

## Importance of the WTO decisions for the development of international trade

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The 9th WTO Ministerial conference which took place in December 2013 and was positively estimated by the world business community, because its results may increase the scale of international trade, has revealed substantial organizational peculiarity in aspiration of its participants to reach partial compromise agreements in the conditions of fundamental contradictions. The accent of discussions was displaced to the decision of some problems of cooperation and issues in the relations with certain groups of states. As a result of the Conference, only one general agreement was made, but at the same time sixteen decisions were adopted. Such approach appeared during the Uruguay round of negotiations, it is spread more and more and, thus, deserves attention.

A special place in the package of various documents according to the name, approved at creating of the WTO agreements, arrangements, decisions, declarations and protocols, is occupied by decisions, as many of them are focused on increase of international trade efficiency: aimed at removal of obstacles or expansion of its liberalization in perspective sectors, explanation of the controversial questions arising at implementation of commercial operations or demanding involvement of qualified experts.

Total number decisions, accepted at the Uruguay round, equals to 24, i.e. more, than WTO agreements. Some decisions lost value because they provided single actions (for example, the Decision on establishment of the Sub-management committee for the World Trade Organization, containing the list of administrative and financial actions, necessary for the beginning of its operation), others provide privileges to the developing and less developed states. However, the majority of decisions are important for all members of the WTO now and for further extension, because they contain constantly operating specifications of international trade regulations or define activities of its members in interests of the achievement

of agreement on elimination of gaps in regulation by means of development of future regulations. The latter, among other things, allows specifying the procedure of stage-by-stage preparation of new documents by members of the WTO for active participation of Russian representatives in this process.

In terms of law (obligations of execution by members of the WTO) all decisions have the same force as other documents, and issues, regulated by many decisions, are practically important. Therefore, despite the limited volume of decisions (often contain some pages or one page, some paragraphs or one paragraph) and establishment of regulations in them in rather narrow areas of trade regulation, decisions addressed to businessmen, organizations of member states of the WTO or to the international institutes, are important for the Russian participants of foreign trade, the enterprise associations promoting commercial operations of domestic exporters and importers, and relevant public institutions as well.

The most numerous group is decisions accepted in connection with agreements and arrangements of the WTO (14 decisions); others relate to the issues beyond these documents, including those aimed at the conclusion of new agreements or expansion of its function as the center for collection and distribution of useful information. General agreement on trade in services (GATS) is the leading in relation to the number of decisions. Members of the WTO made 8 decisions relating to this document, mobilizing them for further negotiations on liberalization of trade in services, and also specifying and explaining certain provisions of GATS.

The decision on negotiations on main telecommunications (on services in the field of long-distance communication), which are an independent sphere of activity and at the same time information transmission medium for other branches, is a characteristic example of acceleration of adoption of new fundamental documents on liberalization of international trade. Interest of a large group of states (about 50 mainly developed ones) in these negotiations was noted in the Decision; the time of their beginning and end, and the date of trade barriers subject to elimination were determined. The obligation of the states concerning non-use of any measures improving their positions or putting pressure upon negotiations during negotiations was agreed. It was provided that “negotiations should be comprehensive in terms of coverage, without exception of any main telecommunications a priori”.<sup>1</sup>

As a result, participants of negotiations who accounted for over 90% of annually gained income of the international long-distance communication operation, reached the agreement reflected in the Declaration of ministers on trade of information technology goods dated December 13, 1996, on elimination of custom duties for 300 corresponding

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<sup>1</sup> Contents of documents of the WTO and their citing, unless otherwise stipulated, are provided according to the edition of the Results of the Uruguay round of multilateral trade negotiations. Legal texts. M, 2002. 486 pages.



positions and on distribution of liberalization on all members of the WTO. Computers, telecommunication equipment, semiconductors and equipment for production of the latter, computer programs and scientific devices were included in the range of duty-free goods<sup>2</sup>. The specified document is considered to be the largest achievement of the WTO since it was established.

The Decision on financial services<sup>0</sup> played the similar role, as results of the Uruguay round in this area were considered as the unsatisfactory. The Decision, which formally authorized “to improve, change or withdraw all or part of the obligations in this area”, is actually aimed at expansion of the volume of obligations on liberalization in the developing states and the states with transitional economies (trade of financial services in developed states according to multilateral, regional and bilateral agreements used to be much more liberalized). The committee on financial services was delegated to monitor implementation of the decision and to present a report to the Council for trade in services.

As a result, on December 12, 1997 the 5th Protocol to GATS (it is often called as the Agreement on liberalization of financial services) was adopted and came into force on March 1, 1999. Developing states, especially those with quickly developing economy, undertook additional obligations on liberalization, including in the field of establishment of foreign enterprises in their territory by the suppliers of such services (branches, offices, representations and so forth), though they stipulated the right of the governments to application of restrictive regulating measures. The Decision on professional services is connected with item 4 of article VI of GATS – “Internal regulation”, which provides, firstly, that the measures relating to qualification requirements and procedures, technical standards and licensing requirements, should not create unjustified barriers in services trade and, secondly, concerning an assignment to the Council for trade in services in relation to development of regulations based on objective and public criteria, not burdening and limiting delivery of professional services.

Influence of regulating measures is recognized in the preamble of the decision in the field of professional qualification, technical standards and licensing on expansion of trade with professional services, and intention to establish multilateral regulations so such measures, urged to increase quality of rendered services, would not be considered as “excessive obstacles for provision of professional services” is expressed; and its substantial part proposes immediate introduction into operation of the Working program provided in item 4 of the article VI GATS and establishment of the Working group on professional services for the purpose of studying of regulations, necessary for ensuring performance of the objective and drawing up the report with recommendations.

The Decision on negotiations on migration of natural persons is related to service provision too. The document arose due to the fact that insignificant obligations accepted

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<sup>2</sup> Practical guidance on world trade system. International trade center UNCTAD/WTO, Chamber of Commerce and Industry of the Russian Federation, Geneva, 1999, page 44

in this field by developed states at the Uruguay round did not satisfy the developing states (the document emphasizes the “importance of achievement of higher levels of obligations for migration of natural persons for ensuring balance of benefits within GATS”). The Decision provides not only continuation of negotiations on further liberalization of migration of natural persons for the purpose of service and creation of the Negotiation group on migration of natural persons, but also in advance focuses the participants of negotiations on inclusion of positive results into the Lists of national specific obligations of members of the WTO. The Decision on some procedures of disputes settlement under GATS 0 is connected with articles XXII (sub item 6 and 7) and XXIII of the Agreement under the same name about regulations and procedures, which provides, among other things, technology of settlement of disputes and, in particular, formation of “arbitration groups” of international experts for consideration of complaints of clashing members of the WTO. The decision establishes strict procedure of selection of future international member-arbitrators of this group. The list of candidates is formed on the basis of offers of the states from the highly qualified governmental and/or non-governmental specialists experienced in issues related to GATS and/or to trade of services, including in the part of its regulation. Arbitration groups for the disputes, related to sectorized issues, should have necessary knowledge in certain sector of services.

Due to GATS there was adopted the Decision on negotiations on services of marine transport concerning continuation of work for the purpose of definition of obligations of members of the WTO in this field (navigation, provision of additional services and access to port means of service is meant here), aimed at elimination of restrictions and on creation of the special Negotiation group informing about the course of discussion and submitting the final report. At the same time, the Decision perspicaciously provides that, if within the planned time (June 1996) “negotiations fail, the Council for trade in services will resolve an issue of necessity of continuation of negotiations according to the present mandate”. The negotiations were completed neither within the original term, nor later.

Among decisions, relating to the Agreement on application of the article VP GATT of 1994 (“Goods assessment for the customs purposes”), the Decision concerning cases when the customs administration has the basis to doubt about correctness or accuracy of the declared cost, as it establishes the procedure of regulation of interaction of contractors with customs authorities at conflict situations often arising because of these doubts, is especially important.

In the Decision, first of all, it is reminded that the contractual goods price is taken as a basis of customs cost. However, it is admitted that in some cases customs officers “have reasons to doubt about truthfulness or accuracy of data or documents submitted by participants of trade”. In such cases the customs administration can request from the importer to present additional explanations, documents and other proofs, confirming that



the declared cost completely corresponds to the price actually paid or subject to payment for imported merchandises. At the absence of the answer or preservation of doubts at customs officers after obtaining of additional information they, before acceptance of a final decision, express their opinion to the importer and give the chance to respond. After decision-making the customs administration in writing reports it to the importer with the corresponding justification. Thus, if the first information on the price is provided by the contractor, the last word about its authenticity at a disputable situation is said by customs administration. The second decision to the specified agreement gives some customs privileges to developing states.

Due to the Agreement on application of the article VI GATT of 1994 (“Anti-dumping and compensatory duties”) the short Decision concerning circumvent of anti-dumping measures is of practical interest, because accusations of a dumping and subsequent sanctions, both reasonable and unreasonable, are the most common reason of trade conflicts between members of the WTO and in Russia’s relations with them. It is stated in the Decision that the problem of circumvention of anti-dumping measures was the object of negotiations during the Uruguay round, but their participants failed to agree on certain text of the relevant document. Thus, “considering the desire of prompt application of uniform regulation”, the WTO members decide to transfer regulation of the specified problem to the Anti-Dumping Practice Committee, established in accordance with the Agreement.

The Agreement on technical barriers in trade includes the Decision on the proposed arrangement of information system of standards of the WTO/ISO (ISO – International organization for standardization), recommending to the WTO Secretariat to agree with the ISO on formation of information system and containing some of its technical details, for example, on assignment to each standard with a digital objective code, and the Decision on reviews of publications of the ISO/IEC information center (International electrotechnical commission), providing periodical consideration of publications of the ISO/IEC information center by the Committee on technical barriers in trade for familiarization of the WTO members, received in accordance with the provisions of the Code of good practice on preparation, adoption and application of standards.

The Code placed in Annex 3 to the Agreement on technical barriers contains about two dozens of items (mainly obligations of members of the WTO), providing, in particular, the greatest possible use of international standards, preliminary notification of members of the WTO on development and approval of national standards, granting of a two-month term before adoption of the draft of the standard for their remarks and recording of the last. Publications of the ISO/IEC Information center can serve as a source of practically useful data on standardization development in the WTO member states.

A special Decision on accession to the Agreement on governmental purchases, which is one of four documents optional for WTO members, was adopted. The Decision is aimed

at involvement of a wider range of states (initial participants were generally developed states, as well as Hong Kong, Republic of Korea and Singapore) to its members, and contains accession conditions: the candidate should provide information on interest, carrying out of consultations in the Working group and drawing up of the inventory within the framework of the Agreement.

It is necessary to mention the Decision on the notification procedures, establishing the order of performance by the member of the WTO of one of the main obligations, among documents beyond the scope of agreements: regular notification of the Secretariat about all changes in national regulation of foreign trade. The decision informs about establishment of the Central register of such notices and possibility of obtaining of appropriate information (at the same time, non-performance of this obligation by certain WTO members is noted). The decision contains the Appendix with the detailed list of measures to be notified: all in all 20 items. Change of custom duties, charges, quotas, quantitative restrictions of trade, licensing, technical barriers, anti-dumping, compensation and protective measures, export taxes and subsidies, regulations of origin, etc. are among them, and the very end of the list specifies the following: “any other measures provided by multilateral trade agreements, contained in Appendix 1 A to the Agreement on the WTO”.

A specific and especially important issue, from the point of view of prospect, is discussed by two documents concerning development of trade and environmental protection, that was first reflected in the Marrakesh Agreement on WTO establishment (the preamble of the Agreement contains words about policy of its members “for the purpose... of production and trade expansions” and about “aspiration to protection and environment preservation”), and then in Working programs of the first Conference of ministers in Singapore in December, 1996 and the subsequent ones.

The Decision on trade and environment, accepted by the ministers at the meeting at the Committee on trade negotiations in Marrakesh on April 14, 1994, is the most extensive. The Decision contains an assignment to the first meeting of the General Council of the WTO: to found a Committee on trade and environment for the purpose of drafting of reports and preparation of recommendations concerning the necessity of modification of the provisions related to the multilateral trade system. It states, first of all, the necessity of development of the regulations aimed at positive interaction among the measures in the field of trade and environmental protection for assistance to sustainable development; secondly, to avoid acceptance of protectionist measures in trade for ensuring of greater compliance of the multilateral trade system with the environmental protection purposes; and, thirdly, to carry out supervision over the trade measures used for protection of this environment.

The Decision also determines primary authorities of the new Committee: to consider interrelation between (1) provisions of the multilateral trade system and trade measures aimed at environmental protection; (2) trade aspects of the policy in the field of





environment and measures of its protection, that have substantial effects on trade and related to multilateral trade system; (3) provisions concerning this system and charges and taxes, collected for environmental protection, and requirements for the purpose of its protection, related to goods, including standards and technical regulations, to packing, labelling and disposal; (4) provisions related to multilateral trade system, concerning transparency of trade measures used for environmental protection, and measures in the field of its protection, having substantial effect on trade; (5) mechanisms of settlement of disputes in the multilateral trade system and similar mechanisms within the frameworks of multilateral agreements on environmental protection, etc.

Moreover, a similar decision, related to GATS, was made in the general package of the WTO documents of the Uruguay round. The preamble of this document notes possibility of contradictions between measures for environment protection and GATS provisions (reference to article XIV, General exceptions, clause b, which allows the WTO member states to apply measures for protection of life or human health, animals or plants). The Decision contains a request to the Committee on trade and environment to study the issue and submit a report with recommendations, if any, about interrelation between trade in services and environment, including the issue of sustainable development.

Interaction between trade and environment is in the center of attention of the WTO and beyond its limits. In particular, Declaration adopted at the 4th Ministerial conference of member states, contains the section "Trade and Environment". This section, cl. 32, sets the following questions for coordination: interrelation between the existing regulations of the WTO and special trade obligations imposed by multilateral agreements on environment, procedure of regular exchange of information among the secretariats and decrease or elimination of tariff or non-tariff barriers to exogenous goods and services. The final document of heads of states and governments of the "Groups of Eight" in July 2008, item 34, noted that "it is necessary to activate efforts at negotiations within the WTO on decrease or elimination of tariff and non-tariff barriers for environmentally friendly goods and services..."<sup>3</sup>.

At Ministerial conference of the WTO in December 2013, many new decisions were accepted, as it was noted. They also relate to the earlier concluded agreements and other important problems of regulation of international trade, especially concerning developing and least developed member states.

In addition to former documents of the WTO, the decision on "Observance of the Agreement on the objects of intellectual property (TRIPS) related to trade and situational complaints" (the decision prolongs the practice of protection of intellectual property against legal disputes, when states file actions, even if WTO agreements were not violated directly, because of the disagreements on this matter among members, and there is article 64.2 about temporary moratorium in TRIPS), was made.

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<sup>3</sup> Main document. It was accepted by heads of states and governments of the "Group of Eight" on July 8, 2008. Website of the President of Russia, page 9

Besides, the decision on the “Working program for electronic trading” was made (it prolongs action of the Working program, approved in 1998). The Decision confirms the necessity of compliance with non-discrimination, predictability and transparency of trade, but, the main thing is preservation of duty-free electronic international commerce. Two decisions relate to the WTO Agreement on agriculture: concerning “Understanding under provisions of administration of tariff quotas for agricultural goods, according to article 2 of the Agreement on agricultural industry of the WTO” (provides consolidation of transparency of application of quotas, annual notification of percentage of their use, fast distribution of quotas and delivery of permissions) and concerning “General services” (services, belonging to the “green basket” in Annex 2 to the specified agreement and related to rehabilitation and preservation of lands, as well as employment development in agricultural industry).

Decisions on the “Establishment of reserves for food security” of the developing states (provides coordination of the corresponding temporary mechanism and obligation to develop a final decision at the 11th Conference of ministers of the WTO), on “Trade and transfer of technologies” to the developing states (provides recommendations in this area) and on “Cotton” (aimed at performance of monitoring of export subsidies and equivalent measures of internal support of the sector, application of tariff and non-tariff measures of trade control) should be related to the most essential documents in relation to new issues.

Besides, some decisions were made in the interests of all foreign trade of least developed states, including on “Operationalization of the waiver concerning the treatment for services and service suppliers from the least developed states” (concerning temporary permission of non-fulfillment of obligations under the services), on “Duty-free and non-quota access to the market for the least developed states” and on “Preferential regulations of origin for the least developed states”.

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Summing up the general result concerning the value of the decisions made by the WTO member states, the following conclusions may be made.

Relatively large number of decisions testifies that this compact form of documents is widely used, when its members for various reasons fail to reach a mutually acceptable consent on complex and multidimensional problems “from the first calling”. Therefore, an offer on adoption of the relevant decision can be considered as a compromise solution of a seemingly deadlock situation, and mainly - as the first step on the way to the agreement in compliance with all national interests.

At drawing up of the draft decision, as the practice shows, justification with the emphasis on carrying out of in-depth study of a problem (against it difficultly to object), and accurately formulated purpose with instructions of the performer and priorities, fixing of completion date of research and a way of use of its results for preparation of recommendations are required.





The decision concerning cases, when the customs administration has the reason to doubt about correctness or accuracy of the declared cost, requires responsible relation to indication of price in foreign trade contracts and to be ready to grant detailed documentation confirming reliability of the price level to the administration in order to avoid the conflict with the customs officers, delays with registration and crossings of border by goods and additional payments, when it is charged with tax.

Entrepreneurial associations shall probably take care of organization among their members of the distributive system of statistical, survey and analytical information, regularly prepared and published by the WTO Secretariat, in particular, of WTO/ISO Information center information, preferably translated into Russian (at least, being of practical value for the Russian participants of foreign trade activity).

Public institutions offering the Russian candidates for work in the Secretariat, Councils, Committees and other structural divisions of the WTO, especially related to the settlement of disputes, should consider high level of requirements placed to vocational training of experts and existence of their experience of practical activities in the respective sphere.

Public institution have to duly and fully provide to the WTO Secretariat information on the changes, made in system of national regulation of economy, mentioning the mode of foreign trade, and directly in its mode and organization, according to the list of the concrete items contained in the Appendix to the Decision on the procedures of notification, and also to actively use the information of the Central register of such notices arriving from other members of the WTO.

Finally, entrepreneurs and their associations, public institutions, promoting development of foreign trade of Russia, should pay due attention to the process of toughening of requirements to objects and regulation of international trade from the point of view of environmental protection: not only to be aware of the main directions of consolidation of these requirements and to achieve their due performance, but better to foresee. Observance of ecologically conditioned standards coordinated at the multilateral level, according to the experience of legislative and law-enforcement practice, for example, of a number of the West European states – Norway, Sweden and Finland - increases the international competitiveness of national goods and services.

### **BIBLIOGRAPHY:**

1. Results of the Uruguay round of multi-lateral trade negotiations. Legal texts M., 2002, 486 p.
2. Practical guidance on global trade system. International trade center of UNCTAD/WTO, Chamber of Industry and Commerce of the Russian Federation, Geneve, 1999, 423 p.
3. Trading into the Future. WTO. The World Trade Organization. Geneva, 1995. 36 p. Ministerial Declaration on Trade in information technology products. - Singapore, 13 December 1996, 15 p.
4. Bali Ministerial Declaration and decisions. Adopted on 7 December 2013. 62 p.

