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1994 Treaty as the Basis for the 2011 Agreement on Free Trade Area

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Abstract:

This article focuses on the adoption of the 1994 Agreement on free trade area as the basis for the formation of the 2011 Agreement on free trade area. International relations have been developing constantly, especially on trade issues. Ratification of the 2011 agreement has helped to adapt to modern realities, still basing on the provisions of the 1994 treaty, the final formation of which took more than 10 years.
The main vector of the article is aimed at a segment of dispute resolution, affecting issues of their qualification and assessing effectiveness of the existing mechanisms. We will consider qualitative changes that have caused recognition of the 1994 Agreement on free trade area illegal and signing of the agreement in 2011. Special attention is paid to possible future development of international trade relations, with in-depth analysis of the current situation and previous experience. We will tell about the impact of the 1994 agreement on the development of the agreement in 2011, as well as how these processes and mechanisms have contributed to the situation that we see today.
This article aims to reflect a causal relationship in free trade agreements of 1994 and 2011, as well as determine the actual preconditions for the development of international trade relations on the basis of previous experience and qualitative changes in the niche of the settlement of disputes.

Key Words: *WTO - World Trade Organisation, CIS - Commonwealth of Independent States, International Economic Court of the CIS, SEC - Status of the Economic Court, International Trade Relations, Settlement of Disputes, Norms of International Law*

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Introduction

In the agreement of 1994 it is possible to distinguish entirely two fundamental objectives: the formation of well-defined free trade area and the establishment of a dispute settlement mechanism. Aspects were involved only in the Commonwealth of Independent States (hereinafter the CIS) but in the body of the treaty have been involved the guidelines for long-term development. Partly because of this, the fundamental (basic) principles and mechanisms have been used in the new agreement on free trade area dating back to October 18, 2011. Simply put, despite the fact that the agreement of 1994 has lost its legitimacy in 2012, its basis is valid today, but as a part of more extensive and up to date agreement of 2011. Today the map of the area of free trade gained more impressive dimensions, and the settlement of disputes (the term was used in the 1994 agreement, but in fact it was renamed to the term "disputes" in the treaty of 2011) became more productive, and most importantly easier to use to all parties concerned. In our opinion, because the treaty of 2011 largely respond to the document of 1994, the agreement on free trade area in 1994 can be considered as basic. In fact, we can assume that the new 2011 treaty is not fundamentally new agreement, and is in some ways a modification of the 1994 agreement.

We believe that it is impossible to claim that the new agreement was a final and comprehensive. After the treaty was adopted in 1994, it took more than 10 years to form a free trade area. And it is only about the CIS countries. As the 2011 document registered more relevant mechanisms and by its preparation has been used somewhat different (in comparison with the 1994 document) case-law database, we can assume that the establishment of the provisions of the 2011 agreement on free trade area will take some time. At the same time, in our opinion, it can actually be claimed that the agreement on the framework of free trade and resolving core disputes is not final, and in the future will undergo significant changes.

1. Saving Progressive Mechanisms and their Adaptation

Using some interim verdicts, all of the above can be summarized: despite the fact that the 1994 CIS agreement on free trade has lost its legitimacy in 2012, it has not lost its validity and relevance. At the same time the agreement of 2011, in some ways is an upgrade (improvement and addition) of the 1994 document, and in the foreseeable future may again undergo qualitative changes.

The 1994 agreement merely set the right direction, and helped to assess the effectiveness of mechanisms for dispute resolution. Notably, it is not standard, but only some basics, and the current status on free trade is more productive and adapted under the actual conditions.

The text of the 1994 agreement on free trade zone and the agreement of 2011 is available in a free form, so their studying in this article is inappropriate. Therefore,

we paid special attention to the differences, which in our opinion will help to assess more accurately the qualitative changes. So the application of highlights and complements of ongoing agreements to the comparison is needed.

Qualitative changes in the agreements on free trade area in the segment of the settlement of disputes

As mentioned, in the 1994 agreement was used the term "dispute settlement". According to our estimates, this definition does not fully meet modern trends (particularly the difference of disputes regarding conflict sides' standards). But in the free trade agreement from October 18, 2011 this aspect is already defined as resolution of disputes, which in turn is more accurate terminology, although the two definitions take place.

Comparing the dispute settlement mechanisms in the agreements of 1994 and 2011, we can emphasize that the latter had to step aside from the strict structure of the first document. In the new version instead of alternating transition from one procedure to another, the discretionary algorithms are used, ie instructions for the parties involved are more liberal. But it is worth noting that the standard procedures under the agreement of 1994 had been quite effective, allowing to use them as a basis for the development of elements of the disputes settlement in the new 2011 agreement on free trade area.

But if the provisions of the 1994 agreement have had been rejected, they were objectively not enough effective. Below we analyze the preconditions for ratification of the 2011 agreement, considering, in our opinion, the most important aspects.

2. Preconditions for the Ratification of the 2011 Agreement, and the Reasons for the Loss of the 1994 Agreement's Lawfulness

One of the main reasons for the adoption of the new agreement was the creation of favorable conditions for deepening the integration in the long-term outlook. Also, in order to full, and most importantly effective functioning of the free trade area in the former Soviet Union was required compliance with additional conditions, which were not provided for in the 1994 agreement.

We believe that the agreement on free trade area in the form in which it is working now, only partly echoes the principles and mechanisms described in the 1994 document. Importantly influenced also WTO rules (World Trade Organisation), which have already proven their effectiveness. In a way, at the time of ratification of the new 2011 agreement, in the segment of free trade, especially in resolution of disputes, there was a need to integrate existing basis (meaning 1994 agreement) and the principles of the WTO.

The big downside of the 1994 agreement was the lack of certain guarantees by the parties for fulfill their obligations, to be more precise, a tool to force them in case of

violation of the agreement by one or both of the parties. The new agreement contains clear rules for resolving disputes which are valid for the majority of cases (in fact, reduced the possibility of precedents in which these rules cannot contribute to resolve a dispute).

Among interstate trade relations there can be bilateral and multilateral agreements distinguished. The 1994 document is mostly adapted for multilateral cooperation while in bilateral relations were often used principles and agreements concluded in the 1990s. The new agreement on free trade area combines these aspects in a single agreement, which has significantly simplified the categorization (qualification) of disputes, with clear rules and algorithms to solve them. But the main thing is that many of the principles used previously, are corny outdated. Therefore they need to be adapted to modern conditions, so that could condition the effectiveness of agreement's compliance.

The document from 2011 contains the principles of the abolition of import duties, that were laid back in the 1994 agreement. But a new time creates new rules, so in the latter agreement also appeared clear rules for the niche of subsidies and manifested a strong guarantee of equitable use of the rules of non-tariff regulation.

Another argument for the ratification of the treaty of 2011, and hence the reason for the loss of the legitimacy of the previous agreement were provisions that allow the parties quickly take certain steps if the implementation of trade relations with certain third parties inflicting some damage. Such situations are not uncommon, and the possibility of the efficient intervention can prevent significant losses. In fact, the 2011 agreement provides algorithms that balance the parties, preventing discrimination against participants.

3. On the Procedures for Resolving Disputes

In our opinion, the settlement of disputes in accordance with the 1994 agreement was very successful. Controlled disputing within the legal framework is an important result, which was achieved largely due to the phased sequence of actions, namely:

1. Dialogue and consultation between the parties;
2. Identification of problems and harmonization of their solutions. At this stage, the groups set up to study the details of the dispute, and to develop recommendations to resolve the situation as well;
3. Preparation and submission of an application to the higher economic courts;
4. If necessary, carry out additional procedures under existing international law. Particularly, in this section we mean the procedure of the settlement provided under the WTO.

Notably, the algorithm has involved all parties. At the same time were imposed the steps, allowing to avoid stagnation of the process at one of the stages. Particularly, the 1994 agreement, namely in paragraph 2 of Article 19 stipulates that in the case of

unresolved disputes during 6 months after the presentation of diplomas, requesting a transition to the next procedure may be unilateral, even without the agreement of the other party. In fact, the process of settlement of disputes could be constantly on the move approaching inevitably the resolution of the situation.

It is worth noting that the item no. 4 of the foregoing algorithm provides for situation where the dispute can be resolved withinin the framework of the WTO, if one of the parties involved was not a member of the World Trade Organization. In fact, this stage is not always figured in solving disputes, and was available only after having been passed previous procedure prescribed in Article 19 of the 1994 Agreement on free trade area. It is noteworthy that Article 19 does not contain clear recommendations on the transition between the procedures, but it is considered to be possible. As in the case of partial membership of the parties in WTO disputes could present those countries which in 1992 did not participate in the Agreement on the SEC (Status of the Economic Court). In fact, in this case procedures of the Economic Court of the CIS were not used in the settlement of disputes, using other mechanisms for resolving situations. And we believe that largely due to this, a similar algorithm can be considered as universal, and that was the fundamental reason for its adaptation in the agreement on free trade area in 2011.

4. On Categories of Disputes

Earlier in the article we mentioned that the 2011 agreement on free trade area has simplified the categorization of disputes. Having said that, because the 1994 agreement in this segment, despite the fact that Article 19 contains some qualification. To be more precise, were distinguished notions of "dispute" and "differences" (or "situations"). At the same time the text of the 1994 agreement does not clearly define neither the first nor second term. In fact, its interpretation could be almost arbitrary, but thanks to the UN Charter more often the term "dispute" was used in situations when the presence of mutual claims of the parties, and the "situation" implied any disagreement on any issue. In turn, in Article 19 there is a more "detailed" qualification of disputes:

- With regard to the provisions of the agreement;
- Regarding the interpretation of the elements of the agreement;
- The debate on the rights and obligations of the parties;
- The debate about the rights and obligations in connection with the agreement.

Despite vague categorization, paragraph 1 of Article 20 provides a limitation that, in our opinion, helped to prevent the emergence of a great number of precedents. It states that the other obligations of the parties shall not contradict the terms of the agreement. Also, we believe that it was managed to adapt the provisions in the 2011 agreement on free trade area.

5. On Primary Reasons for Taking of the 2011 Agreement on Free Trade Area

In 2011, a lot of countries have become members of the WTO, particularly Ukraine, Moldova, Georgia and Kyrgyzstan. At the same time, many states were already at the stage of entry into the World Trade Organization, which would definitely require to adapt the provisions in the free trade area under the WTO. There was an urgent need to integrate the current trading system in the world economy.

In our opinion, part of the above reasons, as well as recognition of the rules of the WTO agreements and international law, became central to the ratification of the 2011 agreement on free trade area. Accordingly, the outdated 1994 agreement ceased to meet current standards and does not provide the opportunities for economic development and the guarantees of mutually beneficial trade relations, which are incorporated in the 2011 agreement. In fact, since the recognition of the illegality of the 1994 agreement, trade relations of the CIS countries have discovered a possible way of further development, based on over 10 years of experience in the formation of the 1994 agreement.

6. What can we expect from Realia of the 2011 Agreement on Free Trade

Despite the numerous, in our opinion, aforementioned advantages, for some countries the new provisions of the agreement may have a negative impact. In fact, in case of disagreement of the parties with the trade policy of any state, it may be a controversial situation that will result for a consultation, during which it may be decided to eclude the specific country from free trade area. That is, if the trade policy of the government adversely affects the trade of other parties of the agreement, it (the state) can be excluded.

Among the important differences between the 1994 agreement and the 2011 agreement on free trade we should highlight a paragraph of Article 19, which states that the parties involved have certain obligations to discharge which they must make every effort. We believe that this principle could be fundamental to the creation of clear international trade policy, pursuing the offending country under the rules of international law. As an important achievement enable this option in the agreement - the possibility of mutual consultation. Comparing with the provisions of the 1994 agreement it could be claimed that the agreement of 2011 more competently implemented tools to achieve a compromise in the dispute. If the parties fail to reach an agreement at this stage, the dispute may be further considered in the Economic Court of the CIS, or handed over to a commission of experts (according to the procedure described in Annex 4 of the 2011 Agreement). The exact way depends on whether the parties are participants of the Agreement on the status of the Economic Court, that is, in fact, the further progress and dispute resolution are possible in any case.

As already mentioned, the presence of WTO rules traces more and more clearly. In the 2011 agreement on free trade area is viewed distinct priority of mechanisms of

the WTO in situations that are directly related to the competence of the organization (Article 19). The 1994 agreement on free trade area did not contain such priority.

Here it is possible to emphasize that, unlike the 1994 agreement, the 2011 agreement focuses not only on the countries of the CIS, but also on any state. Consequently, the scale and prospects of a new agreement on free trade area in the segment of the disputes settlement are much wider.

7. Conclusion

As it can be understood from the article, the provisions of the 2011 agreement repeat ones of the 1994 treaty. Despite this, the newly ratified treaty has a great opportunity in the segment of the dispute settlement. In fact, the principles that were laid down in a document from 1994, are still relevant today, and that given the fact the treaty has lost its legitimacy in 2012.

As the final formation of the 1994 agreement took more than 10 years, we can also predict the phased development of the 2011 agreement. But when you consider the fact of certain fundamental similarity of these documents, the projected final formation of the 2011 agreement as a fundamental will take much less time, basing on prior experience, as well as already established base.

Dispute settlement segment in the 1994 agreement could not cover all directions, but it was a very clear and quite effective algorithm. Largely because of this the main elements of the tools for resolving disputes have also been taken to the 2011 agreement. The structure of the latter has become more loyal, when compared with the strict structure of the 1994 agreement. Notably, it can be claimed that the instructions gained the discretionary liberal nature to all parties involved.

An important achievement of the new agreement is the ability to integrate it under any state, in fact, thus extending the rule of law in the segment of international trade to all countries, not only the members of the CIS.

8. Results

Distribution of WTO rules, obviously, was a fundamental impetus for change. The integration of the provisions of the 1994 Agreement on free trade area with the current realities and requirements in the field of international trade relations have resulted in the signing of the 2011 agreement, and the recognition of the illegality of an earlier treaty.

The agreement of 2011 has become more liberal, at the same time, the most advanced tools, such as dispute resolution algorithms, have been preserved.

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