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A Comparative Analysis of the Trade Defence Mechanisms in the EU and the EAEU

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Trade defence measures are an essential instrument of state protection of the internal market that received enough attention during the codification of certain rules of international trade that resulted, *e.g.*, in the batch of trade agreements of the World Trade Organization (hereinafter - the WTO). Those mechanisms were borrowed by the European Union (hereinafter - the EU) and the Eurasian Economic Union (hereinafter - the EAEU). This paper provides a study of the two systems of trade defence in regional economic agreements and analyzes, whether the reform proposals of the EU system may be applicable in the EAEU.

The EU legislation provides the standard triad of trade defence instruments - anti-dumping (hereinafter - AD) [5], anti-subsidy measures (hereinafter - AS) [6] and WTO-based safeguards. Importantly, these measures are only applicable to the imports from third countries, and the trade regime of the EU members is regulated by a special field of EU law. Trade defence is created and supported on the supranational level through the common legislative process, and certain cases of trade defence measures are investigated and implemented under the control of the EU Commission [9]. Anti-dumping and anti-subsidy measures are mainly applied in the form of additional duties to gloss over the damage done to a particular industry, while safeguards are applied very rarely and only under Article XIX of the GATT agreement and the SG Agreement.

A specific element of any trade defence measure that must be analyzed prior to the application decision is the «Union interest» or «Community interest». Any measure likely to be applied must always comply with the general interest of the Union - *i.e.* the measure cannot in any way harm or affect the Union industry. This requirement has a unique «WTO-plus obligation» nature and is reflected in a number of EU law sources [9]. For the establishment of the compatibility of a certain measure with the Union interest, a test exists: all the members of a particular industry should have a chance to estimate the measure; any information presented can only be accepted if enough factual evidence exists; a measure cannot be applied if it does not serve the Union interest [8]. Among other peculiarities is the division of economies into market and non-market - the WTO AD agreement does not contain a specific provision on this, though the GATT mentions it [7].

At the present moment, however, the EU trade defence system's protective role is weakened. In the light of this, in 2013, the EU Commission introduced a modernization program, that included, *inter alia*, the cancellation of the «lesser duty» rule, the right of exporters to get collected AD and AS duties reimbursed and *ex officio* AD investigations [10]. The reforming process, however, was slowed down in 2014, when the EU Parliament amended and toughened the Commission's proposals. It focused on the social-economic and ecological standards of an exporting country and set a dependence of the application of the «lesser duty» rule and the choice of the analogous state for AD investigations on the level of such standards in the exporting country in question [3]. Meanwhile, the EU internal market is under serious pressure from Chinese dumped imports . On the contrary, recent decisions of the CJEU in favor of the exporters show there is a contradiction in the EU present trade defence policy [4, 11].

In the EAEU, the set of the instruments used for trade defence and their application is almost similar to that in the EU [1]. It should be noted that, despite the fact that the EAEU

legislation does not contain a specific «interest test», the categories that need to be analyzed before the measures will be imposed are very much alike the «Union test» criteria in the EU. Interestingly, according to the EEC Court interpretation, the EAEU and the WTO law are on the same level of hierarchy and the former is a special law with respect to the latter [2].

It is therefore evident that the trade defence systems of the EU and the EAEU both stem from the relevant WTO agreements and are justified additionally by the two regional agreements. The question arises whether the modernization efforts of the EU systems can be taken into account in the EAEU, since the nature and the legal regulation of the both are alike. Should this be done given the fact that the EU trade defence reform met certain difficulties? The answer may be the level of the overall integration of the two unions. In the EAEU, in comparison to the EU, the members are, strictly legally, bound by only common economic interests. This means that the modernization processes have more chances to be accepted effectively. Hence, the scientific research on the EAEU legislation should pay more attention (and it almost does not do so now) to the trade defence challenges in the EU in order to gain enough analytical data for the possible reforms in the future.

Источники и литература

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