

International trade disputes in modern regulatory paradigm *

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ABSTRACT. This article studies the latest trends observed in the area of contradictory relations between countries with regard to international trade, which cause changes in the paradigm of international trade disputes. It has been found out that any state of inconsistent relations between the countries is recently characterized as a «trade war». It has been analyzed the notions of «dispute», «conflict», «war» according to international regulatory documents and determined the applicability of these terms depending on a number of criteria. It has been studied the evolution of the objects of international trade disputes since the time of ancient Greece until today, and new trends based on this have been revealed with regard to use of trade policy instruments that cause disputes between countries. Several specific examples of international trade disputes and causes of their occurrence have been considered. A quantitative analysis of international trade disputes in general and in relations between the leading countries in terms of a number of the trade disputes in which they were involved has been performed.

KEYWORDS: disputable situation, international trade dispute, international conflict, trade war, international law, liberalization, protectionism, GATT, World Trade Organization, round of multilateral negotiations, international trade, foreign sales market, trade policy, trade sanctions, customs tariffs, tools of non-tariff regulation of international trade, expansion, economic losses, import, export.

Introduction

The intensive development of globalization processes in late 20th and early 21st century, a growth in volumes of the international trade, a change of countries' positions in the world market and the structures of their goods turnover, a desire of the countries to support the competitiveness of their own producers and protectionist tendencies in new forms actualize a problem of aggravation of trade relations between the countries. Each counterparty in the international trade tries to secure the most favorable terms and benefits, even while discriminating against a trade partner. Governments of countries defend the interests of domestic producers by all means available to them. Despite the efforts of the World Trade Organization (WTO) to provide the member countries with favorable conditions for the international trade, the proneness to conflict of international trade relations remains considerable. In-

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ternational trade disputes break out between different countries both being members of the WTO and other countries.

Discussions on correlation between a level of international economic relations and a number of conflicts are still going on among the economists who study inter-state conflicts in 21st century. Thus, according to Edward Mansfield and Brian Pollins, liberals believe that the high level of trade relations between countries contributes to maximum reduction in potential conflicts in their relations. Instead, realists believe that states, by contrast, prefer to maximize the effect, especially in the case of asymmetric gains from trade: seizure of territories and, in particular, markets with using aggressive (war) methods.² Indra de Soysa and Nils Petter Gleditsch believe that the high level of trade relations prevents wars between the democratic countries, but rather contributes to the differences between them and other countries.³

Empirical studies of correlation between a level of trade between the member countries of the World Trade Organization (WTO) and a number of complaints received by the Dispute Settlement Body of the organization show that there is a certain (moderate) inverse correlation between those indicators. The correlation coefficient calculated by the author for the period of WTO existence on the basis of indicators of the value of world exports and a number of registered trade disputes is -0.67. This is shown in Figure 1. Many foreign and domestic scholars, despite the controversies that existed previously and still exist among individual countries and groups of countries, emphasize the positive role of WTO in establishing the trade and economic relations between countries. This organization does not allow claims arising in countries on its trading partners to develop in more severe forms of resistance such as military conflicts.

Today, the problem of studying the complications of interstate trade and economic relations is associated, to some extent, with the lack of a generally accepted theory of conflicts in the international trade. Scientific works dedicated to a comprehensive research of the paradigm of international trade disputes in the context of their substance, causes, nature, behavior forms, evolution under the influence of factors of economic, political, environmental and other origins etc. have been so far unavailable. No inform terminology has been formulated. However, the mechanisms of cognition of international trade disputes now have a significant cognitive potential to explain the conflict phenomena and proc-

² Edward D. Mansfield, Brian M. Pollins. *The Study of Interdependence and Conflict: Recent Advances, Open Questions, and Directions for Future Research* // *The Journal of Conflict Resolution*. 2001, No 45 (6). P. 845

³ Indra de Soysa, Nils Petter Gleditsch. *The Liberal Globalist Case* // Bjorn Hettne, Bertil Oden (eds.). *Global Governance in the 21st Century: Alternative Perspective on World Order*. Stockholm: Almqvist & Wiksell, 2002. P. 26-73.

esses in the modern trade and economic relations between countries.

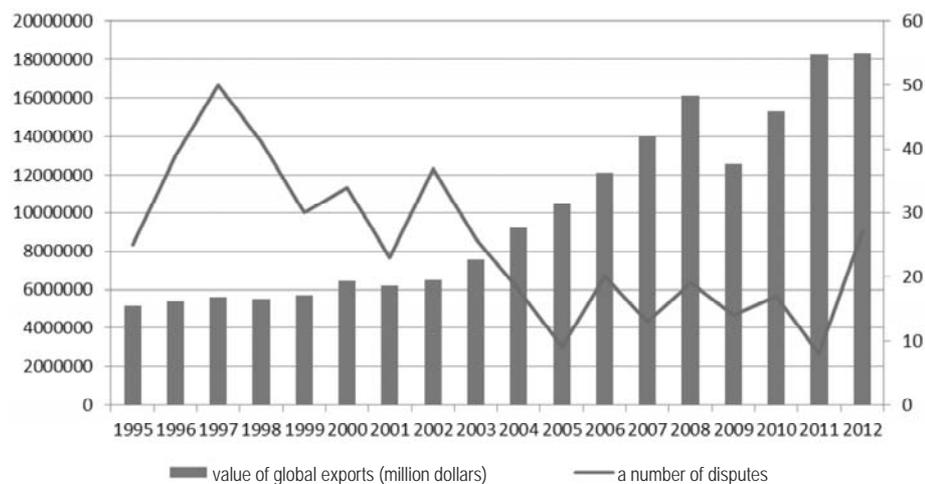


Fig. 1. The volume of global exports and a number of international trade disputes reported in the WTO during 1995-2012⁴

Works by M.H.Kapitonenko⁵, V.Kremenyuk⁶, V.Panova⁷, M.S. Chornoudova⁸, A.Ya.Antsupov and A.I.Shypilov⁹, D.M.Feldman¹⁰ and others are dedicated to studying the terminology and general conceptual principles of international conflicts. Some aspects of a range of problems concerning the disputed relations in the international trade have been studied by Bialy Yu.¹¹, Dubrovina O.A.¹², Kapelinsky I.Yu.¹³, Smbatyan A.S.¹⁴, Shnytko

⁴ Drafted by the author according to the data of the World Trade Organization. <http://www.wto.org>

⁵ Kapitonenko M.G. International conflicts: textbook for students of higher educational establishment. / M.G.Kapitonenko. — K.: Lybid, 2009. — 352 p.

⁶ Kremenyuk V. Modern International Conflict: Problems of Control. Journal of International Relations Theory and World Policy «International Processes». Electronic resource. Access mode: <http://www.intertrends.ru/one/005.htm>

⁷ Panova V. Modern Western Studies of International Conflict. Journal of International Relations Theory and Policy «International Processes» [Electronic resource]. — Access mode: <http://www.intertrend.ru/seven/005.htm>.

⁸ Chernoudova M.S. Concept of Conflict in International Law / M.S.Chernoudova. // Moscow Journal of International Law. 2005. — No. 5. — pp. 77 — 92

⁹ Antsupov A.Ya, Shpylov A.I., Conflict Management Studies: Textbook for Universities. — Moscow: YUNYTY.2000. — 551 p.

¹⁰ Feldman D.M. Political Science of Conflict. Textbook. M.: Publishing House «Strategy», 1998. p. 9 (199 p.).

¹¹ Bialy Yu. «Trade War». A series of articles in the newspaper «Sut vremeni» in 2013. Electronic resource. Access mode: <http://www.eot.su>.

¹² Dubrovina O.A. Correlation between Protectionism and Fretrade in External Trade. Tesis ... candidate of economic sciences: 08.00.14 / O.A. Dubrovina. — Moscow, 2005. — 151 p.

¹³ Kapelynsky Y.Yu. Causes of Occurrence of Conflicts in Processes of Global Trade Development and Formation of Multilateral Mechanisms of their Settlement. Tesis ... candidate of economic sciences: 08.00.14 / Y.Yu.Kapelynsky. — Moscow, 2004. — 153 p.

A.S.¹⁵ and others. In particular, Biay Yu. explores the phenomenon of trade wars in a historical perspective with focusing on their causes and consequences. Dubrovina O.O. has analyzed the problem of foreign trade contradictions that arise between countries, determined their nature and causes in the context of correlation between the liberalization and protectionism in the theory and practice of international trade. Kapelynsky I. Yu., in his Ph.D. Thesis, has placed the main focus on studying the issues of formation of international mechanisms for the resolution of conflicts in the global market, inter alia, the WTO mechanism. Smbatyan A.S. has analyzed in detail the practice of dispute settlement in the GATT/WTO by studying the texts of reports by arbitration groups and the Appellate Body in the period of 1952-2005. Shnytko A.S. has explored a range of problems of economic wars and identified the trade wars as a specific kind of economic war.

Despite the fact that numerous international trade disputes are recorded in the history, the problem of formation of a disputable relations paradigm in the international trade is still relevant. Only some aspects of this problem area are dealt with in a small number of research papers available. An attempt to define a conceptual model of international trade disputes, to determine their structure, to identify the determinants (causes, subjects, participants, an object field, a spatial scale, a level of intensity, a duration, methods of settlement, the consequences, etc.) was made by the author of this article in the works published earlier¹⁶. However, new trends in the global economy caused, on the one hand, by raising the globalization processes, and on the other hand, by serious crises arising from time to time, resulted in a need for further research and identified the purpose of the article to identify and explore new features which were assumed by the modern paradigm of international trade disputes as a result of influence of the aforementioned factors.

Approaches to the interpretation of categories of disputable trade and economic relations between countries

A uniform approach to the basic concepts of international conflict management generally and conflict management in the area of international trade and economic relations, in particular, has not been yet developed among scholars and specialists in international

¹⁴ Smbatyan A.S. International Trade Disputes in the GATT/WTO: favorite solutions (1952-2005). / A.S.Smbatyan. — M.: Wolters Kluwer. — 344 p.

¹⁵ Shnytko A.S. Economic Wars: origins, forms, objectives, problems, prospects. / A.S.Shnytko. — K.: Genesa, 2007. — 376 p.

¹⁶ Gordeeva T.F. Determinants of Conflict Situations in International Trade. // Formation of a market economy: Collection of scientific papers. K.: KNEU, 2011. edition 25. P. 276-285. Gordeeva T.F. Modern concept of international trade disputes. Research notes: Collection of scientific papers. K.: KNEU, 2012. edition 14. P.2.p.196-202.

economic relations both in Ukraine and outside it. The term «trade dispute» is used *pari passu* with the term «trade conflict» in scientific and journalistic literature on the international trade relations. In addition, the recent emergence of any problems in trade relations between countries in the information space is often specified with the term «trade war». Moreover, the authors arbitrarily, at their discretion, select one or another term, regardless of the specifics of the stated categories and actually equal them. The problem of need to distinguish the specified terms has been rarely raised in the literature and never solved. However, in the author's opinion, each of the said terms has a certain specific character and its use should be associated with respective characteristic features of the phenomenon under study.

First of all, it is necessary to clearly determine the content that is embedded in the notion: a disputable situation, a dispute, a conflict, a war and to identify the criteria for classification of a particular case of violation of normal (conflict-free) trade relations between countries in an appropriate way.

The United Nations and the World Trade Organization prefer the term «dispute» to refer to the difficulties in relations between states. The term «international dispute» is commonly used in the international law to specify the presence of unresolved issues, dissension, discrepancies between states associated with various problems of their relationships. One of the first definitions of an international dispute the most often cited in the literature was formulated by the Permanent Court of International Justice (the predecessor of the International Court of Justice) in 1924: «A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons»¹⁷. Common understanding of the content of this concept based on the practice of the International Court of Justice is formed in the modern theory, under which an international dispute means a conflict of legal opinions, which objectively exists before the hearing of a case. However, the availability of disagreements and contradictions between states, as it is noted in the definition, is not still a dispute. For a disagreement or a contradiction to turn into a dispute between countries, they should be objectively expressed in formal actions, at least by one of them.¹⁸ A state of relations between countries is considered a dispute only when certain actions are perceived by the counterparty as such that create a threat for the country in a certain area of its life and raise concerns and claims to the former party, but the latter does not pay any attention to this. Use of the

¹⁷ The Mavrommatis Palestine Concessions. August 30th. 1924 // Publications of the Permanent Court of Justice. Series A. №2. P. 11. (37 p.) [Electronic resource]. — Access mode: http://www.icj-cij.org/cijwww/cdecisions/ccpij/serie_A/A_02/06_Mavrommatis_en_Palestine_Arret.pdf

¹⁸ International Law: Textbook / Edited by M.V. Buromensky — K.: Yurinkom Inter, 2006. p.236.

term «dispute»¹⁹ is eligible from the standpoint of modern international law, because it is this term that is specified in the provisions of Chapter VI «Pacific settlement of disputes» (articles 33-38) and Chapter VII «Actions with respect to threats to the peace, breaches of the peace and acts of aggression» (articles 39-51) of the UN Charter.²⁰

A situation that could lead to increased tension in international relations and cause a dispute with a disagreement in interests if states not accompanied by laying the mutual claims is referred to as «a disputable situation» in the UN Charter (article 34).

Disputes in practice of the World Trade Organization (WTO) are considered significant disagreements between countries in the interpretation of a certain trade rule or obligation. A dispute usually arises when a particular country introduces some trade measures or takes actions that, in an opinion of one or more WTO member countries, violate the Treaties concluded or result in non-performance by the country with its obligations.²¹

The term «conflict» is often used in international economic relations as a synonym for the term «dispute». According to the calculations of Feldman D.M., a Russian expert on the conflict management studies, there are more than 70 definitions of a conflict.²² The difficulty to have a single definition of a conflict in the international law is associated with the ambiguity of its application in various scientific disciplines and the availability of many notions having the close meaning such as: clash, fight, dispute, aggression, collision, etc.

While exploring the problem of any scientific definition of an international conflict, Kapitonenko M.G. is based on the fact that the phenomenon of a conflict is closely linked to contradictions. The main difference between a contradiction and a conflict is in the subjective nature of the latter as opposed to objective-subjective manifestation of the former. A contradiction can be seen between any elements of the material and immaterial world. The objectivity of contradictions, their «eternal» nature itself manifests in this. A conflict is not as the same as a contradiction as it represents the interaction of actors. This interaction is based on contradictions, but the mere contradiction or even a system of contradictions is not enough for a conflict to arise. The subjects of a conflict usually mean its direct participants who are separated by

¹⁹ Hereinafter, the author considers the terms «dispute» and «contradictory» identical.

²⁰ Shevchenko A. International dispute, its legal nature and peaceful resolution via arbitration. Foreign trade: economics, finance and law. 2012, No. 5 p. 143 — p.142-144

²¹ The global trading system: development of institutions, rules, tools of WTO: Monograph / T.M.Tsyhankova, the writing team head and science editor. — K.: KNEU, 2003. p.410-411. — 660 p.

²² Feldman D.M. Political science of conflict. Textbook. M.: Publishing House «Strategy», 1998. p. 9 (199 p.)

incompatible interests and values. A conflict has the dual nature as it exists both in the mind and actions of the participants.²³

The distinctive feature of an international conflict is that it occurs with participation of two or more international actors and has international political consequences. Historically, an international conflict typically takes the form of a war, so these two notions are often equated.²⁴

In philosophy a conflict is interpreted as «an extreme case of aggravation of a contradiction»²⁵. Antsupov A.Ya. and Shipilov A.I., Russian researchers, understand a conflict as a clash of opposing goals, interests, attitudes, opinions or beliefs of opponents or entities of interaction.²⁶

The emphasis on a high level of aggravation of a contradiction existing between the parties is characteristic of the most definitions of a conflict.

Use of the term «conflict» and allied concepts was arbitrary before adoption of the UN Charter. There was no unity in their translation from one language to another. The official language of the first conventions relating to the amicable resolution of conflicts was French, their translations into English and Russian were not authentic, the terms were chosen by the parties at their discretion. The French, English and Russian versions of the UN Charter are currently authentic, the more «soft» term «dispute» is used instead of the term «conflict»: *différend* (French), «dispute» (English), *спор* (Russian). However, there is no clarity with regard to the correlation between the terms «dispute» and «conflict» in all UN documents.²⁷

Conflicts can evolve not only along a pacific course, but also with applying force and using weapons. It is the task of politicians not bring a dispute between countries to a conflict. The developers of international legal instruments gradually moved away from the concept of «conflict» in an attempt to thus focus on settling any disputes before their extreme escalation. Entin L.M. states that contradictions only are normal and natural for international relations. To resolve them through an international conflict is not only unnecessary, but harmful and unacceptable. The transformation of contradictions in conflicts indicate a low level of political culture, the inability or unwillingness to achieve the resolu-

²³ Kapitonenko M.G. International conflicts: textbook for students of higher educational institutions. / M.G.Kapitonenko. — K.: Lybid, 2009. p.9-10. — 352 p.

²⁴ Kapitonenko M.G. International conflicts: textbook for students of higher educational institutions. / M.G.Kapitonenko. — K.: Lybid, 2009. p.12-13.

²⁵ Philosophic Encyclopedia. V. 3., M.: Soviet Encyclopedia. 1964. p. 55.

²⁶ Antsupov A.Ya., Shipilov A.I. Conflict management studies: textbook for universities. — M.: YUNYTY. 2000. p.80. — 551 p.

²⁷ Chernoudova M.S. Concept of Conflict in International Law / M. S. Chernoudova. // Moscow Journal of International Law. 2005. — No. 5. pp.81-82 — pp. 77 — 92

tion of conflicts by civilized means which were already laid out in the conventions on pacific settlement of international clashes in 1899 and 1907²⁸

According to Shevchenko A.S., who studied the correlation between the terms «dispute» and «conflict» in the international law, the term «international dispute» is different from the term «international conflict», the transformation of an international dispute in an international conflict depends on a degree of intensification of contradictions and proneness to conflict in behavior of the parties. A borderland between an international dispute and a conflict is determined by the presence or absence of conflict behavior of the parties in the form of active opposition or collision (armed or unarmed).²⁹

Use of the term «conflict» in the international law has to comply with a situation of extreme exacerbation of existing contradictions manifesting in the parties' behavior. The term «disputable situation» and «international dispute» can not be equated with the term «conflict». A possibility of their transformation into a conflict depends on a degree of intensity of the contradictions and the parties' behavior.

The term «war» also does not have a single generally accepted definition. By the beginning of 21st century a conflict between political entities (states, tribes, political parties, etc.) that occurred in the form of armed confrontation, hostilities between their armed forces was usually referred to with this word. For example, researchers of the Heidelberg Institute for International Conflict Research (Germany) define a war as a form of resolution by force of a conflict of the highest degree of intensity, during which over a particular period of time force is systematically applied, the parties use tools according to a situation, destructions are usually substantial³⁰. Such wars were defined as «classic» by foreign researchers. Over the last third of 21st century, the term «war» was gradually replaced by the term «conflict». A war began to be regarded as one of subspecies of a larger phenomenon — a conflict.³¹

It is stated in the Practical Glossary of Humanitarian Law that the word «war» is no longer used in the modern international

²⁸ Association of Theory and Modeling of International Relations. International Studies. M., 1991. No.1-2 (5).p. 16. Quotation from: Egorov S.A. Armed Conflicts and International Law. DA MFA of Russia. M., 2003. p. 22.

²⁹ Shevchenko A. International dispute, its legal nature and peaceful resolution via arbitration. Foreign trade: economics, finance and law. 2012, No. 5 p. 143. The author refers to the source: Kamarovsky L.A. Hague Peace Conference of 1899. — M.: Typolithography of G.I. Prostavkov, 1905 — 63 p. — p.142-144.

³⁰ Official web-site of Heidelberg Institute for International Conflict Research (Germany) [Electronic resource]. — Access mode: http://www.hiik.de/de/index_d.htm

³¹ Panova V. Modern Western Studies of International Conflict. Journal of International Relations Theory and Policy «International Processes» <http://www.intertrend.ru/seven/005.htm>.

law³², it is replaced with the term «armed conflict». The UN also recommended to use the word-combination «armed conflict» instead of the word «war».

Modern scholars, basing on statistics, suggest that a classical interstate war can be considered an obsolete phenomenon.³³ According to estimates of the Heidelberg Institute for International Conflict Research, only about 15 % (in 2001 – 6.5 %) of wars from 1945 to 2000 can be included in the category «classical».³⁴ At present the problem of «classic» conflicts between states, that were inherent in the international relations for a long period (from the time of conclusion of the Peace of Westphalia in 1648), began to take on secondary importance. Intrastate conflicts as well as new threats of transnational terrorism and international organized crime start to come to the foreground. However, in the 21st century the problems of exhaustion of vital resources, the state of ecological environment, fierce competition in global markets, etc. have gained the major importance. In today's global economic system there is no need, as a rule, for territorial expansion to build prosperity in a country, and the need to capture new product markets and to maintain the existing ones comes to the foreground. This need is satisfied with use of various tools of trade policies by countries, which sometimes annoys the trading partners and therefore provokes some degree of tension in their relationships and can cause substantial economic losses of one or even both counteragents.

Today, the term «war» is more often used in combination with the words economic, trade, energy, information, etc. Moreover, the authors using like word-combinations do not consider the nature and intensity of tension arising in relations between the countries. Any minor troubles that arise between states in their mutual trade are often called a trade war. Thus, a threat from one country to the other to apply strict tools of trade policy is straightaway declared a trade war, when in fact it may just be an attempt of putting pressure on a trading partner to force it to make the decisions necessary for the former country .

The author believes that each of the above terms should meet a certain level of intensity of the tension in the relations between countries, a degree of deterioration of trade conditions for one or all parties and economic losses. Therefore, the terms to refer to the state of disputable relations depending on their nature can be ranked according to the specified criteria (Figure 2).

³² Boucher-Solneur F. Practical Dictionary of Humanitarian Law / translation from French M.: Publishing House «MIK», 2004. p. 81. 552 p.

³³ Coming Conflicts: Interstate War sn the New Milleniuv // Harvard International Review (Cambridge) Summer 2001, № 23, p. 42-46 .

³⁴ Official web-site of Heidelberg Institute for International Conflict Research (Germany) [Electronic resource]. — Access mode: http://www.hiik.de/de/index_d.htm

Each category of controversial trade relations between countries is identified with a set of characteristics inherent in it (Table 1):

1) a disputable situation in trade: there is a contradiction and respective tension in the relations between countries, there are no financial losses or deterioration of trade conditions so far, the most favorable situation for normalization of the relations;

2) a trade dispute: there is tension in the relations, associated with the material losses caused by the measures taken by one country, which worsen the trade conditions of the other (or others), requires settlement.

3) a trade conflict: a high degree of tension in the relations, associated with the material losses caused by the measures taken by both parties to each other, requires settlement;

4) a trade war: the highest degree of tension in the relations between countries, associated with the use of intensive prohibitive measures of trade policy (embargoes, economic blockade, boycott, etc.) that can lead to large financial losses of the country against which they were taken.

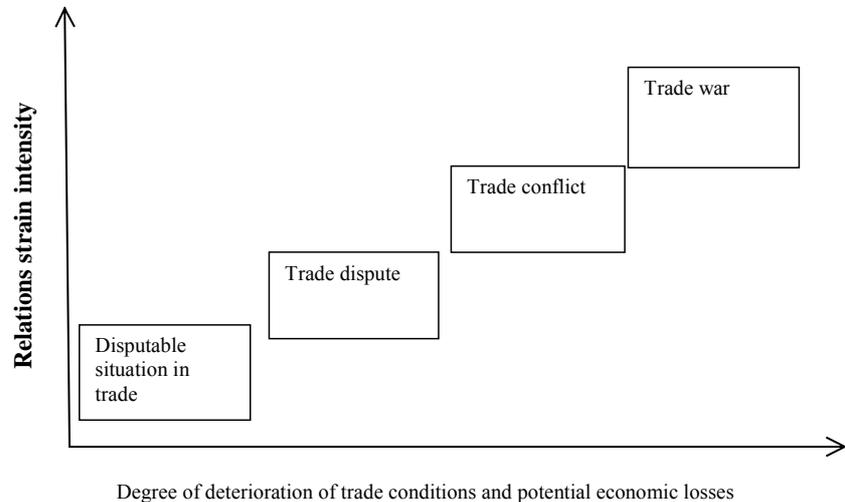


Fig. 2. Terms for the controversial nature of relations in trade between states depending on the intensity of tension and potential economic losses

Use of the term «trade war» is more convenient and appropriate in the circumstances when it comes to a simple fact of desire of either party to the trade relations to force foreign competitors to the background in its own market or to increase its presence or to keep the «conquered» position in one or more foreign markets. Perhaps, that is exactly why some scientists, experts of international relations and politicians now use the term «trade war» regardless of a degree of intensity of tension between countries to indicate the

availability of disputable relations between countries in the international trade.

Table 1. Intensity of characteristics of disputable trade relations between countries

Type of disputable relations between countries	Availability of a contradiction between countries	Intensity of tension in the relations between countries	Deterioration of trade conditions and/or financial losses incurred by a trade partner	Deterioration of trade conditions and/or financial losses incurred by the country as an initiator of disputable relations	Management of disputable relations
Disputable situation in trade	+	+	-	-	Intergovernmental negotiations, consultations
Trade dispute	+	++	+	-	DSB ³⁵ WTO + performance of decisions. International commercial courts of arbitration
Trade conflict	+	+++	++	++	DSB WTO or International commercial courts of arbitration + non-performance of decisions + complaint + taking of appropriate measures
Trade war	+	++++	++++	(++)	DSB WTO Political decisions to stop at a level of heads of states and/or international organizations

Note: 1) «+» – the indicator of a current characteristic (number « + » means the intensity of the characteristic «(++)» – a possibility of positive value of the characteristic; 2) «-» the indicator of unavailability of the characteristic

Evolution of the objects of international trade disputes in historical context

One of the main causes of occurrence of a trade dispute between countries is violation of bilateral, regional or global agreements by either party, which causes a loss of, or reduction in, the benefits of the other party to a trade agreement. A historical analysis of the nature of origin of international trade disputes is allowed to dis-

³⁵ The Dispute Settlement Body of WTO, which considers complaints of the countries which benefits from trade are degraded as a result of taking by the country — trade partner the measures of trade policy, violating the signed agreements.

tinguish between their types (depending on a motive of behavior of a dispute initiator):

- ◆ protective (protection of the domestic market from import and/or creation of favorable conditions for foreign activities of domestic producers);
- ◆ political (dissatisfaction with domestic and foreign policy of certain states, territorial claims, etc.);
- ◆ ideological (incompatibility of values systems dominated in the societies of countries such as communist, liberal, conservative, nationalist, etc.);
- ◆ environmental (relating to violation of the norms of compliance with the ecological balance in different environments, such as: mineral resources, water, air, etc.), etc.

The object of an international trade dispute is a certain aspect of trade relations, in which regard the interests of the parties are inconsistent and the situation prevailing at that is unable to simultaneously satisfy the trading partners. As a rule an international trade dispute arises as a result of taking by either party a certain measure of its domestic or foreign economic policy that discriminates against the other side (a company, state, integration groupings, etc.) of the trade relations in a specific sector of economy. In this regard, a complex object of dispute arises, which includes: 1) a measure of domestic or foreign economic policy of one trading partner, which discriminates against the other; and 2) the sector of a country's economy that suffers economic losses (e.g., reduction in export or import of goods or services) as a result of wrongful actions by its trading partners. In some cases the object of a trade dispute can be multi-dimensional.³⁶

The phenomenon of international trade disputes has been known since ancient times. Establishment and development of international trade under conditions of competition between countries for sales markets, which were permanently escalated, caused severe trade and often armament conflicts. To protect their own markets from goods of foreign competitors and strengthening of positions in the overseas market, countries used a variety of methods from diplomacy to military intervention.

Methods of fighting for a place in the world trade were evolving with the development of international trade, and if first force and weapons were the primary tools of achieving the advantages in the international trade, over time (20th century) countries realized the reasonability of non-use of force in the international relations and use of pacific ways to achieve their goals in the global market, which was recorded in the documents of the UN in 1945.

³⁶ Gordeeva T.F. Modern Concept of International Trade Disputes. Research notes: collection of scientific papers. K.: KNEU, 2012. Edition14. P. 2. — p.200.

At the time of ancient Greece competing city-states used military force or a threat of military forces to support their own trade expansion or restriction of the outside one. The most famous episodes of use of weapons as a tool for promoting the national interests and implementing the commercial ambitions were:

– The Navigation Act of 1651, passed by the English Government, which granted the right only to English ships to export goods from its colonies and resulted in three Anglo-Dutch wars³⁷,

– «Boston Tea Party» in 1773, when the English Government abolished the import duty on tea export to its colonies in North America by the English «East India Company», causing start of anti-colonial struggle³⁸,

– Opium Wars of 19th century in China which were unleashed by Britain, supported by France and the United States. As a result, China was forced to sign the Treaty of Nanjing (1842) due to which five Chinese ports were opened for the British trade, import and export duties profitable for Great Britain were fixed, the island of Syanhan (Hong Kong) was transferred to ownership of the United Kingdom³⁹.

The United Kingdom as the world's industrial and trade leader of 19th century supplied the global market with almost a half of the world's industrial production pursued the tough trade policy against its competitors (France, Sweden, Germany, etc.) with targeted trade sanctions, including complete or partial embargo or exemptions from the principles of free trade for certain goods. During this period, countries tried to protect their national markets with using the high import tariffs (at that time an average import tariff was 35-45 %).⁴⁰

However, countries used not only legal methods for their expansion into foreign markets. In the early 20th century Germany secretly imported into the territory of Persia goods in large quantities which were bearing trademarks of Turkish or Persian firms via Turkey or by sea to oust Britain from the provinces of Persia.

Growth of the economic power of Germany raised concerns of industrially developed countries (Britain, France etc.) which had

³⁷ Harper L. The English navigations laws. N.Y.,1939.(repr. 1964) [Electronic resource]. TheFreeDictionary — Access mode:

<http://encyclopedia2.thefreedictionary.com/1651+Navigation+Act> Navigation Act contributed in fact to the development of English maritime trade in the days when the trade and fleet of England were in the original condition and needed protective measures. When England reached high positions in the trade, Act of 1849 was repealed. Adam Smith, although considered the Navigation Act unfavorable for foreign trade, nevertheless called it the wisest governmental act which was of great political significance.

³⁸ Great Soviet Encyclopedia. (30 volumes). M.: «Soviet Encyclopedia», 1974, V.3. p.592

³⁹ Great Soviet Encyclopedia. (30 volumes). M.: «Soviet Encyclopedia», 1974, V.17. p.699.

⁴⁰ Bialy Yu. «Trade War». A series of articles in the newspaper «Sut Vremeni» in 2013 p.7. Electronic resource. Access mode: <http://www.eot.su>.

tried with all sorts of methods to slow build-up of its commercial expansion. Rivalry often transformed in local armed conflicts.

The First World War not only led to enormous human and economic losses, but also drastically reduced the world trade. Customs tariffs, which were somewhat reduced before the war, again rose sharply after the war.

In the early 30s of 20th century a global crisis started, which led to further degradation of international trade relations. Developed countries that had found themselves in a difficult economic condition tried to improve their situation with the international trade. Thus, if the U.S. customs duties in 1920 were on average 40 % of the customs value of import, in 1930 it was adopted as a law the so-called tariff of Smoot-Hawley, which increased the import tariffs for many products to 64-65 % .⁴¹ Afterwards the total import of goods into the U.S. fell from 4.4 billion dollars in 1929 to 2 billion dollars in 1931. European governments responded with establishing their own trade barriers to the U.S. goods. In addition, the countries which products had met with prohibitive duties did not receive the proceeds in dollars, which, in turn, did not allow them to make purchases in the United States. As a result, the U.S. exports fell from 5.3 billion dollars in 1929 to 2.3 billion dollars in 1931, almost all exports from the European countries were blocked. Thus, the process of trade and payments between Europe and the United States was disrupted. This led to a devastating effect for the banking system of European countries first, and from 1931 for the same of the United States. As a result, the currency and international trade systems were destroyed.⁴²

During the World War II, the countries that took part in it suffered heavy economic devastation. The acute problem of post-war reconstruction of national economies was on the agenda. The countries realized that the problem of reconstruction could not be solved without expanding the foreign trade relations.

In 1947, after lengthy negotiations (1944-1947) aimed at establishing a stable multilateral economic order, 23 countries signed the General Agreement on Tariffs and Trade (GATT). While it was not managed to reach a broad agreement with respect to the extent of liberalization in most sectors of international trade, it was recognized that unilateral and discriminatory practices of the period between the two world wars had had negative consequences for all parties. The principles of mutuality and waiver of discrimination proclaimed in GATT were reflected in the concepts of «most favored nation treatment» and «national treatment». One of

⁴¹ Bialy Yu. «Trade War». A series of articles in the newspaper «Sut Vremeni» in 2013 p. 8. [Electronic resource]. — Access mode: <http://www.eot.su>.

⁴² Kizilov V., Sapov G. Inflation and its Consequences / edited by. E.Mihaylovska. — M.: ROO «Center «Panorama», 2006. p. 123-125.

the main principles of GATT was a principle of domestic market protection with duties rather than with quantitative or administrative tools. 45 thousand of tariffs covering about 20 % of the world turnover at that time were reduced during the first round of negotiations. The package of documents adopted included both a list of reduced tariffs and the rules for trade between the parties.

In the environment of increasingly liberalized international trade, striving of countries is not to lose their positions in the global market, to use more and more new methods of non-tariff trade regulation. A striking example of the widespread and successful use of such instruments of trade policy may be considered Japan. A range of the instruments was quite diverse: from non-compliance of imported goods with certain standards or the Japanese traditions to endless bureaucratic approvals and difficulties of licensing. But since the 1970s, new methods of non-tariff import restrictions: phytosanitary, environmental, non-compliance of imported goods with consumer safety conditions or labor safety etc. have begun to appear.

In the early rounds of multilateral negotiations the issues of tariffs reduction were discussed, later the negotiations covered other areas, including antidumping and non-tariff methods. During the last (Uruguay) round (1986-1994) GATT established WTO which significantly expanded the scope of GATT with covering by its rules the trade in services and trade-related aspects of intellectual property. Thus, the GATT system was adapted to the new conditions of modern international trade.

However, the establishment of the WTO did not terminate the emergence of trade disputes between countries. Increased liberalization of the international trade by reducing the tariffs, on the one hand, supported the globalization processes in the global economy and, on the other hand, exacerbated the competition for sales markets between countries. Developing countries suffer most from liberalization, and although some exceptions in the trade with developed countries are provided for by the WTO rules, nonetheless they are trying to apply various non-tariff methods to protect their markets and to increase exports, which would allow them to circumvent the WTO rules. But not only developing countries provoke international trade disputes. The leading developed countries being actually the initiators of trade liberalization at the same time try in different ways which are not always permitted under the WTO rules to increase the competitiveness of their producers in the global market and to reduce the competitiveness of their opponents. It is these methods that form the foundation for the emergence of trade disputes. More veiled new methods are added to already «conventional» non-tariff methods such as the methods of trade policies (measures to protect the domestic market from

import and to promote export), methods that are not directly relating to trade policies (such as technical standards), methods associated with providing the food safety and environmental protection, various bureaucratic procedures, in particular:

- protection of biodiversity (living organisms in all their forms: from genes to the biosphere);⁴³
- organization of combating imports and increasing the exports through the public sector, which support is not prohibited by the WTO rules;
- export debt financing on favorable terms;
- undervaluation of national currency rate compared to its purchasing power parity, etc.;⁴⁴

It is the undervaluation of national currency rate that is currently one of the main tools to ensure a strong position in the global market for goods from some countries. For example, China has pursued the policy of undervalued yuan for many years. U.S., EU and Japan accuse it for this. The Americans claim that the yuan rate is undervalued by 15-30 %, while experts from China's economy believe that the yuan rate is actually undervalued twice.⁴⁵

Evolution of the objects of international trade disputes is seen across industries. While in ancient times disputes broke out mainly because of a collision of interests of producers in the markets of raw materials, with development of the economies of countries a range of industries grew wider and wider from the ferrous metal industry to the production of textiles and foodstuff. High technology markets did not also remain without conflicts. Thus, in 2008 the United States first and then joined by Japan filed a complaint with the WTO for the EU tariffs, which it imposed on certain types of imported high-tech products. The U.S. claimed that those tariffs (they were 14 %) were in contradiction with the terms of an agreement on information technology and actually created a barrier to scientific progress. EU, on its part, did not admit its fault with referring to the same progress. It believes that in the agreement concluded there is no clarity about the typology of technical devices falling under its action, and advocates making adjustments to this agreement.⁴⁶

An analysis of various trade disputes suggests that whatever specific reasons (environment protection, consumer health care,

⁴³ Johnson Michael. US-EU trade disputes: their causes, resolution and prevention, European University Institute, The Robert Schuman Centre for Advanced Studies, <http://www.iue.it/RSCAS/Research/Transatlantic/Johnson.pdf>, 2009.

⁴⁴ Biały Yu. «Trade War». A series of articles in the newspaper «Cut Vremeni» in 2013 p.16. Electronic resource. Access mode: <http://www.eot.su>.

⁴⁵ Biały Yu. «Trade War». A series of articles in the newspaper «Cut Vremeni» in 2013 p.16. Electronic resource. Access mode: <http://www.eot.su>.

⁴⁶ The U.S. opened a new front in the trade war with the European Union. 2008. Electronic resource. Access mode: <http://finance.rambler.ru/news/economics/19574101.html>

complications of customs procedures in the country for a trade partner, etc.) particularly influence a behavior of the parties, in the end they (reasons) reflect their interests, which in the case of disputes appear to be inconsistent or contradictory.

After entering into the agreements of the Uruguay Round of multilateral trade negotiations there remained a number of issues that needed further discussion. The first years of the WTO functioning showed that contradictions between the member states that need immediate resolution survived and continuously grow. The essence of the contradictions was the following: the countries tried to increase its presence in the markets of trading partners, while slowly liberalizing their particular sectors of economy. And such situation was typical both for developed countries and for developing countries. In 2001 the next round of multilateral trade negotiations (Doha Round) was launched to resolve the problems available. But during the negotiations the contradictions between different groups of countries manifested particularly acute. The developed countries were interested in resolving a number of issues on the agenda (investment, competition policy, trade facilitation and transparency in government procurement, security, strengthening of protection of intellectual property rights, liberalization of services markets), and other group of issues (liberalization in agriculture, labor migration, etc.) was important for the developing countries.⁴⁷ As a result of deep contradictions in the negotiations between the parties in July of 2006, the Doha Round was suspended. The situation so created causes aggravation of contradictions in trade and economic relations between the countries. The outstanding issues in multilateral talks motivate the developed countries to break the agreements concluded within the WTO, which, in their opinion, are imperfect. At the same time the developing countries are objectively unable to perform some agreements concluded and knowingly violate the WTO rules, causing discontent of the trading partners both from among the developed countries and developing countries. Regional and bilateral agreements start playing the increasingly important role in the global trading system.

Disputes and nature of their origin at the present stage of global trade system development

Numerous trade disputes have occurred over the entire history of international trade existence. Just in the period of 1995-2013 the WTO considered 467 disputes between its members. States have different experience of participation in such disputes. Table 2

⁴⁷ Trofymenko O. Yu. Doha Round: consequences for development of modern trade system. / O.Yu.Trofymenko // Vestnik of St. Petersburg State University. — Ser. 5. — 2007. Edition. — P.126.

presents the quantitative information on participation of the WTO member countries that often were the parties to commercial disputes during 1995-2013.

Table 2. Top-10 member countries of wto, which participated in trade disputes within 1995-2013 both as plaintiffs and defendants*

No.	Country-plaintiff	Number of times	No.	Country-defendant	Number of times
1	USA	106	1	USA	120
2	EU	89	2	EU	74
3	Canada	33	3	China	31
4	Brazil	26	4	India	22
5	Mexico	23	5	Argentine	22
6	India	21	6	Canada	17
7	Argentine	19	7	Japan	15
8	Japan	18	8	Republic of Korea	14
9	Republic of Korea	16	9	Mexico	14
10	Thailand	13	10	Brazil	14

*Prepared by the author on the basis of the WTO data: [Electronic resource]. – Access mode: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

The leader as to a number of trade disputes is the U.S. They have been a party to a dispute over 200 times with being a plaintiff (complainant) in 106 cases and as a defendant in 120 cases. The second position in the ranking of countries-plaintiffs and countries-defendants is held by EU (being a plaintiff 89 times, a defendant, 74). China as a leading country in the global trade often (31 times) became, for the period of membership in the WTO, the subject of complaints from the trade partners, while it initiated only 10 complaints against their trading partners. As shown in Table 3 the most of disputes were between the U.S. and the EU. Those disputes received the definition as transatlantic in the literature.

Table 3. Number of disputes associated with mutual complaints of countries most often referred to wto within 1995—2013*

Defendant Plaintiff	USA	EU	Canada	Mexico	Japan	South Korea	China	India	Brazil	Argentine
USA	x	19	5	6	6	6	15	6	4	5
EU	32	x	6	3	6	4	7	11	4	5
Canada	15	9	x	—	1	2	2	1	1	-
Mexico	9	3	—	x	-	-	4	-	-	1

Defendant Plaintiff	USA	EU	Canada	Mexico	Japan	South Korea	China	India	Brazil	Argentine
Japan	8	1	2	1	x	-	2	—	1	-
Republic of Korea	10	3	—	1	2	x	—	—	—	-
China	9	3	—	1	—	—	x	—	—	-
India	8	7	—	—	—	—	—	x	1	-
Brazil	10	7	3	1	—	—	—	—	X	1
Argentine	5	5	-	-	—	—	—	—	1	x

*Prepared by the author on the basis of the WTO data [Electronic resource]. — Access mode: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

The volume of bilateral trade in goods only between the EU and USA in 2012 reached a level of over 646 billion dollars. The countries are the largest trade partners in the world. The largest volumes of trade between the countries are characteristic of mechanic engineering and high technologies, pharmaceuticals and automobiles, as well as optical, photographic and medical devices. The EU-USA trade focuses on the labor and capital intensive sectors characterized by economies of scale and intra-industry trade. In the past, agricultural products were often the subject of trade disputes. Most disputes usually arise in the areas of consumer and food safety, environmental protection and subsidy assistance.⁴⁸

Michael Johnson, while studying the disputes between the EU and the U.S. for the period of GATT existence and then the WTO, identifies their following varieties:⁴⁹

1) direct protectionism (abuse of public procurement procedures developed to protect domestic producers from foreign competition);

2) hidden protectionism (abuse of national standards or discriminatory application of national taxation to reduce the competitiveness of imported goods compared to domestic ones);

3) a disagreement as to a possibility of application of agreed rules and definitions in particular cases;

4) attempts of one country to impose upon the other its own national standards abroad with using one of the ways: either by extraterritorial imposition of technical standards on foreign products or by extraterritorial application of national regulations;

⁴⁸ Škoba Laine . Principal EU-US trade disputes. European Union, 2013 [Electronic resource]. — Access mode: <http://www.library.ep.ec> – <http://libraryeuroparl.wordpress.com> (material prepared for the European Parliament)

⁴⁹ Johnson Michael. US-EU trade disputes: their causes, resolution and prevention, European University Institute, The Robert Schuman Centre for Advanced Studies [Electronic resource]. — Access mode: <http://www.iue.it/RSCAS/Research/Transatlantic/Johnson.pdf>, 2009.

5) dissatisfaction of one party with violation of the rule of most favored nation treatment (MFN) by the other party by excessive restrictions on imports compared with a third party (for example, a long-standing dispute between certain countries and the EU because of violation of MFN in bananas trade);

6) dissatisfaction of one party with the fact that the trading partner distorts trade by subsidizing certain types of production (subsidies to the Airbus production in the EU and similar actions of the U.S. government with regard to the production of Boeing);

7) dissatisfaction of one party with the fact that the country-partner misuses the anti-dumping tools allowed by WTO with the aim of protection;

8) direct conflicts in the international trade between the national regulations and relevant rules of law of a trading partner, that reflect the interest of certain communities.

During the period of GATT existence, 39 disputes between the EU and the U.S. were recorded, which by nature were attributed to the types 1,2,3,6,7. During the existence of WTO, the U.S. litigated with the EU at the Dispute Settlement Body of WTO 19 times, accordingly, the EU complained about USA 32 times. In addition to the above types of disputes that occurred in the days of GATT, after 1995 new trends emerged, namely, a number of discontents related to the trade measures of non-economic origin (public health, non-compliance with environment protection standards, political or economic relations with a third party, etc.). Several disputes between the EU and the U.S. relating to the EU ban for using a growth hormone in beef production, long-term preferences to banana importers from the countries under the EU control and the refusal to provide the same conditions to the sellers from Latin America, subsidies to exporters of industrial and agricultural products in the U.S. and the EU subsidies to the production of Airbus, etc. are just a small list of disputes of different origin nature.

Conclusions

The analysis performed allowed the revealing of new trends inherent in the modern paradigm of international trade disputes, namely:

- recent emergence of any problems in the trade relations between countries in the information space is often termed as a «trade war». The author believes that when applying one or another term to indicate the troubled relations between countries, it is appropriate to follow the generally accepted rules of international law and the criteria allowing the estimation of a degree of

tension in relations between the countries, and on this basis to select one of the options: a disputable situation in the international trade, a trade dispute, a trade conflict, a trade war.

- evolution of the objects of international trade disputes occurs in two ways according to their structure. First, the tools of trade policies of countries, the use of which causes contradictions between trading partners are extended to both imports and exports. Before entering into the GATT agreement, tariff or quantitative tools of import restriction were mainly used, sometimes anti-dumping investigations were launched. Trade liberalization initiated by GATT through reducing tariffs in the mutual trade between countries caused widespread search for, and use of a variety of (often hidden) methods of non-tariff regulation of international trade. They are actively used to improve the competitiveness of own products and to restrict the access to the domestic market of products of foreign competitors both by developing countries which really need to protect their markets and by developed countries. Secondly, more and more sectors of the economies of countries become the objects of disputes. Currently, an international trade dispute could break out both in the market of some rare raw material and in the markets for agricultural, industrial, hi-tech and other products.

- an analysis of the state of trade and economic relations in terms of disputes showed that international trade disputes remain the sustainable phenomenon of today. The most active participants in international trade disputes are the U.S. and the EU which use various instruments of trade policies and create conflicting situations in the markets of a wide range of products, while competing with each other and other countries both developed and developing. They, being the initiators of liberalization and equal rights in the trade and economic relations, in fact, pursue the policy of hidden protectionism by all means available with them;

- impossibility to reach an agreement during rounds of multilateral trade negotiations creates the prerequisites in the global trade system for exacerbation of disputes between countries and shifting their interests to bilateral and regional agreements.

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