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"Soft Law" through the Prism of the WTO

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ABSTRACT
The article shows the complexity of the regulatory regime applied in the WTO. Along with legally binding norms, legally non-binding ones are used, but which, for various reasons, are usually followed. Such rules are called "soft law". It is shown that the methods of enforcement of the "soft law" norms known to us do not quite fit the "soft law" of the WTO.

KEYWORDS: *Soft law, WTO- World Trade Organization, efficiency, hard law, international law*

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Today, in the world of jurisprudence, more and more often one can meet a relatively "new" legal category - "soft law". In my speech today, I would like to consider this concept within the framework of international law and the World Trade Organization, because the liberalization of trade restrictions and the emergence of the WTO have expanded trade between entities represented in the international arena. We are seeing the economic growth of developing countries, the growing integration of world production, higher prices for natural resources and the interdependence of the world economy. These processes within the framework of the WTO are regulated by a legal framework with a completely traditional character - "hard", and since the end of the 20th century, the "soft" nature of law has also been singled out in the system of regulatory management of an organization and its elements.

The term "soft law", as an independent phenomenon in legal discourse, has appeared relatively recently. According to Western scientists, it can be defined as a set of formalized general provisions (norms, principles, criteria, standards) that are not legally binding, are not provided with official sanctions and are observed voluntarily due to the authority of their creators, the interest of addressees and targeted social pressure. .

In turn, the jurists of the post-Soviet countries believe that the term "soft law" is used to define a special type of international legal norms, which, unlike "hard law", do not give rise to clear rights and obligations, but provide only general instructions that subjects must adhere to.

I think that a clear and unified definition of this category will be established with time and practice, but even now we can distinguish the distinctive characteristics of "soft law":

- the effectiveness and binding nature of these rules is supported by an authoritative center;
- "soft law" is most often generated by international organizations
- "soft law" is very close to "hard law", first of all, by its ability to generate legal consequences.
- norms of "soft law" do not go through or do not go through all the stage

In terms of the above characteristics, soft law is a very positive development. But for objectivity, let's dwell on its shortcomings. Chief among them is the flexibility of soft law, i.e. some optionality. It provides the parties with an easier escape from their

obligations. Due to its non-binding nature, it is difficult to assess at what level States are fulfilling their obligations. Based on this, one can say that the increasing use of "soft law" can destabilize the entire international normative system and turn it into an instrument that can no longer serve its goals.

It should be noted that, due to its ambiguous nature, soft law leaves room for broader interpretation by states, and this can sometimes go beyond the letter of the law.

Given the fact that finance and international trade are a very dynamic and rapidly changing environment, accordingly, the legal mechanisms that are designed to solve emerging problems must be flexible and quickly adaptable to new conditions. Soft law mechanisms appear to be beneficial from this point of view, as they are easy to adopt, change or even abandon, and provide flexibility in implementation.

However, I believe that there should be some basic and minimum legal and regulatory framework set by strong legislation. This minimum legal framework should serve as the basis upon which other non-mandatory principles of best practice should be established.

Considering “soft law” in the context of the WTO, a distinction can be made between primary and secondary “soft law” in general international law. Primary “soft law” refers to those normative texts that are not adopted in the form of a treaty and are addressed to the international community as a whole, or to the entire membership of the organization. So, for example, the declaration adopted at the end of one of the ministerial conferences of the organization is the primary “soft law” for the governments of the WTO member countries.

Secondary soft law consists of recommendations and general comments from international oversight bodies, jurisprudence and resolutions of political bodies of international organizations applying primary rules.

In the context of the WTO, there are other forms of “soft law”, including in the form of recommendations adopted by members of one of the boards or committees, guidance from management, reports, statements, programs of action, etc. They may also include informal agreements in the management of the contractual the WTO regime, such as informal meetings, informal sessions and informal documents for discussion among members. Informal arrangements can be used for a number of reasons, such as: strengthening members' obligations under the agreements, reaffirming a common understanding of the WTO's core treaty obligations through a drafting and interpretation process, providing the basis for subsequent treaty texts and other forms of rules, or simply as a means of building consensus before rules are developed.

Many of these instruments and informal “soft law” arrangements are part of WTO membership practice, which is sometimes based on a mixture of specific WTO rules and decades of practice dating back to the period of the General Agreement on Tariffs and Trade. It may also find expression in secondary or subsidiary rules for the fulfillment of WTO obligations, as is the case with some decisions of councils or committees. These secondary rules may, in turn, give rise to other soft law norms.

The main reason for the use of soft law in the WTO legal order is that soft law fulfills all the functions that are usually attributed to it also in other areas of general international law, namely flexibility, adaptability, speed and simplicity.

Other reasons for using soft law in the WTO are that it has proven particularly useful when the issue is politically sensitive, when there is widespread disagreement or lack of coordination among WTO members, when the issue is highly contentious, or when cooperation contributes to conflicts. Such conflicts manifest themselves most acutely when the interests of members of one group conflict with the interests of another, potentially more influential group, that is, the rest of the members, in an attempt to change the terms of cooperation in their favor. Therefore, they put forward the argument that "hard" and "soft" law can act not only as a complement or alternative, but also as antagonists to each other, and that the problem of conflicts related to the distribution of interests was underestimated in determining the results of negotiations and other forms of international cooperation. Thus, to soften the blow to a "hard" contractual obligation, soft law instruments make enforcement problematic but reduce distributive conflicts in negotiations over the exact terms of cooperation.

Speaking about the effectiveness of soft law, we can say that it does not have an instant impact, which complicates its existence, but it is still able to positively influence specific conflict situations over time, which requires constant monitoring and evaluation. The presence of “soft law” in the WTO makes this organization attractive for participation and interesting, from the point of view of research, for further deepening knowledge and predicting trends in modern international lawmaking in order to promote state interests and increase the role of the WTO.