THE IMPLICATION OF THE MARRAKESH TREATY ON INTERNATIONAL COMMERCIAL RELATIONS

The creation of the World Trade Organisation through the Marrakesh Agreement led the international trade relations to a new stage, supported by objectives, rules and specific disciplines and managed by permanent institutions. The tendencies to liberalize commerce came as an answer to GATT, which had many flows, leading to drastic restrictions of the market access. The Uruguay Round of negotiations was meant to resuscitate the international commerce and to regulate aspects that were not covered before by GATT, such as trade n services. The inexistence of a institutional structure, in the context of the failure of the Havana Chart, was one of the major concerns of the negotiation round thru out the second half of the XXth Century. In this context, the birth of the WTO was the natural outcome of 50 years of negotiations, made in order to create the proper instruments for the application of the international trade agreements. WTO is a international organization, with all the immunities and privileges that this statute implies. It is characterized by some original features: the absence of an executive body, the maximum implication of the member states delegates. WTO is a member driven organization and all its functions are carried out by the representatives of the member states.

The study starts with an analysis of the institutional structure of the Organisation, In Chapter I are analysed, on one hand, the creation, managing and functioning way of the bodies within the WTO, on the other hand, their interaction with aspects related to their specific functioning. The comments focus around the existing possibilities at the moment, being given the competence and the specific activity of these bodies, to serve the goals and the objectives of the WTO and to improve the frame of the international multilateral trade system. Also in this chapter are analysed the objectives and the functions of the Organisation, seen from an objective perspective in order to set up the basis of the study, regarding the essential aspects of the Organisation and the fundamental rules of the multilateral system (the fundamental principles, the rules regarding the access to the market of goods and services, the exceptions, protecting the internal market, aspects related to trade of the intellectual property rights).

By adopting the Marrakesh Agreement, the fragmented regulations in the GATT practice was replaced with a unitary structure. All the multilateral agreements regarding the trade in goods, services and intellectual property related to trade are part of a single legal instrument, the Marrakesh Agreement, which has to be interpreted and applied unitarily, considering the fundamental goal of liberalising the international trade. The sector – by - sector regulation does not affect this feature, but is determined by the specific moment of genesis of the legal norm and this occurs not by imposing the norm, but by negotiating it. As a consequence, according to the concessions made by states on each trade sector, the regulation has specific characteristics, but is integrated to the general assembly.

In this context, Chapter II of the paper makes a general analysis of the WTO agreements, that is of the appendices to the Marrakesh Agreement, by highlighting the rapport between the international legal order created through these and the internal legal order. By observing the structure of the annexes to the Marrakesh Agreement, the sphere of application, the content and the specific of all the agreements' regulation are presented, indicating appropriate ways of interpreting. The international agreements adopted in the Uruguay Round are interpreted according to the Vienna Convention on the law of treaties from 1969, therefore the text and context are both equally important. The interpretation and application of any of the treaties is made not only by its provisions, but also taking into account the provisions of the others multilateral treaties and of the Marrakesh Agreement. In case of conflict, the WTO Agreement is prevailing.

The result of the substantial and institutional construction achieved through the Marrakesh Agreement is the international multilateral trade system within the WTO. This system is based on the non-discrimination principle, with two components: the most favoured nation's treatment and the national treatment. The two principles are analysed in Chapter III of the paper and focus is placed upon their importance in the three fields of trade in services and intellectual property.

The treatment of the most favoured nation is a general obligation for all the WTO member states, according to which these have to grant another member state the same treatment as the other member states. Based on this obligation, a WTO member is not allowed to make discriminations among its trade partners by offering, for example to the

imported members from certain states a more favourable treatment than to those coming from the territory of other members. Against numerous exceptions and derogations, this obligation is the most important rule from the WTO system. If this one lacks, we cannot talk about an international multilateral trade system.

The national treatment implies that an WTO member state treats the imported products, as their services and providers, in a not less favourable manner than the treatment applied to the local products, services and providers, on the condition that they are similar. Applying the national treatment implies, therefore, that the imported products, for example, once they got through the customs and are on the internal market benefit from the same treatment regarding the internal taxation and the regulations regarding trading not less favourable than that applicable to the national products with a similar feature. The WTO member states are not allowed, in other words, to discriminate against imported products or services and in favour of the national ones.

The national treatment is an important rule of the WTO law, which generated a lot of disputes. For the trade in goods, the obligation of granting the national treatment has general applicability for all sectors and products. Regarding the trade in services, the national treatment does not have such coverage, being applied only if a member state took its obligation of granting the national treatment related to certain specific sectors and ways of providing services, through the commitments made and written down in its list.

Beside the two main principles of the international multilateral trade system within the WTO, an important set of rules applicable to the international exchanges of goods and services are those referring to the access on the market of goods and services. Chapter IV of the paper is dedicated to the rules regarding the access to the market of goods and services. These can be classified in several categories, such as rules referring to customs taxes, or tariffs, rules referring to other taxes, fares, contributions or expenses, quantitative restrictions and other forms of non-tariff barriers, such as technical trade barriers, sanitary and phytosanitary measures, transparency of regulations regarding trade, customs formalities etc.

Within the WTO regulations, the imposing of customs taxes is not forbidden and, in practice, numerous states impose such tariffs on the imported products. The existing regulations foresee a cap system of the tariffs, in the case the member state makes

commitments regarding these. Such commitments derive from the negotiations rounds on the tariffs and are materialised in the observations written down in the list of tariff concessions of that member. For the products for which such commitments were made, the applied customs taxes cannot overcome the level foreseen in the list.

Unlike customs taxes, the quantitative restrictions are forbidden in the WTO regulation, as a general rule. Beside the cases in which one of the numerous exceptions from this rule is applied, the WTO member states are not allowed to forbid import or export of certain products or to set up shares in this respect. Regarding the trade in services, the quantitative restrictions are, as a principle, forbidden in those sectors in which specific commitments were made. In these sectors, the quantitative restrictions can be imposed only if this thing was foreseen in the list of that state.

Beside these, the technical, sanitary and phytosanitary measures, the transparency of regulations regarding trade, customs formalities can also be trade barriers. These have a diversified character and in many situations, in case of not respecting or of abusive enforcement of the rules referring to the international trade in goods and services, they can annul, concretely, the effects of the general principles or of the rules referring to tariffs and the forbidding of quantitative restrictions.

The regulations adopted within the Uruguay Negotiations Round give a special attention not only to the field of international trade in itself, but also to the way in which the fundamental objective of trade liberalising can enter a conflict with other important social values. These have the character of exceptions, allowing the member states to deviate, but respecting certain conditions, from the basic rules and disciplines resulting from the quality of a WTO member in order to satisfy other non-economic or economic interests. Such values or non-economic interests include the environmental protection, the protection of health, public morale, national patrimony and national and international security. In Chapter V these exceptions are analysed in detail, from the perspective of their importance upon the rules governing the trade in goods and services.

The economic interests protected through the exceptions include the protection of the national industry from the important prejudices caused by an unexpected and sudden increase of imports (safeguard measures), safeguard of the payments balance and regional

economic integration, by creating customs associations and free exchange areas, special and different treatments granted to the developing countries.

Beside the multilateral perspective, the WTO regulations grant importance also to the protection of the internal markets, especially in the trade in goods, when these are threatened by acts of disloyal competition. In Chapter VI of the paper, the rules elaborated within the WTO regarding these acts, that is dumping and subsidies, are analysed. The measures which can be adopted by the member states for combating the negative effects of these on their internal market and national industry are also analysed.

Dumping, that is the introduction of a product on the market of a state at an inferior price to the normal value of that product, is not forbidden in itself in the WTO law. However, where dumping leads to or threatens with the causing of a harm to the national industry branch of an importing member state, the producer of similar products to those which constitute the dumping, that state has the right to impose a series of measures, including anti-dumping taxes, meant to remove that harm.

The governmental financial subsidies or contributions which offer a benefit are also the subject of a detailed set of rules. Certain subsidies, such as the export ones are prohibited („red box"), other can cause adverse effects to the economy of other member states, being actionable („the yellow box"). In case the subsidies do not have a specific character, they are non-actionable, so permitted in the WTO law („green box").

As regards the subsidies, the regulations applicable within the WTO distinguish between two categories of remedies: the multilateral ones, which imply the participation of the WTO bodies, with the goal of withdrawing the forbidden subsidies or those causing an adverse effect or of finding ways to remove the produced negative consequences and the unilateral ones, that is the possibility of states to impose and apply compensatory measures, with the goal of removing the harm brought to the national economy.

The contemporary international trade is strictly related, especially the one in goods, with the intellectual property rights. Beside the main categories of such rights (the author's right, factory and trade brands, licenses, geographical indications etc.), in the practice of the international trade relations, matters related to the protection of the non-disclosed information, even when their secret character has an economic value (for

example the know-how or the trade secret) and respecting the rules of disloyal competition in contractual licences showed their importance, as well.

In Chapter VII aspects related to trade of the intellectual property rights are analysed and focus is placed on the study of various categories of rights or institutions entering this category.

The existing relations between the TRIPS Agreement, as an WTO fundamental multilateral agreement, appendix to the Marrakesh Agreement and other international agreements in the field of the intellectual property protection are analysed (The Paris Convention on the Protection of the Industrial Property from 1883, as it was modified through the Stockholm Act in 1967, The Berne Convention for the Protection of Literary and Artistic Works from 1971, The Convention for the Protection of Artists Interpreters or Executors, Producers of Phonograms and Broadcasting Organisations from 1961, The Treaty on Intellectual Property in Respect of Integrated Circuits from 1989).

The incorporation of part of the existing rules in these international instruments in the TRIPS Agreement and supplementing them implied a detailed and careful analysis, in order to identify the minimum standard of protection that the TRIPS Agreement imposes on the member states, so much more that through this incorporation they become applicable rules of law, even if the treaties through which these rules were created do not produce legal effects yet (as the case of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits).

An international multilateral trade system based on the non-discrimination idea leads naturally to the idea of progress and development. Liberalisation of trade is not a goal in itself, but a means to reach these objectives for all the member states, no matter if they are developed, in the course of development or underdeveloped. This thing is clearly stated even in the preamble of the Marrakesh Agreement and is reflected both in the ministerial statements adopted within the Uruguay Round and in the ministerial statement from Doha.

Liberalising trade, no matter how desirable might be, has to be achieved in a manner which to promote the economic development of all the participants. Where there is such a development, it is amplified by such a liberalising.

Regarding the reaching of this objective for the states in course of development and especially for the underdeveloped ones, the WTO international multilateral trade system has been and still is the source of a lot of criticism. Although created in order to ensure the economic increase and reducing the poverty in all the member states, this system has led many times to the marginalisation and not to the integration of the economies of the states in course of development or the underdeveloped states. As a consequence, a careful analysis of the applicable rules and, especially of their capacity to be more than simple rhetorical wishes is necessary.

Obviously, the WTO international trade system, against its multilateral character, cannot be equivalent to an international trade global system, exactly as it cannot be the universal solution for all the global, economic or any other problems.

However, we have to stress the fact that the WTO regulations, as part of the trade international law, have a crucial importance for regulating the international trade relations, their study being an essential thing in the education of any specialist in the field.