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Research Article

THE PRINCIPLE OF "NATIONAL TREATMENT" IN WTO AND THE PROBLEMS OF ITS IMPLEMENTATION IN THE LEGISLATION OF UZBEKISTAN

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ABSTRACT

The World Trade Organization is an intergovernmental organization that regulates international trade. The principle of non-discrimination, which is considered the basic principle of this organization, includes the most favored nation treatment and national treatment. Through this article, the author describes the history of the national regime within the WTO, its use in the practice of states (especially in developing countries) and exceptions to this principle, as well as the associated regime in the legislation of the Republic of Uzbekistan, a country increasingly approaching WTO membership. Having studied the problems, the author makes his proposals for their legal regulation.

KEYWORDS

The WTO, its use in the practice of states (especially in developing countries) and exceptions to this principle, as well as the associated regime in the legislation of the Republic of Uzbekistan.

INTRODUCTION

WTO agreements are legal documents that cover a wide range of spheres, from agriculture to trade in services, textiles, telecommunications, government procurement, industrial standards and product safety, food hygiene regulations, intellectual property, and so on. But all these agreements are based on a number of principles. These principles are also the basis of the multilateral trade system.

Along with transparency, reciprocity and efficiency, the principle of non-discrimination is one of the main principles of the WTO, which is divided into the most favorable nation regime and the national regime. This article is devoted to the history of the national regime, its content within the framework of the WTO, its application in the practice of states, and the problems related to this regime in the legislation of the Republic

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of Uzbekistan, which is getting closer to WTO membership.

Since WTO law is built on the basis of public international law, the national regime is also applied within the framework of the WTO in a way that is not far from its content in international law. The national regime is a concept of international law, the principle of treating citizens of another country in the same way as its own citizens, if a country grants certain rights and privileges to its citizens, it means that foreigners in the country should be given equal rights and privileges at the same time.

Traditionally, the municipal laws of host countries established a national regime for foreigners to limit any differential treatment in favor of foreigners and mainly to protect the property of foreign legal entities from expropriation. On the other hand, the guarantees of the national regime, which provide for the benefits for foreigners, are usually developed through contractual obligations accepted on the basis of mutual agreement.

In international law, the national regime standard is used in two different contexts. In one respect, the standard represents one of the doctrines of international law that apply to the person and property of foreign nationals known as the Calvo doctrine. According to this doctrine, which is especially supported by Latin American countries, foreigners and their property are entitled to a treatment no less than that provided to citizens of the host country in accordance with its national legislation. In contrast to this doctrine, under the doctrine of state responsibility for the damage caused to foreigners and their property, historically supported by developed countries, international customary law suggests that it defines the minimum international standard of the regime in relation to foreigners, and allows them to provide a more favorable regime than their own citizens.

If we look at the history of the origin of this regime, the national regime in contract practice originates from trade agreements. The first treaties to apply the concept of non-discrimination between foreign and domestic merchants date back to the practices of the Hanseatic League in the 12th and 13th centuries. The United States' Treaty of Amity, Commerce, and Navigation contained a clause offering national treatment. Similarly, national treatment has long been the standard in patent and copyright conventions. Article 2 of the Paris Convention for the Protection of Industrial Property (1883) states that nationals of member countries "shall enjoy the same protection" as nationals of the host member state for which intellectual property protection is requested.

During the 20th century, it became common to negotiate separate international trade and investment agreements, resulting in a variety of legal standards, dispute resolution procedures, and administrative institutions. But initially, the situation with the national regime is more reflected in bilateral investment treaties (BITs) as the relationship between international trade and international investment law. The history of the national regime in international trade began with its first formalization in Article 18 of the Havana Charter, which was created to found the failed International Trade Organization (ITO), and this principle was reworked in the GATT in 1947.

With the establishment of the World Trade Organization's Dispute Settlement Body and Appellate Body ("AB"), which began its operation in 1995, centralization of issues related to the national regime in public international law was achieved. In contrast,

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decentralization remains a key feature of international investment law, which is built on a foundation of more than 3,000 different ad hoc tribunals organized across a network of mostly bilateral treaties. Furthermore, while the WTO is primarily responsible for settling international trade disputes between states, international investment law is used by private litigants and various commercial arbitration institutions, including Investment Disputes governed by the International Center for Arbitration ("ICSID"), the Permanent Court of Arbitration ("PCA") and the International Chamber of Commerce ("ICC").

The national regime for applying internal measures to imported products in trade matters is one of the main principles of the multilateral trade system created by the General Agreement on Tariffs and Trade in Goods (GATT). Based on the fact that the main focus of the GATT is on the control and liberalization of customs measures restricting international trade in goods, the basic principle in this regard is that usually any customs measures designed to give domestic products a competitive advantage should be in the form of customs tariffs set at the border, and the level of such customs tariffs is decided during negotiations and is mandatory be reflected in the "schedule of obligations" (GATT Art. 2 Schedule of Concessions). Within this schedule, Article III of the GATT ("National treatment for Internal Taxation and Regulation") plays a decisive role, as its paragraph 1 makes clear, it seeks to ensure that no "domestic" measures are taken against imported products to protect domestic production. This directly serves the purpose of ensuring that domestic measures are not used to nullify or weaken the effects of tariff preferences and other multilateral rules applicable to customs measures. Therefore, the role of the national treatment principle of GATT Article III should be understood in light of the distinction between customs measures and internal measures.

JST huquqida milliy rejim subyekti faqat xorijiy davlatlar yuridik shaxslari hisoblanadigan eng ko'p qulaylik beruvchi rejimdan farqli ravishda, chet elliklar va mahalliy aholiga teng munosabatda bo'lish – import qilingan va mahalliy ishlab chiqarilgan tovarlarga teng munosabatda bo'lishi kerakligini anglatadi. Xuddi shu tartib xorijiy va mahalliy xizmatlarga, xorijiy va mahalliy tovar belgilariga, mualliflik huquqi va patentlarga nisbatan qo'llanilishi kerak. Ushbu "milliy rejim" tamoyili (boshqalarga ham o'z fuqarolari va/yoki rezidentlari bilan bir xil munosabatda bo'lish) JSTning uchta asosiy kelishuvida ham o'z aksini topgan (GATT 3-moddasi, GATSning 17-moddasi va TRIPSning 3-moddasi), garchi bu tamoyil ularning har birida boshqacha tarzda talqin qilinadi.

In WTO law, the subject of the national regime is , unlike the most favorable nation regime, in which only legal entities of foreign countries are considered, equal treatment of foreigners and locals. It means that imported and domestically produced goods should be treated equally. The same procedure should be applied to foreign and domestic services, foreign and domestic trademarks, copyrights and patents. This principle of "national treatment" (treating others in the same way as one's own nationals and/or residents) is reflected in all three major WTO agreements (GATT Article 3, GATS Article 17 and TRIPS Article 3), although this principle is interpreted differently in each of them.

In the context of WTO law, substantive national treatment means that member states must not apply a discriminatory treatment between imports and domestic "like products" (except for the establishment of customs tariffs). This principle prevents countries from applying discriminatory measures against imports

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and compensating for the impact of tariffs through nontariff measures. For example, country A lowers its import tariff on product X from ten percent to five percent, but imposes a five percent internal consumption tax on that imported product X, and this internal tax effectively compensates for the reduction of the tariff by five percentage points. For this reason, the national regime also aims to eliminate "hidden" internal barriers to trade by requiring WTO members to create a treatment for imported products no less favorable than that applied to products of national production. Regarding "hidden" internal barriers, Article 3(1) of the GATT stipulates that members should not impose internal taxes or other internal charges, procedures, regulations, and requirements affecting imported or domestic products in a way that protects domestic production. With respect to internal taxes or other internal charges, Article 3(2) obliges WTO members not to apply standards higher between imported goods and "like" domestic goods or between imported goods and "directly competitive or substitutable goods" than those applied to domestic products. Regarding domestic rules and regulations, Article 3, paragraph 4, provides that members must create for imported goods a regime no less favorable than that applied to "like products" of national origin.

By all accounts, the national treatment principle was designed to prohibit "disguised protectionism" and to prohibit measures equivalent to tariff barriers, reducing tariff and other trade barriers, the principle is aimed at conscientiously fulfilling the obligations of WTO member states to reduce tariff and other trade barriers and ensure equal conditions of competition. But it is very difficult to detect hidden protectionism or measures that circumvent the rules of trade without barriers.

In the report of the WTO Appellate Body on the case "Japan - Taxes on Alcohol Beverages" (Appellate Body Report, Japan - Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, page 16 (1 November 1996)), the Panel stated that "the purpose of Article III is to ensure that domestic measures are not applied to imported or domestic products to protect domestic production", while in its final report, the Appellate Body in the "Philippines - Distilled Spirits" case (Philippines-Distilled Spirits, paras. 221-222 (WT/DS396/AB/R, WT/DS403/AB/R)) defines the object and purpose of Article III of the GATT-1994 as "requiring equality of competitive relations and protecting the expectation of equal competitive relations".

GATT rules are primarily aimed at reducing barriers between markets, rather than harmonizing the conditions of competition in markets. Therefore, in principle, they only impose restrictions on trade policy, but leave the contracting parties free to conduct their domestic policy. National treatment is applied only after the product, service or object of intellectual property enters the market. Therefore, levying a customs duty on imports is not considered a violation of the national regime, even if an equivalent tax is not levied on domestically produced products.

The national regime raises the most important problems of development in the field of foreign direct investment. It provides formal equality between foreign and national investors. However, in practice, national investors, especially those who can be described as "new industries" or "new entrepreneurs", are at an economic disadvantage compared to foreign investors who may be economically powerful transnational corporations (TNCs). Such "economic asymmetries" may require a certain degree of flexibility in the treatment of national investors,

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especially in developing countries by granting exceptions to the national regime.

For many countries, the national regime standard serves to eliminate distortions of competition and thus enhances the efficiency of the investments involved. An extension of this argument points to the ongoing internationalization of investment and production, and concludes that access to foreign markets on non-discriminatory terms is necessary for the efficient functioning of an increasingly integrated world economy. On the other hand, in a world characterized by a sharp inequality of economic power, technical capabilities and financial power, ensuring economic development national firms may be necessary to ensure a certain degree of rapid equality there is no substitute for the encouragement of domestic industries by host countries to ensure some differentiation between national and non-national industries.

The Republic of Uzbekistan is actively trying to become a member of the WTO and, accordingly, join the main agreements of the WTO system, so the analyses of this principle is undoubtedly relevant now. One of the tasks of becoming a member of the WTO is to harmonize national legislation with the legal norms of the WTO. Thus, the analysis of the legislation of the modern Republic of Uzbekistan, as well as the place and role of the principle of national regime in it, its strengthening in bilateral, multilateral agreements and unilateral order is on the agenda as an urgent issue.

In particular, the legislation of the Republic of Uzbekistan GATT (non-discrimination between imported and domestically produced goods in terms of internal taxation and other measures aimed at protecting national production), GATS (each member state providing services and suppliers of services of any other Member State with respect to all measures affecting the supply of services no less favorable than that accorded to national "suppliers of like services and service providers"), TRIPS (a member state provides nationals of other member states with a favorable regime for the protection of intellectual property no less than that provided to its own nationals, i.e., taking into account the intangible characteristics of intellectual property objects, the owners of intellectual property rights - citizens of member states - are considered objects of the national regime) and the issue of harmonization with the norms related to the national regime in other WTO agreements is one of the main issues on the agenda today.

During the analysis of the compliance of the legislation of the Republic of Uzbekistan with the requirements of this principle of the organization, we realized that several norms of legal documents should be improved in this regard. Below is an analysis of some of these normative legal documents:

– Different tax rates for tax residents and non-residents of the "Tax Code" of the Republic of Uzbekistan, to be more precise, specific features of taxation of legal entities involved in private foreign direct investment (Chapter 67), specific features of taxation of legal entities participants of special economic zones (Chapter 68), specific features of taxation in some regions of the Republic of Uzbekistan (Chapter 711), fulfillment of tax obligations in special circumstances (Chapter 72) tax benefits given to certain categories of tax residents should be reviewed from the point of view of the principle of non-discrimination, including national treatment compliance (However, taking into account that states may grant exceptions in some places, the state should consider the preferential conditions in its tax system in

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accordance with WTO agreements (GATT XX, XXI article and GATS XIV, XIV bis))

It should be noted that the principle of national treatment applies only to taxes, fees and charges applied to the import and sale of products. For example, income tax does not fall within the scope of the principle of national treatment, because income tax is not imposed on products. An example of an indirect tax is the tax imposed on raw materials used in the production of a product.

– Customs duty payment preferences and tariff preferences provided for in the "Customs Code" of the Republic of Uzbekistan (Chapter 43) shall be examined in order to prevent the establishment of discriminatory rules for goods entering the Republic of Uzbekistan should be carried out. Paragraphs 10-15 of the Annex to the Law of the Republic of Uzbekistan No.600 "On State Duty" dated January 6, 2020 on the amounts of State duty rates regarding the provision of legal protection to intellectual property objects State duties for performing actions of legal importance are different for residents and non-residents, and they should be combined and coordinated with Article 3 of TRIPS. (As a matter of fact, resident or non-resident status cannot be said to completely contradict the requirement of citizenship in the content of Article 3 of TRIPS, because we all know that among the residents of the Republic of Uzbekistan there are also foreign citizens, and being a citizen of the Republic of Uzbekistan There are also non-resident individuals for the Republic of Uzbekistan. However, setting the fees paid to them for performing actions related to public services at a different value is contrary to the principle of non-discrimination in the national regime.)

Some legal documents should be supplemented in order to clarify the components of the national treatment regime principle and not to leave gaps in the legislation in this regard. In particular, the author notes that as the violation of national treatment rules is committed on "like product" or "like service", the Law on "Competition" should contain precise definitions of these concepts, and believes that entrepreneurs and responsible authorities should fully understand the essence of these concepts in order to create equal competition conditions. Precisely, Article 4 of this law refers to the "Basic Concepts", and this article should be supplemented with the terms of “like product” and “like service” replacing it with the term of "substitutable goods" in the article, it is proposed to distinguish between the concepts of “like product” and “substitutable goods”.

Paragraph 10 of Article 45 of the Tax Code contains the norm that "goods (services) with the same basic features are recognized as identical goods (services) for the purpose of taxation", however, this is not fully consistent with the content of the concepts of "like product" and "like services" in the decisions of the WTO Dispute Settlement Body and Appellate Body.

The concept of "like product" is very important in applying the principles of equality and non-discrimination. GATT-1994 itself does not define the concept of "like product". The concept of "like product" has been interpreted mainly by WTO panels and appellate bodies. According to it, it was noted that the content of "like product" may vary depending on the situation and where it is used, and it is said that it will be considered on a case-by-case basis.

The practice of the WTO shows that the "likeness" of products should be determined based on "the nature of the products and the level of competition in the market". In the Korea-Alcoholic Beverages case (Korea — Alcoholic Beverages, para. 118 (WT/DS75/AB/R,

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WT/DS84/AB/R)), the WTO panel stated in its report: "like" products are a subset of directly competitive or substitute products: all like products are, by definition, directly competing or substitutable products, but not all "directly competitive or substitutable" products are said to be "like". In the same case panel report, in the ordinary sense of the term, products can be competitive or substitutable if they can substitute for each other or offer "alternative ways of satisfying a particular need or taste".

In its report on the Japan - Taxes on Alcoholic Beverages case (WTO Dispute Appellate Body Report on Japan – Alcoholic Beverages, I.T.L.R. vol 1, iss. 2 at 242 (July 11, 1996)), the Panel notes that the following factors should be considered when determining whether products are "like":

- Physical characteristics of products;
- Habits and tastes of consumers;
- End use of the product;
- Product tariff classification;

In addition, Robert E. Hudee includes "product substitutability among these factors, according to him, this ability is measured by the degree to which consumers perceive two products as functionally equivalent, the willingness of the consumer to substitute one product for another.

And Van den Bossche emphasizes that the methods and processes of production are among the factors in determining the "likeness" of products. However, the importance of this factor is rejected in determining whether the products are "like" in GATT Tuna-Dolphin Case (I and II).

Continuing the analysis of the legislation of Uzbekistan, Article 4 of the Law "On Competition" defines the concept of substitute goods, in which it is said "goods that are comparable in terms of their intended function, use, quality and technical characteristics, price and other parameters, such that the recipient actually substitutes or is ready to substitute one commodity for another during consumption will be", which largely corresponds to the content of the concept of "like product" (not taking into account the absence of a rule related to tariff qualification). It is appropriate to unify these two concepts based on the content of the "Korea-Alcoholic Beverages" case and the goals of the "Competition" Law, and first of all, the goals of Uzbekistan's entry into the WTO.

Xulosa o'rnida shuni aytish mumkinki, milliy rejim prinsipi xalqaro iqtisodiy huquqning maxsus tamoyillari (iqtisodiy kamsitmaslik, o'zaro manfaatdorlik, eng ko'p qulaylik beruvchi rejim, milliy rejim, imtiyozli rejim) orasida eng muhim o'rinni egallaydi, hamda xalqaro huquqning umumiy prinsiplari va xalqaro huquqning boshqa sohalari prinsiplari bilan bir qatorda xalqaro huquq tizimiga kiritilgan. Milliy rejim prinsipi xalqaro iqtisodiy huquqning maxsus printsipi sifatida an'anaviy xususiyatga ega bo'lgan prinsip sifatida belgilanadi, unga ko'ra davlat, qoida tariqasida, o'z hududida (odatda ma'muriy-hududiy birliklarida) tashqi va ichki savdo, soliqqa tortish, milliy qonunchilikni qo'llash, sud himoyasi, moliyaviy, ma'muriy, transport va boshqa sohalarda xorijiy shaxslarga milliy shaxslarga nisbatan qo'llaniladigan rejimni taqdim etadi. Shu sababli, milliy rejim prinsipiga rioya qilish huquq va majburiyatlar muvozanatini saqlash uchun muhim bo'lib, ko'p tomonlama savdo tizimini saqlab qolish uchun muhimdir.

CONCLUSION

In conclusion, it can be said that the principle of national treatment occupies the most important place

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among the special principles of international economic law (economic non-discrimination, mutual benefit, most-favored nation regime, national treatment regime, preferential regime), and international law along with the general principles and principles of other areas of international law, it is included in the international law system. The principle of national treatment is defined as a special principle of international economic law, which has a traditional nature, according to which the state, as a rule, in its territory (usually in its administrative-territorial units) external and internal trade, taxation, provides a regime applicable to foreign persons in relation to national persons in the application of national legislation, judicial protection, financial, administrative, transport and other areas. Therefore, compliance with the principle of national treatment is important for maintaining the balance of rights and obligations, and for maintaining the multilateral trading system.

Analysis of the legal consequences of Uzbekistan's membership in the WTO, the application of the national treatment regime of the WTO for Uzbekistan leads to increased competition for goods and services, attracting additional investments to the territory of the Republic of Uzbekistan and allows us to conclude that the application of the national treatment regime in the markets of WTO member countries prevents discrimination against the import of goods and services of Uzbekistan in most cases.

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