

THE ROLE OF INTERNATIONAL FOOD SAFETY STANDARDS IN THE RULES OF THE WORLD TRADE ORGANIZATION

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The article examines the state issues to ensure and guarantee the safety of food, the problem of regulating the safety of food products of states at the international level. Its importance and relevance of the documents of various international organizations and conferences. Held description of legal instruments in the field of ensuring global food security, the existing legal solutions at the national, regional and international level, the need for new international legal agreements governing food safety, as well as the establishment of a special coordinating body to ensure compliance with international food standards and guidelines, to adopt uniform legal principles and approaches of regulation, which would provide a mechanism for their implementation.

Keywords: sanitary or phytosanitary measures, WTO procedures, food safety, World Trade Organization

In the context of the interpenetration of the legal system and the close interweaving of economic and other intergovernmental and private relationship to food and food safety is one of the main tasks of the twenty-first century.

An important condition for achieving global food security becomes the implementation of an effective international monitoring and coordination of international cooperation in this field. The solution to this problem can be achieved if the introduction of the states in the national legislation on the basis of best practices in line with international requirements and standards.

The entry of Kazakhstan into the global system of trade relations within the framework of the World Trade Organization (WTO) was the most important prerequisite for the further development of the country. However, in the literature there are concerns about the fact that membership in the WTO is a certain risk for the sanitary and epidemiological welfare of the population. A further reduction of tariff barriers, reduction of state support, the elimination of import quotas and export subsidies, import of cheap and not always high-quality food can have a very significant impact on the processes in the field of domestic production and turnover of food products [9].

Marrakesh Agreement Establishing the World Trade Organization refers to those international agreements that have an impact on the entire system of law. Implementation adopted at the WTO obligations affects nearly all economic and legal spheres, which inevitably leads to the need to protect social values such as life, health, well-being of animals, plants and the environment. However, the introduction of restrictive technical, sanitary and phytosanitary measures, in certain cases, it may be

considered contrary to the rules of the WTO and become the basis for the emergence of an international trade dispute.

Food safety refers to basic problems of food security in Kazakhstan.

Objectives of the study

The aim of the study is the international food safety regulation in the framework of the World Trade Organization and the impact of the WTO on the domestic legislation of Kazakhstan.

To achieve this goal the author poses the following problems:

- To determine the place and role of the World Trade Organization in the global system of food safety.

The object of this study is the relationship between the subjects of international law arising about food safety.

As a subject of research, the rules of WTO law and its application, as well as the activities of States and international organizations in the field of food safety.

As the regulatory framework of this study were used international legal instruments of the World Trade Organization: Marrakesh Agreement Establishing the World Trade Organization; General with the announcement on Tariffs and Trade (GATT); Understanding on Rules and Procedures Governing the Settlement of Disputes; Agreement on the Application of Sanitary and Phytosanitary Measures; Agreement on Technical Barriers to Trade; other acts, including the reports of the panel and the Appellate Body. In addition, they were examined international instruments in the field of food safety, as well as the normative legal acts of the European Union, the Eurasian Economic Union, the Customs Union.

Methodology and research methods are complex scientific and special methods of cognition. The basis of the methodology performs general scientific dialectical method. To make the necessary generalizations, development of classifications studied concepts and phenomena, as well as the reasoning of the findings were applied scientific methods integrated system of study, as well as special and particular methods of scientific knowledge, including systematic, logical, formal and legal, comparative legal, historical statistical.

Scientific novelty consists in the fact that studied the complex current theoretical as well as theoretical and practical issues related to food security in connection with the accession of Kazakhstan to the World Trade Organization. Established place and role of the WTO in the international legal system to ensure food safety, the scope of its powers defined.

In addition, highlighting a number of the most pressing issues related to the trade of genetically – modified products, the application of the precautionary principle, the relationship of the WTO rules of law in the resolution of disputes in the World Trade Organization.

Improving food safety is the foundation of the changes in health and nutrition, and thus one of the major food security problems.

Currently, the international documents and national legal acts there are concepts such as “food security”, “food safety” [3, 9], “food safety”, “food safety”, “food security” [4, 9]. Common law concepts in international instruments are not currently produced. Recognizing the terminological differences, taking into account features of use at the international and national level, the author considers it necessary for the purposes of this paper to use the generic term “food safety” [8].

The Codex Alimentarius Commission [14, 9] defines “food security” as a guarantee that the food will not cause harm to the health of the consumer in the preparation and / or consumption, in accordance with its purpose [1, 9]. In turn discloses FAO Food safety as the absence or presence of a safe and acceptable level of contaminants, impurities, natural toxins or any other substance.

The EU legislation emphasizes the importance of all aspects of continuous food production chain – from primary production and the production of feed and ending with the sale or supply of food to the consumer.

At the level of European legislation in this area was adopted a number of normative legal acts (directives and regulations) [10]. The fundamental piece of legislation is a Regulation

of the European Parliament and of the Council of 28.01.2002 No 178/2002 “On the establishment of general principles and requirements of food law, establishing the European Authority for Food Safety and consolidation procedures with respect to food safety” [11], which established the general principles and requirements of food law in the field and created the basis for ensuring a uniform approach to the development of food law [12]. One of the key requirements of EU food law is a ban on the introduction into circulation of dangerous food products (Art. 14 of Regulation No 178/2002). Food products are considered hazardous in the event that they are harmful to health and / or unsuitable for human consumption.

Regulation No 178/2002 provides for the establishment of the European Authority for Food Safety. Its tasks include consultation, as well as scientific and technical support of the European Commission in all sectors that directly or indirectly affect the safety of food and feed in the EU. Safety Authority acts as an independent advisory authority and thereby contributes to the smooth operation of the internal market [15, 10].

It provides scientific opinions on controversial issues to EU bodies or Member States to take the necessary to ensure food safety risk management decisions based on the facts of the case. The SPS Agreement applies to all sanitary and phytosanitary measures which may directly or indirectly have a negative impact on international trade. In paragraph 4 of Article 2 of the SPS Agreement states that sanitary or phytosanitary measures consistent with the provisions of the Agreement, be deemed to be in compliance with the obligations of membership from the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Art. XX (b).

The SPS Agreement defines two main objectives: on the one hand, to promote the protection and improvement of human life and health, animals and plants and sanitary-epidemiological situation of the Member States; On the other hand, to prevent arbitrary or unjustifiable discrimination by the Member States due to differences in sanitary and phytosanitary standards [16, 5].

As sanitary and phytosanitary measures in accordance with Annex A refers to measures applied:

a) to protect the life or health of animals or plants within the territory of a member of the risks arising from the entry, establishment or spread of pests, diseases, harmful organisms – disease vectors or pathogens;

b) to protect the life or health of humans or animals within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or in connection with the entry, establishment or spread of pests;

d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Among the sanitary or phytosanitary measures include all relevant laws, regulations, rules, requirements and procedures covering including requirements to the final product; process and production methods; test procedures, inspection, certification and approval; quarantine regulations, including relevant requirements associated with the transport of animals or plants or the materials necessary for their activity during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; requirements for packaging and labeling directly to ensure food safety.

The SPS Agreement is based on several basic principles and provisions elaborated including on the basis of the practice of dispute resolution: equivalence, transparency, non-discrimination, harmonization of scientific studies and regionalization.

In order to balance the interests of trade liberalization on the one hand, and non-trade aspects, on the other hand, as a determining factor of the SPS Agreement establishes science-based approach [10, 11]. This approach lies in the fact that any sanitary and phytosanitary measure should have a scientific basis and be evaluated in terms of possible risks.

In accordance with clause in contract 5 of the SPS Agreement states. Member States shall ensure that the basis for their sanitary or phytosanitary measures was put relevant circumstances assessment of risk to the life or health of humans, animals or plants, and take into account the risk assessment techniques developed by the relevant international organizations. It must be taken into account available scientific studies; appropriate methods of production and processing; corresponding inspection techniques sampling and testing; prevalence of specific diseases or pests; the presence of zones free of diseases or pests; appropriate environmental conditions and quarantine or other measures.

In the note should also be made relevant economic factors: the potential damage from the loss of production or sales in the event of entry,

establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; the relative cost-effectiveness of alternative approaches to limiting risks. It should also take into account the need to minimize the negative impact on trade.

With regard to the principle of regionalization of Member States shall ensure that their sanitary and phytosanitary measures whether taken in view of sanitary or phytosanitary characteristics of the area – as a whole country, and part of it, or several countries, or parts thereof, from which (-s) and the product originates for which (-s) it is designed. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, inter alia, the degree of prevalence of specific pests or diseases, the availability of programs to deal with them and overcome them, and appropriate criteria or guidelines which may be developed by relevant international organizations.

Exporting members declared that areas within their territories are zones, free from pests or diseases, or areas with low pest or disease prevalence must provide the necessary proof that, in order to objectively demonstrate to the importing Member that such areas are indeed areas, free from pests or diseases or areas of low prevalence of pests and diseases, and in all likelihood will remain as such. To this end, the importing Member is available on request, reasonable access for inspection, testing and other relevant procedures.

The impact on international trade relations through the embodied in the WTO procedures and dispute resolution mechanisms, ensures that each Member State of its obligations in order to maintain the international trading system of interstate relations.

International trade disputes between Member States arising from the use or threat of use of measures restricting access to the respective markets of food products. As a rule, the subject of the dispute is the measure introduced by the State as violating its obligations under the applicable agreement between them. However, there are other cases where the subject of the dispute becomes the measure does not violate the obligations of the state, but nevertheless threatens the interests of other countries [10].

WTO rules prohibit recourse to unilateral and unauthorized response to ensure cessation of the breach [9]. The very fact of accession to the WTO government automatically means the consent to the compulsory jurisdiction of the Authority to resolve the WTO dispute.

In summary, it should be noted that the dispute settlement mechanism plays a special

role in the system of WTO law. According to G.M. Velyaminov, the mechanism is a landmark innovation in international law, and of particular interest from the point of view of not only the use of already existing institutions and the means of dispute settlement in international relations as a close combination of these means, makes it a particularly effective [9]. It is the most productive of the currently existing international dispute settlement procedures, with the exception of the procedures adopted in the framework of certain regional integration [9]. A whole new meaning corresponding to the realities of international life value, which do not involve the states at the time of negotiation of the relevant rules; d) the development and application of procedural principles; d) the creation of prerequisites for the development of a new direction in the legal regulation of international trade [9]. All this is the basis for the development of a new direction in the legal regulation of international trade in food.

It should also take into account the effectiveness of the mechanism for resolving disputes. The effectiveness of the OCR resolution mechanism also indicates a large percentage of reaching an agreement.

The main purpose of the mechanism is to reach agreement between the parties. In accordance with clause in contract 7.3 Arrangements solution mutually acceptable to the parties to the dispute and consistent with the covered agreements, is preferred. If the state will measure into conformity in the course of the dispute defined obligations, no further action is required of it.

If no mutually acceptable solution to the second purpose of the mechanism is to ensure the abolition of the measures taken if it is established that they are incompatible with the provisions of any of the covered agreements. To this end, it provides an effective executive procedure of the adopted recommendations and decisions, if necessary with the use of repressive measures, as well as permanent monitoring by the OCR until the full resolution of the dispute [9]. In some cases, the very threat of sanctions can induce the respondent State to execute the decision of the panel (Appellate Body).

In fact, a mechanism for dispute resolution is not aimed at that, to punish the wrongdoing State, and the fact that a contract or compensate the financial losses through the balance of trade, thereby bringing an illegal measure in accordance with the agreements of the WTO system [9].

Conclusion

In a globalizing world, taking into account the failure of States to fully ensure and guaran-

tee the safety of the food problem of regulating food safety is attracting increasing attention from the states at the international level. Its importance and relevance is noted in the documents of various international organizations and conferences.

At the moment, there are only a limited number of instruments in the field of ensuring global food security. Existing legal solutions at the national, regional and international levels have significant structural weaknesses. There is a need to create new international legal agreements governing food safety, as well as the establishment of a special coordinating body to ensure compliance with international food standards and guidelines, to adopt uniform legal principles and approaches of regulation, which would provide a mechanism for their implementation.

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