

## **THE ROLE OF WTO DISPUTE SETTLEMENT SYSTEM IN INTERNATIONAL AND NATIONAL INSTITUTIONAL FRAMEWORK: THE CASE OF UKRAINE**

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### **Abstract**

*Ukraine's accession to the WTO was a long process, which allowed to harmonize Ukrainian legislation in accordance with international standards. However, many institutions were reformed only formally, and on the eve 10th anniversary of the Ukrainian membership in the WTO the advantageousness of terms of accession is still debatable, as Ukraine's accession to the WTO occurred against the backdrop of the global financial crisis and inner problems. Thus, to date the WTO Dispute Settlement System seems to turn into a great opportunity for Ukraine to strengthen its position on the world market and deepen integration into the Western European and world economic system. The article is concerned with the role of the WTO Dispute Settlement System in international and Ukrainian institutional framework. Major conclusions are this article are: Ukraine's decisions to initiate consultations under the WTO were not based on an analysis of economic benefits and prospects, as they should, but influenced by multinational companies or were rather a political countermeasure; Ukrainian private and public sector, including SMEs, should work together in order to strengthen Ukrainian position on foreign markets; Ukraine should not concentrate on its "post-soviet" links, but defend its interests globally in the context of its National strategy.*

*Keywords: WTO, DSU, Dispute Settlement System, Ukrainian economy, international trade*

## **INTRODUCTION**

Each and every acceding to the World Trade Organization (WTO) makes a number of commitments prior to joining the organization. They are developed in the course of lengthy negotiations, which should result in the consensus of all parties. The process of acceding to the WTO is unique for each new state, and the terms of accession depend on the stage of its economic development, the existing trade regime in it, and a number of other factors. The alleged set of obligations may expand or narrow, depending on the content of provisions in the accession working party report and the Protocol of accession to the WTO. However, it is not the paragraphs of the Protocol themselves that are important, but the points (terms) of which they consist, since they are the last units, which perform a function, characteristic of their functional category. Only those that change the set of obligations and rules having defined the GATT/WTO system before the accession of a new member (the WTO Baseline) have legally binding force, i.e. are WTO-plus or WTO-minus provisions.

The WTO Dispute Settlement System is the main instrument for ensuring compliance of the WTO member states with the principles and rules established by the WTO agreements. Since 1995, when the WTO was established, more than 500 disputes have been brought to the WTO Dispute Settlement System, in 7 of which Ukraine was involved as a complainant, in 4 as a respondents, and in 18 as a third party. Thus, the Dispute Settlement System is a central element in ensuring the security and predictability of the multilateral trading system, which serves to protect the rights and obligations of member countries of the WTO.

## **REVIEW OF LITERATURE**

Among scientists who studied the specifics of the accession process to the World Trade Organization, interpretation of the introductory commitments and the WTO Dispute Settlement System should be noted - K. Alexander, B. Marina, C.P. Bown, K.M. Reynolds, C. VanGrasstek, S. Chernovits, M. Elsig, L. Johannesson, P.C. Mavrodís, J. Quinn, P.J. Williams, I. Matyushenko, S. Berenda, M.Kizim, K. Leitner, J.Y. Qin, V.S. Seshadri,

## **PROBLEM DEFINITION**

But the abovementioned scientists do not focus on the role that the WTO Dispute Settlement System plays in the international and national institutional framework in detail, especially as applicable to Ukraine, merely touching upon this subject.

## AIM OF THE ARTICLE

The aim of the article is to investigate the role of the WTO Dispute Settlement System in international and Ukrainian institutional framework. The first section of the article examines the historical development and significance of the WTO Dispute Settlement System. The second section deals with the specifics of Ukraine's accession to the WTO and its participation in the WTO Dispute Settlement System.

## PRESENTATION OF THE BASIC MATERIAL

Since its establishment in 1995, 36 new members have joined the WTO. All parties to the General Agreement on Tariffs and Trade (GATT) joined the WTO, apart from the disintegrated Yugoslavia, and the members of the European Union, which are represented in the institution both individually and as a whole. Each of the new members in the process of joining the WTO made commitments (GATT members worked out common commitments during the rounds and consolidated them in GATT 1994). The set of these obligations varies from state to state and can both expand and narrow. To date, 164 states are WTO members (162 internationally recognized, as well as Chinese Taipei, Hong Kong and the European Union), 41 of which were not party to the GATT. Another 20 countries have observer status. It is important to understand that all of them (with the exception of the Vatican) are obliged to begin negotiations on accession to the WTO in the next five years after obtaining observer status. Only 15 states are neither members nor observers in the World Trade Organization. Liberia and Afghanistan were accepted for membership in summer of 2016.

## SECTION 1

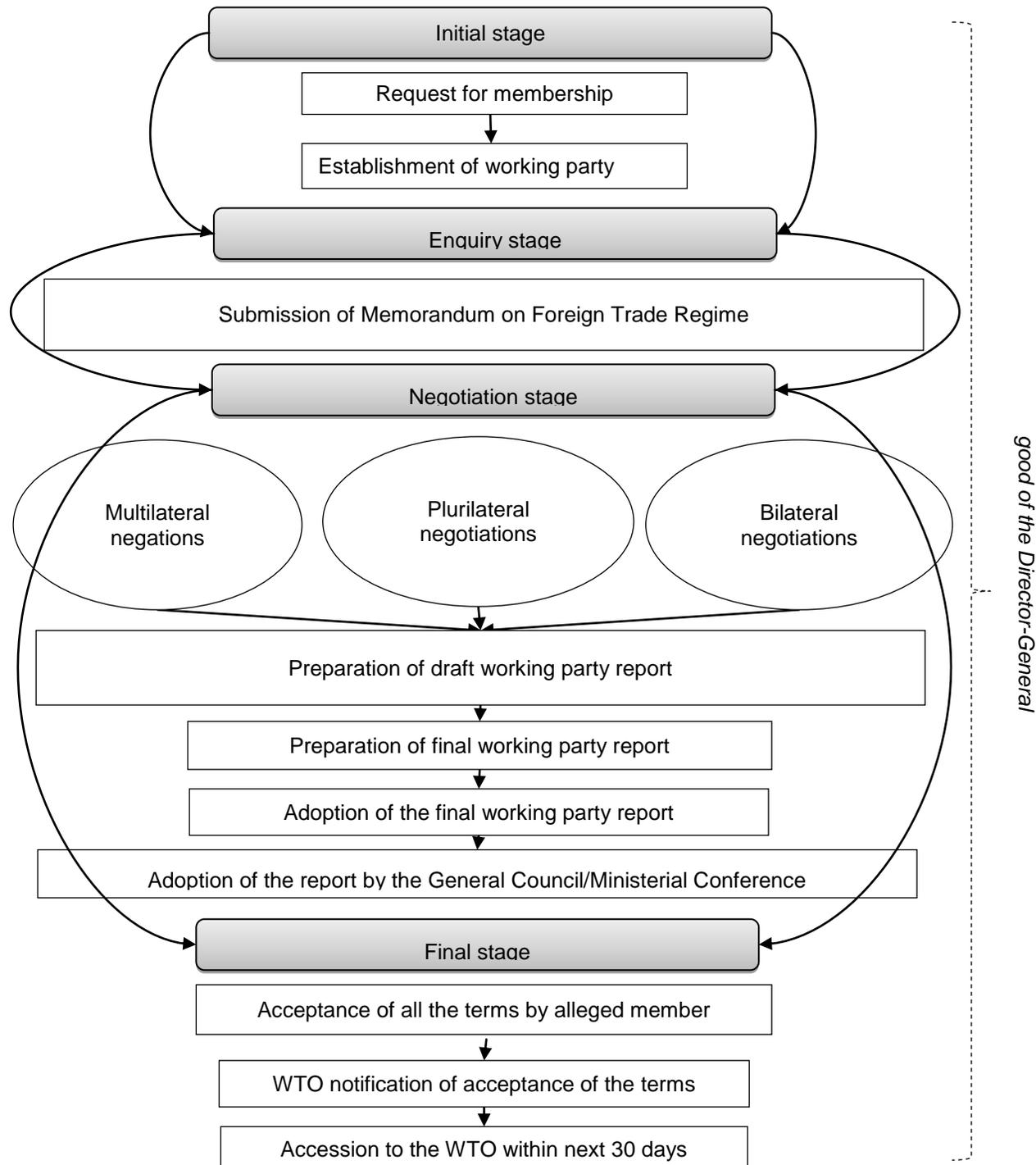
The process of acceding to the WTO is unique for each state, which is related to the specifics of the decision-making process within the framework of the GATT/WTO system. In order for the state to join this organization, a consensus of all existing members is needed. On average, from the moment the states applies for membership, it usually takes about five years to officially become a member of the WTO. Ukraine became the 152nd member of the WTO on May 16, 2008, the process of accession took 14 years and 6 months.

Directly the process of joining the organization is regulated by Article 12 of the Marrakech Agreement. It states that "...any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO" [15]. Thus, the Marrakesh Agreement Establishing the World Trade Organization does not impose any restrictions on what these terms may be.

Any incumbent member can expand the set of obligations for the alleged member or block the decision to admit a new state to the organization. The duration of the accession process is influenced by the following factors: political will, size of the economy, inability or unwillingness to back away from central planning, the need for technical and monetary assistance.

The Marrakech Agreement does not contain a clear procedure for obtaining the status of a member in the WTO. However, this process is fairly standardized and predictable (Figure 1).

Figure 1. The standard process of accession to the WTO



First, the state submits an official application for accession to the WTO, a Memorandum on its foreign trade regime and proposals for concessions to the General Council. After the state has submitted an official application for WTO accession, a working group is set up, which can include all interested incumbent members of the organization. It collects information on the trade legislation of the alleged member and clarifies various aspects, focusing on the degree of privatization of the economy and transparency of state regulation. Often, detailed information is required on agricultural subsidies, health and safety requirements, services and intellectual property. A separate document has been developed for the least developed countries (LDCs), which encourages incumbent members to provide greater technical support and milder requirements for market access. The Working Group, on the basis of its Memorandum, Offers on Assignments and Collected Information, develops obligations for the alleged member, concerning its tariffs, agricultural subsidies and services. The set of obligations is formed on the basis of a series of multilateral, plurilateral and bilateral negotiations between the parties concerned. In addition, the working group checks the applicant's national legislation for inconsistencies with the WTO Baseline.

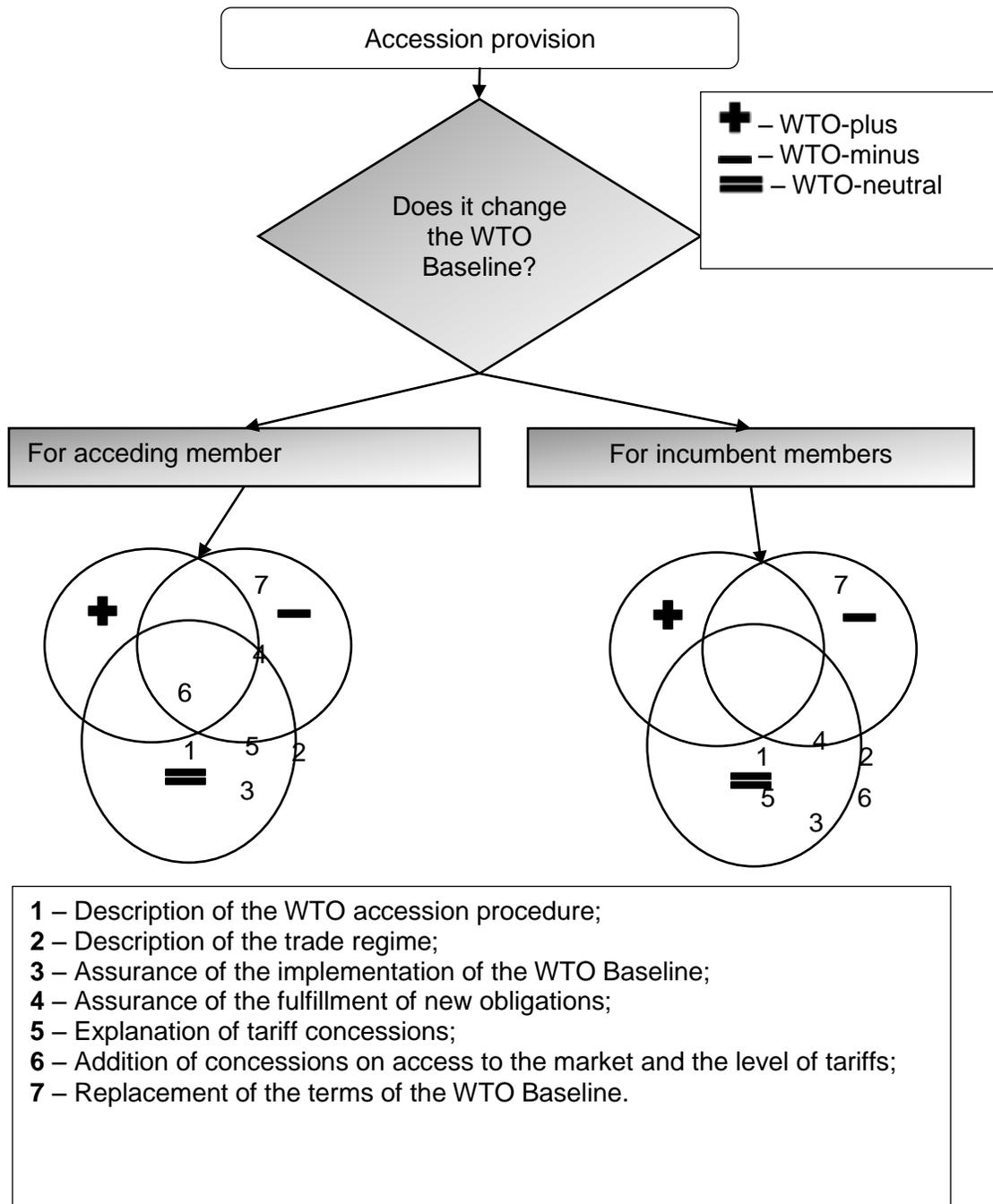
Issues that are discussed by the applicant and the working group are not published until the final report of the working group is prepared. The latter describes the order of the discussion, questions and answers received on the basis of the Memorandum. Further, the applicant either explains why its national legislation complies with the WTO institutional framework, or undertakes to change its legislation in accordance with the WTO law. The final version of the working report usually contains hundreds of paragraphs and explains in detail the commercial, tax and investment regime of the applicant. However, it has no legal force. Formally, the set of obligations is not contained in the Report, but in the Accession Protocol, which contains a reference to the paragraphs of the Report. The protocol is a standardized document, the same for each member (the Protocol of China, containing an additional description of obligations, is an exception). The first paragraph explains the process of accession of this state to the WTO and notes that all the transition periods are counted from the time of the creation of the WTO. The second paragraph describes what the new member agrees with. It indicates that the Protocol includes the obligations described in the working party report. At the same time, the state takes not only all the obligations that are assumed by the incumbent members, but also their own. Moreover, the Protocol itself becomes part of the WTO Baseline.

Each WTO member develops its own set of obligations to provide access to its market for goods and services, which is the result of bilateral negotiations with trading partners and then applied on the MFN basis. Only those that perform one of three functions are legally important:

- 1) Creating a new commitment;
- 2) Complete or temporary cancellation of existing obligations;
- 3) Replacing one commitment with another, that is changing the WTO Baseline.

Such obligations change the WTO Baseline either for the state acceding to the organization or for the incumbent members. If they expand the Baseline of the WTO, then they are WTO-plus provisions, narrow down - WTO-minus provisions (Figure 2).

Figure 2. Types of accession provisions



The Dispute Settlement Body - The Appeals Body applies the same rules of interpretation to the obligations contained in the working report included in the "reference" paragraph of the Accession Protocol, as well as any other documents. This practice is described in the Article 3 of the Agreement on Rules and Procedures Governing the Settlement of Disputes within the WTO, according to which the interpretation rules adopted in public international law are used to explain the terms of the agreements. The general rule for the interpretation of such documents is contained in article 31 of the Vienna Convention on the Law of Treaties: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

International settlement of disputes has as long history as international relations themselves. The Article 33 of the UN Charter refers to negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resorting to regional agencies, or arrangements, or other peaceful means among the methods of peaceful settlement of international disputes.

Mediation was used in ancient times in India and in the Muslim world. Many examples of arbitration can be found in the history of ancient Greece, China, the Muslim world, medieval Europe and in the Papal practices. The mechanism of dispute settlement was included in the system of the League of Nations, i.e. Permanent Court of International Justice.

The GATT Agreement includes Article XXII, concerning consultations and Article XXIII as for actions which are used in the event that the dispute can not be settled through consultations. The rules and procedures governing the settlement of disputes were developed during the 1960s and 1970s. The current version of the Understanding (DSU) and the dispute settlement procedure was formulated during the Uruguay Round of GATT trade talks on the basis of nearly 50 years of dispute settlement practice in the GATT.

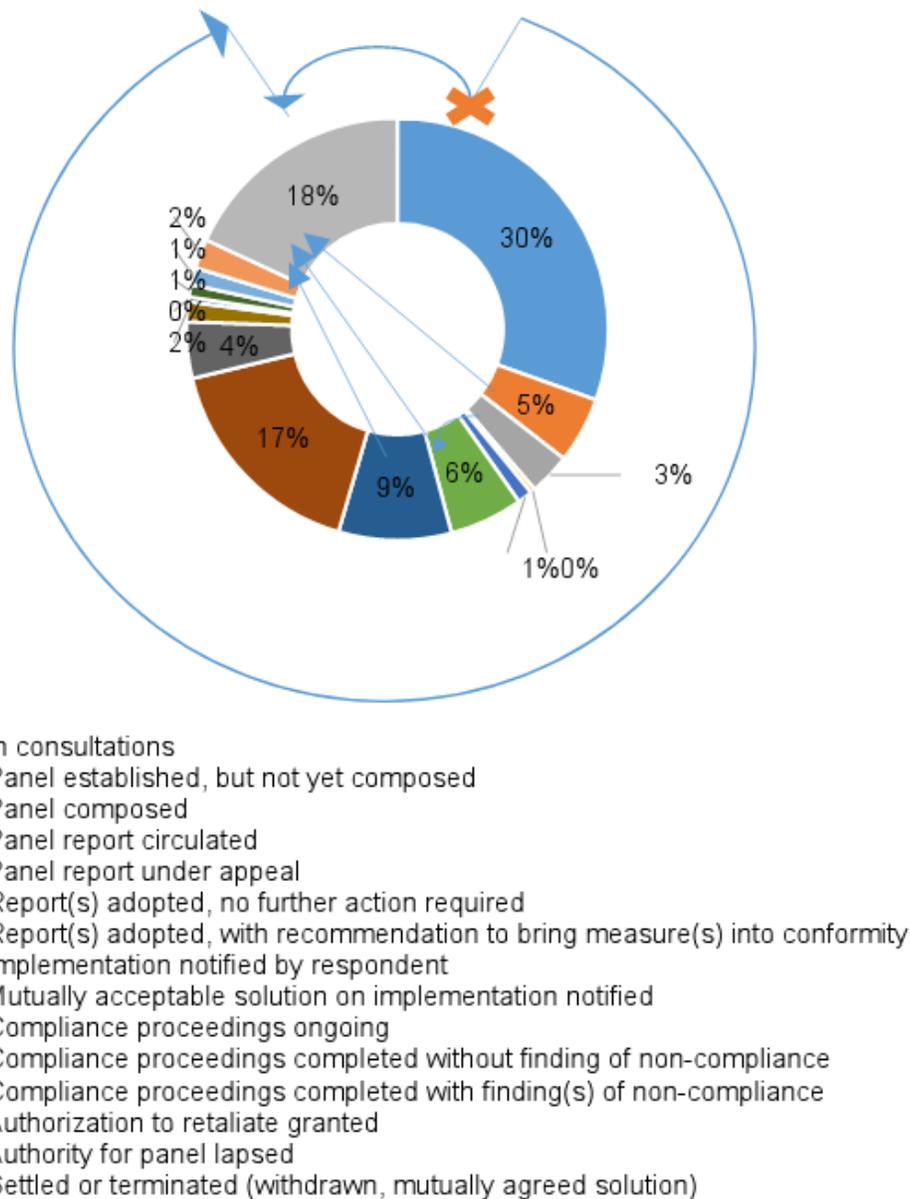
To date, the use of the WTO dispute settlement mechanisms is the most widespread way of peaceful settlement of problems in international trade, applied by the parties to enforce obligations under these agreements. More than 500 dispute cases have been brought to the WTO since its foundation in 1995. The third of them is still in consultations (Figure 3).

It should be noted that only 1/5 of disputes, brought to the WTO, have been formally resolved, i.e. settled or terminated (withdrawn or party came to the mutually agreed solution). However, there are many shortcuts in the procedure. The main one is to resolve the dispute through consultation without any formal proceedings of the WTO dispute settlement. It means that almost 1/3 of existing disputes can be resolved in such a way. Some stages of formal dispute settlement under the WTO are not obligatory, such as an appeal of the report.

The mechanism for resolving WTO disputes is governed by the Understanding on Rules and Procedures. One of the main purposes of the WTO is to provide a positive solution to

disputes between its members. The WTO Agreement allows the parties to reach a mutually acceptable solution on a dispute. A panel (a group of experts) and the Appellate Body should assist the WTO members in reaching this solution, even in cases where WTO member countries decide to participate in the formal dispute resolution procedure.

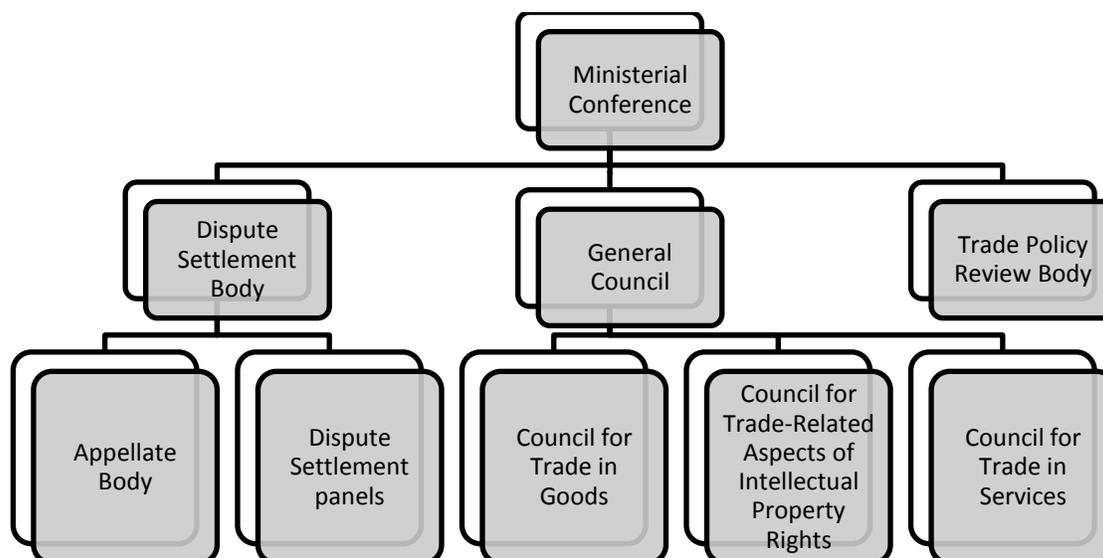
Figure 3. Cases according to the stage of their resolution, possible sequence of dispute settlement



The WTO Dispute Settlement Mechanism (figure 5) fulfills a number of functions. First, this mechanism strengthens the rule of law and thus guarantees security and stability of the multilateral trading system. Secondly, it ensures the fulfillment of the rights and obligations of

the WTO member countries. The system ensures the presence of tools that allow WTO member countries to lift measures that are not compliant with WTO agreements. With the application of these tools, WTO member countries can be confident of restoring their violated rights. Thirdly, the WTO Dispute Settlement System explains the existing provisions of the WTO agreements. The meaning of the provisions of the agreements is not always clear, as they are the result of long and complicated diplomatic negotiations. WTO member countries can understand a certain term that is used in transactions or separate provisions of agreements in different way. Thus, the panel and the Appellate Body shall interpret the rules in accordance with established principles. Fourthly, the mechanism for dispute settlement contributes to the prompt resolution of international disputes. Because violations usually have negative economic implications for member states WTO, this mechanism provides recommendations for a settlement of the dispute in the shortest possible time. It is important to note that the WTO provides resolutions faster than other national legal systems (for example, most of the reports of the panel are published within 1 year of its establishment, while the EU Court of general jurisdiction requires 2-3 years to make a decision).

Figure 5. WTO Dispute Settlement System

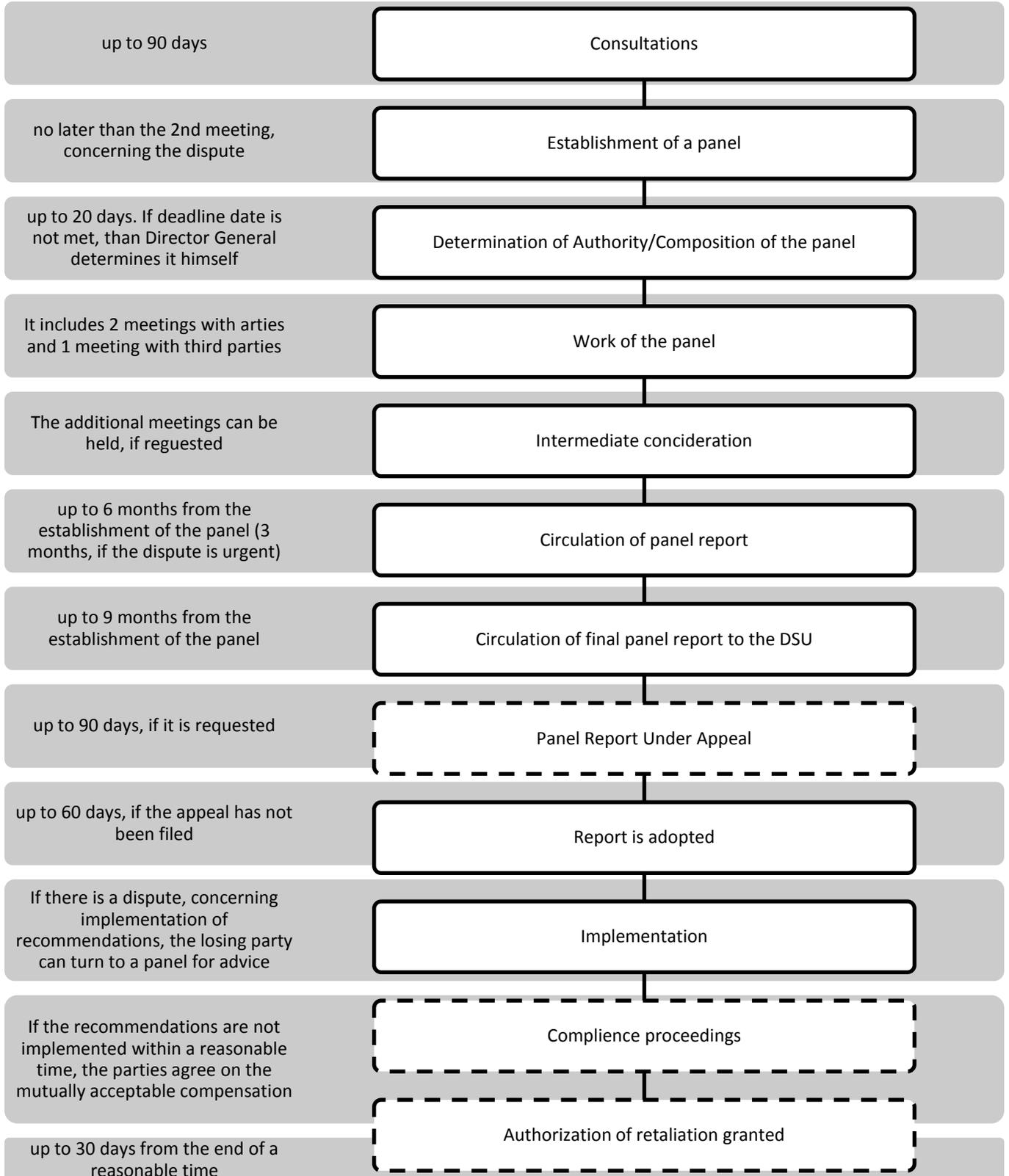


Source: the World Trade Organization

When a violation to the WTO Agreement is proven, this entails the abolition or invalidation of measures that lead to such violations. A complainant is not required to prove separately that such a violation lead to economic losses. However, the losing party will not pay compensation for the damage caused prior to the date when such an inconsistency with the WTO Agreement was proven.

There are several stages of international dispute resolution under the framework of the WTO (figure 6).

Figure 6. The stages of the dispute settlement under the WTO



Panels are established on an ad hoc basis to examine each dispute individually. The Appellate Body reviews the legal issues of the report of the panel and the interpretation of the law made by the experts, if the party requests it. An important role is played by the Secretariat, the Director-General and representatives of the WTO departments. Officials of the departments who oversee the covered WTO agreements assist the Appellate Body and the panel.

The DSU consists of senior officials from all WTO member countries. They hold meetings regularly, at least once a month. The DSU decides upon establishment of panels and improvement of their reports. It also monitors the implementation of approved recommendations and regulations. Furthermore, it appoints members of the Appellate Body and is responsible for conducting consultations in order to clarify and improve the activities of the DSU. The panels and the Appellate Body are responsible for carrying out one of the main functions of the dispute settlement mechanism, such as dispute resolution and decision making. Panels consider disputes of WTO member countries and prepare reports where the objective assessment of the facts, concerning consistency of trade practices with the WTO law is provided. They also formulate recommendations for further action regarding the measures under consideration.

## SECTION 2

The transition from the Plan to the Market economy entails big changes over a short time span, in institutions on the one hand, and in trade integration and blocs' geography on the other. The main issue is, whether institutional improvement can influence the growth rate. Accession to the GATT/WTO system is not an event, but a process, which in Ukraine has overlapped with transition from the Plan to the Market economy and improved the national institutional framework for the better. Without doubt, rich developed countries do have well-functioning market supporting institutions. Poor countries, on the other hand, are strongly dependant on their ineffective institutions, which fail to promote both market reform and economic growth. And it is a catch-22, unless they try to improve their institutions first. Market reforms are needed to increase the economic performance, but their implementation depends on the economic growth. That is where effective market-oriented institutions can step in and turn the situation around. The accession to the GATT/WTO provides developing countries with the clear rules of the 'game' and a well-functioning institutional framework of trade, which already proved their efficiency in developed world, i.e. can be an external anchor of transition process and overall economic improvement for developing countries.

Despite common legacy of central planning and of a 'fresh start' in the 1990s, some former USSR countries have already successfully transitioned. Others still have poor export performances. Although there is not a consensus among economists on the level of exports

impact on economic growth, but it is largely accepted that export performance is beneficial for boosting development for many reasons.

The economic theory as well as empirical analysis has proven that the economic growth is a very complex process, determined by a series of factors, such as capital accumulation, increased productivity, quality of business environment, economic infrastructure, political conditions, general geographical conditions (factors endowment, geographical location), culture, etc. Another important variable influencing economies' development is external trade, and particularly export performance. Through exports, firms may take advantage of economies of scale; bring technological progress; create employment and increase labour productivity; improve allocation of scarce resources throughout the economy and alleviate the current account pressures on foreign capital goods by increasing the country's external earnings and attracting foreign investment; and consequently the well-being of the country.

The implementation of the reforms depends upon the economic growth, which in turn cannot be achieved without reforms. And that is where institutions can step in.

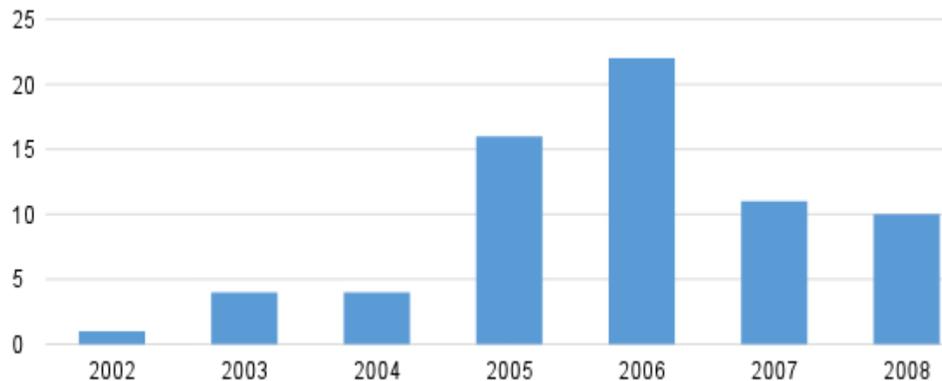
After 20 years of transition, we have to state that discrepancies between the countries of Central and Eastern Europe and Ukraine have increased strongly. The majority of countries have completed the transition process. At present, some have even joined the European Union, while Ukraine still struggles to carry out efficient market-oriented reforms. The successful countries are the countries that have acted immediately upon the dissolution of the USSR. No doubt, they have progressed more than those, which hesitate to radically change their institutional framework and end up with structures that hinder their economic progress. However, the transition can be solicited by the presence in the equation of an external anchor. The GATT/WTO rules and institutional system can be that external anchor for Ukrainian transition.

After Soviet Union's dissolution Ukraine could have rebuilt from "zero" its external trade links. Nevertheless, it has chosen to maintain them. The process of convergence towards EU-standards has started in 2004 after the first Maidan, but then Yanucovich and pro-russian elite gained power again and all the convergence has abruptly stopped. The Maidan-2 and a significant reduction of ties with Russian Federation has forced new government to concentrate on the convergence of national institutional framework towards the EU-standards once again. On the eve of 10<sup>th</sup> anniversary of membership in the WTO Ukrainian exports is in need of not only a quantitative boost, but also qualitative improvement. It is geographically concentrated on the post-soviet countries and its commodity structure is dominated mainly by primary or low value goods, which have a limited effect on economic growth.

Although there is not a consensus among economists about the level of export impact on economic growth, it should be noted that in 1993, at the time of Ukraine's application to GATT, the predecessor of the WTO, the state had virtually no foreign trade relations with GATT members, i.e., highly developed countries. However, over the next ten years, Ukraine managed to significantly expand the geographical structure of foreign trade.

Ukraine became a full member of the WTO in May 2008 after 14.5 years of negotiations. The long negotiation process allowed Ukraine to implement many necessary changes to its own national institutional framework prior to official membership in the GATT/WTO system. In total, during the period from 2002 to 2008, 68 bills were drafted, which are directly related to the preparations for WTO accession (Figure 7).

Figure 7. The number of legislations, adopted in Ukraine, in accordance with implementation of the GATT-WTO law in 2002-2008



Nevertheless, Ukraine's accession to the WTO multilateral trade system was the first step towards integration into the Western European and world economic system. The importance of Ukraine's European integration choice is determined by the fact that the EU is one of Ukraine's largest foreign trade partners. A strategic perspective for Ukraine, concerning regional integration, is the further implementation of the EU-Ukraine Association Agreement, and overcoming the gap in GDP per capita between Ukraine and EU member countries, narrowing the gap in level and quality of living standards, bringing stabilization and democratization of society, adaptation of Ukrainian legislation to the EU legal system.

Since the beginning of 2008, Ukraine has been a member country of the WTO. Ukraine took part in the consideration of a number of disputes in the WTO. As of December 2017, Ukraine submitted 7 requests for consultations and was a respondent in 4 cases. Also, Ukraine have joined the consideration of 18 disputes as a third party (figure 8).

Figure 8. Ukraine in the WTO Dispute Settlement System



Source: the World Trade Organization

Ukraine is neither among the top-10 complainants, nor top-10 respondents (Table 1).

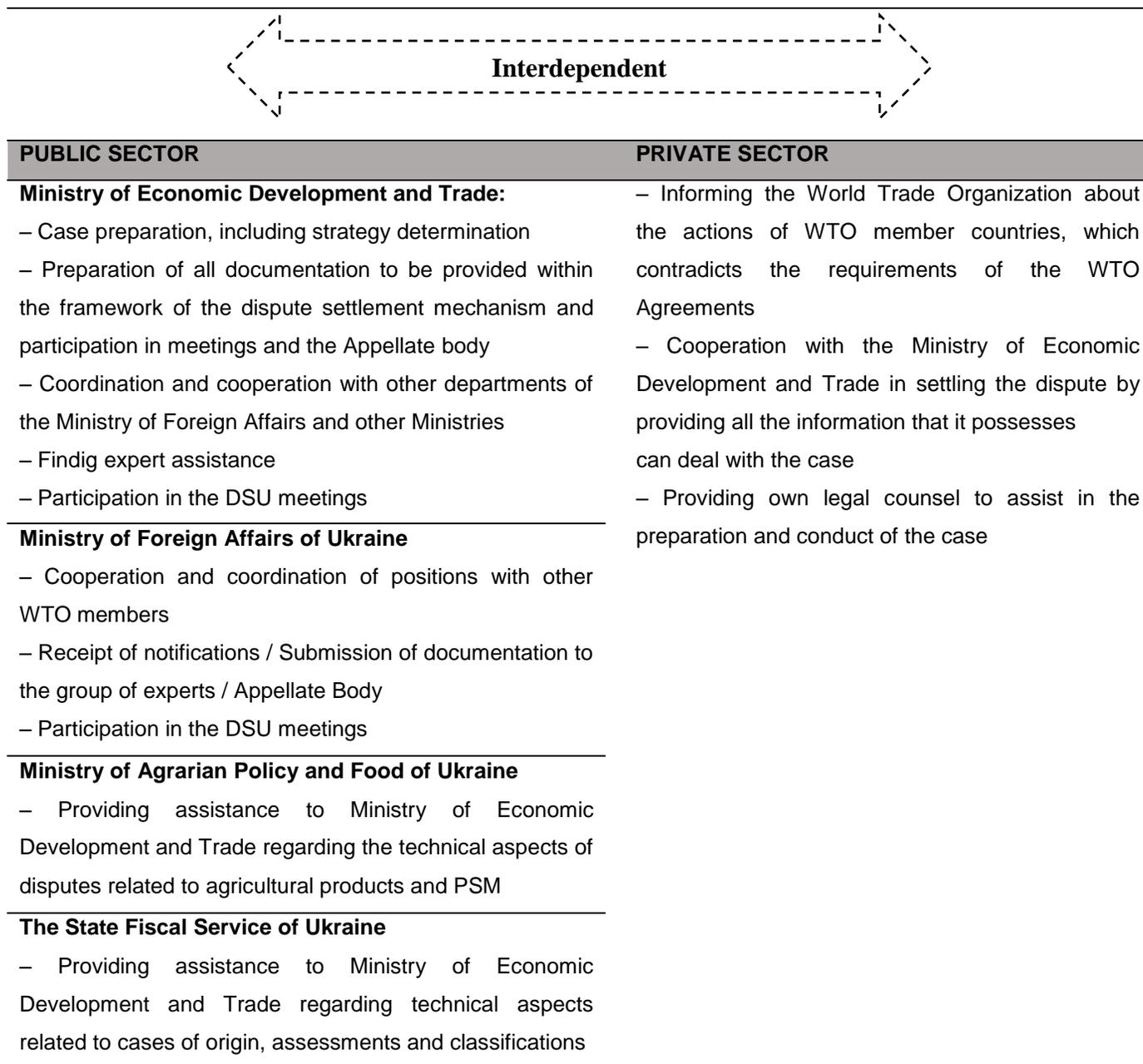
Table 1. Top-10 active members of the WTO Dispute Settlement System

	<b>as complainant</b>	<b>as respondent</b>	<b>as third party</b>
1.	United States - 115	United States - 132	Japan - 174
2.	European Union - 97	European Union - 84	European Union - 169
3.	Canada - 37	China - 39	United States - 142
4.	Brazil - 31	India - 24	China - 142
5.	Mexico - 24	Argentina - 22	India - 129
6.	India - 23	Canada - 21	Canada - 122
7.	Japan - 23	Australia - 16	South Korea - 115
8.	Argentina - 20	Brazil - 16	Brazil - 114
9.	South Korea - 17	South Korea - 16	Australia - 104
10.	China - 15	Japan - 15	Mexico - 84

The Ministry of Economic Development and Trade of Ukraine is the body that defines the trade policy of Ukraine and is responsible for negotiation and implementation the resolutions to the WTO disputes (figure 9). The Deputy Minister of Economic Development and Trade is

responsible for decision-making on dispute settlement in the WTO. At the technical level, the Department of Trade Defense is responsible for monitoring the implementation of WTO provisions by other members of this international organization and protecting the rights and interests of Ukraine in the trade and economic sphere through assistance of WTO mechanisms (including the mechanism for dispute settlement).

Figure 9. Brief description of the competence of Ukrainian public and private sector, participating in the settlement of disputes within the framework of the WTO



In particular, when settling disputes, Ministry for Economic Development and Trade coordinates all parties concerned the responsibility for the complete documentation in writing and its proper attitude, as well as dealing with groups of WTO experts and the Appellate Body. It also conducts private sector training to improve understanding of disputes settlement mechanisms.

The cost of using the WTO dispute settlement mechanism is an important factor to be taken into account. In general, the settlement of international disputes involves high costs, which vary considerably depending on the elected representative. The cost of services for firms that are leaders in this industry is from 500 thousand to 1 million USD (only at the stage of work of the panel). Services of other firms, which also have considerable experience and good reputation are estimated at about 300-500 thousand USD. Costs for consulting services Center for WTO law - an international organization whose main direction of work involves submitting in the consideration of disputes in the WTO interests of developing countries, amounting to 150-250 thousand USD.

As noted above, the decision to initiate a dispute is based on an analysis of economic benefits and prospects. Investments are high enough, and access to the foreign market may take several years, but the benefits, if the dispute can be won, have a long-lasting effect. As of December 2017, Ukraine exercised its right to be a complainant under the WTO Dispute Settlement System 7 times:

### **1. DS-411. UKRAINE-ARMENIA**

**Subject:** taxes on cigarettes and alcoholic beverages.

**Brief overview.** The Ministry of Economic Development and Trade of Ukraine alleged that Armenia's law "On Presumptive Tax for Tobacco Products" of 24 March 2000 levies discriminatory internal taxes on imported tobacco products and is therefore in violation of Article III of the GATT 1994 and paragraph 1.2 of Armenia's Protocol of Accession to the WTO. Moreover, the law imposes customs duties on such imported tobacco products at a rate of 24%, which is higher than Armenia's WTO bound rate of 15 per cent. As to imported alcoholic beverages, Ukraine alleges that Armenia's law "On Excise Tax" of 7 July 2000 applies higher excise taxes on imported alcoholic beverages than on like domestic products. Ukraine considers that this is also inconsistent with Armenia's obligations under Article III of the GATT 1994.

**Current status:** In consultation, Ukraine requested the establishment of a panel, but on 25 October 2010 it was deferred. Later that year the Armenian government decided that customs duties for imported from Ukraine alcoholic beverages would be the same as that applied to local products. It also eliminated discrimination against Ukrainian cigarettes, but with a few exceptions.

The rates of excise duty on Ukrainian and Armenian cigarettes equaled, but only for the period of 2011-2013, and making expensive cigarettes an exception.

**Interested parties:** multinational cigarette, tobacco and alcoholic beverages.

## **2. DS-421. UKRAINE MOLDOVA**

**Subject:** environmental charge.

**Brief overview.** On 17 February 2011, Ukraine requested consultations with Moldova regarding the latter's law "On Charge for Contamination of Environment" of 25 February 1998, which imposes two types of environmental charges (a charge on products, the use of which contaminates the environment or a charge on plastic or "tetra-pack" packages that contain products, except for dairy produce) on imported products only in violation of Article III:1, III:2 and III:4 of the GATT 1994.

**Current status:** Panel established on 17 June 2011, but not composed. Moldova made a complaint to the WTO against Ukraine, concerning imported taxes on distilled spirits. By the end of 2011, the parties agreed to take reciprocal actions by abolishing discriminatory measures against each other. However, it was easier said than done, because both Ukraine and Moldova kept their charges, only reducing their level.

**Interested parties:** Ukrainian beverages producers and multinational alcoholic beverage manufacturing companies.

## **3. DS-434. UKRAINE-AUSTRALIA**

**Subject:** the rules of packaging of tobacco products.

**Brief overview.** On December 1, 2012, a law that fundamentally changed the rules for the sale of tobacco products came into force in Australia. In order not to tempt the consumer and to minimize the marketing effect, all tobacco products were to be sold in packages of uniform design - gray-olive color, provided with the image of the bodies of the human body affected by nicotine. This image accounts for 70% of the front side of the package, and 90% of the rear. For the characteristics of the product and the name of the company-manufacturer, the minimum area at the bottom of the package was given. On 13 March 2012, Ukraine requested consultations with Australia concerning certain Australian laws and regulations that impose trademark restrictions and other plain packaging requirements on tobacco products and packaging.

**Current status:** Authority for panel lapsed on 30 May 2016, because it had not been requested to resume its work within the 12 month following the suspension of the panel proceedings. Ukraine's request for suspension of the panel was granted on 29 May 2015.

**Interested parties:** multinational cigarette and tobacco manufacturing companies.

#### **4. DS-499. UKRAINE-RUSSIAN FEDERATION**

**Subject:** measures imposed on importation of railway equipment and parts thereof.

**Brief overview.** On 21 October 2015, Ukraine requested consultations with the Russian Federation concerning certain measures imposed by the Russian Federation on the importation of railway equipment and parts thereof.

**Current status:** The panel is expected to issue its final report to the parties in April 2018, in accordance with the timetable adopted after consultations with the parties.

**Interested parties:** countermeasure, economic, as well as political interest of Ukraine.

#### **5. DS-512. UKRAINE-RUSSIAN FEDERATION**

**Subject:** measures concerning Traffic in Transit.

**Brief overview.** On 14 September 2016, Ukraine requested consultations with the Russian Federation regarding alleged multiple restrictions on traffic in transit from Ukraine through the Russian Federation to third countries.

**Current status:** The panel is expected to issue its final report by the end of 2018.

**Interested parties:** countermeasure, economic, as well as political interest of Ukraine.

#### **6. DS-530. UKRAINE-KAZAKHSTAN**

**Subject:** anti-dumping measures on certain types of steel pipes.

**Brief overview.** On 19 September 2017, Ukraine requested consultations with Kazakhstan with respect to anti-dumping measures applied to certain types of steel pipes on the customs territory of Kazakhstan.

**Current status:** In consultation from 19 September 2017.

**Interested parties:** countermeasure, economic, as well as political interest of Ukraine.

#### **7. DS-532. UKRAINE-RUSSIAN FEDERATION**

**Subject:** measures concerning trade of juice products, beer, beer-based beverages and other alcoholic beverages, confectionary products, wallpaper and similar wall coverings from Ukraine.

**Brief overview.** On 13 October 2017, Ukraine requested consultations with the Russian Federation, Ukraine asserts that these measures apply separately and in addition to those previously challenged under DS512, Russia – Traffic in Transit.

**Current status:** In consultations from 13 October 2017.

**Interested parties:** countermeasure, economic, as well as political interest of Ukraine.

It can be noted that recently Ukraine has been using the WTO dispute settlement mechanism more actively to protect its economic, as well as political interests. Besides Ukraine has been a tool of multinational companies, which gained little but helped them to protect their economic interests.

## CONCLUSION

Interpretation of the asymmetry of the institutional base of WTO member states is not possible without an understanding of the relationship between the WTO Baseline and the accession working party report. Thus, any item in the report of the working group can be divided into one of the seven above-mentioned functional categories. Each of them has its own peculiarities of interrelation with the WTO Baseline. WTO-plus and WTO-minus provisions have a legally binding effect. They are often the subject of litigation during the settlement of disputes.

This classification can facilitate the preparation of dispute case within the GATT/WTO system, as practice proves that the WTO Dispute Settlement System prevents the adoption of the legislations that contradict the WTO agreements at the national level. If such rules are still adopted, a country, which rights are violated, may employ the procedures provided by the Agreement, to encourage the violating country to make appropriate amendments or cancel such a law. It should be noted that the formal procedure for resolving the dispute in the WTO takes place only at the extreme cases.

After 20 years of transition, discrepancies between the countries of Central and Eastern Europe and Ukraine have increased strongly. SMEs cannot lobby their interests, because they are divided and have little experience in defending their interests. Besides, Ukrainian public sector is still corrupt, which makes participation of SMEs in decision making almost impossible. Ukraine still struggles to carry out efficient market-oriented reforms, because of the inner problems and lack of political stability and clear long-term national strategy. The GATT/WTO rules and WTO multilateral trade system can be the external anchor needed for Ukrainian transition. Ukraine is not among the most active users of the WTO Dispute Settlement System, but it is involved in 29 cases either as complainant, or respondent, or third party. However, its decisions to initiate consultations under the WTO Dispute Settlement System were not based on an analysis of economic benefits and prospects, but were influence by multinational companies or were rather a political countermeasure. Thus, Ukraine as a state in concert with its private sector should take a more active role in strengthening its position on foreign markets through the WTO Dispute Settlement System. Investments are high enough, and access to the foreign market may take several years, but the benefits, if the dispute can be won, have a long-lasting effect. It should also try not to concentrate so much on its “post-soviet” external trade links, but

defend its economic interests globally after their careful evaluation in the context of National Strategy of sustainable development “Ukraine – 2020”.

Ukraine's accession to the WTO multilateral trade system can be the first step towards integration into the Western European and world economic system. The accession to the GATT/WTO provides developing countries with the clear rules of the ‘game’ and a well-functioning institutional framework of trade, which already proved their efficiency in developed world, i.e. it can be an external anchor of transition process and overall economic improvement for developing countries.

Further research should be focused on qualitative and quantitative impact of the resolution of international trade disputes through the WTO Dispute Settlement System on the external trade of involved parties.

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