHN M., *The World Trade Organization: Law, Practice, and Policy* (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2015, p. 79.

information related to its essential security interest, or restrict the actions of any country actions with the same reasoning, the transportation of explosive materials, war equipment or related components, when the measure is used in war or other during an emergency situation caused in the international relations, or when the action of the state is related to the maintenance of international peace and security provided for by the UN Charter.²⁷

3. Trade dispute resolution mechanisms

Once the state breaches the obligation to comply with the rules and principles of international trade law, there is a need for respective remedies, for the purposes of securing the interests of the other states. With regard to the latter, the settlement of trade disputes is the most important part of the international trade system. This chapter will discuss the alternatives that countries can use to respond to unilateral trade measures.

3.1. Consideration of special trade claims in the committees of the WTO

The first important step towards solving international trade disputes is the discussions under the special committees within the WTO. Two important WTO instruments, namely TBT (Agreement on Technical Barriers to Trade) and SPS (Agreement on Sanitary and Phytosanitary Measures) agreements have respective TBT and SPS committees for this kind of functions. Within the Committees, a mechanism for submitting a Special Trade Concern (STC) is defined, which is used when taking measures under the TBT and SPS Agreements. It can be said that it represents an important discussion platform for considering issues related to technical barriers as well as sanitary and phytosanitary measures.²⁸

The existence of the STC derives from the principle of transparency reflected in the TBT/SPS agreements. Article 13 of the TBT and Article 12 of the SPS establish respective committees to supervise the specific trade measures.²⁹ TBT/SPS agreements do not directly reflect the provision on the creation of the STC mechanism, since its formalization actually took place in 2009.³⁰

The STC is neither a trade dispute nor a prerequisite for consideration by the dispute settlement body of the WTO, however, due to its growing importance, application and effectiveness, it is important to consider it together with the dispute settlement system. Its dispute -resolving nature is envisaged by the format of the STC since opposing positions of the states are discussed on the TBT/SPS issues.³¹

3.2. Dispute Settlement Body of the WTO

The Document of *"Understanding on Rules and Procedures Governing the Settlement of Disputes"* (DSU) adopted within the framework of the WTO provides more legitimacy to the multilateral trade regime and ensures the establishment of a mechanism that is impartial and has a binding legal force supported with relevant norms. The DSU is an annex to the 1994 Marrakesh Agreement. It creates the Dispute Settlement Body (DSB), which is a central element of the WTO and underpins the security and stability of the multilateral system.³²

The DSB, by its very nature, is a political body consisting of representatives of all member states. Its function is to administer the dispute settlement process within the WTO, to supervise inter-state consultations, to ensure the formation of a panel in case of failure of consultations, to approve the reports of the panel and the Appellate Body, to examine the implementation of the

²⁷ GATT, Article XXI.

²⁸ *Ibid.*, p. 186.

²⁹ TBT, Article 13; SPS, Article 12.

³⁰ AMARAL A. Jr., SÁ PIRES L.M., CARNEIRO. C. L., *The WTO Dispute Settlement Mechanism: A Developing Country Perspective*, Springer Nature Switzerland, 2019, p. 122.

³¹ *Ibid.*

³² MERCURIO B., Why compensation cannot replace trade retaliation in the WTO Dispute Settlement Understanding, *World Trade Review*, Vol. 8, Cambridge University Press, 2009, p. 315; DSU, Article 3.2.

recommendations made within the reports and, if necessary when the action of the States is not in accordance with the report of the panel or the recommendations given by the Appellate Body, authorize the use of sanctions.³³ In addition to dispute resolution, upon request, the chairman or the General Director of the DSB, *ex officio*, can combine the functions of good offices, conciliation, and mediation.³⁴

If necessary, the DSU envisages the creation of a group of experts to resolve the issue.³⁵ In disputes of the type where, for example, TBT or SPS measures are applied, obtaining expert opinions is particularly important in dispute resolution.³⁶

Once the panel receives its report, it is submitted to the DSB for approval. The report is approved unless a party to the dispute notifies the DSB of its intention to appeal to the Appellate Body or the DSB itself decides by consensus not to approve it.³⁷ In this respect, the DSB is a kind of quasi-judicial system, as a panel report taken independently does not automatically create an enforcement obligation.³⁸

If all countries do not unanimously declare a position on not accepting the report, further procedures are carried out.³⁹

An appeal of a panel report in the DSB system takes the form of a cassation rather than an appeal, as the appellate body assesses the correctness of the legal aspect of the report adopted by the panel.⁴⁰ After receiving the report by the appellate body, the rule related to consensus is still in effect, after which the implementation part of the given recommendations begins.⁴¹

The DSB monitors compliance with the recommendations by the offending member. In case of non-fulfillment, authorization of countermeasure is used, which is expressed by suspending the corresponding part of the table of concessions, or compensation.⁴² In any case, such measures are temporary. They do not imply the definitive restoration of the violated right and do not release the offending member state from the obligation to replace any measure contrary to the agreement of the WTO.⁴³

3.3. International arbitrations

For the WTO dispute settlement system, arbitrations have two main functions: to evaluate the recommendations and countermeasures adopted within the framework of the DSB⁴⁴ or, in accordance with the rule defined in Article 25 of the DSU, to adjust the role of the alternative dispute resolution mechanism. Even if this type of

³³ MACKENZIE R., ROMANO C.P.R., SHANY Y., SANDS PH., *The Manual on International Courts and Tribunals* (2nd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2010, p. 73.

³⁴ DSU, Article 5; MARCEAU G., Consultations and the panel process in the WTO dispute settlement system, in YERXA R., WILSON B. (Eds.), *Key Issues in WTO Dispute Settlement: The First Ten Years*, Cambridge University Press, 2005, p. 45.

³⁵ Appendix 4 to DSU: Expert Review Group.

³⁶ MARCEAU G., Consultations and the panel process in the WTO dispute settlement system, in YERXA R., WILSON B. (Eds.), *Key Issues in WTO Dispute Settlement: The First Ten Years*, Cambridge University Press, 2005, p. 38-39.

³⁷ DSB, Article 16.4.

³⁸ WOLFRUM R., STOLL P.T., KAISER K., *WTO - Institutions and Dispute Settlement*, Max Planck

Institute for Comparative Public Law and International Law, 2006, p. 279; MACKENZIE R., ROMANO C.P.R., SHANY Y., SANDS PH., *The Manual on International Courts and Tribunals* (2nd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2010, p. 74.

³⁹ *Ibid.*, 448.

⁴⁰ DSU, Article 17.6;

⁴¹ DSU, Article 17.14.

⁴² MATUSHITA M., SCHOENBAUM T., MAVROIDIS P.C., HAHN M., *The World Trade Organization: Law, Practice, and Policy* (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2015, p. 96.

⁴³ DSU, Article 22.1.

⁴⁴ DSU, Article 21.3(c); MACKENZIE R., ROMANO C.P.R., SHANY Y., SANDS PH., *The Manual on International Courts and Tribunals* (2nd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2010, p. 75.

dispute settlement mechanism is used, it does not lose the link with the WTO system and includes the obligations of notification.⁴⁵

4. Unilateral trade measures used against Georgia in the past and its legal assessment

4.1. Development of facts in 2006-2013

Today, it is no longer a matter of dispute to consider that significant obstacles to the foreign trade of Georgia were, in many cases, related to its neighboring state - the Russian Federation. The significant problems started even after the collapse of the Soviet Union when the economic problems that arose in Russia left Georgian skilled specialists without the labor market and caused a sharp decrease in the demand for Georgian agricultural products. The latter had a significant competitive advantage at that time. The events that developed in the following years, especially the civil war, caused a 90% drop in the export of the country, which was the worst-case scenario for a state with a transition economy.⁴⁶

In 1994, the "Agreement on Free Trade between the Government of the Republic of Georgia and the Government of the Russian Federation" was signed, with the motivation of deepening trade and economic cooperation.⁴⁷ Since 2003, the economy of Georgia has started to gradually recover, which was reflected in the average annual growth of the real gross domestic product by 10%. The development of facts related to the actions of the Russian Federation since 2006

proved to be an obstacle to the stability of the economic situation.⁴⁸

The trade relations between Georgia and Russia became particularly complicated after the issue of recognizing the territories of Abkhazia and the so-called South Ossetia intensified. At the beginning of 2006, as a result of the bombings carried out on gas and electricity lines, Georgia faced significant problems, because the latter was related to providing the population with heating and warm water during the winter. Georgia blamed the Russian Federation for the situation, in response to which, in April 2006, Russia imposed a ban on the import of major agricultural products from Georgia, such as wine, mineral waters, and fruits.⁴⁹ Economic sanctions were reflected in specific types of trade measures, which in the case of wine were explained by the presence of high levels of pesticides.⁵⁰ For example, the bans imposed on the main exporting companies of Georgian mineral waters were reasoned by the fact that, according to the assessment of the Russian "Federal Service for the Protection of Consumer Rights and Supervision on Human Welfare", the mineral waters failed to meet the required total mineralization standards, as well as the labeling rules were not fulfilled, resulting in the failure to respond quality and safety requirements. The decision was based on the Chief Sanitary Doctor's Resolution No. 13 of April 6, 2005 "On Strengthening the Supervision of the Production and Circulation of Mineral and Drinking Water", as well as on the legislation "On Consumer

⁴⁵ DSU, Article 25.

⁴⁶ WTO, Trade Policy Review: Summary Observations, Georgia, WT/TPR/S/224, 3 November 2009, p. vii, §1; available at: <https://docsonline.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/TPR/S224-00.pdf&Open=True> [15.06.2021].

⁴⁷ Agreement between the Government of the Russian Federation and Government of the Republic of Georgia on free trade, Preamble.

⁴⁸ WTO, Trade Policy Review: Summary Observations, Georgia, WT/TPR/S/224, 3 November 2009, p. vii, §2.

⁴⁹ Case Studies in Economic Sanctions and Terrorism, 2012, in HUFBAUER G.C., SCHOTT J.J., ELLIOTT

K.A., MUIR J., *Economic Sanctions Reconsidered* (3rd Edition), Peterson Institute for International Economics, 2008, p. 8; available at: <https://www.piie.com/sites/default/files/publications/papers/sanctions-timeline-post-2000.pdf> [15.06.2021].

⁵⁰ Ibid.; Appendix B, CONNABLE B., YOUNG S., PEZARD S., RADIN A., COHEN R.S., MIGACHEVA K., SLADDEN J., *Russia's Hostile Measures: Combating Russian Gray Zone Aggression Against NATO in the Contact, Blunt, and Surge Layers of Competition*, Santa Monica, CA: RAND Corporation, 2020, p. 25-27; available at: https://www.rand.org/pubs/research_reports/RR2539.html [15.06.2021].

Protection", *"On Sanitary and Epidemiological Welfare of the Population*", *"Food Quality" and security" and "protection of rights of legal and sole proprietors during state control (supervision)".* Federal customs authorities were instructed not to allow Georgian mineral water companies to enter the Russian market.⁵¹

The situation between the countries has worsened since September 2006 when Georgia arrested four Russian officers on espionage charges. This fact was followed by a sharp response from the Russian Federation. On October 4, 2006, the Russian legislative body - the Duma, issued a decree *"On the statement of the State Council of the Federal Assembly of the Russian Federation regarding the anti-Russian and anti-democratic policy of the Georgian government"*, which considered the actions of Georgia as hostile to Russia and negatively evaluated its aspirations in the North Atlantic Treaty Organization (NATO) to join. The Russian Duma emphasized that the Russian Federation had the right, in a similar situation, to use a combination of measures against Georgia. It urged the executive authorities to take measures of this type, first of all, to be of a commercial and economic nature.⁵²

In response to the arrest of the spies, the Russian Federation expelled its own diplomats from Georgia, suspended air, land, and sea transport as well as postal links, raised energy prices, and

collectively expelled more than 1,000 people from the country.⁵³

In response to the measures employed, Georgia prevented the Russian Federation from joining the World Trade Organization. The tension between the countries was not limited to the trade dispute, the development of events reached the five-day war between Russia and Georgia in August 2008, which, together with the world economic crisis, caused additional negative consequences for the economy of the country.⁵⁴

Finally, on 9 November 2011, between the conflicting countries, the *"Agreement Between the Government of Georgia and the Government of the Russian Federation on the basic principles for a Mechanism of customs administration and monitoring of trade in goods"* was signed. This gave the Russian Federation the opportunity to join the World Trade Organization.⁵⁵ Since 2013, the embargo on Georgian products has been lifted and the products returned to the Russian market.⁵⁶

4.2. Development of facts since 2013

After 2013, Georgia has not experienced aggressive, large-scale economic pressure, however, there were some exceptions. Before the events of 2006-2008, the Russian Federation was

⁵¹ *Письмо От 5 Мая 2006 Г. N 0100/5155-06-23*, Министерство Здравоохранения и Социального Развития Российской Федерации Федеральная, Служба по Надзору в Сфере Защиты Прав Потребителей и Благополучия Человека, available at: https://rulaws.ru/acts/Pismo-Rospotrebnadzora-ot-05.05.2006-N-0100_5155-06-23/ [15.06.2021]; *Письмо От 4 Мая 2006 Г. N 0100/5043-06-23*, Министерство Здравоохранения и Социального Развития Российской Федерации Федеральная, Служба по Надзору в Сфере Защиты Прав Потребителей и Благополучия Человека, available at: https://rulaws.ru/acts/Pismo-Rospotrebnadzora-ot-04.05.2006-N-0100_5043-06-23/ [15.06.2021].

⁵² „Постановление Государственной Думы О Заявления Государственной Думы Федерального Собрания Российской Федерации Об Антурсисской И Антидемократической Политике Грузинской Властей“, Государственная Дума,

Российская Федерация; available at: <https://duma.consultant.ru/files/884165> [15.06.2021].

⁵³ HUFBAUER G.C., SCHOTT J.J., ELLIOTT K.A., MUIR J., *Economic Sanctions Reconsidered* (3rd Edition), Peterson Institute for International Economics, 2008, Table 1A.2, p. 38.

⁵⁴ WTO, Trade Policy Review: Economic Environment, Georgia, WT/TPR/S/224, 3 November 2009, p. 1, §3.

⁵⁵ Case Studies in Economic Sanctions and Terrorism, 2012, in HUFBAUER G.C., SCHOTT J.J., ELLIOTT K.A., MUIR J., *Economic Sanctions Reconsidered* (3rd Edition), Peterson Institute for International Economics, 2008, p. 8.

⁵⁶ Appendix B, CONNABLE B., YOUNG S., PEZARD S., RADIN A., COHEN R.S., MIGACHEVA K., SLADDEN J., *Russia's Hostile Measures: Combating Russian Gray Zone Aggression Against NATO in the Contact, Blunt, and Surge Layers of Competition*, Santa Monica, CA: RAND Corporation, 2020, p. 27.

the largest exporting country for Georgia⁵⁷ and after the embargo was lifted, it continued to be one of the main trading partners. The share of exports from Georgia amounted to 10% in 2014⁵⁸ and as of today, it represents a large market for Georgian products as well.⁵⁹

After 2013, the measures applied to Georgia were mainly related to the political context, as before. For one such example, the events of 2019 should be considered when in response to the protest held due to the visit of the member of the Russian Duma to Georgia,⁶⁰ the Russian Federation banned flights to Georgia and advised travel companies to stop selling tourist products. The ban was based on the Russian federal law on "security". In the order of the President of the Russian Federation, the reason for taking this type of measure was the safety of Russian citizens.⁶¹ The ban on flights was soon followed by measures on the import of the products of several Georgian wine companies. In the statement of the "Federal Service for Protection of Consumer Rights and Welfare Supervision" of June 24, 2019, it was noted that Georgian wine could not meet the established

requirements. According to the statement, the federal service has been monitoring quality since 2014, and in 2017, the laboratories introduced high-tech control methods to detect violations in the production technology of the products and raw materials used. The adopted measure forbade several producers of Georgian wine to import the specified products into the territory of the Russian Federation.⁶² A similar decision was applied to different companies in 2015, in relation to Georgian wine exporters. The content of the decision was related to problems regarding the safety and quality of Georgian wine, as explained by the "Federal Service for Protection of Consumer Rights and Welfare Supervision". The measure covered a total of 6,720,310 liters of wine production.⁶³

According to the statement of the Ministry of Foreign Affairs of Georgia, after the events of June 2019, Russia was planning to apply stricter sanctions against Georgia, however, in the end, this was not implemented.⁶⁴

⁵⁷ WTO, Trade Policy Review: Summary Observations, Georgia, WT/TPR/S/224, 3 November 2009, p. viii, §10.

⁵⁸ WTO, Trade Policy Review, Georgia, WT/TPR/S/328, 10 November 2015, p. 7, §7; available at: <https://docsonline.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/S328.pdf&Open=True> [15.06.2021].

⁵⁹ Economic Review, Ministry of Economy and Sustainable Development of Georgia; available at: <http://www.economy.ge/?page=ecoreview&s=20&lang=en> [20.06.2021].

⁶⁰ Georgia protests: Thousands storm parliament over Russian MP's speech, 21 June 2019, BBC News; available at: <https://www.bbc.com/news/world-europe-48710042> [20.06.2021].; Dozens injured after Georgia police fire rubber bullets at demonstrators, 21 June 2019,

<https://www.theguardian.com/world/2019/jun/20/georgian-police-teargas-crowd-russian-lawmaker-parliament> [20.06.2021]; Statement of the Ministry of Internal Affairs of Georgia; available at: <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/12827> [20.06.2021]; 4 angles of June 20, Radio Liberty, June 18, 2020., available at: <https://rb.gy/fh3mse> [20.06.2021].

⁶¹ Указ Президента Российской Федерации Об Отдельных Мерах По Обеспечению Национальной Безопасности Российской Федерации И Защите Граждан Российской Федерации От Преступных И Иных Противоправных Действий, 21 июня 2019; available at: <http://ips.pravo.gov.ru:8080/default.aspx?pn=0001201906210017> or <http://publication.pravo.gov.ru/Document/View/0001201906210017?index=0&rangeSize=1> [20.06.2021].

⁶² О Контроле За Алкогольной Продукцией Из Грузии, Федеральная Служба По Надзору В Сфере Защиты Прав Потребителей И Благополучия Человека, 24.06.2019; available at: https://www.rosпотребнадзор.ru/about/info/news/new_s_details.php?ELEMENT_ID=12160 [20.06.2021].

⁶³ О Контроле За Алкогольной Продукцией Из Грузии, Федеральная Служба По Надзору В Сфере Защиты Прав Потребителей И Благополучия Человека, 04.08.2015; available at: https://www.rosпотребнадзор.ru/about/info/news/new_s_details.php?ELEMENT_ID=3983 [20.06.2021].

⁶⁴ Statement of the Ministry of Foreign Affairs of Georgia on the additional sanctions of Russia, <https://mfa.gov.ge/News/davit-zalkalianis-shefasebit-provokaciuli-ganckhad.aspx> [20.06.2021].

4.3. Legal Assessment of trade measures employed against Georgia

When discussing the unilateral trade measures used against Georgia in the past, it is important to answer several basic questions: *What remedies did Georgia have for the unilateral trade measures used against it according to general international law?; Did the "Free Trade Agreement" signed between the governments of Georgia and Russia⁶⁵ create certain legal mechanisms to protect rights?; What were the prerequisites for the Russian Federation to join the WTO in 2012?; What type of rules apply to joining the WTO?; What kind of guarantees are established in response to unilateral trade measures under the agreement signed in 2011 "Between the Government of Georgia and the Government of the Russian Federation on the basic principles for a Mechanism of customs administration and monitoring of trade in goods"?; What types of measures were used against Georgia during 2006-2013?; What kind of legal protection mechanisms existed in response to these measures?; What types of measures have been used against Georgia since 2013?; What kind of reaction followed the application of these measures from Georgia? What types of safeguards does the accession of the Russian Federation to the WTO create for Georgia in response to unilateral trade measures?; In case of using practices similar to the actions carried out since 2006, how can Georgia protect itself using international instruments, and how effective are these instruments?*

In the case of Georgia, when responding to unilateral trade measures, the main challenge is the complex nature of international trade relations, which is caused by the fundamental influence of political and economic factors along with legal ones. That is why, in the analysis, the

review of one of the factors taken separately cannot create a unified and complete picture.

The system created within the framework of the WTO itself is formed in such a way that it takes into account all three factors mentioned above while conducting interstate relations.

The legal remedies created by the multilateral regime, that Georgia may have today to respond to unilateral trade measures by the Russian Federation, did not exist until 2012 before the Russian Federation became a member of the WTO. The reason for this was the lack of personal (*ratione personae*) and temporal jurisdiction (*ratione temporis*) in relation to the dispute settlement mechanism of the WTO.⁶⁶ Although the WTO regime is considered *lex specialis* in certain aspects, as already discussed in previous chapters, it is usually governed by the norms of treaty law. Therefore, the country cannot file legal disputes against a non-member state based on its obligations under the WTO.⁶⁷

When discussing the possibilities of resolving trade disputes with the norms of general international law, it became clear that these types of possibilities are not established by general international law. Unilateral trade measures, no matter how severe the consequences are, cannot fall within the scope of Article 2 (4) of the UN Charter, nor are they established in the form of customary international law. Although nothing restricts the countries to resolve the issue through international arbitration, or even ICJ, in case of reaching an agreement, certain legal prerequisites must precede the conduct of a legal dispute within this format.

The Russian Federation has not recognized the jurisdiction of the ICJ as *ipso facto* mandatory according to Article 36, paragraph 2 of the ICJ Statute, therefore, for the settlement of trade

⁶⁵ Agreement between the Government of the Russian Federation and Government of the Republic of Georgia on free trade, available at: <https://matsne.gov.ge/ka/document/view/1211507?publication=0> [10.06.2021].

⁶⁶ MACKENZIE R., ROMANO C.P.R., SHANY Y., SANDS PH., *The Manual on International Courts*

and Tribunals (2nd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2010, p. 81-84.

⁶⁷ Is the WTO the only way?, Briefing Paper, WTO; available at: https://www.wto.org/English/forums_e/ngo_e/po_sp66_greenpeace_wto_e.pdf [23.06.2021].

disputes, there must be a case provided for in paragraph 1 of the Article 36 of the ICJ Statute, when the parties themselves apply to the court, or when this type of jurisdiction is stipulated by the agreement signed between them.⁶⁸ Theoretically and according to legal provisions, it is permissible for the parties to apply to the court based on a joint agreement, however, the involvement of the Russian Federation in such a process is practically excluded considering the political context.

Treaty obligations related to trade also existed in the free trade agreement signed between the Government of Georgia and the Government of the Russian Federation, on February 3, 1994, however, Article 16 of the same agreement stipulates that *"... Disputes, concerning interpretation and application of the provisions of the agreement will be settled through negotiations."*⁶⁹ The agreement does not include a mechanism for resolution of disputes by courts or arbitration, it only stipulates that *"[i]n order to implement the present agreement and to elaborate recommendations for improvement of trade and economic cooperation between two countries, the parties agreed to establish the joint Russian-Georgian Commission"*.⁷⁰ Based on the reasoning presented above, it can be concluded that at least until 2011, there was no legal basis for responding to unilateral trade measures used by Russia. Since general international law cannot protect states from unilateral measures, the alternative remains to reflect it in the parts of soft law, through the intensive expression of positions of the states, which has the prospect of transforming into customary law norms, however, this is a long-term, difficult and complex process that may not necessarily lead to a concrete result, especially when the practice of the states is not consistent.

The agreement signed in 2011 *"Between the Government of Georgia and the Government of the Russian Federation on the basic principles for a Mechanism of customs administration and monitoring of trade in goods"* is the important point from which it becomes possible to indicate the existence of legal mechanisms for responding to unilateral trade measures. The agreement contains two important clauses for the resolution of disputes, the first refers to a committee created by the parties to the agreement and a neutral third party, which can supervise the implementation of the agreement and resolve disputes related to its interpretation, and the second establishes the possibility of resolving disputes by arbitration when the involvement of the committee and through friendly negotiations between the parties no agreement can be reached.

As stated in the preamble of the above-mentioned agreement, it is related to the negotiations between Georgia and Russia concerning the accession of the Russian Federation to the WTO. Also, the importance of the articles of the main WTO Agreement, namely the General Agreement on Tariffs and Trade (GATT), which refer to the reduction of tariffs, the prohibition of discriminatory treatment, and the obligations of transparency, is emphasized. The preamble also emphasizes the importance of the Agreement on Trade-Related Intellectual Property Rights (TRIPS) and the need to consider facilitation in the area of tariff and non-tariff barriers.

The balance created by political, economic, and legal aspects of the WTO system is visible in the example of Georgia. The 2011 agreement was some form of prerequisite for joining the organization of the Russian Federation. The absence of legal mechanisms, in this case, was balanced by the political approach, which, in turn,

⁶⁸ Articles 36(1) and 36(2), *Statute of the International Court of Justice*, 1945, UNTS; available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=I-3&chapter=1&clang=en [23.06.2021].

⁶⁹ Agreement between the Government of the Russian Federation and Government of the Republic of Georgia on free trade, Article 16.

⁷⁰ *Ibid*, Article 17.

was based on the legal framework. Joining the WTO is a rather complex process that includes many stages. In the case of Russia, the main stumbling block, in this regard, was Article XII of the Marrakesh Agreement establishing WTO, which determined the conditions for accessing the treaty. Accession to the Marrakesh Agreement automatically means membership of the organization. After 1994, Article XI related to original membership (which applied to parties to the GATT 1947) is no longer relevant, as today all countries applying for membership go through the accession process. According to Article XII:2 of the Marrakesh Agreement, the decision on accession is taken by the Ministerial Conference. It approves the terms of the accession agreement by a two-thirds majority of the members of the organization. Within the organization, regarding the decision-making process, Article IX applies, which stipulates that the WTO shall continue the practice of GATT 1947 regarding decision-making by consensus. According to the literal definition and general assessment, it can be interpreted that two-thirds of the members of the organization can determine the conditions of joining, and, among them, make a decision on the issue of joining, however, the General Council of the organization, in 1995, gave a specific interpretation to this issue and determined that for the decision on joining the WTO the practice of GATT 1947 is relevant, which implies consensus.⁷¹ It was this interpretation that enabled Georgia, which objected the accession of the Russian Federation, to use some form of blocking mechanism.⁷²

To analyze the legal content of the unilateral trade measures applied to Georgia and evaluate the mechanisms to be used in response to it, it is

possible to divide the applied measures into several parts. One part concerned the technical characteristics and quality of products, which may be covered under the TBT or SPS agreements, while the other part concerned restrictions related to transport, communications and tourism services, which may be considered the applicable law of the General Agreement on Trade in Services (GATS). At the same time, the general requirements established by the GATT may also be relevant for specific cases. It is also important to understand that in some cases, the restriction was imposed on a specific exporter and did not apply to the product in general or its country of origin.

Before starting the discussion, it should be clarified in advance that the measures used before August 22, 2012, for the purposes of the DSU, could not have legal admissibility in the framework of the WTO. The actions taken since November 2011, which were contrary to the agreement signed between the governments of Georgia and the Russian Federation, could be submitted before the Arbitration in the event of a dispute, although of course, no such dispute arose between the countries, especially when an agreement had been very difficult to reach between the parties for many years. The discussion developed below will concern the legal analysis of the measures already used and the prospects of possible response in case of repetition of a similar approach.

The 2006 restrictions on wine and mineral water companies, as well as the 2019 loopholes, targeted specific exporters, which contradicts the definition of a “rule of general application” at issue. Reference to the general rule can be found

⁷¹ WOLFRUM R., STOLL P.T., KAISER K., *WTO - Institutions and Dispute Settlement*, Max Planck Institute for Comparative Public Law and International Law, 2006, p. 150; WTO, Decision-making Procedures Under Articles IX And XII of the WTO Agreement, Statement by the Chairman, General Council, WT/L/93, 24 November 1995; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/93.pdf&Open=True> [23.06.2021].

[px?filename=q:/WT/L/93.pdf&Open=True](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/93.pdf&Open=True) [23.06.2021].

⁷² RACZ A., *Russian WTO Accession and the Geneva Agreements: Implications for Russia and Georgia*, Transatlantic Academy Paper Series, p. 1; available at: <https://www.yumpu.com/en/document/read/45096116/russian-wto-accession-and-the-geneva-agreements-transatlantic-> [23.06.2021].

both in Article X of the GATT and in the SPS Agreement. The TBT Agreement, by its content, includes the adoption of regulations that establish standards and requirements and are not addressed to specific business operators. The rule of general application applies to an indefinite circle of persons, therefore a restriction applied to a specific shipment or company may not fall within the scope of the regulation of the WTO. However, a decision that modifies a previously existing rule and establishes a new approach may be perceived as a rule of general application.⁷³

It is interesting to discuss the issue in terms of Article X of the GATT. The function of the DSB is not to assess specific customs cases, nor to analyze the correctness of actions taken in accordance with the domestic laws of countries, however, Article X:3(a) nevertheless sets certain criteria regarding how properly the measure is applied to specific cases. The provision under the GATT that laws, regulations, decisions, or administrative orders of general application must be applied in a uniform, impartial and reasonable manner allows countries to consider the legal correctness of specific cases. The same approach can be identified in the case of Georgian companies.

Along with content, Article X:3(b) of the GATT also establishes an obligation of the type given in the form of "*due process*". If there was no independent body that reviewed it when deciding against a particular company, in such a case the terms of the GATT would be considered violated.

To summarize, at the initial stage, countries can challenge whether there was an independent body to deal with issues related to Georgian wine and mineral water companies and whether the approach was uniform, impartial and reasonable for the purposes of Article X of the GATT. It should also be noted that X:3(b) does not oblige States to exhaust domestic procedures or to open a dispute if they believe that the treatment shown to them was not appropriate. Moreover, it is possible to conduct both processes in parallel.

Regarding measures of general use, it is important to evaluate the conditions of their acceptance and publication. As noted in the decisions of the "*Federal Service for Protection of Consumer Rights and Welfare Supervision*" of the Russian Federation, they were introducing new laboratory methods, these methods and approaches should not be discriminatory and they should normally be subject to transparency obligations. In the future, when taking similar measures, it is possible to actively use the STC mechanism in the TBT and SPS committees. Ukraine is actively involved in these processes. It has eighteen STCs used against the Russian Federation.⁷⁴ For example, one such claim aimed to protect specific Ukrainian goods that were affected by unilaterally submitted new veterinary certificate requirements. The latter was protested by Ukraine, which resulted in an exchange of positions between the parties, and the issue was not raised further which means that the latter.⁷⁵

⁷³ GATT Article X, WTO Analytical Index, p. 7; available at: https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art10_jur.pdf [03.06.2021]; WTO, Panel Report, *United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear*, WT/DS24/R, 8 November 1996, para. 7.65; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/24R.PDF&Open=True> [03.06.2021]; WTO, Panel Report, *Japan - Measures Affecting Consumer Photographic Film and Paper*, WT/DS44/R, 31 March 1998, para. 10.388; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/44R07.pdf&Open=True>

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/69ABR.pdf&Open=True> [03.06.2021]; WTO DSB, Appellate Body Report, *European Communities - Measures Affecting Importation of Certain Poultry Products*, WT/DS69/AB/R, 13 July 1998, para. 113 and 261; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/69ABR.pdf&Open=True> [03.06.2021].

⁷⁴ Russian Federation and the WTO, Specific Trade Concerns; available at: https://www.wto.org/library/stcs/stc_maps_iframe.htm?country_selected=RUS

⁷⁵ WTO, Summary of the meeting of 15 and 17 October 2014, Committee on Sanitary and

Given the "*due process*" obligations created by GATT Articles X:3(a) and X:3(b), it is interesting to what extent these two subsections can be invoked together in a dispute or refer to TBT/SPS agreements. To formulate the question briefly, it is important to what extent countries can make use of the inappropriate approach in dispute within the WTO and at the same time point to problems related to the independence of the reviewing body. Also, to what extent the obligation under Article X regarding the existence of an independent body and the criteria for the application of measures can be considered in conjunction with TBT/SPS agreements, while for example, X:3(b) covers cases that are "*related to customs matters*".

In the *European Communities - Trade Description of Sardines* case, it was clarified that when considering the articles related to TBT and GATT, compliance with the norms provided for by TBT should be considered first, preferably GATT, however, this does not mean that GATT violations within the scope of the dispute have no prospect of further consideration.⁷⁶ By comparison, in *United States - Certain country of origin labeling (cool)* requirements, the size did not qualify as a technical barrier, but the panel still found non-compliance with X:3(a) of GATT.⁷⁷ Regarding the relationship of X:3(b) to other agreements (such as the TBT/SPS), the discussion in the previous chapters of the paper regarding the interpretation

adopted in the case *United States - Countervailing and Anti-Dumping Measures on Certain Products from China* made it clear that the term "*relating to customs matters*" used in Article 3(b) was interpreted quite broadly and referred to agreements which could not be implied in GATT 1947, but which, based on the unified system of the Marrakesh Agreement, which is actually a single document with appropriate annexes, should normally be disseminated.⁷⁸ In *European Communities - Selected Customs Matters*, the United States challenged the lack of a common customs approach within the European Union by referring jointly to Article X:3(a) and X:3(b) of the GATT, and made an appropriate assessment of each of them, thus, it can be concluded that that they are not mutually exclusive.⁷⁹ In this direction, the review of current cases is also interesting. In the current case *Russia - Measures Concerning The Importation And Transit Of Certain Ukrainian Products*, which is still at the consultation stage, Ukraine complains about the inconsistency of the measures used by the Russian Federation with GATT Articles I:1, X:1, X:2, X:3(a), X:3(b) and XI:1, as well as the TBT and SPS Agreement.⁸⁰ At the same time, the case *China - Measures Concerning the Importation of Canola*

Phytosanitary Measures, G/SPS/R/76, p. 8, paras. 3.4-3.5; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/R76.pdf&Open=True> [23.06.2021];

⁷⁶ WTO DSB, Panel Report, *European Communities - Trade Description of Sardines*, WT/DS231/R, 29 May 2002, para. 7.15; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/231R.pdf&Open=True> [23.06.2021].

⁷⁷ WTO, Panel Report, *United States - Certain country of origin labelling (cool) requirements*, WT/DS384/R; WT/DS386/R, 18 November 2011, para. 7.196, p. 214A, para. 8.4(b).

⁷⁸ WTO, Panel Report, *United States - Countervailing and Anti-Dumping Measures on Certain Products from China*, WT/DS449/R, 27 March 2014, para. 7.261.

⁷⁹ WTO, Panel Report, *European Communities - Selected Customs Matters*, WT/DS315/AB/R, 13 November 2006, para. 309(b)(iii) and (c).

⁸⁰ WTO DSB, Request for Consultations by Ukraine, *Russia - Measures Concerning the Importation and Transit of Certain Ukrainian Products*, WT/DS532/1, G/L/1189 G/TFA/D1/1, G/SPS/GEN/1582, 19 October 2017, paras. 13, 15, 47; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/532-1.pdf&Open=True> [23.06.2021].

Seed from Canada is also in progress⁸¹ where Canada is challenging the suspension of imports of canola seeds from two Canadian companies into China and the changed inspection methods for canola seeds. As an analogy, the same situation can be considered in the case of Georgia, when in the past the measure of import suspension was applied to two mineral water-producing companies, and as for the wine companies, their inspection was carried out in accordance with the changed laboratory requirements. The Russian side indeed claimed that they had communicated with Georgia in the past, however, in today's context, there are additional levers here too when within the framework of the WTO, it is possible to discuss whether the new measure is based on a correct assessment of risks, at what degree is it based on scientific evidence, whether it is disproportionately restrictive for international trade. Today, the Georgian side can raise these issues both in the form of consultations in the committees and STC, as well as while using the DSB. It is also important that, unlike many international courts, the DSB has the authority to seek information and to create a group of experts who, if necessary, will analyze the received measure.

The arguments discussed above show that the regime created by the WTO guarantees more transparency and stability. It allows Georgia to be more informed, to be involved in the process of introducing new regulations when it affects its exports, to use the STC mechanism when there are certain objections, and to make it questionable if its companies are not allowed to appeal decisions made in a foreign country, and more importantly, refer to the DSB for the initiation of dispute if the approach towards the Georgian companies and

the application of the regulation was not uniform, impartial and reasonable.

In addition to TBT/SPS measures, the previous experience of Georgia also shows service-related limitations. The large-scale measures of 2006 and the ban on flights applied in 2019, which, depending on the content of the document, were mainly aimed at tourist flows, can be considered within the framework of GATS. In this case, it is less problematic to discuss whether the measure used was of a general nature since it was not addressed to a specific group of persons. As the GATS covers the provision of services from the territory of one country to another (GATS Annex on Air Transport Services), tourism and transport services would easily fall under its definition. For simple justification, the GATS Annex, which deals with specific obligations of states (similar to the GATT Table of Concessions), covers tourism and transport services as well.⁸² The spirit of the measure applied could not be linked to the exceptions provided by Article XIV(a) or XIV(b) of the GATS, which refer to measures related to public order or human life or health when necessary, nor could the content of the restrictions cover the GATS to the security exceptions provided for in Article XIV *bis*, because at such a time the essential security interest should be on the other side of the scale, and the events developed in Georgia, neither in 2006 nor in 2019, could not receive a similar assessment. It did not threaten the territorial integrity of Russia or the population, and also did not create threats to the life or health of Russian citizens. In the case of *United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, the Appellate Body evaluated the "necessity" criterion enshrined in Article XIV(a) and

⁸¹ WTO DSB, Request for consultations by Canada, *China - Measures Concerning the Importation of Canola Seed from Canada*, WT/DS589/1, G/L/1324, G/SPS/GEN/1727, G/TFA/D2/1, 12 September 2019, para. 1-2; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/589-1.pdf&Open=True> [23.06.2021].

[px?filename=q:/WT/DS/589-1.pdf&Open=True](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/589-1.pdf&Open=True) [23.06.2021].

⁸² WTO, Trade in Services: Russian Federation - Schedule of specific commitments, GATS/SC/149, 5 November 2012, p. 54-66; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-SC/SC149.pdf&Open=True> [23.06.2021].

explained that it must be based on an objective assessment, including the prior history of the measure. It must be assessed on a case-by-case basis and shall be based on a balance of assessment of a combination of factors. Consideration should also be given to whether it would be possible to use another measure that would be less inconsistent with the WTO regime.⁸³

Based in the examples above, we can state that Georgia had certain prospects on the basis of GATS, in 2019, to challenge the unilateral ban on flights which aimed at stopping the tourist flows, under the WTO system.

The need to use DSB should be considered on a case-by-case basis. Article 3(7) of the DSU itself stipulates that countries must assess for themselves the effectiveness of the procedures implemented under the DSU. The WTO system is based on realistic assessments. The content of legal norms also gives countries the opportunity to analyze political and economic aspects. Even if success is achieved through DSB, it is difficult to determine how positive the end result could be. If

countermeasures are used, the damaged economy may be under even greater pressure, as for compensation, it still cannot compensate for the consequences, besides it is not binding. Despite these challenges, the WTO system still shows high efficiency and is quite actively used by Ukraine against the Russian Federation.⁸⁴ The obligation of transparency creates a chance to secure legal expectations. A clear example of this is, in 2020, the unified platform for exchanging notifications about the measures used during the situation of the pandemic, where the restrictions imposed on specific types of agricultural products⁸⁵ allowed Georgia to react faster than it would have otherwise.

To make an overall assessment, the transparency and notification obligations created by the WTO, together with the STC and DSB mechanisms, ensure significant prospects for responding to unilateral trade measures. As of today, Georgia has not used any of them in resolving disputed situations.⁸⁶ In the past, the country already has the experience of conducting disputes through

⁸³ WTO DSB, Appellate Body Report, *United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, 7 April 2005, paras. 304-305; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/285ABR.pdf&Open=True> [24.06.2021].

⁸⁴ Cases brought by Ukraine against Russian Federation, WTO; available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_iframe_e.htm?country_selected=RUS&sense=e [24.06.2021]

⁸⁵ COVID-19 and trade - Russian Federation, WTO, available at: https://www.wto.org/english/tratop_e/covid19_e/covid_details_by_country_e.htm?country=RUS [24.06.2021]; Постановление № 385, *О Введении Временного Количественного Ограничения На Вывоз Зерновых Культур За Пределы Территории Российской Федерации В Государства, Не Являющиеся Членами Евразийского Экономического Союза, И Установлении Случая, При Котором Временное Периодическое Таможенное*

Декларирование Товаров Не Применяется, 31 Марта 2020 Г., Правительство Российской Федерации; available at: <http://static.government.ru/media/files/0kk3yjAkAmmPZxBeCo3G98KNnc2uDDNA.pdf> [24.06.2021]; COVID-19: Agricultural Measures, WTO; available at: https://www.wto.org/english/tratop_e/covid19_e/ag_trade_measures_e.htm [24.06.2021]; Решение Евразийского экономического союза №21, 16 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425251/err_24032020_21 [24.06.2021]; Решение Евразийского экономического союза №41, 24 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425254/err_26032020_41 [24.06.2021]; Распоряжение Евразийского экономического союза №11, 25 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425272/err_30032020_11 [24.06.2021].

⁸⁶ Member information: Georgia and WTO, *Maps: Disputes involving Georgia, Specific Trade Concerns*, available at:

international mechanisms, which indicates that the inactivity is not caused by problems of financial or legal qualifications, but by analyzing the political context. The WTO system is, of course, not perfect, because it has certain hindering factors when applied to economically powerful states, however, it should be noted that it establishes an important balance, which to some extent damages all actors in the event of its violation, thus it is more effective in enforcement. As already mentioned in the previous chapters, Russia is considering leaving the WTO, which will significantly reduce the leverage arising from the international trade regime. In response, the 2011 agreement and its dispute settlement mechanism will remain binding legal instruments. It is worth noting that the latter significantly reflects the principles of the WTO. Despite the provision in the agreement that it precedes the accession of Russia to the WTO, the impact of the latter on the operation of the agreement if Russia leaves the organization is not specified and cannot cause legal problems.

5. Free trade agreements of Georgia

In the foreign policy strategy of Georgia for 2019-2022, one of the main tasks is defined as *"the maximum increase in the number of countries with a free bilateral trade regime with Georgia,*

further extension of the geographical area and promotion of export of Georgian products/diversification of markets".⁸⁷ From this record, it is clear that the trend of concluding free trade agreements is of special importance for Georgia, and the foreign trade policy of the country is also oriented towards it. The strategy document aims at more effective use of existing free trade zones and continuation of ongoing negotiations.

Currently, Georgia has signed free trade agreements with the following countries: the Russian Federation, the Republic of Azerbaijan, the Republic of Armenia, Ukraine, the Republic of Moldova, Kazakhstan, the Republic of Uzbekistan, Turkmenistan, and the Republic of Turkey.⁸⁸

Free trade agreements are being negotiated or planned with the following countries: The USA,⁸⁹ Canada,⁹⁰ United Kingdom,⁹¹ India⁹², Republic of Korea.⁹³ In addition to the above, Georgia is actively trying to deepen trade relations in various directions on the various aspects of free trade.⁹⁴

The free trade regime for Georgia operates within the framework of the Commonwealth of Independent States (CIS) organization and is regulated by the 1994 CIS multilateral agreement *"On the establishment of a free trade zone"*. Also, the multilateral agreement of 2002 on the creation of a free trade zone within the framework of the

https://www.wto.org/english/thewto_e/countries_e/georgia_e.htm [24.06.2021].

⁸⁷ 2019-2022 Foreign Policy Strategy of Georgia, task 5.2., available at: <https://mfa.gov.ge/getattachment/MainNav/ForeignPolicy/ForeignPolicyStrategy/2019-2022-clebis-saqartvelos-sagareo-politikis-strategia.pdf.aspx> [24.06.2021].

⁸⁸ Existing Trade Regimes in Georgia and International Agreements, Ministry of Economy and Sustainable Development of Georgia; available at: <http://www.economy.ge/?page=ecopolitic&s=12&lang=en> [24.06.2021].

⁸⁹ 2019-2022 Foreign Policy Strategy of Georgia, p. 10

⁹⁰ Ibid.

⁹¹ Ibid., 11.

⁹² Ibid., 15.

⁹³ Ibid., Feasibility Study on FTA between Georgia and India Accomplished, Ministry of Economy and Sustainable Development, 12 January 2019 <http://www.economy.ge/?page=news&nw=1007&s=saqartvelosa-da-indoets-shoris-tavisufali-vachrobis-shetanxmabis-mizanshewonilobis-kvleva-dasrulda&lang=en> [24.06.2021]; The Deputy Foreign Minister, Alexander Khvtisiashvili met with the Chargé d'affaires ad interim of the Republic of Korea to Georgia, Chung Dae-soo, Ministry of Foreign Affairs of Georgia, 2 June 2021, available at: [https://mfa.gov.ge/News/saqartvelos-sagareo-saqmeta-ministris-moadgil-\(43\).aspx?CatID=5](https://mfa.gov.ge/News/saqartvelos-sagareo-saqmeta-ministris-moadgil-(43).aspx?CatID=5) [24.06.2021].

⁹⁴ 2019-2022 Foreign Policy Strategy of Georgia, p. 15.

Organization for Democracy and Economic Development (GUAM) is valid for Georgia. On June 27, 2016, Georgia signed a free trade agreement with the European Free Trade Association (EFTA). The agreement is valid for the member countries of the organization, Norway, Iceland, Switzerland, and Liechtenstein.⁹⁵

The "*Deep and Comprehensive Free Trade Agreement*" (DCFTA) with the European Union is particularly important for Georgia, the active use of which is an important trade priority for Georgia in terms of increasing the export of agricultural and industrial products.⁹⁶

Today, the actors involved in international trade, simultaneous to the multilateral regime created by the WTO, are increasingly turning to the practice of concluding free trade agreements (FTA).⁹⁷ The main purpose of FTA is to eliminate tariffs between the parties to the agreement, on all types of goods.⁹⁸

The scope of legal regulation of FTAs has over time gone beyond tariff elimination provisions to include many other aspects related to international trade,⁹⁹ including those related to responses to unilateral trade measures.

The relationship between the legal norms created by the WTO and FTAs has become a subject of legal and economic discussion. A significant contradiction is caused by the problems of dispute resolution, which is related to the conflict of law norms. As the rules related to the interpretation of international agreements apply to the agreements of the WTO, as a part of public international law, in their interpretation, the approaches related to

the hierarchy of norms prescribed in international law are also considered as applicable law. Modern international law has not established a standard hierarchy of norms, it is a horizontal system where one treaty can be as valid as another. It is not the purpose of this paper to discuss the legal conflict between FTAs and the WTO regime. The main result that can be seen in their interaction is that there are several possibilities for the protection of the rights guaranteed by FTAs, which, regardless of whether they create a conflict of legal norms, in the end, the issue does not remain unresolved. As for the specific terms that are exclusively incorporated in FTAs, they can usually be covered by the dispute settlement mechanism of these agreements. This factor does not weaken the mechanism of the states to respond to unilateral trade measures but strengthens it.¹⁰⁰

Conclusion

The research on the challenges and prospects for a legal response to unilateral trade measures for Georgia showed that, as of today, the country can use several important mechanisms in international trade relations to respond to the type of actions that are contrary to the obligations of appropriate notification or cooperation provided for in the international trade regime.

While discussing general international law, it appeared that neither the existing regulations nor the customary international law established the prohibition of unilateral trade measures.

⁹⁵ *Existing Trade Regimes in Georgia and International Agreements, Ministry of Economy and Sustainable Development of Georgia.*

⁹⁶ *2019-2022 Foreign Policy Strategy of Georgia*, task 2.1.

⁹⁷ KÖBELE M., Free Trade Areas, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011, §3, p. 2.

⁹⁸ *Ibid.*

⁹⁹ KÖBELE M., Free Trade Areas, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011, §4, p. 2.

¹⁰⁰ HENCKELS C., Overcoming Jurisdictional Isolationism at the WTO-FTA Nexus: A Potential Approach for the WTO, *European Journal of International Law*, Vol. 19, Issue 3, 2008, p. 572-576; GRAWERT T., Conflicting Laws and Jurisdictions in the Dispute Settlement Process of Regional Trade Agreements and the WTO, *Contemporary Asia Arbitration Journal*, 2008, p. 290-293.

It should be noted that today, Georgia has at least the following mechanisms for the response to unilateral trade measures: 1. To be involved in discussions and receive information when adopting new regulations by means of notification; 2. To use the STC mechanism in the TBT/SPS committees due to the improper performance of the obligation of notification and the substantial problems in the new regulations adopted; 3. To ensure uniform, impartial and reasonable application of trade measures by other countries to its exporting companies; 4. In case of violation, referring to DSB; 5. To provide Georgian companies with independent appeal mechanisms for actions related to customs issues in a foreign country. In such a case, since customs-related actions are broadly defined, it may cover various agreements adopted within the framework of the WTO along with Article X of the GATT.

In addition to the mechanisms created by the WTO, an analysis of the FTAs revealed that the legal space created by free trade agreements for Georgia enhances the prospects of responding to unilateral trade measures.

In conclusion, it should be noted that if the Russian Federation leaves the WTO, the guarantees of legal protection will be significantly reduced, which will strengthen the need to reconsider the obligations arising from international contractual relations, as well as increase the need to effectively use existing and future trade agreements to ensure stable trade relations with other partners.

As a general conclusion, it can be noted that if Russia remains a member of the WTO, today, Georgia has more prospects to actively use legal protection mechanisms in response to unilateral trade measures applied to it than in the past. However, the prospects are also accompanied by challenges related to the adaptation of the relevant WTO agreement in the course of disputes and the problematic nature of the enforcement mechanism. In this regard, free trade agreements are new options for Georgia to prescribe the legal framework more precisely when drafting the text

of international agreements than it is established in multilateral international agreements.

Bibliography

1. HERDEGEN M., *Principles of International Economic Law* (1st Edition), Oxford University Press, 2013.
2. HUFBAUER G.C., SCHOTT J.J., ELLIOTT K.A., MUIR J., *Economic Sanctions Reconsidered* (3rd Edition), Peterson Institute for International Economics, 2008, Table 1A.2.
3. SHAW M.N., *International Law* (6th Edition), Cambridge University Press, 2008.
4. MÄLKSOO L., *Russian Approaches to International Law*, Oxford Scholarship Online, 2015.
5. MATUSHITA M., SCHOENBAUM T., MAVROIDIS P.C., HAHN M., *The World Trade Organization: Law, Practice, and Policy* (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2015.
6. AMARAL A. Jr., SÁ PIRES L.M., CARNEIRO. C. L., *The WTO Dispute Settlement Mechanism: A Developing Country Perspective*, Springer Nature Switzerland, 2019.
7. MERCURIO B., Why compensation cannot replace trade retaliation in the WTO Dispute Settlement Understanding, *World Trade Review*, Vol. 8, Cambridge University Press, 2009.
8. WOLFRUM R., STOLL P.T., KAISER K., *WTO - Institutions and Dispute Settlement*, Max Planck Institute for Comparative Public Law and International Law, 2006.
9. MATUSHITA M., SCHOENBAUM T., MAVROIDIS P.C., HAHN M., *The World Trade Organization: Law, Practice, and Policy* (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2015.
10. MACKENZIE R., ROMANO C.P.R., SHANY Y., SANDS PH., *The Manual on International Courts and Tribunals* (2nd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2010.
11. NOLLKAEMPER A., Unilateralism/Multilateralism, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011.

12. KÖBELE M., Free Trade Areas, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011.
13. CARTER B.E., Economic Coercion, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2009.
14. HILF M., SALMON T.R., Running in Circles: Regionalism in World Trade and How It Will Lead Back to Multilateralism, in FASTERNATH U., GEIGER R., KHAN D.E., PAULUS A., SCHORLEMER S.V., VEDDER Ch., *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, Oxford University Press, 2011.
15. HENCKELS C., Overcoming Jurisdictional Isolationism at the WTO – FTA Nexus: A Potential Approach for the WTO, *The European Journal of International Law* [EJIL] Vol. 19 no. 3, 2008.
16. DÖRR O., RANDELZHOFFER A., Ch. I Purposes and Principles, Article 2 (4), in SIMMA B., KHAN D.E., NOLTE G., PAULUS A., WESSENDORF N. (Eds.), *The Charter of the United Nations: A Commentary*, Volume I (3rd Edition), Oxford Scholarly Authorities on International Law [OSAIL], 2012.
17. PAUWELYN J., The Role of Public International Law in the WTO: How Far Can We Go?, in *The American Journal of International Law*, Vol. 95, No. 3, American Society of International Law, 2001.
18. CARTER B.E., Economic Coercion, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2009.
19. OHLER Ch., Unilateral Trade Measures, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2012.
20. BOON K., Charter of Economic Rights and Duties of States (1974), *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2013.
21. TREVES T., Customary International Law, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2006.
22. MARCEAU G., Consultations and the panel process in the WTO dispute settlement system, in YERXA R., WILSON B. (Eds.), *Key Issues in WTO Dispute Settlement: The First Ten Years*, Cambridge University Press, 2005.
23. KÖBELE M., Free Trade Areas, *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2011.
24. HENCKELS C., Overcoming Jurisdictional Isolationism at the WTO-FTA Nexus: A Potential Approach for the WTO, *European Journal of International Law*, Vol. 19, Issue 3, 2008.
25. GRAWERT T., Conflicting Laws and Jurisdictions in the Dispute Settlement Process of Regional Trade Agreements and the WTO, *Contemporary Asia Arbitration Journal*, 2008.
26. Chapter 14: Unilateral Measures, *Report on the WTO consistency of trade policies by major trading partners*, Subcommittee on Unfair Trade Policies and Measures, a division of the World Trade Organization Committee of the Industrial Structure Council, Ministry of Economy, Trade and Industry of Japan; available at: https://dl.ndl.go.jp/view/download/digidepo_1285940_po_2-14UniMeasuree.pdf?contentNo=28&alternativNo=, [20.05.2021].
27. RACZ A., *Russian WTO Accession and the Geneva Agreements: Implications for Russia and Georgia*, Transatlantic Academy Paper Series; available at: <https://www.yumpu.com/en/document/read/45096116/russian-wto-accession-and-the-geneva-agreements-transatlantic-> [23.06.2021].
28. ICJ, *Military and Paramilitary Activities in and Against Nicaragua*, Nicaragua v United States, Merits, Judgment, (1986) ICJ Rep 14; available at: <https://www.icj-cij.org/public/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> [23.05.2021];
29. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996; available at: <https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf> [23.05.2021].
30. ICJ, *Continental Shelf* (Libyan Arab Jamahiriya/Malta), Judgment, ICJ Reports 1985, available at: <https://www.icj-cij.org/public/files/case-related/68/068-19850603-JUD-01-00-EN.pdf> [23.05.2021];
31. WTO DSB, Panel Report, *European Communities - Trade Description of Sardines*, WT/DS231/R, 29 May 2002; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/231R.pdf&Open=True> [23.06.2021].

32. WTO DSB, Request for Consultations by Ukraine, *Russia – Measures Concerning the Importation and Transit of Certain Ukrainian Products*, WT/DS532/1, G/L/1189 G/TFA/D1/1, G/SPS/GEN/1582, 19 October 2017; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/532-1.pdf&Open=True> [23.06.2021].
33. WTO DSB, Request for consultations by Canada, *China - Measures Concerning the Importation of Canola Seed from Canada*, WT/DS589/1, G/L/1324, G/SPS/GEN/1727, G/TFA/D2/1, 12 September 2019; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/589-1.pdf&Open=True> [23.06.2021].
34. WTO DSB, Appellate Body Report, *United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, 7 April 2005; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/285ABR.pdf&Open=True> [24.06.2021].
35. Responsibility of States for Internationally Wrongful Acts; International Law Commission [ILC], 2001, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [25.05.2021];
36. United Nations, Charter of the United Nations, 1945, 1 UNTS XVI, Article 41, available at: <https://www.un.org/en/about-us/un-charter/full-text> [25.05.2021];
37. WTO, General Agreement on Tariffs and Trade 1994 (GATT 1994); available at: https://www.wto.org/english/docs_e/legal_e/06-gatt.pdf [29.05.2021]
38. WTO, Agreement on Technical Barriers to Trade (TBT Agreement); available at: https://www.wto.org/english/docs_e/legal_e/17-tbt.pdf [29.05.2021].
39. WTO, Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), available at: https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf [29.05.2021]
40. Agreement between the Government of the Russian Federation and Government of the Republic of Georgia on free trade, available at: <https://matsne.gov.ge/ka/document/view/1211507?publication=0> [10.06.2021].
41. The agreement signed in 2011 "between the Government of Georgia and the Government of the Russian Federation on the basic principles related to the customs administration and monitoring mechanism of commodity trade"; available at: <https://www.matsne.gov.ge/ka/document/view/1512898?publication=0>; [20.05.2021].
42. *Statute of the International Court of Justice*, 1945, UNTS; available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-3&chapter=1&clang=en [23.06.2021].
43. UNGA Res. 58/198 (23 December 2003), UN Doc A/RES/58/198.
44. UNGA Res. 58/171 (22 December 2003), UN Doc A/RES/58/171; available at: <https://undocs.org/en/A/RES/58/171> [24.05.2021].
45. UNGA Res. 74/154 (18 December 2019), UN Doc A/RES/74/154; available at: <https://undocs.org/en/A/RES/74/154> [24.05.2021].
46. UN HRC Res. 40/3 (21 March 2019), UN Doc A/HRC/RES/40/3; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/098/96/PDF/G1909896.pdf?OpenElement> [24.05.2021].
47. UNGA Res. 3281 (XXIX), (12 December 1974), UN doc A/RES/29/3281; available at: <http://www.un-documents.net/a29r3281.htm> [24.05.2021];
48. UNGA Official Records, (22 December 2003), UN docs A/58/PV.77; available at: <https://undocs.org/en/A/58/PV.77> [24.05.2021];
49. UNGA Official Records, (23 December 2003), A/58/PV.78; available at: <https://undocs.org/en/A/58/PV.78> [24.05.2021];
50. UNGA Official Records, (18 December 2019), UN Docs A/74/PV.50; available at: <https://undocs.org/en/A/74/PV.50> [24.05.2021].
51. Russian Federation and the WTO, Member Information, available at: https://www.wto.org/english/thewto_e/countries_e/russia_e.htm [20.05.2021].
52. Russia Plans to Exit World Trade Organization and Other Global Bodies, IISD, 6 June 2022; available at:

- <https://www.iisd.org/articles/news/russia-plans-exit-world-trade-organization>.
53. Explanation of Vote on a Resolution on Human Rights and Unilateral Coercive Measures, United States Mission to the United Nations, available at: <https://usun.usmission.gov/explanation-of-vote-on-a-resolution-on-human-rights-and-unilateral-coercive-measures/> [24.05.2021].
 54. Is the WTO the only way?, Briefing Paper, WTO; available at: https://www.wto.org/English/forums_e/ngo_e/posp66_greenpeace_wto_e.pdf [23.06.2021].
 55. WTO, Decision-making Procedures Under Articles IX And XII of the WTO Agreement, Statement by the Chairman, General Council, WT/L/93, 24 November 1995; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/93.pdf&Open=True> [23.06.2021].
 56. Russian Federation and the WTO, Specific Trade Concerns; available at: https://www.wto.org/library/stcs/stc_maps_iframe_e.htm?country_selected=RUS
 57. WTO, Summary of the meeting of 15 and 17 October 2014, Committee on Sanitary and Phytosanitary Measures, G/SPS/R/76; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/R76.pdf&Open=True> [23.06.2021];
 58. WTO, Trade in Services: Russian Federation - Schedule of specific commitments, GATS/SC/149, 5 November 2012; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-SC/SC149.pdf&Open=True> [23.06.2021].
 59. Cases brought by Ukraine against Russian Federation, WTO; available at: https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_iframe_e.htm?country_selected=RUS&sense=e [24.06.2021]
 60. COVID-19 and trade - Russian Federation, WTO, available at: https://www.wto.org/english/tratop_e/covid19_e/covid_details_by_country_e.htm?country=RUS [24.06.2021];
 61. Постановление № 385, О Введении Временного Количественного Ограничения На Вывоз Зерновых Культур За Пределы Территории Российской Федерации В Государства, Не Являющиеся Членами Евразийского Экономического Союза, И Установлении Случая, При Котором Временное Периодическое Таможенное Декларирование Товаров Не Применяется, 31 Марта 2020 Г., Правительство Российской Федерации; available at: <http://static.government.ru/media/files/0kk3yjAkAmmPZxBeCo3G98KNnc2uDDNA.pdf> [24.06.2021];
 62. COVID-19: Agricultural Measures, WTO; available at: https://www.wto.org/english/tratop_e/covid19_e/ag_trade_measures_e.htm [24.06.2021];
 63. Решение Евразийского экономического союза №21, 16 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425251/err_24032020_21 [24.06.2021];
 64. Решение Евразийского экономического союза №41, 24 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425254/err_26032020_41 [24.06.2021];
 65. Распоряжение Евразийского экономического союза №11, 25 Марта 2020 Г.; available at: https://docs.eaeunion.org/docs/ru-ru/01425272/err_30032020_11 [24.06.2021].
 66. Member information: Georgia and WTO, *Maps: Disputes involving Georgia, Specific Trade Concerns*, available at: https://www.wto.org/english/thewto_e/countries_e/georgia_e.htm [24.06.2021].
 67. *Foreign Policy Strategy of Georgia*, available at: <https://mfa.gov.ge/getattachment/MainNav/ForeignPolicy/ForeignPolicyStrategy/2019-2022-clebis-saqartvelos-sagareo-politikis-strategia.pdf.aspx> [24.06.2021].
 68. *Existing Trade Regimes in Georgia and International Agreements*, Ministry of Economy and Sustainable Development of Georgia; available at: <http://www.economy.ge/?page=ecopolitic&s=12&lang=en> [24.06.2021].
 69. *Feasibility Study on FTA between Georgia and India Accomplished*, Ministry of Economy and Sustainable Development, 12 January 2019 <http://www.economy.ge/?page=news&nw=1007&s=saqartvelosa-da-indoets-shoris-tavisufali-vachrobis-shetanxmehis->

[mizanshewonilobis-kvleva-dasrulda&lang=en](#) [24.06.2021]

70. *The Deputy Foreign Minister, Alexander Khvtisiashvili met with the Chargé d'affaires ad interim of the Republic of Korea to Georgia, Chung Dae-soo*, Ministry of Foreign Affairs of Georgia, 2 June 2021, available at: [https://mfa.gov.ge/News/saqartvelos-sagareo-saqmeta-ministris-moadgil-\(43\).aspx?CatID=5](https://mfa.gov.ge/News/saqartvelos-sagareo-saqmeta-ministris-moadgil-(43).aspx?CatID=5) [24.06.2021].