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WORLD TRADE ORGANIZATION: ESTABLISHMENT, DEVELOPMENT AND SIGNIFICANCE

***Abstract**: The paper deals with the origin, organization and activities of the World Trade Organization from its formation until today. The authors will refer to a brief historical overview of the events that preceded the final formation of the WTO, and in the following, they will emphasize its internal structure and organs and the basic principles on which it rests. The paper also presents the future work of the WTO with an emphasis on the problems in determining it and the mechanisms for establishing a program of future work.*

***Keywords**: international trade, international economic relations, World Trade Organization, negotiations, dispute resolution.*

INTRODUCTION

The World Trade Organization (hereinafter: WTO) is an intergovernmental, interstate organization that regulates and facilitates international trade. National governments use this organization to establish audits and enforce rules that facilitate international trade. The WTO belongs to the so-called universal international organizations of an economic and trade nature, and is one of the most important subjects of international business law in general. The creation of this organization is the result of painstaking negotiations conducted between world governments, between small and large countries, developed and underdeveloped, and above all between the largest and most developed ones. The main goal of the WTO is to extend the reach of the principle of free trade to the so-called system of freer trade, and further internationalization and liberalization of the process in the international flow of goods, services and capital, by eliminating non-tariff and gradually tariff barriers.[1] The WTO officially began its work on January 1, 1995, in accordance with the Marrakesh Agreement from the previous year, which replaced the General Agreement on Tariffs and Trade (hereinafter: GATT) from 1948. This organization is focused on solving issues involving goods, services and intellectual property. It organizes discussions, negotiations and resolution of certain disputed issues aimed at reducing or removing customs duties and other restrictions, as well as facilitating trade in goods and the provision of services. The WTO is actively working to remove obstacles and facilitate the signing of international (bilateral and multilateral) agreements in the field of trade and provision of services, which are concluded by member states of this organization. The organization is also focused on the organization of international trade negotiations (multilateral trade negotiation), searching for ways to resolve trade disputes, monitoring domestic trade policy and cooperation with other international organizations that deal with issues of international

[1] A. Lj. Ćirić, *Međunarodno trgovinsko pravo*, Niš, 2010, p. 278.

economic relations.[2] Today, the headquarters of the WTO is in Zurich, Switzerland, and it has 164 member states that participate in 98% of world trade and global GDP.[3]

Since its inception, the WTO has been an interesting topic for experts from many fields: economists, economists, political scientists, diplomats and other experts in the field of international economic relations and international relations in general.[4] Currently, 24 countries are in the process of joining the WTO, and of all the countries of the Western Balkans, only Bosnia and Herzegovina and the Republic of Serbia are not members of this organization (both currently have observer status).

1. Creation of the World Trade Organization

During the formation of the United Nations (hereinafter: OUN, UN) as an umbrella world organization of states, the idea of forming a specialized UN agency whose task will be to create rules and principles of international trade came up. This idea was one of the final proposals reached at the United Nations Conference on Monetary and Financial Policy in 1944 (also known as the Bretton Woods Conference). The representatives of the countries of the free world discussed at the aforementioned meeting the re-establishment of international trade and many other issues of the international financial and monetary order after the end of the Second World War. In the conclusions, it was stated that it is necessary for governments to negotiate and reach an agreement regarding the removal of obstacles to international trade, and the best way to achieve such coordination is to form an organization at the global level. The participants of the conference proposed the formation of the International Trade Organization (International Trade Organization, hereinafter: ITO).[5] In 1948, the UN Conference on Trade and Employment was held in Havana, where an agreement was reached on the ITO Charter. In order for the formation of the ITO, it was necessary for the states to ratify the Charter, which was not the case with the United States of America. Namely, the US Senate did not ratify the Charter of ITO, which led to the collapse of the plan to form this organization, because it became evident that if the USA does not want ITO, less developed countries will not want it either, which turned out to be true.

This international document was quite ambitious. It went beyond all the rules of world trade discipline, as it provided for rules in the areas of employment, international investment, services, restrictive business practices, international trade rules and trade issues related to economic development.[6] The countries eventually managed to reach an agreement on some issues. As a result of that compromise, the General Agreement on Tariffs and Trade was created. GATT represented only one part of what the ITO Charter was supposed to contain, that is, the part dedicated to customs and trade. This agreement was considered as a compromise, a temporary solution until the major economic powers approve and agree to the formation of something that would represent the ITO.

[2] A. Popović, „Svjetska trgovinska organizacija kao međunarodna organizacija od opšteg značaja za razvoj međunarodnog poslovnog prava", *Srpska pravna misao*, 17(44)/2011, p. 170.
[3] According to WTO data from 2016.
[4] P. N. Cvetković, *Uvod u pravo Svetske trgovinske organizacije*, Niš, 2010, p. 1. See more P. Cvetković, „Pravo i teorija igara: primer prava Svetske trgovinske organizacije", *Zbornik radova Pravnog fakulteta u Nišu*, 81(LVII)/2018, p. 83-101.
[5] See M. Jovanović, „Pravni okviri pristupanja Svetskoj trgovinskoj organizaciji", *Pravo i privreda*, 7-9/2019, p. 369.
[6] A. Popović, *op. cit.*, p. 171. See more S. A. Taboroši, „Od GATT-a do Svetske trgovinske organizacije", *Pravo i privreda*, 11-12(33)/1995, p. 30-40.

Although 50 countries advocated the creation of the ITO, only 23 of them joined the GATT, and these were mostly highly economically developed countries. Over time, GATT was joined by 130 countries of the world, which were involved in about 80% of world trade.[7] Thus, it became a somewhat more "permanent" temporary solution until the formation of an umbrella organization that deals with formulating the basic principles of international trade.

After the partially successful negotiations in Havana, in 1960 and 1961, a new "round" of multilateral trade negotiations between the 26 GATT member states will be held in Geneva. This fifth round of negotiations was named after C. Douglas Dillon (the so-called Dillon Round), an American diplomat, politician and businessman (then US Treasury Secretary). The largest part of this round of negotiations related to the renegotiation of customs duties, which is the result of the establishment of the European Economic Community and its common customs policy. The authors state that the results of these negotiations were relatively modest. Namely, about 4,400 customs concessions were exchanged, which is about ten times less than the 45,000 during the conference in Geneva in 1947.[8]

After Dillon's round, there followed, from 1963 to 1967, the so-called The Kennedy round of negotiations, named after US President John F. Kennedy, in recognition of the affirmation of international trade and support in the reformulation of US trade policy, which led to the adoption of the Trade Expansion Act of 1962, which was assassinated six months before of the official start of negotiations. Why do we mention an American federal law that regulates the issue of foreign trade? Namely, this law gives the President of the USA the broadest powers to conduct trade negotiations, especially if we take into account that Europe has risen from the ashes a long time ago, that the European Economic Community was formed, and that serious economic growth began to be felt in the Far East, especially in Japan. The main focus of this round of negotiations was the relations between the EEC and the USA. This round of negotiations involved 66 countries that took part in 80% of world trade and had four main goals: (1) a linear reduction of tariffs by 50% with the least number of exceptions, (2) to remove restrictions on trade in agricultural products, (3) remove non-tariff barriers and (4) help developing countries. The result of this round of negotiations was a 35% reduction in customs rates (except for textiles, chemical products, steel and other sensitive products) and a 15% to 18% reduction in customs duties on agricultural and food products.[9] We can say that the results of this round of negotiations were not very satisfactory, at least when we talk about the fulfillment of the four basic goals. But, regardless, one small part was a great success. Namely, it was about the adoption of the Memorandum with the Agreement on the basic elements for negotiations on the world arrangement on cereals, which will eventually grow into the International Agreement on Cereals. In addition, an important document that was adopted at the end of this round of negotiations was the Anti-Dumping Code, which provides more precise instructions for the implementation of Article VI of the GATT.[10]

A few years later, the so-called The Tokyo round of negotiations (from 1973 to 1979), which in a way represented a continuation of the Kennedy round. Unlike the previous mining negotiations, this round of multilateral trade negotiations was much more successful. As a result of these

[7] V. G. Popović & R. D. Vukadinović, *Međunarodno poslovno pravo, Opšti deo, Drugo izdanje*, Banja Luka – Kragujevac, 2007, 90.
[8] W. Goode, *Dictionary of Trade Policy Terms, Sixth Edition*, Cambridge, 2020, p. 103.
[9] A. Popović, *op. cit.*, p. 172-173.
[10] *Ibid*, p. 173.

negotiations, we see six codes on non-tariff barriers,[11] three sectoral agreements[12] and four decisions known as framework agreements. The mentioned framework agreements refer to the special treatment of developing countries, that is, to the introduction of special trade measures that will facilitate trade in targeted countries with the aim of facilitating their economic development, as well as reaching an agreement on the improvement of measures to resolve any disputes that may arise.[13]

In 1986, within the framework of the GATT, seven years after the slightly more successful Tokyo round of negotiations, the eighth round of multilateral trade negotiations began in the city of Punta del Este in Uruguay, which will end in 1993 and will be remembered as the so-called Uruguay Round. The reasons for such a long journey that ended in 1993, that is, in 1994 with the signing of the final agreement in Marrakesh, can be seen in the confrontational attitudes between developed and slightly less developed countries, but also between economically developed countries. On the agenda could be found all the issues related to international, i.e. world trade: customs, non-tariff barriers, textiles and clothing, products from natural resources, tropical products, re-examination of several articles of the GATT, re-examination of the rules of the Tokyo Round, anti-dumping, subsidies, intellectual property, investment measures, dispute resolution, GATT system and services and many others.[14] The main goals set before the participants of these negotiations were: (1) reduction of agricultural subsidies, (2) abolition of restrictions on foreign investment, (3) initiation of the process of trade in services such as banking and insurance, and (4) protection of intellectual property. Two years after the start of the negotiations and after countless difficulties, delays and problems, the ministers of the countries participating in the negotiations managed to agree in Montreal on some issues such as, for example, were concessions for access to the market of tropical products (to help developing countries), as well as a dispute resolution system and a mechanism for reviewing the trade policies of participating countries. The biggest problem that arose was the issue of regulating world trade in agricultural products. When that issue was opened, a crisis in the negotiations occurred, called the „black period", when the negotiations almost stopped.[15] The biggest disagreements occurred between the EEC and the US in relation to trade in agricultural products, regulation of services, market access conditions, anti-dumping rules and the establishment of new institutions. In 1992, the USA and the EEC managed to reach a compromise (the so-called Blair House Accord), which encouraged all participants that the negotiations would continue and that this

[11] Agreement on Technical Barriers to Trade (which seeks to ensure that technical regulations, standards, testing and certifications do not become barriers to trade), Agreement on Government Procurement (which introduces non-discrimination, competition and transparency in government procurement), Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (which aims to ensure that subsidies do not harm the interests of other trading partners), Agreement on the implementation of Article VII (which aims to ensure a fair, uniform and neutral system for the valuation of goods for customs purposes, Agreement on procedures for issuing import licenses (which aims to ensure that the requirements for obtaining import licenses do not in themselves represent an obstacle to trade) and the Agreement on the Implementation of Article VI (revised version of the Anti-Dumping Code). See more A. Popović, op. cit., pp. 173-174 .

[12] Agreement on beef (which aims to ensure the expansion, liberalization and stabilization of trade in meat and live stock), International Agreement on Dairying (which aims to ensure the expansion, liberalization and stabilization of milk trade) Agreement on trade in civil aviation (which aims to abolish customs duties on civil aircraft and their components). See more A. Popović, op. cit., p. 173-174.

[13] W. Goode, *op. cit.*, p. 407.

[14] See V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 103.

[15] V. G. Popović, Radovan D. Vukadinović, *Međunarodno poslovno pravo, Opšti deo*, Banja Luka – Kragujevac, 2005, 133.

agreement was a positive step forward. The last controversial issues that existed between the so-called four (USA, European Union, Japan and Canada), which related to customs and related issues, were resolved in 1993. After all the individual disputed issues were resolved, we can say that on the way from Punta del Este, through Montreal, Geneva and other cities, to Washington, all obstacles were overcome and already in the following year 1994 in Marrakesh, 125 participating countries joined the negotiations signing of the Final Agreement on ending the last round of negotiations and creating the World Trade Organization.[16]

1. Final Agreement and Agreement on the Establishment of the World Trade Organization

1.1. Final agreement - content and nature

The most important result of the eighth round of multilateral trade negotiations is the Agreement establishing the World Trade Organization, which is also the constitutive act of this international organization. The Agreement on the establishment of the WTO was signed by 104 countries, while the Final Agreement of the Uruguay Round was signed by 111 countries. The Agreement on the establishment of the WTO, together with the Final Agreement, was ratified at the beginning of 1995 by 80 countries, which at that time participated in 90% of trade.[17] The final agreement is presented in a document of 550 pages, while the results of the Uruguay Round of negotiations are contained in over 30,000 pages of text (of which only 430 correspond to the Agreement on the Establishment of the WTO). The Final Agreement itself represents a collection of legal documents, that is, agreements reached during seven years of painstaking negotiations, as well as ministerial decisions and declarations on the interpretation of certain provisions of some agreements. There are 16 agreements, one protocol, two decisions and one interpretation, namely: (1) Agreement establishing the World Trade Organization, (2) General Agreement on Tariffs and Trade - GATT 1994, (3) Uruguay Round Protocol to GATT 1994 , (4) Agreement on agriculture, (5) Agreement on sanitary and phytosanitary measures, (6) Decision on measures related to the possible negative effects of reforms of the program of least developed and net food importing developing countries, (7) Agreement on textiles and clothing, (8) Agreement on technical barriers to trade, (9) Agreement on trade-related investment measures, (10) Agreement on the implementation of Article VI (anti-dumping), (11) Agreement on the implementation of Article VII (determination of customs value), (12) Agreement on pre-shipment inspection, (13) Agreement on rules of origin, (14) Agreement on import licensing procedures, (15) Agreement on subsidies and compensatory measures, (16) Agreement on safeguard clauses, (17) General agreement on trade acc ugama, (18) Agreement on Trade Aspects of Intellectual Property Rights, (19) Interpretation of Dispute Resolution Rules and Procedures and (20) Decision on Pursuing a More Harmonious Global Economic Policy.[18] All the mentioned agreements are of great importance for the creation of the WTO, but the most important are certainly the Agreement on the Establishment of the WTO, GATT 1994,

[16] *Ibid*, 134.
[17] A. Lj. Ćirić, *op. cit.*, p. 282.
[18] A. Popović, *op. cit.*, p. 176-177.

and the Agreement on Agricultural Products, the General Agreement on Trade in Services and the Agreement on Trade Aspects of Intellectual Property Rights.[19]

1.2. Agreement on the establishment of the World Trade Organization and its importance

As we have already mentioned, the Agreement on the Establishment of the WTO is the most important document that was signed as part of and constitutes the Final Agreement of the Uruguay Round of Negotiations and is its constitutive act. According to this agreement, the WTO is an international, multilateral and intergovernmental trade organization of a universal character, whose main goal is, in accordance with the adopted principles, through a common institutional framework, to facilitate and assist the development of international trade between member states in matters covered by the agreements and attached legal instruments that are included in the annexes, as well as to organize trade negotiations and resolve trade disputes between member states, and to cooperate with other international organizations that are involved in the formulation and implementation of global economic policy.[20] Generally speaking, the task of the WTO is to enable the achievement of the goals proclaimed in the same international instruments by applying the principles established by the Founding Agreement and subsequent agreements.[21]

The Agreement on the establishment of the WTO, viewed from a normative and technical point of view, consists of a preamble, a normative part numbering 16 articles, and four annexes. Article III of this Agreement provides for the basic goals and tasks of the WTO. According to him, the WTO exists to facilitate the implementation, implementation and realization and expansion of the goals of the Founding Agreement, as well as multilateral trade agreements, and to ensure the framework necessary for the implementation, implementation and realization of plurilateral trade agreements. The WTO should also provide a forum for its members to negotiate their multilateral trade relations in matters contained in the Founding Agreement and its annexes. In addition to being able to coordinate negotiations on multilateral trade relations, the WTO can take care of the implementation of agreements concluded on that occasion (depending on the decisions of the Ministerial Conference).

The Agreement on the establishment of the WTO has four annexes. The first annex of this agreement constitutes a multilateral agreement on trade in goods which includes: (1) GATT 1994, (2) Agreement on Agriculture, (3) Agreement on the Application of Sanitary and Phytosanitary Measures, (4) Agreement on Textiles and Clothing, (5) Agreement on Technical Barriers to Trade, (6) Agreement on Investment Measures, (7) Agreement on the Implementation of Article VI of the GATT 1994, (8) Agreement on the Implementation of Article VII of the GATT 1994, (9) Agreement on Pre-Shipment Surveillance, (10) Agreement on origin of goods, (11) Agreement on the procedure for issuing import permits, (12) Agreement on subsidies and compensatory measures, (13) Agreement on protective clauses, (14) General agreement on trade in services and (15) Agreement on trade aspects of intellectual property rights . In the second annex, the rules and procedure for resolving disputes between member states are presented. The third annex contains the rules regulating the

[19] *Ibid.*
[20] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 105.
[21] Article III of the Agreement on the Establishment of the World Trade Organization (hereinafter: the Agreement on the Establishment), https://www.wto.org/english/docs_e/legal_e/04-wto.pdf , accessed on 19 February 2022.

mechanisms for harmonizing national trade policies. The content of the last, fourth annex consists of the so-called pluralistic trade arrangements that represent the legal basis for the conclusion of future special agreements between member states.[22]

2. Internal structure and bodies of the WTO

In terms of status and organization, the WTO represents an international organization of a permanent nature with the status of a legal entity and with all the associated attributes.[23] The internal structure of the WTO is determined by Article IV of the Founding Agreement. In accordance with Article IV, the bodies through which the WTO carries out its activities are: the Ministerial Conference, the General Council, subsidiary bodies (subsidiary councils), committees of the Ministerial Conference and the Secretariat.[24]

The Ministerial Conference (hereinafter: the Conference) is the highest body of the WTO. It consists of representatives of all member states and meets at least once every two years. the conference carries out the tasks of the WTO and initiates the necessary procedures for their execution. At the request of a member state, it is authorized to consider and decide on all issues covered by any multilateral trade agreement, in a manner consistent with the special rules on decision-making established in the Founding Agreement or a corresponding multilateral international agreement.[25] After the entry into force of the Agreement on Establishment and the official start of the work of the WTO, the Conference established a number of different committees that deal with relevant issues between the two sessions of the Conference (e.g. the Committee on Trade and Development, the Committee on Budget, Finance and Administration, the Committee on Restrictions in regarding the balance of payments, the Committee for Trade and the Environment and others, the General Council may form more committees for specific issues if necessary). The basic task of the committee is to solve problems that may arise on certain issues contained in the Agreement on Establishment or any multilateral trade agreement.[26]

The General Council is a special body composed of representatives of all member states, which meets as needed. His task is to carry out the tasks of the Ministerial Conference in the periods between its meetings, as well as other tasks entrusted to him in accordance with the Agreement establishing the WTO. It is competent to supervise the implementation of agreements and ministerial decisions, and to work as a body for resolving trade disputes (Dispute Settlement Body), as well as to review the trade policies of member countries. The General Council is assisted in its work by subsidiary bodies (subsidiary councils), such as: Council for Goods, Council for Trade in Services, Council for Intellectual Property (TRIPS Council). These bodies can also form, if necessary, special auxiliary bodies, that is, temporary committees.[27]

[22] A. Popović, *op. cit.*, p. 178. See more J. G. Kozomora, „Svetska trgovinska organizacija (WTO)“, *Ekonomika poljoprivrede*, 2(42)/1995, p. 99-106.
[23] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 106.
[24] See Article IV of the Founding Agreement.
[25] Article IV/1 of the Founding Agreement.
[26] Article IV/7 of the Founding Agreement.
[27] Article IV/2-6 of the Founding Agreement.

Administrative and other auxiliary tasks are performed by the WTO Secretariat headed by the Director General, who is appointed by the Ministerial Conference. His powers, obligations, conditions for appointment and conditions of service, as well as the duration of the mandate are regulated by a special rulebook adopted by the Conference. The responsibility of the general director, as well as the employees in the Secretariat, are exclusively of international law character. Neither the Director General, nor the employees of the Secretariat may, when performing their work tasks, seek or accept any instructions from their home country (that is, the government of the country of citizenship), or any other body outside the WTO. Also, they should refrain from any actions that may negatively affect their status as international officials. WTO members are invited to respect and appreciate the special status enjoyed by the Director General and employees of the Secretariat according to the norms of international law, and will refrain from any influence on their work. The Director General proposes the annual budget estimate and the annual financial report to the Committee on Budget, Finance and Administration of the WTO, which should consider it and send it in the form of a recommendation to the General Council.[28]

Of the auxiliary councils formed by the General Council, it is important to mention the Council for Trade in Goods, the Council for Trade in Services and the Council for Intellectual Property (TRIPS). First, the Council for Trade in Goods supervises the implementation of multilateral trade agreements from Annex 1A, i.e. multilateral agreements on trade in goods. The Council for Trade in Services oversees the implementation of the General Agreement on Trade and Services. The last council of interest to us is the Council for TRIPS, that is, the Council for Trade Aspects of Intellectual Property Rights. It oversees the implementation of the Agreement on Trade-Related Aspects of Intellectual Property. Each council adopts its own work regulations, which are approved by the General Council. Auxiliary councils meet as needed, i.e. when required to carry out their tasks, and representatives of all member states can take part in their work. Depending on the need, these councils can establish their own subsidiary bodies, which also adopt their own work regulations approved by the respective council.[29]

3. Membership in the World Trade Organization

The provisions of Article XII of the Agreement on the establishment of the WTO state that any country or customs territory that has full autonomy in conducting trade policy can become a member of the WTO, according to a specially provided procedure.[30] Given that the WTO is a legal entity with all the accompanying attributes, and that it is a formal successor to the GATT, all member states of the GATT transferred their membership to the WTO in 1947 upon the entry into force of the Founding Agreement.[31] In addition to these member states, we also distinguish new members that were not previously members of the GATT, and which joined the WTO after the entry into force of the Founding Agreement. Special attention is paid to the distinction between member states with regard to their economic power. In this regard, we distinguish highly developed, developed, developing and underdeveloped member states (the status related to economic strength is recognized by the UN). Depending on that criterion, the range of obligations that the new member state assumes upon

[28] Article VI of the Founding Agreement.
[29] A. Popović, *op. cit.*, p. 180.
[30] Article XII/1 of the Founding Agreement.
[31] See V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 114.

accession is determined. Thus, the least developed countries are required to only undertake obligations and concessions to the extent that is consistent with their individual level of development, financial and trade needs, and their administrative and institutional capabilities.[32]

The process of accession begins with the submission of a formal application for membership by the institutions of the interested country to the WTO administrative body, i.e. the Secretariat. Upon receipt of the official request, the Secretariat delivers it to all WTO member states, after which a special working group is formed for negotiations with the interested state, which is open to all WTO member states (to which the state interested in joining submits a memorandum).[33] The submitted memorandum must contain all aspects of the foreign trade of the interested country, as well as its legal regime. Negotiations take place through meetings of the working group where the schedule of obligations and concessions that the state must assume in trade in goods and services is discussed.[34] After the discussions, the working group draws up a report and a protocol on acceptance, with precisely defined terms and conditions, as well as a list of obligations and concessions that the interested country should undertake in terms of goods and services. The working group submits the report and reception protocol to the General Council, which makes the final decision. The final „reception package" contains a wide range of documents that present the results of multilateral and bilateral negotiations, which include: the report of the working group (which summarizes the results of the negotiations, as well as the conditions for admission and the protocol on admission) and a schedule-table of assumed obligations when accessing the market of goods and services of WTO member states.[35]

The final decision on the fulfillment of the conditions for the admission of a new member state is made by the Ministerial Conference. The decision must be taken by a two-thirds majority of the total number of WTO member states. While the negotiations are ongoing, the interested country has observer status.[36] The issue of access to all plurilateral agreements is determined specifically by the agreement on the accession of a new state to WTO membership.[37] Bosnia and Herzegovina and the Republic of Serbia are the only two Western Balkan countries that are not members of the WTO, but are currently negotiating for membership (according to WTO data, Bosnia and Herzegovina and the Republic of Serbia are currently in the phase of bilateral negotiations on access to the goods and services market, which is approximately halfway to full WTO membership).[38]

[32] *Ibid.*

[33] For the detailed procedure for the accession of new members to the Organization, see more https://www.wto.org/english/thewto_e/acc_e/acc_e.htm , accessed 20/03/2022.

[34] Negotiations take place in four, graphically described, phases: Phase I ("Tell us about yourself"), Phase II ("Working with individuals to tell us what you have to offer"), Phase III ("Drafting the terms of admission "), Phase IV ("Admission Decision"). See more https://www.wto.org/english/thewto_e/acc_e/how_to_become_e.htm , accessed 20/03/2022.

[35] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 114. See more M. Jovanović, *op. cit.*, p. 375-381.

[36] Article XII/2 of the Founding Agreement.

[37] Article XII/3 of the Founding Agreement.

[38] See https://www.wto.org/english/thewto_e/acc_e/a1_bosnie_e.htm and https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm, accessed 20/3/2022.

4. Basic principles of the World Trade Organization

The basic principles of the WTO are the fundamental principles that were differentiated as such during the rounds of multilateral trade negotiations, and on which the WTO stands today. There are five such principles, i.e. principles, and they are: (1) the principle of prohibition of discrimination (or, according to some authors, the principle of non-discrimination), (2) the principle of market liberalization (or the principle of a freer market), (3) the principle of predictability, (4) the principle of greater competitiveness and (5) the principle of providing greater benefits to developing countries.[39] WTO bodies are responsible for the implementation and promotion of basic principles.

4.1. The principle of non-discrimination

The principle of prohibition of discrimination (or the principle of non-discrimination) is a general principle by which the WTO aims to ensure the increase of international trade and economic well-being.[40] This principle generally means the obligation of a WTO member state to treat all participants in mutual trade in the same way (thus, without discrimination). The principle of non-discrimination is applied to mutual relations between WTO members and third countries, on the one hand, and WTO member states and the home state, i.e. its economic entities participating in international trade, on the other hand.[41] The elimination of discrimination, i.e. the complete absence of this phenomenon, was still foreseen by the GATT.[42] Article I of the GATT 1947 provided for the most-favoured-nation clause, which prohibits discrimination against foreign countries, and the national treatment clause, which prohibits the difference in treatment between domestic and foreign products.[43] In the first case, discrimination regarding the origin of the goods is prohibited, of course with full respect for customs and other regulations. For example, goods coming from a WTO member state to one of the EU countries cannot be subject to a higher tariff rate.[44] However, there are a few exceptions to this rule. The first, which foresees the waiver of application when it comes to the free trade zone and the second, which refers to the existence of the customs union.[45] When we talk about the national treatment clause, we are talking about non-discrimination between domestic entities and entities from other member states participating in international trade. There are exceptions to this clause as well. The most significant is that discrimination is allowed when it comes to public procurement and when subsidies are given to domestic producers.[46]

[39] See Ž. Šević, „Svjetska trgovinska organizacija: institucionalni i pravni aspekti", *Finansije*, 1-2/1997, p. 141.
[40] F. Turčinović, „Pravni okvir zajedničke trgovinske politike Evropske unije u Svjetskoj trgovinskoj organizaciji", *Srpska pravna misao*, 19(46)/2013, p. 46.
[41] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 107.
[42] F. Turčinović, *op. cit.*, p. 46.
[43] Article I of GATT 1947, https://www.wto.org/english/docs_e/legal_e/gatt47.pdf , accessed 20/03/2022.
[44] F. Turčinović, *op. cit.*, p. 46.
[45] See Article XXIV of GATT 1947.
[46] F. Turčinović, *op. cit.*, p. 46. See more P. N. Cvetković, „Načelo najvećeg povlaštenja u pravu Svetske trgovinske organizacije – primer člana I:1 Opšteg sporazuma o carinama i trgovini", *Pravo i privreda*, 4-6(47)/2010, p. 391-404.

4.2. The principle of market liberalization

The principles of market liberalization (or the principle of a freer market) imply the obligation of WTO member states to constantly strive for a gradual reduction of obstacles in mutual trade in mutual negotiations. States can create obstacles to free and unhindered trade through various mechanisms, such as customs duties, taxes, tariffs and other measures, as well as import bans or import quotas that limit the amount of imports. The WTO insists that member states strive to gradually reduce and abolish these obstacles through multilateral and bilateral negotiations conducted within the WTO, but also between member states separately. It is important to note here that this principle proclaims liberalization or a freer market, which is far from the concept of completely free trade, which is quite difficult to achieve in practice. The WTO is aware of this, and for this very reason obligates member states to gradually reduce obstacles that hinder freer multilateral trade. This is especially important in the 21st century, that is, the century of accelerated technological development, faster transport and generally a faster way of life. The demand for certain types of goods is constantly increasing (and most of the time it is about life-essential products), so it is necessary to remove any unnecessary obstacle to multilateral international trade so that the products are available to consumers as soon as possible and at acceptable prices. We must understand that completely free trade is more of an ideal to be aspired to in the modern world, which is rather difficult to achieve (it might be possible if the world were one country, one sovereignty, but even then there would be certain obstacles due to the nature of social in general interpersonal relations). That is why, within the framework of this principle, the WTO set as its highest goal the regulation of that freedom in order to maintain stability in the world.[47] Thus, according to WTO rules, the use of measures such as tariffs and quotas is quite restrictive. WTO member states are obliged by the GATT to establish maximums for specific products, which indicates a tendency to reduce barriers, but not their complete removal. Also, GATT prohibits the use of quotas and other prohibitions on imports after customs clearance. Such prohibitions were quite widely applied in practice.[48]

4.3. The principle of foreseeability

One of the goals of the multilateral agreements signed within the WTO is to ensure a stable and predictable business environment for participants in international trade, that is, conditions in which WTO member states could unhindered fulfill the obligations they assumed as a member. The predictability of future international trade conditions is based on the stability of existing trade conditions. In this regard, the principle or principle of predictability is conditional and closely related to the existence of stable conditions.[49] With the principle of predictability, subjects of international trade can plan their future moves, i.e. they can adjust the measures they take depending on the circumstances that may arise in the future (e.g. hiring new workers, increasing the import of raw materials for production, redirecting goods to a more lucrative market, etc.).

[47] See S. A. Taboroši, „Svetska trgovinska organizacija i SRJ“, *Pravo i privreda*, 5-8/1996, p. 562.
[48] F. Turčinović, *op. cit*., p. 42-43. See more D. Karić, „Uloga i značaj WTO na globalnom svetskom tržištu“, *Anali Ekonomskog fakulteta u Beogradu*, 25/2011, p. 197-209.
[49] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 108

4.4. The principle of greater competition

The Agreement on the establishment of the WTO contains several rules based on the principle of greater competition. The WTO thus set itself the task of working to promote the conditions for the creation of freer and fairer competition. In other words, fair and free competition (which was proclaimed by GATT 1994) in international trade is ensured, first of all, by the application of the principle of non-discrimination, that is, by the less favored nation and national treatment clauses, as well as by the comprehensive application of anti-dumping measures. These measures are taken in the case of selling goods for export at prices lower than those paid on the domestic market or that price is lower than what is necessary to cover the production of the goods being sold. It is a factually unfair international trade.[50] The task of the WTO, with regard to customs duties, taxes and other types of restrictions on trade between member states, is to promote such conditions that will realize the principle of a freer market as much as possible. In cases where there is a violation of this principle, i.e. the rules of fair and loyal competition, the WTO is obliged to stop the continuation of such „gray" practices and to provide fair compensation for any damage that may have occurred.[51]

4.5. The principle of providing greater benefits to developing countries

Today, in the 21st century, large differences in the economic development of both member states and non-member states of the WTO continue to be particularly pronounced (although some thought that such differences would decrease after the process of decolonization and trade liberalization). Such differences have a particularly negative impact on the volume and conditions of international trade. In this regard, the WTO has been given the task of helping the less developed member states to achieve faster economic development in its rules contained in multilateral and other international agreements. Unfortunately, almost 3/4 of the WTO members are developing or underdeveloped countries. For this very reason, the WTO agreements provide for numerous exceptions that have been established in favor of such countries (e.g. special aid and trade concessions, longer adjustment periods, etc.), in order to encourage their faster and more efficient economic development. Also, the WTO should encourage economic reforms in less developed member states that lead to the same goal, but it is also authorized to periodically review the mechanisms of the national trade policies of the member states.[52]

5. Settlement of disputes within the WTO

The Agreement on the establishment of the WTO contains numerous provisions that the member states are obliged to apply during international business. Precisely for the reason that in the framework of international business, states enter into numerous relationships that can result in a certain type of dispute, the WTO focused on adopting a range of rules that will be applied in the case of disputes arising in international trade, disputes regarding the interpretation and application of certain agreements (primarily the Agreement on establishment of the WTO, and then other

[50] F. Turčinović, *op. cit.*, p. 47. See more U. Zdravković, „Damping i antidampinške mere", *Zbornik radova Pravnog fakulteta u Nišu*, 64/2013, p. 309-322.
[51] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 109.
[52] *Ibid.*

agreements that have already been discussed). The settlement of disputes within the WTO is regulated by the Dispute Settlement Agreement, the elements of which can still be seen on one dispute settlement panel between GATT member states in 1950. Until the establishment of the WTO, this panel as a dispute resolution mechanism was very popular, primarily because it sought to reach a consensus between the parties to the dispute. However, at one point, this way of resolving disputes came to a dead end. As a reason for this, the authors state that the consent of the losing party in the dispute was expected (and neither party wants to voluntarily admit defeat and thus be harmed in some way).[53]

The WTO dispute settlement system is considered by many authors to be a great (perhaps the greatest) success of the WTO, and is often referred to as the diamond or jewel in the crown of this organization.[54] It is considered one of the most effective systems for resolving and enforcing decisions from interstate trade disputes in which member states have particular confidence. The rules for settling disputes are contained in the second annex to the Agreement on Establishment. These rules apply to disputes from all multilateral trade agreements that are part of the Uruguay Round Final Agreement. Arising disputes are resolved by a special dispute resolution body based on the authority of the General Council, i.e. the council or committee of the respective agreements. By acceding to the WTO, states undertake to respect the established procedure for resolving disputes that may arise and to implement the decisions made.[55]

Disputes between WTO member states arise when one member state undertakes some trade policy measure that other member states consider to be a violation of one of the multilateral trade agreements, on the one hand, while a dispute can also arise when a member state allegedly violates one of the assumed obligations. on the other hand.[56] The initiative to start the procedure is submitted by the interested party with a request submitted to the Dispute Settlement Body (hereinafter: DSB).[57] It is important to note another significant feature of the Agreement on Dispute Resolution. Namely, in addition to the fact that the member states undertook to entrust their disputes arising from the previously mentioned issues to the DSB for resolution, they also undertook to resolve the dispute in such a way as to reach a compromise between the parties, in accordance with WTO agreements.[58] Therefore, we want to achieve a positive, acceptable solution so that both parties are satisfied with it and to facilitate the execution of the decision of the DSB.

The decision on the dispute made by the DSB must be in accordance with the rights and obligations arising from the WTO agreement for the member states. In addition, it is important to note that the rights and obligations that states have based on the agreement cannot be reduced. During the dispute resolution procedure, which has four phases (consultation phase, panel phase, appeal phase and decision implementation supervision phase), we want to reach a solution as soon

[53] See F. Turčinović, *op. cit.*, p. 52.
[54] Cvetković, *op. cit.*, p. 27.
[55] See A. Popović, „Značaj rješavanja sporova u okviru STO“, *Srpska pravna misao*, 18(45)/2012, p. 142-144. See more U. Zdravković, „Rešavanje sporova pred Svetskom trgovinskom organizacijom i granice merodavnog prava“, *Zbornik radova Pravnog fakulteta u Nišu*, 72(LV)/2016, p. 311-327.
[56] V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 112. See more J. Damjanović, „Rješavanje sporova u okviru Svjetske trgovinske organizacije“, *Srpska pravna misao*, 23(5)/2017, p. 103-119.
[57] See N. Arsić, „Institucionalni okvir sistema za rešavanje sporova Svetske trgovinske organizacije i transparentnost postupka kroz prizmu sličnosti i razlika sa međunarodnim trgovinskim arbitražama“, *Škola biznisa*, 2/2017, 73-74.
[58] F. Turčinović, *op. cit.*, p. 53. See more V. Bilas, A. Videc, „Učinkovitost sustava za rješavanje sporova Svjetske trgovinske organizacije“, *Zbornik Ekonomskog fakulteta u Zagrebu*, 9(2)/2011, p. 175-194.

as possible (due to the possible occurrence of damage).[59] The panelists are mostly former officials of the governments of the countries who in the specific case act in a personal capacity. As a rule, the panel should be completed in nine months, but in practice there are cases where it is extended. The appellate body consists of seven members elected for a mandate period of four years with the possibility of re-election. The report is usually submitted by the appellate body within 90 days, after which implementation is carried out, i.e. control of whether the results of the panel's decisions and the appeal have been applied.[60] The panels and the appellate authority adopt their own rules of procedure with their own rules of procedure. Panels and the appellate body, according to the authors, are by their nature pseudo-judicial bodies.[61]

Only WTO members have the right to initiate a dispute settlement procedure, and any third country (member state) that has a direct interest in dispute settlement can join the procedure at any time. A WTO member state can use the dispute settlement system when it claims that it has been denied or reduced benefits under the WTO agreement. As a rule, the prosecutor will plead that the defendant violated one or more provisions of one of the agreements. If the injury is visible, then there is a presumption of deprivation or reduction of benefits. Non-governmental organizations, companies or individuals do not have access to the WTO dispute settlement system, but it should be noted that a large number of disputes that have been and are currently being conducted before the WTO have been initiated by companies and the non-governmental sector.[62]

6. Future work of the WTO (the so-called Doha Development Agenda)

At the beginning of the new millennium, the fourth session of the WTO Ministerial Conference was held in Doha, Qatar, where the WTO member states decided to initiate new negotiations on the implementation of the agreements that make up the WTO, as well as on the corresponding dynamics (the so-called Doha round of negotiations). It was after the end of that conference that the Doha Development Declaration (Doha Development Declaration, Doha Ministerial Declaration), or more popularly called the Doha Development Agenda (Doha Development Agenda), was adopted. According to this Agenda, all future negotiations will take place through the Trade Negotiating Committees and their subsidiaries in regular and extraordinary meetings or within special negotiating groups, which is one of the two modes of operation envisaged. Another way of working should be through WTO bodies (that is, councils and committees). The ministerial conference concluded that the issues should be divided into three groups: the first contains issues that will be negotiated, the second contains issues for which appropriate enforcement measures will be taken, and the third group of issues for which appropriate analyzes should be made.[63]

[59] See R. Bhala, *International Trade Law: Theory and Practice*, New York, 2001, p. 195-201. See more T. Stupar, „Svetska trgovinska organizacija – pravila i procedure za rešavanje sporova", *Pravo, Teorija i praksa*, 1-2(25)/2008, p. 90-100.

[60] F. Turčinović, *op. cit.*, p. 53.

[61] A. Popović, *op. cit.* (2012), p. 150.

[62] See P. van den Bossche, W. Zdouc, *The Law and Policy of the World Trade Organization: Texts, Cases and Materials*, Cambridge, 2017, p. 299-304. See more U. Zdravković, „Aktivna legitimacija u postupku rešavanja sporova pred Svetskom trgovinskom organizacijom", *Zbornik radova pravnog fakulteta u Nišu*, 79(LVII)/2018, p. 415-427.

[63] See V. G. Popović, R. D. Vukadinović, *op. cit.* (2007), p. 113 i I. F. Ferguson, „World Trade Organization Negotiations: The Doha Development Agenda", Washington 2008, p. 2-3. See more R. Kovačević, „Svetska

Negotiations in Doha officially began in November 2001, obliging all countries to talk about the opening of agricultural and manufacturing markets, as well as negotiations on trade in services (GATS) and negotiations on the expansion of the regulation of intellectual property protection (TRIPS). The intention of the participants of this round of negotiations was to make the international market "fairer" for developing countries.[64] The tentative deadline for ending the negotiations was the beginning of 2005. The most important moment, one could say the crowning moment of the Ministerial Conference in Doha, was the vote on the accession of the People's Republic of China to the WTO, as one of the new economic superpowers.

Two years after Doha, the Ministerial Conference was held in Cancún with the aim of concretizing the negotiations in Doha. However, these talks collapsed when the participating states could not agree on the format for the continuation of negotiations. Certain „lower level“ meetings between state representatives continued after Cancún, but without the desired result.[65] There are different opinions as to why the negotiations in Mexico failed, some cite the failure to resolve the so-called the Singapore issue, while others point out that certain states did not even come with the intention of negotiating, others point out the demands of the EU representatives from which they did not want to deviate, and so on.[66]

The consequence of the failed negotiations in Mexico was a months-long standoff. Negotiations started again at the beginning of 2004. The USA, specifically its trade representative Robert Zoellick, pointed out that the negotiations should continue on those issues where a somewhat broader consensus has been reached. Namely, it was about free access to the market, including the issue of abolishing agricultural export subsidies. The representatives of the EU decided to give up a certain range of their demands by accepting the abolition of subsidies for the export of agricultural products by a „certain date“, thereby creating the conditions for a new Ministerial Conference in Geneva that year. at this Conference, developing countries took a more serious role, insisting on the continuation of negotiations on trade facilitation from Doha. The negotiations in Geneva gave a certain result because the student states managed to reach an agreement which was officially called the Framework Agreement. Also, an agreement was reached to continue the negotiations in Hong Kong next year.

Before the Ministerial Conference in Hong Kong, the negotiators wanted to achieve some kind of tangible progress, and held a meeting in Paris where the following issues were discussed: France's protest over the reduction of subsidies to farmers, issues related to trade in chicken, beef and rice between the EU, the US , India and Australia, and some technical issues. Negotiations in Hong Kong later that year did not produce the expected result, although the parties came closer to a draft of the final declaration (again, problematic issues were related to agricultural subsidies, the opening of the markets of highly developed countries to products from developing countries, and other issues). After Hong Kong and until today, a number of conferences were held with more or less achieved results (twice in Geneva, then in Potsdam, Bali, Nairobi and Buenos Aires). The twelfth consecutive

trgovinska organizacija i liberalizacija trgovine posle Dohe“, *Privredna izgradnja*, 1-2(47)/2004, p. 17-49 i V. Bilas, „World Trade Organization and regional economics integration: together in future or not?“, *Međunarodne studije*, 1-2(18)/2018, p. 49-64.

[64] See https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm , accessed 20/03/2022.

[65] See https://www.economist.com/business?story_id=E1_NDPVQJN, accessed 20/03/2022.

[66] There are different views of many observers and opinions from business and diplomatic circles. We did not deal with this specifically because it is not the subject of this paper.

Ministerial Conference was not held due to the COVID-19 virus pandemic, but negotiations are still continuing.

CONCLUSION

The World Trade Organization is undoubtedly one of the most important subjects of international business law, the fact that points to this is that its membership consists of 164 countries that take 98% of the total world trade. The historical period that preceded the formation of the World Trade Organization testifies to the continuous efforts of the superpowers, but of those developing countries, to find a compromise solution in the form of an institutionalized organization that would be responsible for implementing global economic policy, which bore fruit with the adoption of the Marrakesh Agreement. However, it is evident that the constellations on the world political scene have a great influence, above all, on the future activities of the WTO, especially when we talk about new growing economies. The World Trade Organization represents the backbone of liberal foreign trade exchange, forming an institutional and legal framework, it encourages the creation of harmonized rules of international business law through the conclusion of a series of multilateral agreements, and in addition it acts as a „judge" when resolving disputes that member states bring before it, which is it is evidently the most important regulator of global economic policy.

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