Slava Fetelava
Grigol Robakidze University

RULES OF WORLD TRADE ORGANIZATION IN THE FIELD OF COMPETITION

World Trade Organization (WTO) was established on December 8, 1994 as a legal successor of the "General Agreement on Trade and Tariffs" (GATT) created in 1947 (the Organization started activity from January 1, 1995). Georgia joined WTO as earlier as June 26, 1996 as an observer, while since October 6, 1999 it gained the status of the full member of WTO (Georgian Parliament ratified the Treaty on Joining Georgia with WTO on July 14, 2000).

The WTO is aimed at regulating the trade and economic relations of its members on the basis of multilateral obligatory agreements, while the main objective of WTO is a liberalization of the international trade through ensuring its justice, prediction and transparency that, in its turn, should assist a process of economic growth and increase of people's welfare [4, 191-203].

It is the fact that according to the rules of the "General Agreement on Trade and Tariffs" and the World Trade Organization, the trade cooperation between countries is based upon the preferential assistance principle (i.e. the preferential assistance regime), the main concept of which is that a custom preference granted by a GATT participant state to another GATT participant state shall be automatically spread over all GATT participants. Therefore, we can say that the World Trade Organization is a set of the legal documents (a certain multilateral trade agreement) determining the rights and duties of governments in the sphere of international marketing of goods and services.

As for the rules of the World Trade Organization in the field of competition, it should be noted that they form a comprising part of just this set of the multilateral agreements (legal documents) and regulate through its norms and principles more than 90% of the current world trade (with goods and services). However, it is noteworthy that there were/are no direct statements in the provisions of "General Agreement on Trade and Tariffs" / World Trade Organization in support of the principles of competition (they do not characterize the rules to be adopted as the "rulers of competition"). But, despite the above stated, we can say that just the core of the WTO regulations provides the competitive conditions of the foreign-economic deals through avoiding the discrimination and artificial barriers. But this does not mean at all that WTO fully relies upon the conditions of a free competition. For the Organization, use of the methods of both tariff- and non-tariff regulations, among them – implementation of the anti-damping and compensation measures with a strong limitation, are acceptable, that is not aimed at the limitation of the competition.

"Generally, . . . for the purposes of "protection" of the national industry, the aforementioned provides an opportunity to cancel or cease those concessions in the trade which were adopted on the grounds of mutual agreements".

The World Trade Organization envisages two categories of measures: The first – temporary measures which may be applied only if certain conditions exist; the second – the permanent measures which can be considered as an exception from the obligations taken before WTO. Among the temporary measures envisaged by WTO, the most important ones are:

- Urgent measures which must protect the national industry seriously damaged as a result of competition by imported goods. Each country shall have the right to take the "security" measures through establishing the quotes and imposing taxes on import of this or that type of product, in the event if an increased volume of import causes damage or creates threat to local manufacturers (Article XIX of GATT – urgent measures related to import of some products; WTO Agreement on Security Measures);

- Introduction of the anti-damping and compensation custom charges against the non-honest import from one or more countries, that caused a material damage or created a threat of damage to the national industry (Article VI of ATT – Anti-damping and Compensation Custom Charges; WTO Agreement On Implementation of Article VI of 1994 General Agreement on Tariffs and Trade, hereinafter the "Anti-damping Agreement"; and WTO Treaty on Subsidy and Compensation Measures);

- Introduction of the import limitations by the developing countries, for the purposes of protecting the payment balance and foreign financial state (Article XVIII "b" of GATT – Import-related measures for Payment Balance)" [1, 37-38].

At the same time, according to the Point 1 of the Article 8 of the WTO Agreement (Monopolies and Suppliers of Special Services) "Each member shall ensure that none of the monopolist supplier can act on its territory . . . in such a manner that may violate . . . the obligations . . . under the Agreement . . . Correspondingly, these obligations shall cover also the services provided by holders of special possessions, in case I they misuse their monopolistic state [9, 355-356].

Undoubtedly, each country implements its contemporary foreign-economic policy under the influence of development of specific historical conditions. It is a fact that often, a temporary protection of the local markets are fully justified (for instance, in the countries with transitional economy, where the national economy is unable to compete with major transnational companies) and, generally, strengthening the positions of the national companies on the world market is the unconditional priority for all high-developed industrial states in terms of the principles of the just competition and restriction of the monopoly on the local markets.

Therefore, we can say that the antimonopoly policy belongs to the local markets-related policy and is regulated under the national laws. As for the issues regarding the trade relations of the WTO member states, they are regulated in pursuance with the international treaties. Thus,

occurrence of conflict situations cannot be excluded. That is why, currently, the circles of professionals are actively involved in discussions regarding introduction and enactment of the international rules of competition and inclusion thereof in the sphere of WTO activity. In other words, in conditions of the current globalization, a necessity of establishing and exercising a wide-range control over the anti-competition policy and achieving an agreement on regulation of competition-like relations with certain standard occurs, under which each WTO member state should be guided.

At the same time, it should be also noted that Georgia, like other countries with the transitional economy, is enforced to resolve not only the problems of legal protection and institutional provision of the competition, but the issuers of formation of the competitive environment as well, that is not a case for the high-developed WTO member states.

Therefore, for recognizing Georgia as an equal partner by the WTO members, the country must necessarily have a perfect legislative basis to regulate the customs procedures and their administration, intellectual property rights and other similar business environments having impact on realization of the goods and services. Moreover, Georgia took such specific obligations upon signing the WTO Membership Agreement. Namely, "Georgia undertook not to implement the reprisals of trade (measures of protection, anti-damping and impose of the compensation fee) until the regulating legal acts corresponding to the WTO requirements will have been introduced. According to most part of the observers, Georgia really needs to adopt such the procedures despite the fact that none of the other WTO members are obliged to do so [8, 27].

At the same time, by technical assistance of the donor organizations [on October 17, 1997, by the assistance of the Canada International Development Agency (CIDA) the Georgian Center for Trade Policy Laws (CTPL) was established at the Ministry of Trade and Foreign Economic Relations of Georgia], "CTPL has developed the draft law "On Anti-damping, Compensation, and Security Measures" [2, 5] and submitted it to the government for reviewing. Moreover, as revealed, the said draft law was forwarded to the Georgian Parliament too, but it was not adopted finally. According to this draft law, the Antimonopoly Office was proposed as a governmental body responsible for administering the reprisals" [8, 27].

Proceeding from the above stated, the fact is that on this stage Georgia has not still introduced a national legal basis (legal acts to cover fully the security mechanisms) for regulating the anti-damping and compensation measures. This matter became more urgent after annulment of the Law of Georgia "On Monopoly and Competition" dated 25.06.1996. (Law No.1550-Ic dated 03.06.2005), Sub-point , "c" of the Point 2 of the Article 9 of which stated that an non-honest competition is achieving a privilege in the competition through using the damping prices, that shall be prohibited. Besides, according to the Point "g" of the Article 13 of the same Law, an economic agent with a monopolistic power was prohibited to use the damping prices, etc. This seems to allow us to say (creates a threat) that a dishonest trade of other countries (i.e. import of goods with damping prices) can easily occur on the country's local market. However, it is also

obvious that even if such law exists, a probability of applying it is too low, since a conduct of researches (and not only within the country) and application of the appropriate measures require bit expenses of administrative, research and legal nature. It is a fact that the "Administrative barrier is so high that the countries which were in the similar economic situations earlier, applied the mentioned measures in case of urgent need, only" [1, 38].

Thus, if looking through deeply (carry out a critical analysis) the existing (expecting) situation in terms of anti-damping measures (with all possible outcomes), we may conclude that on the given stage, inexistence of the legislative basis related to the reprisals is less catastrophic for Georgia. Like a certain part of independent experts, we also share the opinion that on this stage, use of the WTO provisions concerning the protecting measures would be more acceptable and even effective for Georgia, than charging the compensation duty and the anti-damping procedures. Namely, "There are more costless means with an immediate effect, such is the WTO Agreement on Protecting Measures" [8, 27] which, to say frankly, is a less stronger instrument but still, is able to play an important role in protecting the local businesses. Respectively, it stimulates the private sector to use the protecting measures against import for increasing the competitive ability.

Here we would like to indicate that some of the countries with the transitional economy (Latvia and Kirgizstan) adopted the laws and legal acts on the anti-damping and compensation measures as earlier as by end of the XX century, for their integration into WTO.

Special attention deservers the positive side of the protecting procedures, namely, the fact that by their nature the procedures are "single-minded" and participation of a violating party is not a necessary requirement. In other words, any country desiring to adopt the protecting procedures is not required to prove that the imported product gains unjust funds or is of anti-damping nature. It is sufficient to determine easily whether the imported product causes a serious damage to the local competitive manufacturers of the similar products or creates a threat of such damage. In such cases, the standards of causing damage can also be specified easily than in case of conducting investigations in terms of the anti-damping procedures and compensation duties.

Finally, we can say that fulfillment of the obligations taken before WTO in connection to the protecting procedures is much simple and effective (costs saving) that increases a probability of their use by the countries with the transitional economy. Moreover, it is also profitable by political point of view, since it ensures protection of those local businesses, for which it seems to be difficult to adapt in the competitive environment. Correspondingly, the local companies are promoted and the government helps them with its policy to overcome the difficulties and take a position on the market.

Here we should take into consideration the fact that according to the WTO provisions, the protecting measures directed mainly to increasing the competitive ability of the private sector are of temporary nature. However, in case an increase of competition ability of the local

manufacturers is not achieved in the course of implementation of such measures, it cannot be excluded that after removal of such measures the industries will be in the similar or even much difficult conditions than before introducing of the mentioned protecting means. Correspondingly, ". . . the protecting measures can be considered as the supporting means for the economic reforms and the regional integration, since they create an environment where the private sector must become more effective and gain the competitive abilities both on regional and global levels" [8, 29].

Proceeding from the above mentioned, it is clear that regardless of inexistence of the legal basis for regulation of the anti-damping and compensation duty charging procedures in Georgia, it seems really possible to implement the full-range competition policy within the frameworks of the WTO provisions (related to the protecting measures), if not its main barrier – indetermination (inexistence) of a state institution that should investigate (study) the protecting measures and make the relevant decisions.

This problem has become more actual after abolishing the State Antimonopoly Office of Georgia (on August 19, 2005) which was not directly charged with execution of the protecting measures envisaged under the WTO Agreement, but acting according to the monopoly legislation in force in that time (Article 9 of the Law of Georgia "On Monopoly and Competition"); it was involved in detection and suppression of the facts of non-honest competition on the specific (concrete) commodity markets of the country. But, after liquidation of the mentioned Office and abolishment of the Law "On Monopoly and Competition", no other state agency works in this direction (detection and suppression of the facts of non-honest competition), that creates a real threat in terms of protection of the local businesses against the increasing imports [5, 114-115].

Therefore, we consider it necessary to nominate as soon as possible a state agency that will serve as the institution charged with implementation of the protecting measures as per the procedures of the WTO Agreement (we thing that such an institution should be the main agency responsible for the competition-related issues in the country). In parallel, it seems also necessary to improve the legislation on competition (in the current Law "On Free Trade and Competition", the competition limiting mechanisms cover only the prohibition of the competition limiting actions by the side of the state (national and local) bodies) and harmonize it with the similar standards adopted by the high developed WTO member states.

And finally, we think that acceleration of this process (i.e. approaching to the WTO standards on competition) would be promoted also by the fact that the EU is an active member of WTO (since January 1, 1995), which repeatedly makes attempts to strengthen both the economic and political ties between its member states and those from Central and Eastern Europe still being remained out of the EU membership. Such an approach gives the non-EU countries a chance to enter the EU market through matching (harmonizing) their competition laws with the WTO and EU standards. Therefore, EU has a great potential to support maximally Georgia's integration into the WTO.

References

1. Barnevic A. 1999. Protection of Local Industry on the grounds of the WTO Agreement on Security Measures. *Georgian-European Consulting Center for the Economic Policy and Legal Issues. Georgian Laws Review. 3rd Quarter,* 3, 36-39 (in Georgian).
2. Beruchashvili T. 2000. The Period after Georgia's Integration into WTO. *Georgian-European Consulting Center for the Economic Policy and Legal Issues. Economic Directions of Georgia. Quarterly Review.* 2, 50-52 (in Georgian).
3. Lyont D. 2000. Membership to WTO. *Economic Directions of Georgia.* 1, 3-4 (in Georgian).
4. Raich N. 1998. The 1998 Comments on the Law of Georgia "On Advertising". *Preliminary observations (recommendations of the EU Experts to the State Antimonopoly Office of Georgia on the customers protection problems) Tbilisi. Archives files of the State Antimonopoly Office of Georgia.* 12, Chanturia str., Fl.6 (in Georgian).
5. Fetelava S. 2007. *Theory of Competition and Antimonopoly Regulation in Georgia*. Tbilisi, LOY (in Georgian).
6. Fetelava S. 2007. *On Problems of Improvement of Competition (Antimonopoly) Laws of Georgia.* Tbilisi, LOY (in Georgian).
7. Kemoklidze D. 2000. Trade and Competition – Multi-sided Discussions on Trade. *Georgian-European Consulting Center for the Economic Policy and Legal Issues. Economic Directions of Georgia. Quarterly Review.* 2, 53-54 (in Georgian).
8. Bearing Point. 2004. *Formation of the Trade Policy and Observance of WTO Requirements by Georgia.* Tbilisi. 5th of July (in Georgian).
9. Yacheistova N. I. 2001. *International Competition: Legislation, Regulation, and Cooperation.* New York & Geneva: UNO (in Russian).
10. *Georgian law on "Monopolistic Activities and Competition".* 25th of June 1996 (286-IIs).
11. *Georgian law on "Free Trade and Competition".* 3th of June 2005 (1550-Is).