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**THE ANALYSIS OF WTO MANDATORY
AND FACULTATIVE AGREEMENTS: APPLICATION OF SANITARY
AND PHYTOSANITARY MEASURES (SPS)
AND GOVERNMENT PROCUREMENT**

The package of agreements of the Uruguay Round of multilateral trade negotiations consists of the Agreement establishing the WTO (an integral part of the Final Act) and its annexes. The annexes contain legal agreements and other documents covering the areas of trade in goods, services and the protection of trade-related aspects of intellectual property rights. This whole package of arrangements is considered as a whole. This means that a country acceding to the WTO should accept all agreements without exception. The only advantage provided for in this plan is the different conditions for the implementation of the agreements: longer for developing countries and, in some cases, for countries with economies in transition. This study focuses on the analysis of the legal mechanism to ensure the rights and obligations of member states in the interaction of mandatory and optional WTO agreements. This article discusses the scope and role of the above types of WTO regulations on the example of the Agreement on the application of sanitary and phytosanitary measures and the Agreement on public Procurement. The study shows the importance of these documents in the field of trade and the economy as a whole. The article also discusses theoretical and practical recommendations for improving the current legislation of the Republic of Kazakhstan and the practice of their application.

Key words: WTO, agreement, SPS, public, Procurement.

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**ДСҰ міндетті және факультативті келісімдердің сараптамасы:
санитарлық және фитосанитарлық шараларды қолдану жөніндегі
және мемлекеттік сатып алу туралы келісімдер**

Көпжақты сауда келіссөздерінің Уругвай кезеңінің келісімдер пакеті ДСҰ-ның құрылуы туралы (Қорытынды актінің ажырамас бөлігі) және оның қосымшаларын құратын Келісімнен тұрады. Қосымшаларда тауарлармен сауда-саттық, қызмет көрсету және зияткерлік меншік құқықтарының сауда аспектілерін қорғау салаларын қамтитын құқықтық келісімдер және басқа да құжаттар бар. Бұл барлық келісімдер жиынтығы тұтастай алғанда қарастырылады. Бұл ДСҰ-ға қосылған ел, барлық келісімдерді қабылдайтындығын білдіреді. Бұл жоспарда көзделген жалғыз артықшылық- бұл келісімдерді жүзеге асырудың әртүрлі шарттары: дамушы елдер үшін және кейбір жағдайларда өтпелі экономикасы бар елдер үшін ұзақ болады. Бұл зерттеу ДСҰ-ның

міндетті және қосымша келісімдерінің мүше мемлекеттердің өзара әрекеттесуінде құқықтары мен міндеттерін қамтамасыз етудің құқықтық тетігін талдауға бағытталған. Бұл мақалада ДСҰ-ның санитарлық және фитосанитарлық шараларды қолдану туралы және Мемлекеттік сатып алу туралы келісімдердің үлгісінде, жоғарыда аталған құжаттардың маңыздығы мен заңды көлемі талқыланады. Зерттеу осы құжаттардың тұтастай алғанда сауда және экономика саласындағы маңыздылығын көрсетеді. Сондай-ақ, мақалада Қазақстан Республикасының қолданыстағы заңнамасын жетілдіру және оларды қолдану практикасы бойынша теориялық және практикалық ұсыныстар талқыланады.

Түйін сөздер: ДСҰ, келісім, СФС, қоғамдық, сатып алу.

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**Анализ обязательных и факультативных соглашений ВТО:
соглашение по применению санитарных и фитосанитарных мер (СФС)
и соглашение по правительственным закупкам**

Пакет соглашений Уругвайского раунда многосторонних торговых переговоров состоит из Соглашения об учреждении ВТО (неотъемлемой части Заключительного акта) и приложений к нему. В приложениях содержатся юридические соглашения и другие документы, охватывающие сферы торговли товарами, услугами и защиты торговых аспектов прав интеллектуальной собственности. Весь этот пакет договоренностей рассматривается как единое целое. Это означает, что страна, присоединяющаяся к ВТО, должна принимать все без исключения соглашения. Единственным преимуществом, предусмотренным в этом плане, являются различные условия для осуществления соглашений: дольше для развивающихся стран и, в некоторых случаях, для стран с переходной экономикой. В этом исследовании основное внимание уделяется анализу правового механизма обеспечения прав и обязанностей государств-членов при взаимодействии обязательных и факультативных соглашений ВТО. В данной статье обсуждается сфера действия и роль вышеназванных видов нормативных актов ВТО на примере Соглашения о применении санитарных и фитосанитарных мер и Соглашения о государственных закупках. Исследование показывает важность данных документов в области торговли и экономики государства в целом. В статье также рассматриваются теоретические и практические рекомендации по совершенствованию действующего законодательства Республики Казахстан и практика их применения.

Ключевые слова: ВТО, соглашение, СФС, общественность, закупки.

Introduction

The agreement establishing the WTO covers only organizational and procedural issues. The WTO does not have a statute containing legal rules and regulations. The legal basis of the WTO is the GATT in the 1994 edition (hereinafter referred to as GATT 1994), which includes a number of new agreements, agreements and decisions, as well as the General Agreement on Trade in Services (GATS); The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (WTO Legal Texts) and a number of agreements and other legal instruments.

All the legal documents resulting from the Uruguay Round constitute one integrated package of agreements and arrangements. This package contains legal rules, regulations and decisions that the

WTO is intended to promote. In this regard, the abbreviation «WTO» has a double meaning: it means the organization and at the same time a complex of legal documents defining the rights and obligations of governments in the field of international trade in goods and services. The term «WTO Law» is increasingly used in legal and economic literature. And this is not by chance.

The provisions of the agreements forming the legal framework of the WTO codify in a systematic way what is commonly referred to as generally accepted international practice. The term «generally accepted world practice» is a kind of synthesis of national legal systems in the sphere of regulating international trade relations. The generally accepted world practice is based on a complex system of multilateral agreements; conventions and decisions rooted in the national legislation of the largest

countries in the world, and create in many ways a common international legal space – the basis for the growth of world trade. In this article we will give the analysis of one mandatory Agreement on SPS measures and the facultative on the example of the Agreement of public Procurement.

Theoretical-methodological bases of the article

The theoretical basis of the research was scientific research on the issues of the use of mandatory and facultative agreements, general theoretical works of legal scholars on the theory of law, as well as on trade, civil and international law. The research was based on the works of D. Karro, P. Juiar, A.S. Smbatyan, P. Van den Bosche, R.A. Askhodzhayeva, L. Lacovone.

In the development of the topic, the works of researchers in the field of philosophy, also economics and ecology, natural and technical sciences were used.

The methodological basis of the research is the methods and methods of scientific knowledge that established in science. In particular, such general scientific methods as logical, systemic, functional, method of analysis and synthesis, as well as the dialectical method as the fundamental general scientific method of cognition of processes and phenomena of the objective world and the private-scientific methods based on it are used: historical-legal, comparative legal, formally legal.

Literature review

The overall goals of this article are firstly to establish the significance of the mandatory and facultative agreements of the WTO, and then identify their place in the legal system in trade relations. The main scope of the research is aimed on the analysis of the functioning of mandatory agreement on SPS measures and facultative agreement on Government procurement. Foreign authors mostly in Russian legal science such as Chuyko N.A. and Azkhodzhaeva R.A. in their thesis works define the mandatory agreement on SPS measures as a tool in monitoring the harmonization of international standards; interactions with international organizations whose activities include food safety issues. The foreign scientists as Van den Bosche P. and Silverglade B. approach the research that the mandatory agreements form a new legal space that has a significant impact on the domestic legislation of the member states. On the other hand researchers like Lacovane

L. think that SPS measures prevent arbitrary and unreasonable discrimination on the part of member states due to differences in sanitary and phytosanitary standards. In order to balance the interests of trade liberalization, on the one hand, and non-trade aspects, on the other, Bisgaard C. in 2001 noted that the approach is that any SPS measure should have a scientific rationale and be evaluated in terms of possible risks.

Concerning the facultative agreements and in particular the agreement on Government procurement their role is underestimated. Pascal Lami in his Remarks to a Symposium on «The WTO Agreement on Government Procurement: Developmental and Trade Significance, Changing Context and Future Prospects» in 2010 stated that it is necessary to carry out government procurement in the member states, «preventing corruption practices», that is a very important issue in every legal state. Russian scholar Makarova in her work: Bans and restrictions in foreign trade states that at the same time, all countries of the world actively apply the terms of the above mentioned facultative agreement in their foreign trade practice and government procurement system. The points of such authors as Marcia G. Madsen, Timothy J. Keeler, Krista Nadakavukaren Schefer, Michael R. Liners, Fraser Johnson, Anna E. Flynn, Harold E. Firon shows us that WTO agreements are a form of lawful interference in the internal affairs of states, since each state, joining the WTO, voluntarily assumes legal obligations under the agreements to which it becomes a party.

Discussion

Multilateral agreements that are part of the WTO contain legal norms that should guide governments in mutual trade in goods and services. In this capacity, they replace more than 30,000 bilateral agreements and create the legal basis of modern international trade (Дюмулен, 1997: 158).

From the point of view of ensuring the safety of imported goods, the passage of certain procedures to prevent the presence of pathogens and harmful substances in them is of key importance. These procedures are in the nature of pre-market inspections, market control, quarantine regime. Together with relevant laws, regulations, rules, requirements, risk assessments, etc. they are called sanitary, phytosanitary and veterinary measures.

As a result of liberalization in the framework of the GATT / WTO, customs tariffs today do not create as serious barriers to international trade in goods,

as it was before. However, in such circumstances, the role of non-tariff regulatory measures in the form of restrictive measures in relation to the import of certain goods from certain countries increases. Such measures can become both a hidden tool for the protection of the national interests of the country, and an obstacle for poor-quality foreign goods. Among non-tariff measures, sanitary and phytosanitary measures are particularly important.

The importance of WTO activities in the field of food safety is increasing. It plays a special role, forming a new legal space that has a significant impact on the domestic legislation of states. Most of the emerging controversial situations related to food belong to trade issues and, therefore, to the scope of the WTO agreements (Van den Bosche, 2005: 608).

Both in science and among the general public, a point of view is expressed that Kazakhstan's accession to the WTO threatens the country's food security. Consumer protection and environmental NGOs are concerned that WTO promotes trade to the detriment of health and environmental concerns. They express concerns that the uniform trade rules lead to a decrease in the level of national environmental, sanitary and technical protection. In order to study this issue, it is necessary to analyze what the WTO as an international organization represents, what are its features and terms of reference for regulating food safety.

Food safety issues may be within the purview of bodies such as the Committee on Technical Barriers to Trade and the Committee on Sanitary and Phytosanitary Measures (included in the Council for Trade in Goods), disputes arising are referred to the Dispute Resolution Authority (Silverglade, 2014: 2).

The Committee on Technical Barriers to Trade is established in accordance with Art. 13 Agreements on technical barriers to trade. It consists of representatives from each member country who meet at least once a year to provide members with the opportunity to hold consultations on issues related to the functioning of the relevant TBT Agreement or the implementation of its goals, and also performs other duties assigned to it this Agreement TBT or members.

If the disputable measures of states fall within the scope of the Agreement on the Application of SPS Measures, then such issues may be submitted for consideration by the SPS Measures Committee (Article 12 of the SPS Agreement). The committee encourages and facilitates ad hoc consultations or negotiations on specific sanitary or phytosanitary issues. It performs three main functions: 1) it acts as a forum for expressing concern on specific product

items; 2) it established a procedure for monitoring the harmonization within the framework of related organizations that are engaged in the development of standards in this area; 3) The Committee is engaged in the development of the norms established in the Agreement.

At each meeting within the framework of the Committee, Member States have the opportunity to express their concerns regarding specific product positions and to receive support from other members. In this regard, the Committee works as a multilateral forum where states have the opportunity to explain and argue on their adopted measure.

In addition to the discussion platform, the Committee develops a procedure for monitoring the process of international harmonization, the application of international standards, guidelines or recommendations and coordinates this work with relevant international organizations. They maintain close contacts with international organizations in the field of SPS protection, especially with the CCA, the OIE and the Secretariat of the International Plant Protection Convention.

The WTO SPS Committee on Measures makes a significant contribution to the resolution of food safety issues through the resolution of disputes related to the application of SPS measures; monitoring the harmonization of international standards; interactions with international organizations whose activities include food safety issues; development, development and interpretation of the norms of the WTO Agreement on the application of SPS measures; collection, dissemination of information on the application of SPS measures by Member States and the provision of technical assistance to them (Чуйко, 2015:11a).

According to the famous Russian scientist V.M. Shumilova, in practice the selective use of SPS measures turns them into a means of restricting access to the national market. SPS standards are in the trade of agricultural products, food products, medicines, perfumes, chemicals, etc. the same as technical barriers to trade in manufactured goods (Азходжаева, 2008:107-108a).

Regarding international standards, the SPS Agreement establishes two main functions of the Committee, one of which is to monitor the use of international standards by member states. To this end, the Committee is developing a list of international standards that have the greatest effect on trade, and controls the extent to which member states adhere to them. In cases where a member state does not adhere to these standards, it must justify the relevant reasons that the standard does not provide the state's

objectives in SPS protection. This monitoring procedure was first introduced in 1997 and continues to be applied at present. It allows you to establish where the development of a new standard is required, and in which cases the current standard does not meet the proper level, since it does not provide the necessary degree of protection. As a result, this process of monitoring, ongoing dialogue and information sharing within the framework of the Committee underlines its role as coordinator in the process of international harmonization. Nevertheless, much more needs to be done in order to engage and more actively engage developing countries in this process.

Within the WTO, there is no special agreement regulating relations in the field of food safety, but these issues are addressed in such agreements as GATT, SPS Agreement, TBT Agreement. Neither the GATT, nor the SPS Agreement, nor the TBT Agreement are agreements in the field of health and food safety – these are trade agreements. Based on the exemptions provided for in these agreements, States can take measures to protect the life and health of people, animals and plants, thereby ensuring the import of food of good quality. However, for such measures to take place, the WTO agreements provide for special conditions, and if such measures are discriminatory or provide protectionism measures against national producers, they can be challenged under the LFS as illegal and subject to cancellation (Шумилов, 2013: 20).

As noted T.M. Kovaleva and S.A. Malinin, many of the constituent acts of specialized organizations provide for liaison with UN bodies and other organizations. As for legal relations with sovereign subjects, they are not limited to contacts with member states. Cooperation is also carried out with non-member states, for which the relevant treaties are concluded. The Vienna Convention of 1975 gives states the right to have representative offices at international organizations of universal character, therefore, an organization has the right to enter into relations with sovereign entities through these representations (Ковалева, 1992: 55-56a).

SPS measures are legal provisions aimed at protecting the life and health of people, animals and plants. Sanitary measures are designed to protect the health of people and animals from diseases, pests, as well as the risks arising from additives, pollutants and toxins in food. Phytosanitary measures deal with the protection of plant health from pests. In general, SPS measures include various laws, regulations, rules, instructions and procedures covering veteri-

nary, quarantine and sanitary and epidemiological requirements for the final product (for example, the permissible level of pesticides in feed), to the process of production and processing of products, inspection procedures and certification, etc.

The SPS Agreement contains a balance of rights and obligations. Due to the fact that SPS measures are a less transparent way to regulate trade than tariffs, and may differ depending on the country of origin of the imported goods, it is possible for countries to abuse the right to apply SPS measures and discriminate some goods against others. The SPS Agreement applies to all sanitary and phytosanitary measures that may directly or indirectly have a negative impact on international trade. Having no analogue in the era of GATT-47, the SPS Agreement replaced Art. XX GATT, which was poorly applicable to sanitary and phytosanitary measures taken by states, as it contained rather vague provisions and lacked an effective institutional framework for their application. Clause 4 of Article 2 of the SPS Agreement states that sanitary or phytosanitary measures consistent with the provisions of the Agreement are deemed to be in accordance with the obligations of the members provided for by the provisions of GATT 1994 relating to the use of sanitary or phytosanitary measures, in particular the provisions of art. XX (b).

The SPS Agreement defines two main objectives: on the one hand, to promote the protection and improvement of human, animal and plant life and health and the sanitary and epidemiological situation of member states; on the other hand, to prevent arbitrary and unreasonable discrimination on the part of member countries due to differences in sanitary and phytosanitary standards (Lacovone a).

The SPS Agreement is designed to prevent such abuses and defines mechanisms to ensure conditions under which WTO members will not apply SPS measures for protectionist purposes so that the implementation of these measures does not create unreasonable barriers in international trade (Сайрамбаева, 2014: 113). This agreement enshrines the rights of member countries to impose restrictions in order to protect the life and health of people, animals and plants from:

1. Risks arising from the penetration, rooting or spread of pests, diseases, pests, or pathogens;
2. The risks posed by additives, pollutants, toxins or pathogens in food, beverages or feed;
3. Risks arising from diseases carried by animals, plants or their products, or in connection with the penetration, rooting or spread of pests;

4. Other damage caused by the penetration, establishment or spread of pests (Гурбаева, 2009: 13a).

At the same time, the SPS Agreement recognizes the sovereign right of WTO members to establish such a level of SPS protection as it seems necessary for them to protect the life and health of people, animals and plants based on climate, prevalence of diseases and pests, as well as other internal country conditions. However, the established level of SPS protection must necessarily be based on scientific evidence (Гурбаева, 2009: 13б).

SPS measures include all relevant laws, regulations, rules, requirements and procedures covering, including requirements for the final product; processing and production methods; testing, inspection, certification and approval procedures; quarantine regulations, including relevant requirements related to the transportation of animals or plants or materials necessary for their livelihoods during transportation; provisions for relevant statistical methods, sampling procedures and risk assessment methods; packaging and labeling requirements aimed directly at ensuring food safety.

The SPS Agreement is based on several basic principles and provisions, developed, including on the basis of the practice of resolving disputes: equivalence, transparency, non-discrimination, harmonization, scientific justification and regionalization (Ковалева, 1992: 216).

Kazakhstan researcher B. Kalymbek adds to this list the principle of recognizing zones free from pests or diseases, and zones with insignificant spread of pests or diseases, as well as the principle of openness of measures taken by SPS (Калымбек).

In order to balance the interests of trade liberalization, on the one hand, and non-trade aspects, on the other, the SPS Agreement establishes a scientifically based approach as a determining factor (Bisgaard, 2001: 105.). This approach is that any SPS measure should have a scientific rationale and be evaluated in terms of possible risks.

In accordance with Art. 5 of the SPS Agreement, member states should ensure that the basis of their SPS measures is an appropriate risk assessment for human, animal or plant life or health, taking into account risk assessment methods developed by competent international organizations. The available scientific rationale should be taken into account; appropriate production and processing methods; relevant inspection, sampling and testing methods; the prevalence of specific diseases or pests; the presence of zones free from diseases or pests;

Relevant environmental conditions and quarantine or other measures.

In cases where the scientific rationale is insufficient, any member may temporarily introduce sanitary or phytosanitary measures based on available relevant information, including information received from relevant international organizations, as well as information on the SPS measures applied by other members. In such circumstances, members should seek to obtain additional information necessary for a more objective risk assessment, and to review the sanitary or phytosanitary measure within a reasonable period of time (Lacovone б).

In addition, the measure adopted by Member States must meet the criteria of necessity and consistency.

Accordingly, in the case of a dispute, the measure adopted by a WTO SPS member state will be evaluated according to three criteria:

1. Has it been used only to the extent necessary to protect the life or health of people, animals or plants.
2. Was it based on scientific principles and did not remain in force without sufficient scientific substantiation.
3. Whether it serves as a means of arbitrary or unjustified discrimination and whether it is not applied in a way that would be a hidden restriction of international trade.

Taking into account the principle of regionalization, the member states ensure that their sanitary or phytosanitary measures are taken taking into account the sanitary or phytosanitary characteristics of the area – both the whole country and its part, or several countries or parts of it, from which the goods originate and for which one he intended. Assessing the sanitary or phytosanitary characteristics of a region, members take into account, inter alia, the prevalence of specific pests or diseases, the existence of programs to control or eradicate them, and appropriate criteria or guidelines that can be developed by relevant international organizations.

Exporting members who declare that zones within their territories are zones free from pests or diseases, or zones with a low prevalence of pests or diseases, should provide the necessary confirmation of this. To this end, the importing member is provided, upon request, reasonable access for inspection, testing and other relevant procedures (Антонова, 2009: 85).

In addition to the principles considered, in accordance with Art. 10 of the SPS Agreement in the development and application of sanitary or phyto-

sanitary measures Member States should take into account the specific needs of members – developing countries and in particular members from among the least developed countries. For their goods, a longer period should be provided for adapting to these measures in order to preserve the possibilities of their export.

The problem of supporting food safety systems in developing countries is one of the most pressing. Developed countries, through the provision of technical assistance, can contribute to their more active involvement in the work of specialized WTO bodies and protect their rights within the Dispute Resolution Authority (Чуйко, 2014: 1086).

In order to further liberalize trade in agricultural products, the SPS Agreement promotes the harmonization of the laws of member countries, as well as their closer cooperation through equivalence and the application of international standards, guidelines and recommendations.

The principle of equivalence (Article 4 of the SPS Agreement) is that member states recognize the measures of other members as equivalent, even if these measures differ from their own or from those used by other members trading in the same product, and if the exporting member will objectively demonstrate to the importing member that his measures provide an adequate level of sanitary or phytosanitary protection for the importing member.

In accordance with the principle of harmonization (Article 3 of the SPS Agreement), member states should strive to base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, if any, that do not contradict the provisions of the SPS Agreement.

States may establish a higher level of SPS protection than established on the basis of relevant international standards, if there is an appropriate scientific justification or if a member determines that this level of SPS protection is appropriate under the provisions of Art. 5 of the SPS Agreement. Thus, measures that were not based on international standards, guidelines and recommendations, where they exist, will not be applied without providing members with a scientific justification for these measures in accordance with Art. 3.3 SPS Agreement.

To the extent possible, States commit to participate in the activities of international organizations and their subsidiary bodies, such as the AC Commission, the International Epizootic Bureau and international and regional organizations operating under the International Plant Protection Convention. Coordination and monitoring of the process of in-

ternational harmonization is carried out by the SPS Measures Committee.

Each state entering the WTO accepts a package of mandatory documents, which include multilateral agreements of the WTO. However, there are so-called plurilateral, i.e. non-binding for the adoption of the WTO agreement, which means that states independently determine the appropriateness of accession to such agreements.

One of these agreements is the WTO Agreement on Government Procurement (Agreement on Government Procurement), which is a very significant international document in the field of public procurement.

It should be noted that the international rules of this type of trade began to develop only towards the end of the last century, because in 1947, when GATT was concluded, government Procurement were specifically excluded from it. However, as international economic relations developed, government Procurement became part of the global trading system. In this regard, there is a need to develop common rules that would ensure transparency, competitiveness and non-discrimination in this market segment and would not contradict the interests of the states themselves.

Thus, in 1979, the Government Procurement Agreement was signed at the Tokyo Round of Multilateral Trade Negotiations. In 1994, the WTO Agreement on Government Procurement was again reviewed. The revised agreement entered into force on January 1, 1996 within the framework of the established World Trade Organization (Государственные закупки в системе ВТО а).

State procurement is the totality of the various functions and actions that are focused on the increase of centralized controllability, reduction of state budget expenditures, control of material flows and ensuring the needs of state institutions (Michael, 2007: 221).

The main principle of the WTO Agreement on Government Procurement is non-discrimination. It is aimed at developing international trade, restricting discrimination against foreign suppliers and ensuring the transparency of national legislation and applicable procurement procedures. At the same time, the WTO legal documents contain strict rules for using numerous measures of non-tariff regulation of foreign trade. At the same time, all countries of the world actively apply them in their foreign trade practice (Макарова, 2007: 4).

Thus, according to the WTO Agreement on Government Procurement, states must provide suppliers

from all other member countries with equal conditions, rights and opportunities to participate in their public procurement with domestic suppliers. The provisions of the Agreement do not allow government Procurement authorities to provide benefits, privileges or preferences to any particular supplier for receiving orders. It is also prohibited to impede the participation of foreign suppliers in public Procurement by unreasonably tightening qualification requirements, technical regulations and other means.

However, this WTO Agreement on Government Procurement does not imply full liberalization of the government procurement market. First of all, the rules of the Agreement do not cover Procurement related to ensuring the national defense and security of the state. In addition, all the benefits provided for in the Agreement are given only for its members, and there is no requirement for a favorable regime for third countries (Государственные закупки в системе ВТО б).

When joining the WTO Agreement on Government Procurement, all commitments made by countries are clearly specified, which are documented as individual Annexes to the Agreement for each country. The application of each country consists of five sections. Sections 1-3 present lists of organizations conducting public Procurement in accordance with the standards prescribed by the Agreement. The first section shows the list of central government bodies, the second one lists the local authorities, and the third section indicates the other organizations involved in government Procurement (for example, state-owned companies) (Государственные закупки в системе ВТО в).

Sections 4 and 5 include a list of services and construction services, respectively. The rules and regulations of the WTO Agreement on Government Procurement apply only to government procurement of those services that are included in these sections. For example, if the list of services of a particular country does not include veterinary services, then the Ministry of Agriculture of this country (or another competent authority) will procure these services according to other internal rules and laws that may be contrary to the provisions of the WTO Agreement on Government Procurement (Государственные закупки в системе ВТО г).

The purpose of the Agreement is to oblige governments to use commercial considerations in the procurement of goods and services for government use, without distinguishing between foreign and national suppliers.

On April 6, 2014, a new version of the World Trade Organization Agreement on Government Pro-

urement entered into force. The changes will create new opportunities for Procurement, according to which it became possible to liberalize potential markets for more than 80 billion US dollars annually, giving companies of the parties to the Agreement the opportunity to participate in tenders for government Procurement.

The changes to the GPA expand the scope of its coverage to more government entities, services and other procurement activities—including local governments and sub-central entities. The WTO estimates that the parties to the revised Agreement will see annual gains ranging from \$80 – \$100 billion in market access for their businesses. The GPA is a plurilateral agreement, meaning it only applies to those WTO members that have agreed to be bound by it. Two-thirds of the signatories were required to accept the Protocol of Amendment before the revised GPA could enter into force. This condition was met on March 7, 2014, when Israel approved the Protocol. The revised Agreement is now in force for the first 10 parties to have accepted the Protocol of Amendment: the United States, the European Union, Canada, Norway, Taiwan, Hong Kong, Singapore, Iceland, Liechtenstein and Israel. The revision will come into force for Japan on April 16, 2014. South Korea, Switzerland, Armenia and the Dutch territory of Aruba will continue to operate under the original 1994 GPA until they submit their instruments of acceptance (Marcia G. Madsen, 2014).

In the following paragraphs, the relationship between government Procurement and trade liberalization on the one hand and corruption on the other is briefly described, and then the most remarkable aspects of the new edition of the Government Procurement Agreement about the corruption are considered. The original version of the Agreement entered into force in 1996. The new version of the document applies to a larger number of subjects, including such as ministries and agencies. In addition, the Agreement covers a greater amount of goods and services. Included rules are new; simpler and designed to discourage corruption and protectionism. The WTO members participating in the new edition of the Government Procurement Agreement have committed themselves not only to recognize the importance of preventing corruption (according to the preamble of the Agreement), but also to carry out government procurement in their states, «preventing corruption practices». The latter wording is contained in the text of the Agreement and is a general binding principle (Krista N. Schefer, 2013: 1135).

Results

The SPS Agreement is part of the mandatory WTO accession package. That is, Kazakhstan, becoming a member of the WTO, fully accepted the obligations stipulated by this Agreement.

In accordance with the requirements of the SPS Agreement, the national standards of WTO members should be harmonized with international standards, in particular, with the requirements of international organizations such as the FAO SC Commission, the International Epizootic Bureau, as well as the provisions of the International Plant Protection Convention (The WTO Agreement on the Application of Sanitary and Phytosanitary Measures). On the whole, this will positively affect the foreign trade activity of Kazakhstan, since it means that the national legislation will be brought in line with the rules of trade recognized by most countries.

At the same time, the SPS Agreement, as noted above, allows countries to establish the level of sanitary and phytosanitary protection that they consider necessary, subject to the availability of the scientific validity of the measures taken and the risk assessment (Стандарты по пестицидам). That is, Kazakhstan, with the appropriate scientific justification, will be able to set stricter standards than those provided for by international organizations, and trading partners will be deprived of grounds for accusing Kazakhstan of excessive protectionism.

It is also worth noting that membership in the WTO, and in particular accession to the SPS Agreement, will allow Kazakhstan to protect the export of domestic goods from discrimination and unreasonable protectionist measures of the SPS used by importing countries. So, for example, an importing country will be able to prohibit the importation of Kazakhstani meat only if there is scientific evidence that the import of this product in any way endangers the life and health of the population, animals or plants of the given country. In the case of the introduction of an unreasonable ban, Kazakhstan, as a member of the WTO, will be able to challenge its rights using the WTO dispute resolution mechanism.

The Marrakesh Agreement Establishing the WTO refers to such international treaties that affect the entire legal system. The implementation of commitments made under the WTO affects almost all economic and legal spheres, which inevitably leads to the need to protect social values such as human life and health, the welfare of animals, plants and the environment. However, the introduction of restrictive technical, sanitary and phytosanitary measures in certain cases can be considered contrary to WTO

rules and become the basis for the emergence of an international trade dispute (Азходжаева, 2008: 4-56).

An example of positive changes in Kazakhstan in the course of bringing national legislation in line with the provisions of the SPS Agreement is to achieve some progress in improving the system of veterinary medicine, phytosanitary and food safety, both in law and in terms of improving the material and technical base. A striking example is the situation with genetically modified products (GMOs). The negotiation process on Kazakhstan's accession to the WTO and, in particular, the harmonization of its legislation with the requirements of the SPS Agreement made the issue of regulating GMOs one of the priorities of the national policy in the field of food safety. Membership in the WTO has a significant impact on the national legislation in the field of food safety regulation. The impact of WTO rules of law is manifested in the need to bring the regulatory framework in line with WTO rules. By referring to other international legal norms, the orientation of the legislation of the Member States to accepted international standards is established. In addition, the WTO dispute resolution mechanism has not only a corrective, but also a deterrent effect on domestic lawmaking. The implementation of commitments under the WTO in the field of food safety regulation is associated with a narrowing of the scope of state competence in terms of regulating the import and export of food and the adoption of sanitary and phytosanitary measures. Through the WTO law, part of the domestic authority in the field of food safety is placed under international legal control and regulation (Азходжаева, 2008: 19-20).

Thus, the process of accession to the WTO and accession to the SPS Agreement in Kazakhstan has become a kind of catalyst for the development and improvement of the national system of veterinary medicine, phytosanitary and food safety. Further work in this direction, ultimately, will allow, on the one hand, increasing confidence in Kazakhstan products in importing countries, which will affect the growth of exports of national goods, and on the other hand, will ensure the import of only high-quality and safe imported products into the republic.

Each state that is considering joining the WTO Agreement on Government Procurement is faced with the question of what are the main advantages and negative consequences of participation in it.

Considering advantages, we can specify the following. First, the WTO Agreement on Government Procurement requires the most transparency, and this greatly limits the spread of corruption, which is

one of the main problems in the public Procurement system of any country. Secondly, the opening of the public Procurement market implies an increase in the number of suppliers, which leads to increased competition. As a result, the state will receive better products and services, thereby contributing to the optimal spending of budget funds. Also, on the external market, the WTO Agreement on Government Procurement will provide domestic companies with a non-discriminatory regime on the part of partner countries, that is, full participation in their tenders, which implies an increase in the sphere of sales markets for exporters.

On the other hand, liberalization means abandoning protective measures, which are usually prominent in the public Procurement sector. Secondly, all the reservations that will allow protecting individual sectors, countries are negotiating. In addition, after joining the WTO Agreement on Government Procurement, the state reduces measures to encourage domestic business and provide preferences to categories that need government support. First of all, this measure will adversely affect domestic suppliers, which are more or fully dependent on Government Procurement.

Conclusion

There are a number of erroneous opinions in the interpretation and perception of the norms of the WTO agreements. For example, some authors believe that the WTO dictates trade policy. We believe that this view is erroneous, as it is an organization governed by Member States. The WTO does not

dictate trade rules, but only provides an arena for resolving disputes and creating principles and norms for regulating the trade activities of states through a negotiation process. Each agreement is subject to ratification by the state that has undertaken the obligations under this agreement. The only situation in which the WTO may have an impact on the government of a member state is when the dispute is to be discussed in a Dispute Resolution Body composed of members of this organization. The dispute resolution body makes a decision based on an expert analysis or appeal. Even in this case, the decision, as a rule, affects only the violation of a country's obligations under the WTO agreement.

WTO agreements are a form of lawful interference in the internal affairs of states, since each state, joining the WTO, voluntarily assumes legal obligations under the agreements to which it becomes a party. The rules and regulations of the WTO are enshrined in agreements that were concluded as a result of negotiations between the member states of the organization in order to liberalize world trade as a whole. In international law, there is an imperative principle of non-interference in the internal affairs of states, which is one of the fundamental principles of international law enshrined in the UN Charter and a number of other international documents and plays an important role in the international legal order, in particular, in the normative provision of economic security. However, modern international law permits lawful interference with the national laws of states, which is the result of their participation in various international treaties and international organizations.

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