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MEMBERSHIP IN THE WORLD TRADE ORGANISATION – INSTITUTIONAL IMLICATIONSAND IMPACT ON DOMESTIC TRADE POLICIES

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Kanan Safarli. Membership in the World Trade Organisation – Institutional ImlicationsAnd Impact on Domestic Trade Policies.

The paper concerns implications of the WTO rules on domestic regulations and trade policy measures and analises trade policy options available for a WTO member-state under the WTO rules that may maintain benefiting from the WTO membership. It describes effects of the WTO disciplines on institutional structure of the member-states and analyses issues relating to the formulation of the WTO compatible trade policy measures and mechanisms of their application, examines possibilities for the utilisation of contingency protection measures available under the WTO law. Issues of institution building, trade regime formation and creation of an adequate normative basis of the trade policy formulation is also touched upon based on such analysis, given that the mentioned aspects of the WTO membership is a necessary condition for a successful WTO compliant trade policy. At the same time, it also becomes important to ensure achievment of the development and welfare interests and avoid of subjecting foreign trade measures to private interests by way of establishment of the appropriate procedures and legal environment. Therefore, shaping trade regime and legal procedures in a way enabling formulation and implementation of measures serving the community interests and excluding or minimising utilisation therof in the interests of the private interest groups aquire utmost importance. Based on this, the paper analyses interactions between the rules, practices and institutions comprising the WTO law and the trade regimes of the member-states and explores possibilities of establishing, conducting and adaptation of the WTO complaint trade policies capable of ensuring acievement of social and econimic development goals. Therefore, the paper explores the trade policy regulation mechanisms of the states within the normative and institutional framework established by the WTO law, as well as the possibilities of introducing economic and social development-oriented trade policies by the member-states and candidates for membership in accordance with the WTO law. For these purpose, the legal and institutional aspects of the WTO affecting formation of trade policies and the application of trade measures by the member states and consequencies of mutual institutional influences between the WTO law and the trade policies of the member states are highlighted, principal legal and institutional effects arising from the WTO agreements have been analysed, experience of the WTO members in trade policy formulation and implementation have been summarized, deficiencies and shortfalls in the internal legal systems and institutional structures that may arise in connection with the membership in the WTO identified based on analysis of the experience of the WTO members, recommendations and proposals regarding legal adaptation and institutional changes that may be considered necessary or appropriate in connection with WTO membership have been formulated. It is shown that membership in the WTO results in long-term effects on the country's economy, and these effects concern primarily the legal regulation of trade relations. WTO membership, creates the need to constantly adapt the application of trade policy measures to the WTO requirements. The paper asserts that specific times, durations and purposes of trade measures applicable in accordance with the WTO law depend on the specifics of the objectives and the issues to be resolved in a specific political and economic conditions and, therefore, must be determined individually in each case. The trade policy in such case needs to be purposefully and organically reconciled with general macroeconomic measures such as tax policy, labor market regulations, investment environment, currency policy, etc., in order to be able to maintain economic efficience and social welfare under the WTO rules, otherwise it is possible that membership in the WTO can become a source of economic and social tensions. WTO membership may vreate serious economic and social risks. Mitigation of such risks requires

adaptation of the legal regulation, as well as institutional and power structures. Solutions should accomodate specific political, economic and social situations, institutional structure and would require involvement of adequate fianacial and intellectual resources. The paper also toches upon the issues of transparency, market competition, good governance methods, market inadequacy and market protection possibilities. As an overall conclusion, it is asserted that adherence to the WTO rules does not ensure the increase in the level of well-being, economic and social development, but only creates the basis for it. Achieving these goals may not be possible through membership in the WTO, but through appropriate organizational structure taking into account the membership requirements, as well as thoughtful decisions on the use of opportunities provided by the WTO. Although the requirements are numerous, the freedom to decide about these requirements is not small. This last aspect is a key issue to consider in terms of the impact of the WTO on trade policy and market access conditions.

Key words: WTO, World Trade Organisation, ,trade policy, safeguards, trade policy measure, domestic regulation, competition, market access, national treatment, MFN rejime, non-discrimination.

Канан Сафарлі. Членство у Світовій Організації Торгівлі – інституційні наслідки та вплив на внутрішню торговельну політику.

Документ стосується наслідків правил СОТ для внутрішнього регулювання та заходів торговельної політики та аналізує варіанти торговельної політики, доступні державі-члену СОТ згідно з правилами СОТ, яка може зберегти вигоди від членства в СОТ. Він описує вплив дисциплін СОТ на інституційну структуру держав-членів та аналізує питання, пов'язані з формулюванням сумісних із СОТ заходів торговельної політики та механізмів їх застосування, досліджує можливості використання заходів захисту на випадок непередбачених ситуацій, доступних відповідно до законодавства СОТ. На основі такого аналізу також торкаються питання інституційної розбудови, формування торговельного режиму та створення адекватної нормативної бази формування торговельної політики, враховуючи, що зазначені аспекти членства в СОТ є необхідною умовою для успішної торговельної політики, що відповідає вимогам СОТ. У той же час, також стає важливим забезпечити досягнення інтересів розвитку та добробуту та уникнути підпорядкування заходів зовнішньої торгівлі приватним інтересам шляхом встановлення відповідних процедур та правового середовища. Таким чином, формування торговельного режиму та правових процедур таким чином, щоб уможливити формулювання та реалізацію заходів, що служать інтересам громади та виключити або мінімізувати їх використання в інтересах приватних груп інтересів, набуває надзвичайного значення. Виходячи з цього, у статті аналізується взаємодія між правилами, практикою та інститутами, що становлять право СОТ, і торговельними режимами держав-членів, а також досліджуються можливості встановлення, проведення та адаптації торговельної політики СОТ для оскарження, здатної забезпечити досягнення соціальних і цілі економічного розвитку. Таким чином, у статті досліджуються механізми регулювання торговельної політики держав у нормативних та інституційних рамках, встановлених правом СОТ, а також можливості запровадження державами-членами та кандидатами на членство торговельної політики, орієнтованої на економічний і соціальний розвиток. відповідно до законодавства СОТ. З цією метою висвітлюються правові та інституційні аспекти СОТ, що впливають на формування торговельної політики та застосування торговельних заходів державами-членами, а також наслідки взаємного інституційного впливу між правом СОТ і торговельною політикою держав-членів, основні правові та інституційні наслідки, що випливають з угод СОТ, узагальнено досвід членів СОТ у формуванні та реалізації торгової політики, виявлено недоліки та недоліки у внутрішніх правових системах та інституційних структурах, які можуть виникнути у зв'язку з членством у СОТ. на основі аналізу досвіду членів СОТ сформульовано рекомендації та пропозиції щодо правової адаптації та інституційних змін, які можуть вважатися необхідними або доцільними у зв'язку з членством у СОТ. Показано, що членство у СОТ призводить до довгострокових наслідків для економіки країни, і ці наслідки стосуються, насамперед, правового регулювання торговельних відносин. Членство в СОТ породжує необхідність постійного пристосування заходів торговельної політики до вимог СОТ. У документі стверджується, що конкретні часи, тривалість і цілі торговельних заходів, які застосовуються відповідно до законодавства СОТ, залежать від специфіки цілей і питань, які необхідно вирішити в конкретних політичних і економічних умовах, і, отже, повинні визначатися індивідуально в кожному справа. Торговельна політика в такому випадку має бути цілеспрямовано та органічно узгоджена із загальними макроекономічними заходами, такими як податкова політика, регулювання ринку праці, інвестиційне середовище, валютна політика тощо, щоб

мати можливість підтримувати економічну ефективність та соціальний добробут у рамках СОТ. правил, інакше членство в СОТ може стати джерелом економічної та соціальної напруги. Членство в СОТ може створити серйозні економічні та соціальні ризики. Зменшення таких ризиків вимагає адаптації правового регулювання, а також інституційних та владних структур. Рішення мають пристосовуватися до конкретних політичних, економічних та соціальних ситуацій, інституційної структури та вимагатимуть залучення відповідних фінансових та інтелектуальних ресурсів. У документі також розглядаються питання прозорості, ринкової конкуренції, ефективних методів управління, неадекватності ринку та можливостей захисту ринку. Як загальний висновок стверджується, що дотримання правил СОТ не забезпечує підвищення рівня добробуту, економічного та соціального розвитку, а лише створює основу для цього. Досягнення цих цілей можливо не через членство в СОТ, а через відповідну організаційну структуру з урахуванням вимог членства, а також продумані рішення щодо використання можливостей, які надає СОТ. Незважаючи на численні вимоги, свобода вирішувати про ці вимоги не мало. Цей останній аспект є ключовим питанням для розгляду з точки зору впливу СОТ на торговельну політику та умови доступу до ринку.

Ключові слова: СОТ, Світова організація торгівлі, торговельна політика, гарантії, заходи торговельної політики, внутрішнє регулювання, конкуренція, доступ до ринку, національний режим, режим ННС, недискримінація.

Introduction.

Membership in the World Trade Organisation (WTO) imposes limitations on possibilities of economic policies that may be pursued by a member to achieve its economic development goals and requires that member states adjust their policies to multiple institutional requirements. A WTO member has to deal with not only limitations of freedom of action in the sphere of trade in goods, but also needs to adapt to rules governing trade in services, intellectual property protection, investments regulations etc. WTO membership benefits mostly those countries which have strong institutional structure and legal system and manage to adapt the same effectively in terms of time and functional capabilities to ever changing conditions [105, p. 100]. Being a WTO member means that any domestic policy measure or regulation enacted, including, but not limited to the trade measures applicable to the trade partners (customs rules and duties first of all), macroeconomic policy, labour market regulations [105, p. 152], fiscal policies etc. are shaped so that WTO rules are complied with. Among others, this also has impact on the activities aimed at attaining economic development goals, economic reforms and institutional structuring [105, pp. 95-98].

Practice of the WTO members indicates that opening of markets alone is not capable of contributing to the economic development if not backed by adequate economic reforms. More than that, trade liberalisation without the sound development policies being in place would very likely produce more financial problems and create even more economic and social instability [69, pp. 5-6]. Therefore, WTO member-states have to constantly adapt their economic and administrative systems, as well as, domestic regulation mechanisms to the WTO rules in order to not face adverse social conditions. Such adaptation and adjustment require adequate resources and management structures put in place.

Structural problems that generally WTO members come across with are often those connected to the weak market and trade policy institutions (organisations and regulations), as well as, the scarcity of human and physical kapital [59, pp. 95–110]. Therefore, reforms aimed at improvement in the structure of management systems and of the human capital may become necessary for benefiting from the WTO membership [95, p. 118]. In addition, countries having inadequate structure face two main prodlems in connection with reforms: (i) failure of ensuring competitive conditions in the markets [105, pp. 191,192] and (ii) impossibility to quickly adapt to fast changing market conditions resulting from constantly changing supplies due to speedy technological improvements [105, pp. XVIII, 39, 83–85, 100–103].

It also should be taken into consideration that developing countries and transition economies lack, in distinction from the industrialised countries, properly established institutions like legal and administrative systems capable of ensuring effective functioning of markets. Such countries generally have inadequate infrastructure. Most of them have defficiencies in the structure of income and property distribution resulting in inequitable and asymmetric income distribution systems, which in turn causes impossibility for certain social groups to benefit from trade reforms [105, p. 98]. In such cases liberalisation of trade and investment regimes may lead to economic and welfare growth only if combined with infrastructure developement and institutional reforms [105, pp. 98-99, 107–109].

That is why the market structure improvement including ensuring of competitve conditions in the markets at the first instance and institutional development is vital for the benefiting from the

WTO membership.This means that enactment of regulations for the reforms in connection with the membership in WTO is an essential condition for benefiting from the trade liberalisation.

Any state becoming a WTO member typically faces two major economic development related institutional and political issues by virtue of such membership: (1) creation a trade regime capable of facilitating economic development complying with the WTO rules and (2) designing a relevant structure of government agencies capable of ensuring validity of such trade regime. Trade liberalisation does not produce viable economic development effects without these elements being in place. From this perspective, the major value of the WTO is in that it creates international obligations requiring governments to put the relevant trade regimes in place and design relevant systems of the government agencies to administer such regimes. Guatemala, New Zealand, Malaysia, Mauritus have been sited as good examples in the World Trade Report 2003 [105, pp. 98–111].

The general scientific theoretical research methodology used in preparation of this paper included functional, systematic and structural analysis and synthesis, generalization, induction and deduction, historical, logical, and formalization methods. Legal analogy and comparison, as well as legal modeling and forecasting were applied as special scientific methods.

The complex nature of the topic has determined the use of not only the study of legal literature, but also the literature of other fields of science, including economics, international trade and politics. In addition, the author used analytical literature, as well as periodical press and Internet sources.In the research process, the author used the sources of WTO law, decisions of the WTO bodies, international and domestic legal-normative acts, WTO dispute settlement practice and other sources interpreting the WTO law. In order to achieve a comprehensive analysis of the research topic, sources of international and domestic law, as well as theoretical materials were examined in terms of the effects on the internal competence of the states and the effects on their trade policy were highlighted at the level of socio-economic development.

This paper concerns implications of the WTO rules on domestic regulations and trade policy measures and analises trade policy options available for a WTO member-state under the WTO rules in order to be able to fully benefit from the WTO membership. First chapter describes effects of the WTO disciplines on institutional structure of the member-states and second chapter analyses issues relating to the formulation of trade policy measures and mechanisms of their application. Third chapter examines possibilities for the utilisation of contingency options provided by the WTO system. Fourth chapter devoted to the issues of institution building and trade regime formation andfifth chapter analyses normative bases of the trade policy formulation from the WTO perspective. Certain conclusions and suggestions are provided in the concluding part.

The aim of this article is to conduct a comprehensive study of the impact of World Trade Organization (WTO) membership on the institutional structure and domestic trade policies of member countries. Specifically, the article aims to:

1. Analyze the institutional changes that occur in countries after joining the WTO.
2. Assess the impact of WTO membership on the formation and implementation of domestic trade policies of states.
3. Identify the main challenges and opportunities that arise for member countries in the context of their participation in the WTO.
4. Examine the mechanisms of adapting national legislation and economic policy to WTO requirements.
5. Analyze the experience of different countries in balancing WTO obligations with the protection of national economic interests.
6. Develop recommendations for effectively utilizing the benefits of WTO membership and minimizing potential negative consequences for the domestic economy.

This aim will allow for a comprehensive examination of the impact of WTO membership on participating countries, focusing on institutional aspects and changes in domestic trade policy.

Analysis of recent scientific publications indicates significant researcher interest in the impact of World Trade Organization (WTO) membership on institutional structures and domestic trade policies of member countries. In particular, works by scholars such as J. Stiglitz, P. Krugman, and R. Baldwin focus on the macroeconomic consequences of trade liberalization within the WTO framework. Studies by A. Rose, M. Tomz, and S. Wei analyze institutional transformations caused by the adaptation of national legal systems to WTO requirements. Domestic researchers, including O. Shnyrkov, V. Movchan, and I. Burakovsky, pay attention to the specifics of implementing WTO norms in the Ukrainian context. However, despite a wide range of studies, the issue of balancing global trade rules with the protection of national economic interests remains controversial and requires further investigation, especially in the context of contemporary geopolitical challenges and the transformation of global production chains.

Presentation of the research material.

1. Institutional Aspect.

WTO membership and undertaking of

relevant obligations produce multiple effects and consequences in a range of directions from the formulation of the trade policy through welfare of population, from business opportunities through marketplace regulations. Such effects are of permanent nature and require from the member states constant mobilisation of administrative, material and intellectual resources on all directions and fields, as well as, constant adaptation of the legal regime and government's response structure to the ever changing environment [105, p. 99]. The latter, raises, in its turn, the issue of effective organisation of government agencies acting both within and outside the state territory.

The main challenge with the maintaining of activities outside a state territory is connected with the participation in activities of numerous WTO bodies, such as Councils carrying out administrative functions over WTO agreements and bodies like TPRB, DSB etc.) [3, Vol. 1867, pp. 156-157]. Necessity to monitor changes appearing in the WTO system and protect one's rights and interests in connection with such changes require ongoing and continuous efforts. This, in its turn, requires substantial mobilisation of material and intellectual resources of a state. Similarly, the developing countries have not been active in utilisation of the dispute settlement mechanism, and the above mentioned reason has been shown as one of the reasons for this [108, pp. 277-278]. However, those states that fail to ensure due participation because of lack or scarcity of resources, lose. In order not to fall behind, states have to (and generally do) unite their resources and create alliances [59]. However, it should be noted that such strategies, although successful in certain cases, has in general been not as effective as expected [20, pp. 223–228].

Economic development and welfare improvement goals together with the aim of prevention of possible adverse effects of the implementation of the WTO rules, require that state agencies formulating and implementing trade policies and interactions among them are capable of not only creating and maintaining effectively functioning institutions, but also providing dynamic response to the rapid changes in the WTO law [106, pp. 176, 179]. Apart of this general requirement, there are specific provisions under the WTO law requiring allocation of additional resources. As an example, a number of agreements (e.g.GATS, TRIPS) provide for the institution of the courts and/or arbitration tribunals, which foreign suppliers would be able to apply to and implementation of relevant procedural rules [54, pp. 91–103]. Such rules and procedures shall be capable of ensuring fast, objective and impartial review of administrative decisions. Another example is the GATS provisions requiring application of appropriate procedures for the verification of qualification of professionals from member-countries in sectors included in the lists of commitments [42].

TPRM. With the aim of implementation of the Trade Policy Review Mechanism (TPRM), a member-state shall submit periodical reports with detailed description of its trade regime to the Trade Policy Review Board (TPRB). Reports shall be prepared in a specific format prescribed by the TPRB. Any changes happened in between reporting times shall also be reported in form of brief notifications. In addition, yearly statistical information shall be submitted to the WTO Secretariat in a prescribed format [3, Annex 3, Section D]. Such information shall be coordinated to the maximum possible extent with the information to be submitted under GATT, GATS and TRIPS [3, Annex 3, Section E]. TPRM reporting requires collection and systematisation of a large amount of information starting from applicable tariff schedules and trade volumes under specific tariff items through trade laws and detailed description of each trade measure and state agency administering it. Systematisation of this information is a task requiring analytical work and coordination among relevant authorities. For this reason, as mentioned in the literature, the fulfillment of TPRM obligations by developing countries has not been at the desired level [46, pp. 4–6]. Although TPR is carried out periodically, statistical information shall be submitted on yearly basis [3, Annex 3, Section D]. WTO member-states have historically opted to the creation of permanent bodies for the trade policy monitoring.

Notification and notices. WTO law establishes a number of notification obligations each of which is attributable to the activities of a specific responsible state agency [104, pp. 6–8]. Besides, summary notice shall be submitted on yearly basis on the changes in laws, other legal acts and trade policies. Such notices shall include information on trade measures applicable on tariff levels, grounds for their application, products covered and trade flows affected. Information shall also be submitted on government procurement enterprises or any import restrictions applied (or application of which has been modified) for the reason of BOP difficulties or any changes in time schedules drawn up with the purposes of lifting such restrictions [3, Vol. 1867, pp. 48–50].

A separate notice shall be submitted to the Commitee on Agriculture in respect of a status of the fulfilment of commitments undertaken in agriculture sector [1, Art. 2.9] including those relating to the sanitary and phitosanitary measures and reduction of the protection level (market access), domestic support, import restriction and export enhancing measures [1, Art. 18]. Information shall be submitted on any protective measure or change of the existing measure, which

is claimed not to be attributable to the obligations relating to reduction of the level of protection with the detailed description of compliance with the requirements established under the Agreement on Agriculture.

Similar obligations exist in respect of technical standards and norms: notices shall be given on measures different from international standards and which may potentially have significant effect on trade flows and their purpose and basis shall be explained [9, Art. 2.9]. Also, there is an obligation of notification on qualification verification procedures different from recommendations and instructions of the International Standartisation Organisation [9, Articles 3.2, 15.2, Annex 3; 42, Art. VII].

In addition to the above, a notice is also presented on all quantitative restrictions on textile and clothing imports, as well as the status of fulfillment of trade liberalization obligations in this area [3, Vol. 1867, p. 50]. Under the Agreement on Import Licensing a notice shall be served within 60 days of the publication of information on introduction of import licensing shall include the following information: (i) list of the licensed products, (ii) requirements applicable to products, (iii) agencies authorized to receive applications, (iv) name of mass media and date of publication of the licensing rules, (v) information in accordance with Articles 2 and 3 of the Import Licensing Agreement on whether or not the licensing is automatic, (vi) in case of automatic licensing, its purpose from the governance point of view, (vii) in case of non-automatic licensing, a measure implemented thereby, (viii) if possible the term of the measure, if not possible, reason thereof [6, Article 5]. All the subsidisation programs, including information crucial for the evaluation and comprehension of their trade impact and operation mechanisms by other member-states shall be notified [8, Art. 8.3]. And finally, all the voluntary export restrictions to be also notified. Preparation and submission of all of these notices proved to be impossible without due organisation [3, Vol. 1867, p. 50; 8, Art. 8.3].

GATS also establishes organisational requirements for notification and information exchange. Council on Services shall be notified at least once a year about new legislative acts (including those amending the existing ones) that have significant impact on trade in services falling under specific commitments [42, Art. III:3-X, XV, XXI, XXVIII]. Rules of access to telecommunications and transport networks and utilisation thereof shall be made avaiable to public. Information to be made public includes price levels and other terms and conditions of service, technical specifications for network and service access, information on organisations responsible for the preparation and application of standards of access to networks and services, conditions of access to networks, and notification, licensing or registration requirements in case provided for under a domestic law [42, Art. 4; GATS Annex on Telecommunications, Art. 4, 5 (f) (vi); GATS Annex on Exceptions under Article II, Article 7; GATS Annex on Financial Services, Article 3(b)].

Inquiry Points. Inquiry points to be created which shall be responsible for receiving inquiries in respect of a number of measures, procedures and rules and providing responses to such inquiries or supply of relevant documents. These, first of all, include matters related to proposed or enacted sanitary and phitosanitary measures, including, procedure of determination of required level of factors and measures, monitoring and review procedures, regime of production/processingand quarantine, procedures of verification of admissable levels of pesticides and food supplements, risk assessment procedures, participation in regional and international sanitary and phitosanitary organisations [2, Art. 3, 12.4, 12.5; Annex B, Articles 3, 5–10]. Also, inquiry points shall be created in the terrotory of a member-state to deal with technical standards and norms and qualification verification and other related issues applicable by regional and central authorities. Inquiry points shall be able to provide information on standards, norms and qualification verification as applied or proposed for application not only by government agencies but by non-government organisations also in the territory of a member-state [9, Art. 10]. GATS provides for the creation of inquiry points responsible for the provision of information in response to inquiries of other members in respect of general legislative acts and their impact on application and implementation of GATS [42, Art. III:4].

Import Licensing. Import licensing agreement being mandatory for all WTO members provides for certain administrative procedures and rules. There is a requirement of publication of all rules and information relating to the issuance of import licenses. Application forms and licensing procedures shall be simple, a single window principle shall be applied. Under Article I:6 of the Agreement on Import Licensing Procedures, maximum 3 agencies may be involved in case where competences of one agency appears to be inadequate [6]. Tariff quotas applicable to licensed products, as well as to the opening and closing dates of such quotas shall also be published [6, Section D, 78]. In case where non-global quotas (quotas distributed among the vendor countries only) are applied, the WTO members that are exporters of relevant products shall be directly notified on quota distribution among the existing exporters. Such information shall also be published

[6, Article 3:5]. Proper implemenation of these rules requires involvement of significant human, technical and capital resources [3, Volume 1868, pp. 436–443].

Application of contingency measures. Contingency measures may be applied subject to certain procedures. Procedures to be applied impose significant obligations on agencies invoking them. Effective application of contingency measures requires enactment of the relevant legislation, establishment of the relevant agencies and equipping them with adequate technical facilities, as well as, well educated and adequately trained personnel.

TRIPS. Maintaining IP rights protection at the levels prescribed under the TRIPS generally necessitates enactment of a new legislation and/or introdcution of relevant amendments into the existing legislation. Obligation of effective protection of IP rights requires efficient and coordinated activities of administrative and judicial bodies [86, pp. 10-11]. Major problems in this field is generally connected with the enforcment of IP rights. Efficient enforcement mechanism may require improvment of the training levels of personnel and their technical equipment, which in its turn may result in additional cost to statebudget.

2. Domestic implications of the WTO rules.

The main purpose in setting the WTO rules was the creation of a legal environment that would be capable of facilitating expansion of cooperation between the WTO member-states. That is why these rules are focused on consequences of trade measures applicable by a member-state for other member-states and therefore, little attention has been given to research of consequences for a state applying trade measures.

A membership in such a multidisciplinary and multifaceted instrument like the WTO imposes a number of requirements and restrictions relating to formulation and application of the trade measures on a member-state. These requirements and restrictions may be useful in formulation of domestic policies and achievement of desirable outcomes. Theoretically, WTO membership may contribute to the credibility of domestic reforms and allow the government to effectively resist demands of politically powerful interest groups [64, pp. 574–601; 66, pp. 1374–1406; 68, pp. 970–985; 91, pp. 823–837; 94, pp. 963–974] (such as, for example, demand for increase of the import restrictions). Both general principles and specific rules fixed in the WTO agreements may potentially increase efficiency of domestic economy. However, achievement of such efficiency in application of the WTO rules would require their strict purposeful application in consistency with the needs of economic development [114, pp. 62-63].

GATT and GATS allow withdrawal of concessions, however, this results in negotiating for the purposes of granting other concessions of compensatory nature, which may be more costly for the economy. This allows governments to reject any demands by interest groups to impose further restrictions in the markets on which concessions have been undertaken [64, pp. 574–601].

However, WTO rules may also be seen as economically harmful due to (1) restricting possibility of application of economically feasible or even necessary measures, (2) existence of gaps in regulation allowing application of measures on discriminatory basis and (3) gaps in the WTO coverage.

As an example, exclusions from the subsidies regime granted to the developing countries, limited coverage of commitments under the GATS, failure of WTO law to regulate the general investment regime (given that the WTO rules apply to the trade related investment measures only and internal rules governing general investment regime not directly related to the trade are excluded from the scope of the WTO regulation, which in its turn affects competitiveness of the markets) may be shown. Attempts to reach an agreement between the WTO members that capanle of regulating not only investment-related trade flows, but the general regime of investments have failed [48, pp. 127-128].

Also, the WTO regulation system is asymmetric in that it regulates import restrictions and export subsidies only and does not provide for any regulation of the import subsidies and export restrictions, notwithstanding that import subsidy, may act as an export subsidy where the imported goods which are subject to subsidization comprises part of an exported product. Subsidies are also excluded from the regulation coverage when they are applied with a purpose of stimulation of domestic consumption [114, p. 136].

In some fields the WTO law does not provide for any regulation at all. There is no regulation on distribution of general level of protection across the sectors, there are no rules on application of tariff concessions or privileges on certain groups or entities. Arange of subsidies falls out with the WTO regulation and even prohibited subsidies may be retained (subject to counter measures by affected member-states) [8, Art. 7]. Also, there is almost no regulation on recovery of duties payable on imports used in exports or use of temporary import mechanisms. There is no regulation on barter trade as well.

States are free to decide on application or level of application of a number of the WTO rules. Some commitments, for example, bottom level of the

tariff concessions and extent of their coverage, participation in state trading agreements or specific commitments under the GATS may be not accepted or not applied by the members.

The analysis of the trade policy implemented by the WTO members suggests that the WTO rules provide sufficient level of discretion fot the member states to implement development-oriented policy measures. This allows the governments to pursue purposeful economic policy in accordance with the WTO law and achieve economic and social development purposes acting within the legal framework established by the WTO rules [12, pp. 1–12].

However, the WTO rules (1) limit the possibilities of applying trade regime measures aimed at development goals and/or deemed to be essential for the ensuring the achievement of development goals, that is, the member-states are deprived of the opportunity to implement any measure they deem necessary in the ways they want, and therefor are obliged to adapt the scope and nature of these measures to the requirements of the WTO law or cannot implement them at all [47, p. 74]. Another important factor is related to the fact that the member-states shall not, save certain exceptions, allow the application of the discriminatory policy measures in the field of both foreign trade and internal regulation of their economies [47, p. 12]. Such exceptions and their scope are determined by the WTO rules. However, there are enough gaps, as indicated above and immediately below, in the scope of WTO law, which can be used for development-oriented policy implementation. Examples of of such exceptions include the special treatment regime applied to developing countries (although its application is associated with certain difficulties), the dependence of the level of binding rates on states (bound rates are in many cases lower than the actual rates applied), the possibilities of applying protective measures, the possibility of waiving obligations and exceptions, regulation of competition conditions only in general terms, non-regulation of the general investment regime by the WTO law [2; 3; 5; 7; 8; 9; 10; 34; 40; 42]

It was pointed out in literature that application of certain rules is capable of adversely affecting public welfare and economic efficiency. Although not widely accepted, some writers referred contingency measures such as anti-dumping and BOP measures or participation in the regional agreements to the measures that may deteriorate market conditions and therefore produce negative effects from the economic development perspectives [110, p. 127]. However, effect of such measures would be different in a long-term perspective and in a short run depending on a measure applied. A number of authors evaluate such measures as protective measures and consider them as having the potential to distort market situation, create conflicts with competition regulations and/or create situation of double responsibility resulting from the application of such conflicting regulations and as a result, to give a trade restricting effect [18, p. 1; 22, pp. 10–14]. The assessment of effects from utilization of the opportunities provided under the WTO law, a level of utilization, if any, from the perspective of solution of existing economic problems and increase of public welfare and economic development is a challenge faced by each of the WTO member-states individually [50, p. 68].

The foregoing provides a basis to argue that the WTO rules are focused on the liberalization of foreign trade and impact of these rules on internal welfare indicators is of no importance from the WTO perspective, although sustainable development is one of the WTO goals [45, p. 20]. Therefore, each WTO member state will bear individual burden of assessment and evaluation of applicable measures and of reaching an agreement on application of those capable ensuring desirable level of welfare. States may, taking into consideration such peculiarities, agree and apply mechanisms or systems which would be capable, within the framework of negotiated legal regime, to ensure economic development. This, however, would require mobilisation of requisite intellectual, organizational and financial resources available for the state [50, p. 68].

3. Possibilities for the utilization of contingency measures.

Contingency measures work as escape clauses that a government can use to address unforeseen economic difficulties. WTO members generally make extensive use of contingency measures [105, pp. 178–182]. Industrialized countries, in particular, mostly resort to the use of anti-dumping and countervailing measures. Anti-dumping is seen to be the most widely used measure in general as compared to other contingency measures [108, p. 153]. This is, very probably, due to the fact that anti-dumping and countervailing cases could normally be initiated by local producers more easily than processes for the application of other safeguards, which generally are connected with the institutional complexities and require existence of more stringent conditions for application than application of the anti-dumping and countervailing measures [110, pp. 38-39].

In practice, anti-dumping is used more extensively than countervailing measures. Majority of authors are of the view that anti-dumping is a protection measure, notwithstanding that in strictly legal sense it is a measure designed to counteract unfair trade practices. Anti-dumping and countervailing measures may be applied on

specific cases, against a specific country and a specific industry, whereas safeguards of general application lack such a useful feature [108, p. 154]. When a WTO member state applies a safeguard, it may wish to exclude certain countries from coverage of the measure. However, measure of general application do not allow this. Besides, measures of general application entitle the states on which the measure was applied to claim compensation or apply compensatory measures in retaliation. Anti-dumping and countervailingmeasures, however, do not allow for this. Given that the proof of necessity of application of the prohibited subsidies is more difficult than that of dumping, the anti-dumping is more extensively practiced. It should also be noted that anti-dumping and countervailing measures have less and more soft impact on consumers than measures of general application [110, pp. 114-115].

In light of foregoing, it is not surprising that almost all the WTO member-states enacted anti-dumping regulations [110, p. 69]. Absence of such regulations and, specifically, of legislation establishing the anti-dumping procedure renders impossible for a state to make use of the WTO anti-dumping provisions and, as a result, would have deprived such a state of an important and effective safeguard tool. Despite of wide range of attitudes expressed in the literature in respect of the anti-dumping, the majority of authors agree that anti-dumping may be useful under certain conditions and within certain time-frame [17, pp. 10–16].

There is also a view, that an importing state may use anti-dumping, as well, as a counter-measure against the regulations existing in an export country which provides the exporting companies with possibilities for dumping. Such regulations may be shaped in different ways: for example, unilateral restrictions on trade or absence of the competition laws in the exporting country or non-enforcement of such laws. The US cliam against Japan may be a good example: The US claimed that non-enforcement of anti-trust regulations in Japan allowed Japanese companies to enter into secret arrangements on a market division, which allowed them to maintain high level of prices in domestic markets and to use surplus revenues to finance dumping in export markets. Similar views were expressed in respect of the South Korean companies. According to Garten, the following four conditions have potential to facilitate dumping: (i) existence of the closed markets in the exporting country, (ii) absence of the competition in the exporting country, which makes possible exports below cost margins, (iii) subsidization by state and (iv) non-market conditions. The latter applies mainly to transition economies [39, p. 11–13]. Therefore, it is clear that application of anti-dumping measures on countries with transition economies is easier and this may be viewed yet as another basis to consider transition economy status as unfavorable for the purposes of the WTO membership. Based on the foregoing, anti-dumping may also be viewed as an auxiliary tool for raising a question on the market closeness. Although this cannot resolve the problem of artificial market division by a state, it may, nevertheless, bring up the issue. Anti-dumping duty may induce exporters affected thereby to bring pressure on their state in order to have the import restrictions removed and in such case the importing state indirectly achieves opening of the exporting country's markets [110, p. 66]. Such changes may be obtained before the anti-dumping investigation begins, given that when the investigation starts, it becomes impossible to take such changes into account. Therefore, obviously, anti-dumping rules are of little help for the establishment of the fact whether dumping is connected with the market entry restrictions. On the other hand, possibilities of small countries to influence market access policies of the big countries by way of expression of their intention to instigate anti-dumping investigation equals almost to none given low interest due to the small market size (more detailed analysis on small economies can be found in the "World Trade Report 2014" [112]).

It should be noted that the WTO law regulates not the dumping itself, but the measures that the member-states can take in relation to the dumping and the conditions for the application of such measures. According to the ADA, in case of dumping, the state has the right to take self-defense measures to protect the domestic industry (the possibility of applying anti-dumping duties). Taking into account that the main goal of the WTO system is the liberalization of trade and the possibility of taking measures against unfair trade that adversely affects competition is a necessary condition for the realization of this goal, it appears to be quite natural that the anti-dumping is a part of the system. The WTO law does not impose an obligation on the states to have anti-dumping legislation, but the existence of such legislation becomes an important condition for taking advantage of the opportunities provided by the WTO rules, so that the use of this opportunity must be in accordance with the requirements and criteria contained in the WTO law [31, pp. 21, 25–27; 74, p. 17].

WTO practice evidences that being classified as a non-market economy, including the status of an economy with a high level of monopoly or oligopoly provides more grounds for the application of anti-dumping measures facilitating their application. Therefore, being classified as a country with a monopoly economy (or a state controlled economy

as China) produces unfavorable results for a state concerned in terms of the WTO anti-dumping regulations. [35, p. 110]. This situation arises due to the fact that the WTO law does not provide precise criteria for determining the status of a non-market economy. The existing rules in this respect are broad in nature and provide states the freedom of determination the more precise criteria in their domestic legislation, which, in turn, gives the WTO members wider opportunities for the application of anti-dumping measures against imports from non-market economies [74, p. 21].

Anti-dumping under the WTO law is by no means a legal requirement, but an allowed option and entitlement of which application is considered possible. There is no requirement to have anti-dumping regulations in legislation when a state becomes a WTO member. However, possibility to use a legal entitlement induce states to enact such regulations and enforce them, although it is not mandatory for a WTO member-state to have such legislation, nor it is necessary for the purposes of complying with the obligations under the WTO agreements. At the same time, existence of such regulations may be considered as necessary from the standpoint of maintaining domestic public welfare and economic development, given that the possibility to apply anti-dumping duties represents a safety valve in cases of economic troubles granting governments trade policy flexibility [111, p. 72].

Anti-dumping is just one of the possible measures avaiable for the application under the WTO law if and where unforseable circumstances arise that distorts a country's terms of trade [36, pp. 8–10; 72, pp. 159–183] and similar to other contingency measures, an anti-dumping measure may be applied only if and when there is a possibility for its application [19, pp. 12–18; 71, p. 148–160]. However, possibility for the application of the anti-dumping measures exists where there is a relevant domestic regulations in place and such a possibility may not be materialised without effective anti-dumping legislation, because imposition of an anti-dumping duty is possible only on the basis of an anti-dumping investigation, which in its turn requires that the relevant domestic legislation be in place [82, p. 19–32]. Absence of such legislation within the law of a country acceeding the WTO, makes it necessary for such a country to enact relevant legislation in the future, preferably prior to the accession and appropriately amend the regulations in effect [75, pp. 44-45; 85, pp. 137–144; 88, pp. 242–257; 89, pp. 583–667; 99, pp. 233–246; 102, pp. 903–920]. The need to use the existing legal opportunity allows states to take into account the importance of ensuring trade policy flexibility when adopting such legislative act(s) (19, p. 3–5). From the point of view of ensuring domestic welfare and economic development, such legislation can undoubtedly be considered necessary [37, p. 5–10]

The conclusion that can be drawn here is that the obligation to open markets to international trade and imports is related to the autonomy in the application of trade policy measures, including anti-dumping, which implies the existence of domestic legislation that enables the use of the opportunities provided by the WTO law. The application of protective measures, including anti-dumping, can be possible on the basis of the investigation (examination) process and the determination of the facts justifying the application of those measures and their negative effects on the domestic economy (for comparison, experience of other countries may be looked at, e.g. EU, USA, China, South Africa, Turkey, etc.) [15, p. 3–14; 16, p. 3–14; 30, pp. 16–30; 31, pp. 15–30; 97, s. 22–55; 101, s. 2, 8–11].

One of the important features of anti-dumping legislation is that government authority competent to conduct the anti-dumping investigation is granted broad discretionary powers to pass decisions and adjudicate. On the other hand, anti-dumping procedures may be designed sothat it would pursue, even if not from the point of view of the anti-dumping legilslation, but actually, expressly protectionist purpose. In a majority of cases methods increasing normal value and decreasing average export value can be used, which result in determination of high dumping margins. Such an outcome, as a rule, is achieved by way of disregarding sales in excess of calculated normal value in export marketsand non-inclusion into calculation of the deemed below costs sales in the domestic markets. The former method is based on the belief that high-price sales shall not allow the concealment of dumping [14, p. 52; 54, p. 97; 92, pp. 3–7]. When normal value is calculated by state authorities the dumping margin may be established in a number of ways, e.g. inclusion of high profits and overhead in normal value and non-inclusion of the same figures in costs. Application of such methods almost guarantees determination of high margin of dumping [5, Art. 2].

Similar to anti-dumping, safeguards that may be used in connection with the balance-of-payment problems/unexpected surge of imports are notmandatory legal requirments, but options allowed and permitted under the WTO law.It is not required for a state which become a WTO member to have in its domestic law a piece of legislation providing for the possibility of application of safeguard measures. However, WTO members prefer to have possibility to use such right as an emergency reserve nothwithstanding the fact that such measures may give unfavorable effects from the point of view of public welfare and economic

growth, given that they can disrupt markets and impede competition [56, pp. 3-4; 93, p. 834; 96; 115, p. 148].

Participation in the preferentialtrade agreements may result in increase of a level of foreign trade restrictions applied on states non-parties to such agreements which may lead to the decrease of the trade volumes of such non-party states [106, pp. 27–29]. Under the WTO law such agreements are considered legal if they do not adversely affect third parties, i.e. do not lead to the decrease in import volumes from the non-party states. However, given that pre-agreement assesment of such impact is not possible, this provision may only be used by affected WTO members as a basis for compensation claims.

Participation in the preferentialtrade agreements is not a legal requirement, but an option allowed and permitted under the WTO law. Utilisation of this option requires compliance with the GATT Art. XXIV and GATS Art. V. However, such compliance is not a guarantee that preferential trade regulations are beneficial for a state from a welfare and economic growth perspective and the WTO rules do not guarantee per se that the preferential trade regulations would become a complementary element of the multilateral trade system. Therefore, it is left to the member-states to assess impact of their participation in any preferential trade agreement to their economic and social development in each individual case [33, pp. 6–11].

The WTO law allows undertaking of selective commitments in the services sector. States may define accesss levels to services markets for each individual service sector separately and regulate the sectors not included in the commitments schedules as they may deem appropriate [42, Art. VI:1]. GATS allows the liberalisation to be initially applied to only limited number of service sectors and even definite transactions within these sectors with the extension of coverage of sectors and commitments during the nexts rounds of trade negotiations [42, Art. XIX].

However, states face substantial pressures during the negotiations, and especially during the accession negotiations (restoration of China's membership in the WTO can be shown as the most obvious example of this [56, p. 5]) and achievement of this goal requires precise determination of the commitment levels across the sectors and individual services, diplomatic skills, proficiency and thorough preliminary preparation works (e.g. proof of harmful effects that may result from exceeding the determined levels of commitments by way of analysis of extensive statistic information).

Generally, GATS provides for much less restrictions in pursuance of domestic policies as compared to GATT. Obligations predominantly relate to non-discrimination between foreign service supplyers in the sectors free of specific commitments and between all supplyers in sectors covered by the "horizontal" commitments. Also, GATS does not require changing regulatory structure or creation of competitive environment in the sectors not covered by the specific commitments [70, pp. 3-4].

Above opinions expresed in respect of the measures which both may facilitate economic growth and, in the contrary, impede it, is fully aplicable to the domain of operation of GATS, e.g. measures applicable on the basis of balance-of-payment problems may have adverse effects on economic growth. Goals of economic growth require that more efficient investment regime and legal regulation is applied in the sectors opened to foreign supplyers as a result of liberalisation. This, specifically, relates to the financial, transport and telecommunications sectors. Where liberalisation is limited just to the market access for foreign suplyers, this will not ensure attainment of the desired results in non-competitive markets and the outcome will be just the redistribution of wealth [109, p. 151–153].

Although there are a lot of requirements, there are also enough room for decision making in respect of these requirements. This latter aspect is the principal issue to be taken into account from the point of view of impacts of the WTO regulations on trade policies and market access. Free market access and market stabilty, as the primary conditions for the WTO membership, are important for domestic producers not only for the purposes of getting access to foreign markets, but also from the standpoint of legal regime of importation, which makes it possible to import products from the world markets on competitive prices and to become internationally competitive. Notwithstanding the fact that GATT rules, such as transparancy, customs valuation etc. may be useful for these purposes, they, however, do not call for any measures for stimulation of exports at all. States are free to determine these within the framework of the WTO rules and to use various trade policy tools to the extent and at the volumes necessary to achieve economic and social policy goals [38, p. 463–467].

It comes out of the above discussion that membership in the WTO focuses on the multilateral trading system and not on reducing the possible negative effects of the trade policies of individual members on the level of their welfare. Although the latter often coincides with the former, full compliance with the WTO rules is not sufficient and does not ensure the improvement of the level of welfare, economic and social development. Achieving these goals within the WTO requires an

appropriate organizational structure, taking into account the membership conditions, as well as the application of purposeful economic and social policy measures for the utilisation of the opportunities provided by the WTO law. This in particular concerns distribution of costs and revenues across society. where there are imbalances in sharing the costs of trade opening and revenues therefrom [84, p. 6–8].

4. Trade regimes and instituion building: good practices.

The WTO law establishes not only a very large number of regulations to be complied with by the member-states, but also, provides for a high degree of liberty for the member-states in determining their trade policies. Although member-states have to adjust their trade policies to the WTO regulations, in many cases obligations under the WTO instruments consist of general guidelines rather than specific provisions. Member-states are free to establish concrete rules and procedures within the framework of such general guidelines [53, pp. 30–37]. As mentioned above, such rules and procedures may have diverse effects on economic development on long and short term perspectives. Therefore, member-states may determine how to utilise for the purposes of economic development opportunities and loopholes contained in the WTO law, as well as, which institutional mechanisms and trade policy measures to use in order to prevent or reduce negative impacts of application of the WTO regulations [55, pp. 11–15; 110, pp. 114–117]. Two-fold activities may be required to achive these goals: (i) formulation of trade policies, coordination of various tools and measures and evaluation of the outcome of their applicationand (ii) development of institutions capable of formulation and application of desirable or appropriate trade policies. The latter acquires much more importance if looked from the long-term perspective. Application of the practice of the developed countries in this sphere may be helpful [11, pp. 32–49]. However, it should be taken into account that there are certain loopholes in the WTO law and it undoubtedly falls behind the regional agreements in regulation of a number of matters. And, therefore, there is also possibility for learning from the practice established under the regional agtreements [13, pp. 20–30]. EU anti-monopoly regulations and practice of their application may be a good example of this [26].

Given that trade regime impacts the entire economy of a country, formulation of such regime shall occur in conditions ensuring that all the interests are given due consideration. This may be possible only if an institutional system capable of takng into account country-wide economic interests is in place [111, p. 65; 27, pp. 16–19].

It should also be taken into account that benefits and costs resulted from a particular trade regime is not distributed proportionatly, i.e.whereas only a small group of population would benefit from a particular trade regime, the related costs, on the contrary, are generally spread across the entire economy [76, p. 74]. The benefiting groups are interested in preservation of disbalances in a trade regime [77, p. 111–153]. Such group interests generally prevail over other interests. As an example, impact of the Congress on trade policy in the US occurs exactly in this way. It was discovered that the private interest groups can easily take control of formulation of the trade policies where this is attributed to the competence of either the legislative or an executive branch overseeing a particular sector [29, p. 4]. In case a trade policy is formulated by any ministry it becomes interested in the protection of the group interests of the economic agents engaged in the business activity in the sector or sphere of its responsibility. This said, it becomes apparent that institutions formulating trade policies shall be shaped so that to be able to prevent prevailing of the group interests over the economy-wide interests [98, p. 34]. There is no rule or guidline which could have been applied in a one-size-fits-all basis. Therefore, this problem requires to be tackled with due consideration given to peculiarities of each individual economy. However, it is possible to distinguish a number of core principles. From the perspectives of these principles two fundamental conceptions acquire utmost importance: (I) use of protective measures mainly for the purpose of ensuring competitive market conditions; it is not only important for the efficiency of the economy, but also a necessity arising from the basic principles of the WTO law [100, p. 322, 329] and (II) recognizing that trade policy is not an effective means of redistribution of wealth; for this reason, the fair regulation of the system of distribution of wealth becomes an important condition of social and economic efficiency [55, p. 17]. On this basis, a genuine cost of each trade measure for economy should be approximated ex ante and evaluated ex post based on these conceptions and this with hidden cost burden and its bearers been identified [113, p. 79]. A measure should then be evaluated as to its cost effectiveness and fairness in terms of the redistribution of wealth [109, p. 151–153].

Practice of the develped nations, where these functions were carried out by central executive agencies competent to evaluate economy-wide effects of trade policy measures, shows that probably the most efficient solution would be execution of these functions by a state authority responsible for the enforcement of anti-monopoly and competition policies. Also, it is very important in order to attain positive results that all the interested parties are granted possibility to express

their opinions in the process of formulation of the trade policy measures irrespective whether they will gain or lose as a result of the application of a particular measure and that opinions so expressed be given consideration and a final decision is made by an authority having economy-wide overseeing competencies (such as the Cabinet of Ministers, for example). Criteria clearly defined in the legislative system such as national welfare or general (public) interests may be used in the activities of such bodies. It is also possible to learn from the experience of economies such as OECD members that have been successful in pursuing such policies [19, p. 12–16; 26].

Other issue is connected with the creation of possibilities for a domestic industry competeng with imports to use non-tariff measures when the domestic market is liberalised. This would require development of legal mechanisms in the domestic legal system enabling domestic economic agents to utilise contingency mesures provided for under the WTO law, establishment of the relevant bodies or authorisation of the existing ones to perform relevant functions that fall or may be included within the ambit of their responsibilities [112, pp. 54, 65-65]. Criteria well defined in the domestic legislation like "national welfare" or "interests", as well as, procedures for fair, impartial and objective consideration of cases and possibility of judicial review shall be applicable in the activities of such bodies. Enforcement of the WTO law by domestic courts would result in increase of the effectiveness of the WTO obligations.

5. Formulation of trade policies – General normative principles.

"Centralization" of Trade Policies. The principal element of the formulation of trade policies is the establishment of a decision making procedure or rules allowing for accounting of the effects across the entire economy. This requires at least ensuring that parties depending on imports and exports participate in the decision-making and government gives due consideration to and apply their respective opinions if and where appropriate [37, pp. 15–17]. Possibility of intervention of bodies authorised to apply and enforce trade policy measures with the decision-making on the formulation of trade policies shall be excluded, because, a policy formulation is a political process falling within the responsibilities of the government. Therefore, competences related to the executive function shall be limited to the enforcement related functions. The enforcement process itself being rather a technical issue shall be based on the rules and criteria precisely established in the course of the political process. For example, application of a temporary measure in an emergency situation upon a request by a domestic industry shall depend on existence of the predetermined conditions. In case an enforcement authority would establish that such conditions are in place, the request would then be sent to a body formulating trade policy, which would decide, taking into account all the above shown aspects, whether or not introduction of a safeguard would be in the national interests [53, pp. 14–16]. In the US, for example, International Trade Administration (ITA), a division of the U.S. Department of Commerce, determines whether an unfair trade practice has occurred based on the predetermined conditions and then confirmed cases are transferred to the U.S. International Trade Commission (ITC), which then upon research and evaluation of all the pertatining factors and circumstances provides recommendations to the government.

Transparency, Accountability and Stability. Rules governing proceduresof formulation of trade policies and trade regime should be enacted by law. Role of the legislative power shall be limited to the establishment of the "game rules" so that the laws shall establish general provisions and procedures on the application of trade measures, including, but not limited to safeguards and other contingency measures and duties on specific products and generally on customs procedures, e.g. fees, inspection requirements, valuation etc. Such rules assure more stability, and therefore, less ambiguity for traders. Of course, laws may be amended, however, the amending of laws in a democratic and market oriented community may occur by way of a process requiring certain time and would be a result of discussions, which would allow parties that may potentially be affected by such changes to express their respective opinions in conditions of transparency and to try to impact the outcome of the discussions. On the contrary, in case where the rules are established not by the legislative but by the executive power, there would indeed be less transparency, more ambiguity and better conditions for the prevailing of the group interests.

Two types of activities have remarkably been useful in the practice of the developed countries concerning the matter in question: (1) activity directed to prevention of application of trade measures which are anticipated to disrupt competitive conditions in a market (ex-ante activity) and (2) activity directed to removal of trade measures that produced disruption of competitive conditions in the domestic market (ex-post activity). Activities of an independent institution responsible for the ex-ante evaluation of possible effects of the trade policies and ex-post evaluation of the outcome of their application has proved to be very helpful for the purposes of formulation of the trade policies. Such an institution, as a rule, performs transparency functions, i.e. advises the

government on impact(s) of specific trade rules and measures on competition (market structure/ concentration etc.) and national welfare, prepares and publishes detailed periodical reviews on such effects and impacts, including, also, status and standing of the trade and investment regimes, as well as, degree of utilization of different loopholes in the WTO law. Competences of such institutions are generally established by law and they act independently. Financing of such institutions is also determined under the law and is generally at sufficient levels allowing them to involve a qualified personnel in their activities. Such an institution would carry out advisory functions only with the purpose of covering and detecting the issues and would not become an executive body. Generally, activities of such institutions cover not only the trade regimes, but generally all the regulations limiting domestic market access. They are generally authorised to conduct research on their own initiative irrespective whether there is a request from an executive body or the legislative [25; 81, pp. xii–xiii]. The U.S. International Trade Commission (ITC) activities may be a good example.

Although provisions contained in the WTO law in respect of the establishment of institutions capable of ensuring transparency of decision making by governments on applicable trade regimes are of recommendatory nature [29], some member-states have created such institutions. Establishment of such an institution may also be helpful from the perspective of the fulfilment of an obligation of filing reports under the TPRM (Marrakesh Agreement, Annex 3 (B) [3, Vol. 1869, pp. 480–482]).

Safeguards. Determination of rules for use of safeguards requires special care because of the WTO requirements been applicable. This in particular concerns the utilization of the special safeguard mechanism (SSM) under the Agreement on Agriculture [1]. Safeguards are applicable within a specific time-frame and shall be gradually withdrawn during such specified time. Besides, compensatory concessions may be required to be provided to the affected member-states. In case where quantitative restrictions are applied, a global quota shall not be used and an applicable quota shall be distributed based on historical market share.It has also been suggested to provide the exporters with a possibility of trading in such quotas, provided that intervention by the importing country is excluded [28, p. 36]. The quota established in the outset shall be extended on a yearly basis in order to reduce the protectionist effect and to equal to non within the established period of time. Notwithstanding the requirement that the duration of a measure shall not exceed four years, re-enactment is possible for another four-year period under certain conditions under the WTO rules. SSM application requires an appropriate preparatory work, negotiations and agreements on the products covered [90, pp. xxi-xxii, 57–60].

Applicable criteria may be multiple, but should be reflected in regulations. Such criteria, generally, include damage, increase of imports and impact on economy of which existence/occurrence is required to be measured in terms of changes in profitability and unemployment levels, market share, utilization of the production capacities and turnover volumes. Said criteria shall be fixed in legislation taking into account the WTO law requirements. Minimization of a possibility of varied interpretations could ensure that safeguards application processes are transparentandreliable and there areminimumpossibilitiesto bring external influences on executive bodies applying such measures. The procedure shall allow for a quick application of necessary measures in order to provide ability to prevent any damages where there is a real threat. Division of functions related to the establishment of facts and deciding on an applicable measure based on such facts renders the process of establishment of facts a technical issue and application of a safeguard, being a political issue, shall be decided upon by a body formulating trade policies in a country-wide scale. This would allow such political body to decide on the application of a measure based on evaluation of all the possible alternatives bearing in mind likely results of the application of measures on the country's economy in the whole [37, pp. 15–17].

Principal features of regulations against unacceptable business practices (dumping and subsidies). Vast majority of the WTO member-states has anti-dumping legislation. Also, many countries bound their tariffs on levels higher than actually applied ones. This allows them, following requests from the domestic industries, either to increase the actually applied duty levels applied on specific products or launch a process for the determination of restrictions in connection with an emergency or an anti-dumping procedure. Such choice generally depends on which measure is considered to be more beneficial [18, pp. 8-9]. Anti-dumping regulations require to be designed with each country's specific development needs taken into account. For example, such regulations may provide for the establishment of deterioration (actual or threatened) of competition conditions caused by an alleged dumping in addition to the necessity of establishment of an injury or threat of injury to a domestic industry producing similar/like products. In such cases it becomes necessary to evaluate the economy-wide effects of an applicable anti-dumping duty based on comparative cost and benefit analysis [81, pp. xviii, 38-39]. Application

of anti-dumping duties in such cases may be regarded to be useful from the public interest and economy-wide perspectives if only benefits to be produced by the application of duties are assessed to outweigh the costs for the economy from the restriction of competition [103, p. 188].

Three factors require to be ensured in this regard: (i) involvement of anti-monopoly (competition) body in the investigation, (ii) inclusion of clear-cut public interest provisions into the anti-dumping regulations, and (iii) mathematical determination of expected effects of the application of the anti-dumping duties based on market prices.

The first factor requires active participation of the anti-monopoly (competition) body in the anti-dumping investigation. The WTO practice shows that application of the anti-dumping measures has a considerable competition restricting potential. A majority of authors are of the opinion that measures that may produce significant negative impacts like a dominant market position or enlargement of a market share shall not be applicable. European countries, for the purposes of avoidance of such negative effects, opted to allocation of a certain role in anti-dumping investigation to the anti-monopoly agencies (for example, in Czech Republic [26, pp. 71–82]) or the investigation by an anti-monopoly (competition) body (e.g. in Poland [26, pp. 277–286]). Such mechanisms allow competition considerations is taken into account when an applicable anti-dumping measure is discussed [25], e.g., in the Check Republic decision on application of an anti-dumping duty is made not by the investigation authority, but by the Cabinet of Ministers which allows to account for the economy-wide interests [26, pp. 71–82]. The criteria applicable in such cases should allow for the determination of an impact of the dumping not only on the competing parties, but also on the competition conditions in the whole [52, p. 17]. One of the important issues here is to ensure that an impartial and objective decision is taken, given that the WTO law does not exclude at all a possibility of utilisation of procedures that may lead to tendentious decisions.

Anti-dumping legislation of the majority of the WTO member-states contains provisions on protection of public interests in the course of application of a duty. This allows for the consideration be given to both the interests of producers and general economic interests when the measure is applied. Application of the mesure in such cases becomes possible if only its application is not harmful for the economy in the whole, i.e. when it is determined that benefits received by the producers will outweigh the costs of the measure produced for the general public. This, in turn, requires granting of locus standit o the consumers' representatives in the anti-dumping process. The best example may be the practice of the European Union on the matter. The anti-dumping practice of Australia may also be regarded remarkable in this respect. Notwithstanding that anti-dumping investigations generally do not result in decisions rejecting application of the anti-dumping duties, there were a number of decisions on postponement of application of anti-dumping measures on such basis with the notification of the exporters on possibility of application thereof if they fail to take adequate measures. However, such practice also produces trade restrictive effects and the practice of both the European Union and Australia confirms this. [25; 73, pp. 21-22].

Precise and exact determination of de minimis damage requirements facilitates more straightforward application of an anti-dumping measure taking into account interests of the public. GATT provides for an option for the states willing to reduce adverse impacts of the contingency measures on competition, to provide in their respective legislations for higher levels of deminimis damage levels. A criterion applicable in such case may refer to a definition of a significant market share of the exporter in the import market and criteria used in the domestic anti-monopoly legislation for the determination of the significant market share (size of the market share in percentage) may be used [63, pp. 32–34]. The WTO law also allows states to apply a measure below the duty margin determined as a result of an anti-dumping investigation taking into accout public interests [24, p. iv-4].

Use of duties as the only contingency measure is another form of protection applied in practice of the WTO member-states. This ensures that protection is transparent and maintains competitive conditions in markets by way of prevention of market sharing in light of widely used possibility of conclusion of investigations conducted for the purposes of application of contingenciesby settlement agreements providing for market sharing between domestic and foreign producers. Besides, use of duties induce foreign producers to question applied protection measures, whereas price arrangements or other similar obligations bind prices in high levels and therefore reduce competition which results in cost increase for consumers/public.

Therefore, when making decisions on the introduction of a trade measure, it is important to take into account general non-economic goals in addition to general public economic goals. For example, while fair distribution of benefits from trade across the entire society is an economic goal, issues related to the objectives of distribution of the benefits in question, such as health and safety or rights protection goals can significantly impact the achievement of economic goals as non-economic objectives [38, p. 464-465]

Market access and non-discrimination. Domestic trade laws and regulations shall be designed so that to facilitate not only trade liberalisation, but also maintain competitive conditions in the markets [53, pp. 4–6]. Exporters should be in a position to foresee possible actions by their competitors in the import markets and be prepared for the application of competition related measures, including, specifically, anti-dumping and countervailing measures. This, in turn, renders it expedient for the country of exporter to have a trade regime capable of preventing unfair commercial practices [51].

Anti-monopoly body may play a significant role in establishment of fair market conditions and trade regime. Such a body may act as a whistle-blowerinrespect of the cost burden created for the consumers and economy by the competition-unfriendly policies and trade measures and facilitate correction initiatives. It may also review trade measures from the anti-monopoly regulations perspective, i.e. evaluate trade measures from the perspective of market structure and anti-monopoly policy, which may prevent development of market domination trends. It is possible to attain considerable progress in this direction by way of laying down specific criteria for the application of regulations. For example, it is possible to link anti-monopoly regimes in certain markets with trade measures within the legislative framework by way introduction of precise definition of such markets [52, pp. 16-17]. This may facilitate invalidation/ removal of trade measures incompatible with or not encouragedbythe WTO law (like voluntary export restrictions or import increase agreements) or subjecting them to the anti-monopoly legislation. The UN "Competition Principles and Rules" provides for the harmonization of legislation in this way. It can be considered that this set of rules and principles represents the good practices in coordination of antitrust policy with the applied trade measures [87, pp. 15-16]. De minimis provisions may be tied up with trade measures and anti-monopoly policy pursued in a specific sector, as more liberal market access situation would lead to higher levels of de minimis damages [52, p. 5-6].

Anti-monopoly agency may protect markets from adverse effects of foreign trade regime by way of both ex-ante and ex-post activities. The first is broadly applied in the practice of the developed countries such as the EU and Canada. By way of providing comments on applied measures or opposing to the application of the suggested ones the anti-monopoly agencies of the European countries achieve abroad discussion of the country-wide economic effects of sectoral measures and, as a result, the optimisation thereof from the perspectives of sectoral interests and interests of the general economic development. However, the main strength of anti-monopoly agencies to influence the application of trade measures arises out of their ex-post competence. Evaluation of the effects of application of trade measures from the perspectives of anti-monopoly legislation and subordination of the former to the latter in the process of enforcement of anti-monopoly legislation facilitates effective consideration of ex-ante opinions on trade measures capable of distorting competitive environment in the markets [61, pp. 23-24; 81, p. 437; 40, p. 437].

Liberalisation of services market acquire significant importance from this perspective. Services sector is important for its role in economic development and production processes. Experience of the western economies indicates that anti-monopoly agencies must have possibility to actively and quickly intervene with the trade measures applied with the aim of preserving competitive conditions in the markets in order to be able to prevent transformation of the trade measures into the protectionist measures [21, pp. 1164-1165]. Services markets are distinct in that they are generally characterized by competition deficiency and inequality in provision of information. Reputation acquires vital importance in publicising of a service quality and inadequate competition conditions in the services markets becomes understandable where difficulty of gaining reputation is taken into consideration. Also, fragmentation of markets becomes possible, wherein foreign suppliers generally serve large and foreign companies, whereas local suppliers clientele is limited to local medium and small businesses [67, pp. 37-38]. Broad product portfolio adds to the competitive strength of companies which already has a market share [62, p. 377]. Anti-monopoly agencies have, therefore, to ensure that compliance with the quality standards and consumer safety considerations do not become factors unreasonably limiting competition [57, p. 114]. This is the one of the underlying conditions for the creation of an effective economy, given that no economy may function effectively unless possibility for local producers to get access to quality services for the minimum possible prices is ensured. That is why formation of competitive services markets becomes an important factor in economic development. At the same time authorities should also ensure that local suppliers are placed in conditions enabling them to have a competitive edge [105, pp. 108-109]. For these purposes restrictions may be imposed on foreign suppliers preventing them to dominate domestic markets [79, pp. 18–22]. From the perspective of the WTO law, main issue here is non-attributability of such measures to the obligations in the commitments schedules which in turn requires thorough preparatory work to be carried out.

National treatment. Application of the national treatment principle is very important for creating equal competition conditions for the local and foreign producers. National treatment is mandatory under the GATT [44, pp. 2-3], whereas sphere of application thereof under the GATS is to be agreed between the states in the schedules [43, pp. 8-9]. Fewer services covered by the schedules allows more flexible trade policies to be pursued, however, it is difficult to achieve this, as newcomers have to make considerable concessions during the accession negotiations with the existing WTO members, especially if the country is considered as a non-market economy [58, pp. 306-309]. Accession practice indicate that newcomers may even be required to join agreements accession to which is not mandatory, like, for example, the Agreement on Government Procurement [83, p. 53]. Termination of membership in this Agreement following the WTO accession [4, Art. 12] may be seen as an alternative, but this may be tied up with certain adverse effects.

Harmonization and Mutual Recognition of Regulatory Regimes. Harmonization of the domestic regulatory regimes with the regimes applied in big trade partners is very important for the attainment of market access in these countries. Environmental, labour and product/ process standards has recently come to the first line of hot discussions within the WTO framework [107, pp. 31–74], given that compliance with the standards provides market access capabilities, whereas products not complying with the standards are unconditionally barred from the access to markets. That is why the WTO members strive to enter into agreements on harmonisation of standards with their important trade partners. In consideration of such requirements not only the WTO agreements, but also regional agreements provide for the harmonization of standards [32, p. 7–28]. It goes without saying that small economies have to adapt to huge importing economies like the US or EU. Currently, China is more and more considered as an economy of which standards it is important to comply with. The WTO members have undoubtedly go beyond the WTO requirements and recommendations and work towards adoption of internationally recognised product specifications, safety measures, health normatives and other standards. It is a huge problem for the countries like former USSR countries in particular, given that normatives and standards in such countries have been in significant deviation from ISO normatives and standards. In addition, even when standards not deviating from the ISO standards are applied, it is of significant importance to have agreements on mutual recognition of testing and certification institutions in place in order to be able to benefit from the WTO membership [107, pp. 31–74]. On the other hand, adaptation to the requirements of high-level standards of the importer countries been required by the national treatment principle [47, p. 2] results in what is known as the "California effect". The California effect appears as a result of upgrade by manufacturers of their domestic standards to the high-level standards of importing countries because of necessity for their products to meet the high-level standards in the importing countries. This becomes one of the benefits of the WTO membership, paving the way for advancement in such matters as technical safety, environmental protection, human, animal and plant health [60, p. 7]. In addition, mutual recognition of standards, as well as testing and certification institutions, is one of the obligations provided by the WTO law [2; 9; 16, p. 8-13].

Conclusions.

The WTO, in a capacity of legal and institutional framework, may in no ways be viewed as a tool for the welfare increase and, therefore, care to be taken in determination of trade policies and tools among mutiple possible ones to be used for the purposes of integration of a country to the world economy. It is clear that the WTO membership does not tackle specific economic development problems of member-states given that the WTO focus is not on the economic grouth or development or poverty alleviation, but on the multilateral trade system. Notwithstanding the fact that the latter in principle is compatible with and does not contradict the former, compliance with the WTO rules is neither sufficient, nor necessary and nor a condition for increase of welfare, economic and social development. Attainment of these goals may be possible not by way of the WTO mmbership, but by way of creation of efficient governance structure taking into account the WTO membership requirements and adoption of weighed decisions relating to the utilisation of possibilities provided by the WTO regulations.

Application and use of improper policies and measures may lead to the decrease of competetiveness of domestic products and result in inefficient utilisation and distribution of economic resources of a country, which in turn may end up in economic resession. The WTO member-states' practice indicates that it is important to ensure harmonised intercourse of all the elements of the trade regime in order to be able to maintain competetive conditions in the domestic markets and enable local industries to compete internationally. Also, account should be taken of that measures applicable within the WTO framework as they provide for opening local markets to exports, which may appear to be disadvantageous for domestic producers and add to social tensions.

Achievement of development goals necessitates structural changes in public governance. Structural changes require putting relevant regulations in place, implementation of reforms and liberalisation in proper sequence, increase of competetivness of local service suppliers, elemination of monopolism and support for small and medium businesses. The latter would in particular require, among others, that (a) mechnisms are in place which would ensure that needs of small and medium businesses in credit resources and advanced technologies are met, (b) measures protecting them from economic pressures from foreign market actors are applied, (c) administrtive pressures on them lifted and (d) development oriented fiscal policies are pursued [114, p. 83–106]. In addition, a mechanism of continuous and timely adaptation of regulations to constantly changing environment should be set up with the purpose of adjustment of regulatory tools to volatile market situation in order to ensure that legal regime is up-to-date in light of dynamic development of markets and technology.

WTO membership may not be limited simply to the market opening and should encompass establishment and maintaning of precise equilibrium and proportionality between stringency and liberalisation of legal regime allowing its adjustment to the changing conditions. Hastiness in liberalisation, delays in providing adequate responces to problems arosen by liberalisation, shortcomings in providing financial and technological resources to local market actors are factors that may negate positive outcomes of liberalisation.

Opening of markets in connection with the WTO membership shall be accompanied by regulation reflecting development needs of a particlular country and matching its social and economic capacities. Liberalisation to be conducted in accordance with the principles as set out under the WTO law shall be accompanied by reforms implemented in logical order in order to avoid deterioration of economic situation which a series of unconnected measures may entail. This obviates that the WTO membership shall not constitute a goal in itself and shall be linked up with the development policies.

WTO member-states' practices indicate that establishment and application of fair and transparent regulations, formation of competitive market conditions and provision of opportunities of choice to consumers has been crucial for the attainment of the development goals [80, pp. 8, 21-22]. Best policy capable of ensuring economic growth and sustainable development proved to include (i) elemination of any administrative intervention in the markets and (ii) minimal intervention in resource distribution. State intervention was useful only where there was a need of correction of specific circumstances and restoration of the optimal competition conditions. It is also noteworthy that formation of competitive conditions facilitating fair market practices resulted from the application of market regulation with the purpose of maintaining competitive conditions in the markets was more beneficial as compared to the application of market access restrictions by way of the direct state intervention in the markets [23, pp. 4–12].

Identification or formation of a state agency responsible for the monitoring of the economic effects of trade policy measures applied or proposed for application in accordance with the WTO requirements and preparation of forecasts may be regarded to be among the essential conditions of the WTO membership. Such an agency shall, apart of monitoring the economic effects of the measures, be entitled to evaluate impact of such measures on the economy in general, including, but not limited to, the export oriented production and service sectors, as well as, the consumers and to require submission of relevant information by public and private institutions.

In conclusion, it should also be noted that the WTO membership neither becomes a remedy for all the economic growth and development related problems as regards to trade policies and institutions nor it may be regarded as a fit-for-all tool. Trade policies tailored for the economic development needs of a particular country, as well as, determination in application of measures aimed at the implementation of these policies remain to be principal factors contributing to the efficiency of economic activities notwithstanding the membership in the WTO. Utilisation of opportunities created by the WTO membership for the member-states' goods and services providers to become specialised in the worldwide scale as a result of integration into the world economy and to benefit from such specialisation becomes possible only where restrictions imposed by domestic legal regulations are dismantled. However, mere adjustment of local requlations to the WTO law is not sufficient for the tackling of the development problems and requires much more to be done. The WTO membershsip as such requires compatibility of trade policies pursued with the standards established by the international law and necessitates pursuance of this pattern. Such compatibility, although, is capable of ensuring reliability of and support for economic reforms by way of paving good foundation therefor, is not in itself a substitute for the reforms. Benefits that the WTO membership may potentially bring, would, therefore, depend on measures applied by the government independently, although in compliance with, the WTO law.

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