TO PRINCIPLES IN THE JURISPRUDENCE OF INTERNATIONAL COMMERCIAL ARBITRATION: A COMPARATIVE STUDY OF THE LONDON COURT OF INTERNATIONAL ARBITRATION AND THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION

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ABSTRACT

This paper deals with the impact of Russia's accession to the World Trade Organization (WTO) on the Russian legal institutions. Russian Federation presents an example of the WTO impact on the developing economies. The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation is the main legal institution in Russia, which is involved in the settlement of trade disputes. Following the country's accession to the World Trade Organization, this institution is to comply with the WTO principles related to the settlement of trade disputes. The article provides analytical review as regards implementation of the WTO principles in the settlement of trade disputes in the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation and the London Court of International Arbitration. The authors revealed shortcomings of the Russian arbitration system and ways of its improvement. The original recommendations are also applicable to other developing economies.

Keywords: Arbitration Regulations, Chamber of Commerce and Industry of the Russian Federation, International Commercial Arbitration, International Commercial Arbitration Court, London Court of International Arbitration.

JEL Classifications: K33, K31, K39

INTRODUCTION

The World Trade Organization is the major institution that provides institutional and legal basis for the development of international trade, thus, promoting international economic integration and contributing to the global economic growth. Many countries that are non-members of the WTO regard accession to this institution as an important goal and a practical tool for full participation in the global economy (Inshakova & Kozlova, 2013). Accession of

any country to the WTO, however, induces changes and transformations in all economic, legal and political institutions of the country, which requires assessing the impact of WTO membership on every aspect of the country's life. For example, Armenia, Georgia, Moldova greatly improved their economies after joining the WTO. In particular, this referred to a number of economic indices, such as GDP per capita, the number of import and export enterprises and agricultural productivity.

Accession of the developing economies to the WTO has many positive aspects. However, it requires some legislative changes since non-compliance with the required standards will adversely affect economic activities of States and their international relations. Russian Federation was chosen as an example for relevant analysis, since it has great potential, substantial resources and takes up a lot of land.

Russia's accession to the WTO is regarded as rational and advantageous in terms of its national development (Tatarkin & Lineckij, 2011) as it gives the possibility to boost the country's economy and to be fully integrated into the world trade. WTO membership is gradually changing practical settlement of trade disputes in Russia, which is reflected by the implementation of the WTO principles in the arbitration court practice.

Numerous studies were devoted to various legal aspects related to Russia's WTO membership. Mitchell (2008) points out two reasons that make parties use procedures referring to resolution of commercial disputes established within the WTO framework. In particular, this refers to strict regulation of procedures and a sound and effective system of appeal. Both aspects are rarely met at the international level. Smbatjan (2012) considers resolution of commercial disputes established within the WTO framework as one of the most effective mechanisms used to resolve such disputes.

Russia's accession to the WTO that inevitably involves implementation of principles related to the settlement of trade disputes arising from foreign economic transactions led to an increase in the number of disputes that had to be resolved within the framework of the WTO Law. Statistics of the period 2012-2013 shows a growing number of trade disputes that were settled within the WTO framework (International Trade Statistics, 2013). This trend reflects both the emergence of new challenges and disputes in the global market and desire of the WTO member states to protect interests of their domestic producers in terms of competition in both domestic and foreign markets. This clearly contradicts the WTO objectives regarding elimination of barriers to free exchange of goods and services. In this situation, a dispute resolution mechanism is in high demand for all parties of commercial disputes and conflicts.

The WTO is one of few international economic organizations that managed to generate a system of specific legal rules-WTO Law, enshrined in various sources-multilateral agreements and multiple declarations and the term "WTO rules" has been already accepted both at the international level and in the Russian Federation. Ideology of the WTO in relation to its member states and prospective members is primarily aimed at harmonizing legal system of relevant states with the "WTO Law."

WTO Law implies the fact that part of internal competence is subject to the international legal regulation of the international trading system through the system of principles, norms and agreements. Although the main objective of this regulation is to reduce administrative and economic barriers imposed by the states on the way towards free exchange of goods and

services, this, in fact, implies restriction of state sovereignty and transfer of state power to the World Trade Organization. Due to WTO Law, international trade law acquires universal character along with its unification and harmonization (in the broad sense) with national legislations of the WTO member states.

Accession to the WTO inevitably entails implementation of principles related to the settlement of international trade disputes. Implementation of WTO law by Russia is qualified as a specific national three-level harmonization of the national legislation system with the WTO norms. This is determined by a number of factors The Russian Federation adopted laws and regulations that complied with the WTO principles. International legal norms are implemented in case of gaps in the national legislation. In case of collision between the national law and international law, current laws are provided with adequate references to the international law. At the third level, the country accepts and implements the WTO norms and principles.

At that, there are gaps as regards studies of the WTO principles carried out by various international commercial arbitration institutions of member states, which should be "filled" with a view to optimize their foreign economic interactions. This paper addresses the gap and analyses the WTO principles in the context of their implementation in the settlement of trade disputes by the LCIA (The London Court of International Arbitration) and ICAC (Independent Commission against Corruption) at the Chamber of Commerce and Industry of the Russian Federation. This is important for finding ways to improve the International Commercial Arbitration in the developing economies.

The purpose of this research is to analyse implementation of the WTO principles in the practice of trade dispute settlement under the jurisprudence of the International Commercial Arbitration Court in the Russian Federation.

Research purpose implied the following tasks:

- Analysis of principles implemented by the International Commercial Arbitration Court in the Russian Federation and by the London Court of International Arbitration.
- Comparative analysis related to practical implementation of principles by the International Commercial Arbitration Court in the Russian Federation and by the London Court of International Arbitration.
- Development of recommendations for the improvement of the arbitration system in the developing economies by the example of the Russian Federation.

Scientific and practical significance of research results is determined by systematization of information regarding the WTO Principles in the Jurisprudence of International Commercial Arbitration and subsequent development of practical recommendations. In the case of practical application, these recommendations will contribute to the improvement of arbitration system in the developing economies and, accordingly, promote their economic development through international cooperation.

METHODOLOGY

Argumentation of theoretical assumptions and research results is based on the application of general and specific methods: dialectical, logical, historical, sociological methods and comparative analysis. Comparative method was used to analyse implementation of the WTO

principles in various activities, regulations and decisions of arbitration organizations being under study.

Empirical basis of this research comprises international commercial arbitration proceedings, information taken from official websites of the WTO, LCIA and the Department of Foreign Affairs, Trade and Development (Canada).

IMPLEMENTATION OF THE WTO PRINCIPLES IN THE LONDON COURT OF INTERNATIONAL ARBITRATION

The London Court of International Arbitration (LCIA) founded in 1892 is the primary international arbitration institution, which can serve as a good example of effectively implementation of the WTO Law principles.

Statistics related to disputes resolved in LCIA supports the assumption regarding its primary role at the international level. For example, in 2012, 265 cases were resolved in this court through its Arbitration Rules and 12 awards were rendered through its Mediation Rules as well as through other methods of Alternative Dispute Resolution (Statistics of LCIA, 2012). This shows increase by 18.3% in comparison with 2011, when 224 disputes were resolved by the Rules of Arbitration and only 13 disputes were considered by the Rules for Mediation.

LCIA activities are regulated by Arbitration Rules effective 1 October 2014. Although, some researchers note, "LCIA Arbitration Rules are drawn up in a true English style, with a somewhat formal approach to the regulation of procedural issues" (Born, 2014), this instrument provides a reliable and effective framework for the conduct of international commercial arbitration, particularly for legal procedures inherent in the system of common law (for example, disclosure of facts). Compared with the rules of the International Arbitration Court in Paris (ICC), LCIA Arbitration Rules are less comprehensive, in particular with regard to some issues related to arbitration record.

This article deals with fundamental principles that define the basis of WTO Law. These principles are fixed in various rules of this international commercial arbitration institution (Inshakova & Kazachenok, 2014).

The concept of good faith is of primary importance for the international commercial arbitration system. This principle governs trade dispute settlement by the Rules of Arbitration.

The concept of good faith in the international commercial arbitration means:

- The Disputing Parties should contribute to facilitation of the procedure and should not apply tactics causing unnecessary delay in dispute settlement;
- The Disputing Parties should be ready to consider not only their interests but also the contractor's interests;
- Actions of the Disputing Parties in the course of dispute settlement should be effective and timely and contribute to reaching mutually advantageous decisions;
- The arbitral award should proceed from how reasonable the conduct of the Disputing Parties in a disputable situation was and whether they displayed a proper degree of responsibility (Tetley, 2004).

The principle of proportionality in commercial arbitration jurisprudence is reflected in regulations referring to decision-making on compensation for procedural costs and expenses. There are three main ways to distribute the burden of expenses:

- Costs are paid by a defeated party;
- Costs are paid proportionately with the case outcome taking into account legitimacy of the parties' claims;
- Both parties bear costs in equal proportions.

As a rule, the third option arises under the arbitration agreement between the parties and the first two options are applied by arbitrators in case the clause stipulating costs is not included in the arbitration agreement. Equal payment of costs by the parties can be regarded as implementation of the principle of good faith and proportional payment of costs is respectively regarded as implementation of the principle of proportionality (Moses, 2010).

Proceeding from the perception of equal distribution of costs as implementation of the principle of good faith (based on a presumption that both parties behave honestly), it is logically possible to conclude that assignment of costs to a defeated party can be considered as an arbitrary sanction for bad faith conduct of the party.

The principle of due process of law as the fundamental principle of fairness in all legal matters is fully embraced by the international commercial arbitration. Most arbitration regulations refer to procedures admissible in the course of dispute settlement and to the duty of arbitrators to resort only to objectively required procedures.

The principle of special and differential treatment in the international commercial arbitration assumes absolute unacceptability of any kind of procedural differences depending on the nationality of the parties. Grigera & Horacio (2014) considers differentiation as violation of non-discrimination approach. They believes that the principle of differentiated approach in the international commercial arbitration is exercised when arbitrators take into account the circumstances accompanying execution of a specific contract-respect for different background, when similar cases are settled differently. This principle refers to the rules of tribunal formation (in terms of nationality of arbitrators).

The Principle of Estoppel is widely used in the international commercial arbitration as well as in almost any mechanism aimed at dispute resolution. The most frequent cases of estoppel implementation include the following: 1) the existence of the earlier decision on the contract bringing the party to lose the right to rely on a number of arguments; 2) a situation where the arbitration agreement was actually signed by only one party to the contract and the second party did not raise objections and in the case the non-signing party of the dispute forces a signatory to transfer the case to arbitration. In this situation, the signatory has no right to deny the existence of the arbitration agreement.

The principle of amicable dispute settlement is undoubtedly a universal principle accepted by all arbitration institutions aimed at preservation of stability in the international commercial turnover, maintenance of partnership, loyal relationships between the parties to international contracts.

These principles constitute the foundation for international commercial arbitration; they are enshrined in LCIA Rules.

The principle of good faith that guides the behaviour of parties in the dispute is enshrined in Article 14.4 (ii) of LCIA Arbitration Rules, stipulating "a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a

fair, efficient and expeditious means for the final resolution of the parties' dispute...” (LCIA, 2014).

The principle of due process enshrined in Article 14 of LCIA Arbitration Rules says: “The Arbitral Tribunal shall have the widest discretion to discharge these general duties, subject to such mandatory law(s) or rules of law as the Arbitral Tribunal may decide to be applicable; and at all times the parties shall do everything necessary in good faith for the fair, efficient and expeditious conduct of the arbitration, including the Arbitral Tribunal’s discharge of its general duties” (LCIA, 2014).

The principle of proportionality is referred to in the Article 28.2 of the Rules saying that “unless the parties agree otherwise, the Arbitral Tribunal shall, observing proportionality, distribute, how and in what proportion the parties will bear the burden of the procedural costs”, (LCIA, 2014).

LCIA like most arbitration institutions exercises the principle of amicable dispute settlement through providing mediation services and other alternative methods of dispute resolution. According to the information taken from its official website, the majority of commercial disputes are to be resolved by mediation without binding decisions. Article 9 of LCIA Rules indicates the possibility to combine mediation with arbitration and even with state proceedings.

The principle of differential treatment exercised by LCIA is included in several provisions of the Arbitration Rules. In particular, Article 12.2 requires arbitrators to consider the circumstances of a particular process when deciding whether to terminate or continue the arbitration. It is also specified in paragraph II of Article 14.1 along with the principle of due legal procedure obliging arbitrators to elect the procedure taking into account the circumstances of the case. The Regulations give the arbitrators the right to replace oral testimony with a written one guided by the circumstances of the case (Art. 20.4), etc.

Most frequent cases referring to implementation of the Principle of Estoppel include: 1) the existence of previously taken decisions under the contract; therefore, the parties are denied the right to refer to a number of arguments; 2) the situation when the arbitration agreement is actually signed on behalf of one party of the contract and the other party did not seek a waiver and in the dispute situation when a non-signatory to a contract wants to compel a signatory to arbitrate a dispute. Under these circumstances, the signatory has no right to waive the arbitration agreement (Moses, 2010).

The principle of amicable dispute settlement is widely implemented by institutional arbitrations. This fact is confirmed by the legal practice of the world’s primary arbitration courts that along with arbitration procedure provide mediation services and other methods of Alternative Dispute Resolution. Arbitration Rules encourage the parties to use amicable means of dispute settlement at any stage of dispute hearing. Broad application of amicable dispute settlement principle is inherent in the nature of international commercial arbitration that is flexible and adaptable, oriented at maintaining loyal relations between the parties.

Implementation of the WTO principles in LCIA jurisprudence can be illustrated by the following awards. For example, the final LCIA Award for case No. 111790 dated 4.03.2011 shows implementation of the three previously mentioned principles:

- The concept of good faith: “The arbitration group confirmed the fact that Respondent completed a good faith, reasonable and diligent search for the requested referenced documents…”
- The principle of proportionality: “Deterioration of wood should be assessed in proportion to the quantity of wood logs which didn't pass quality control”;
- The Principle of Estoppel in relation to previous decisions on the controversial contract is considered, The United States of America vs. Canada (MFAITC, 2011).

Implementation of the principle of good faith is observed in the LCIA Award for the case No. 91312 dated 14.09.2009: “The tribunal expects the parties of dispute, being guided by the concept of good faith, will do their best for amicable settlement of the dispute”; Award for the case No. UN3481 dated 3.02.2006 states: "Tribunal, having heard Doctor de Mena, confirms that she was acting in good faith in a matter where the legal issues were unclear and unsettled”, En Cana Corporation vs. Republic of Ecuador (Base Legal Decisions, 2016).

Proceeding from the principle of proportionality, costs in the Final Award for the case No. UN3467 dated 1.07.2004 are distributed as follows. The Respondent shall pay 55% of arbitration costs (US $ 326,724.40), of which it has already advanced US $ 300,000. The Claimant shall pay 45% of such costs (US $ 267,319.98) out of US $ 300,000, which it has advanced. Therefore, the Respondent shall pay to Claimant US $ 26,724.40 in respect of such costs. Award for the case No. 6804 dated 23.03.2007 states that Respondent is assigned to pay the total amount of the arbitration costs, which should be viewed as penalty for his unfair conduct.

Thus, it is obvious that LCIA in relation to the procedure of trade dispute settlement implements key legal principles of the WTO that support its status as an institution of international commercial arbitration that pursues global economic policy and maintains economic relations between states.

IMPLEMENTATION OF THE WTO PRINCIPLES IN REGULATIONS OF ICAC AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION

Regulations of ICAC at the Chamber of Commerce and Industry of the Russian Federation (hereinafter-ICAC Regulations) set a restriction on concluding an arbitration agreement between the parties: such an agreement should not contradict peremptory norms of international commercial arbitration and the principles of ICAC Regulations.

In the Russian jurisprudence, the term principle conveys rather doctrinal than the generally accepted meaning; it is practically avoided when drafting legislation. Ambiguity of the term used in ICAC Regulations can be regarded as failure on behalf of the authors of its new version because it might give rise to disputes at an early stage of arbitrary procedure-discussion related to the content of arbitrary agreements, validity and, consequently, arbitral competence.

Recalling the principles accepted in Civil Law as the basis for civil regulation of public relations, this general principle is embodied in Article 21 of the above Regulations. According to this principle, arbitration trial should be carried out upon competitiveness and equality of the parties. However, ICAC Regulations also imply other principles that can be inferred from the contents by means of interpretation. The authors of this study consider that these principles

should be enshrined in a separate clause of the Regulations provided by ICAC at CCI of the Russian Federation.

The Principle of Equality of the Parties

The WTO member states exercise the most favoured treatment in relation to another party. Sub clause *d* of Clause 1, Article 9 of ICAC Regulations requires the Claimant to point out the circumstances, which the claim is based on. Proceeding from the general rules of arbitration trial, this requirement should be understood as that the claimant is obliged to provide the circumstances of dispute in the statement of claim with appropriate completeness; only in this case observance of the principles of competitiveness and equality of the parties is provided. Deliberate concealment by the claimant of any circumstances of the dispute, reference to them as the claim basis not in the statement of claim but only during arbitration trial is considered by ICAC as violation by the claimant of the principle of competitiveness-the right of the Respondent for disclosure by the claimant of the circumstances prior to oral hearing. This violation can be considered as abuse of procedural laws by the Claimant and can have adverse consequences for the Claimant (§ 21 of ICAC Regulations). Arbitration can preclude the Claimant from submitting new factual circumstances which are not specified in the statement of claim or replacements of circumstances (§ 30 of ICAC Regulations).

Thus, one can say that the above regulations embody the most favoured treatment in relation to another party according to which deliberate concealment of circumstances that are important for trial are not allowed, which is implied in the Regulations developed by ICAC at Chamber of Commerce and Industry of the Russian Federation. Moreover, under these Regulations the claimant is obliged to provide evidence for the circumstances stated in the claim (sub clause "d", item 1 § 9 of the Regulations). Unnecessary delay in submission of evidence, their purposeful concealment by the claimant is regarded as violation of the principle of competitiveness and equality of the parties and can be considered as abuse of the rights and Arbitration can refuse to consider this evidence.

Reciprocity

The principle of reciprocity is understood as equality in rights, obligations, conditions (formal reciprocity) and as equality and equivalence of material benefits (material reciprocity). The principle of reciprocity complies with the principle of cooperation between the parties who carry out mutual obligations and along with the principle of good faith and rationality forms basic principles of the international commercial arbitration. The analysis of ICAC shows (see Award of ICAC dated January 30, 2007 case No. 77/2005) that in case the parties refused to conduct technical expertise of the quality of goods, Arbitration reduced the amount of paid damages distributing them equally between the parties. Besides, Arbitration also reduced the amount of the missed benefit when the claimant violated the principle of cooperation between the parties (Award of ICAC dated April 11, 2006, case No. 105/2005). The principle of cooperation between the parties of the contract consists in trade dispute settlement by negotiations and in assistance to arbitration to fully clarify the facts of the case. The Arbitration

repeatedly suggested the parties to draw up statements of mutual settlements and to carry out technical expertise of the quality of goods.

The value of the reciprocity principle along with good faith is defined by the fact that this principle is applied in order to decrease the number of potential claims and counter-claims and to encourage the parties to achieve amicable dispute settlement.

Interim and Conservatory Measures

The practice of providing security for the entire amount in dispute or for its part prior to the choice of the court competent to consider the dispute and therefore, before submission of such a claim to this court has a long tradition in foreign courts.

The need for reforming this part of procedural legislation was caused both by the requirements of economic development and by the fact of Russia's accession to the WTO and to the GATT Agreement dated 15 December 1993 referring to the aspects of intellectual property rights (TRIPS) related to trade. The mentioned Agreement embraces the norms providing security for the entire amount in dispute or for its part in relation to protecting the rights of the requirement.

According to Article 17 of ICAC Regulations, unless the parties agreed otherwise, the Arbitration Tribunal can order interim measures concerning the subject of the dispute at the request of any party, which they consider appropriate. The cited Article includes a clause allowing the parties to exclude from arbitration procedure the right to appeal to the Arbitration tribunal with a request for ordering interim measures. Nevertheless, this restriction is only valid under the present arbitration agreement and extends only on the powers of arbitration chosen by the parties, i.e. the party of dispute does not lose the right to appeal for interim measures to the state court in the order stipulated in Article 9 of ICAC Regulations.

Following the analysis, we consider it expedient to include the clause on interim measures in the ICAC Regulations; thus, it keeps the need of the parties involved to appeal to state courts and to secure the dispute completely in the competence of ICAC.

Interpretation

An example of legal application of evolutionary interpretation tool is found in the above-mentioned Award "United States-Import Prohibition of Certain Shrimp and Shrimp Products" (United States-Import Prohibition of Certain Shrimp and Shrimp Products. WT/DS58/AB/R. Adopted on 6 November 1998). When resolving this dispute, the Appellate Body actually construed Article XX of GATT Agreement regulating import restrictions in a new way by pointing out that "living resources" possess "life time", as well as oil, iron ore and other kinds of "non-living resources". The Appellate Body explained that they construed relevant provisions of the Article, which was formulated more than 50 years ago, with respect to the Preamble of the Agreement on WTO institution and other documents that express concern of the international community regarding environmental protection and emphasize sustainable economic development.

We conclude that the principle of evolutionary interpretation could also be explicitly stated in ICAC Regulations at the Chamber of Commerce and Industry of the Russian

Federation. This recommendation is determined by the fact that many international legal contracts have a long-term character and economic realities (under which relevant agreements between the parties were concluded) are subject to change or can gain new value over lifetime of the contract.

DISCUSSION

Comparative analysis of the previously mentioned principles implemented by the in London Court of International Arbitration and those included in the Regulations of ICAC at the Chamber of Commerce and Industry of the Russian Federation revealed insufficient capacity of the principles implemented by the Russian arbitration. This enables rendering unfair awards and may imply improper proceedings. In particular, insufficient attention is given to a differentiated approach as well as to specific features of relevant legal procedures and peaceful settlement of disputes.

Development of solid legal framework for resolution of disputes between economic entities will enable foreign stakeholders to interact with the developing economies, which will promote economic development of the latter. The developing economies-participants of the Commonwealth of Independent States, including the Russian Federation, have a certain potential for agricultural development, however, this sector requires foreign investment. Many potential partners refuse to cooperate because of possible non-observance of relevant terms by users of investment activity objects.

In addition, arbitration courts of developing countries, including the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, render incorrect awards, which is evident today. Elimination of this setback requires reorganization of the entire arbitration system. The London Court of International Arbitration can serve as an example, since it has a better system and its reputation is excellent.

Imperfect arbitration in the developing economies results in a lack of recognition of its results beyond their borders. For example, one can observe mutual non-recognition of arbitral awards between the Republic of Kazakhstan and some other states. In order to resolve this problem, Kazakhstan has already implemented a number of reforms and signed the required international agreements (Sarina et al. 2016).

Russian Federation started gradual reforms referring to its arbitration law. In particular, legislators added provisions referring to the regulation of corporate disputes, quality control of arbitration institutions and other changes related to arbitration (Yadykin, Martin & Noah, 2016). Relevance of modernizing arbitration is also determined by inconsistent interpretation of agreements, especially in the field of investment (Gaukrodger, 2016). Despite the fact that arbitration procedures are rather expensive, they occur quite frequently due to the lack of other means providing effective resolution of disputes (Dupont, Thomas & Merih, 2016; Yang, 2015).

The developed economies and large organizations have a number of advantages over the poor, emerging economies and their economic entities in terms of external economic interactions and resolution of disputes in the Commercial Arbitration Court. Rich states have greater financial advantages and, accordingly, relevant legal assistance and support. In order to balance financial and legal advantages of all participants one should develop and implement a mechanism of

incentives for the developing economies. The size of fines imposed should also be directly proportional to financial possibilities of the guilty party.

Arbitration settlement of disputes between the poor and rich countries has its own characteristics. Poor participants are usually engaged in activities that have a significantly smaller scale, in contrast to the rich ones. Possible damage caused by non-compliance with terms of relevant agreements can be determined proportionately with the size of relevant activities. At the same time, economically developed participants have more opportunities for long-term and costly litigation.

It should be kept in mind that trade relations within and outside the WTO is based on gradual liberalization of market access, transparency and non-discrimination. However, property rights should be actively protected and measures aimed at trade protection should be applied (Cottier, 2015).

CONCLUSION

Russia's accession to the WTO provides the country with a chance to introduce transparent, effective, uniform and predictable rules and regulations into the Russian legislation thus contributing to effective legal regulation of foreign and national economic activity and enhancing the country’s attractiveness for foreign investors by improving its economic and legal climate. Substantial increase in the number of cases resolved by ICAC entail radical transformations in the activity of domestic arbitration institutions, which have to meet the international standards based on the principles of trade dispute settlement within the WTO framework.

Taking into consideration the analysis of court practice, we consider that it is necessary to introduce a separate clause into ICAC Regulations that would stipulate these principles and ensure that the precautionary principle is invoked regardless of the wording of the agreement and the principle of evolutionary interpretation.

Comparative analysis of the previously mentioned principles implemented by the in London Court of International Arbitration and those included in the Regulations of ICAC at the Chamber of Commerce and Industry of the Russian Federation revealed insufficient capacity of the principles implemented by the Russian arbitration. This enables rendering unfair awards and may imply improper proceedings. In particular, insufficient attention is given to a differentiated approach as well as to specific features of relevant legal procedures and peaceful settlement of disputes. Relevant recommendations have been provided.

Scientific and practical significance of research results is determined by systematization of information regarding the WTO Principles in the Jurisprudence of International Commercial Arbitration and subsequent development of practical recommendations. In the case of practical application, these recommendations will contribute to the improvement of arbitration system in the developing economies and, accordingly, promote their economic development through international cooperation. Further studies will aim at finding mechanisms to improve the efficiency of international economic interactions.

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