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THE INTERRELATIONSHIP AND POSSIBLE CONFLICTS BETWEEN THE WTO AND EURASIAN ECONOMIC UNION LAW

Master's thesis

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INTRODUCTION

You are living the global economy from the minute you are woken up by your Japanese-brand radio alarm made in Malaysia. On with your Italian suit made from Australian wool and drink a cup of Colombian coffee while watching American news on television; then get into your German car (assembled in Slovakia) to come to your office in a multinational firm whose headquarters were designed by a Chinese architect. There, your office equipment comes from Korea, Taiwan, the United States, Europe-or sometimes all of these combined in the one machine. You might have lunch in a Mexican restaurant run by Moroccans and go back for a tele-conference meeting that links up half-a-dozen national telecommunication systems.

I don't think I need to take you all the way back through the Finnish sauna to your Japanese futon bed. The point is clear. And it becomes clearer every day, as interdependence between economies increases.[1]

Renato Ruggiero

The international processes taking place in the modern world can be characterized as a combination of global and regional interaction, not only of states, but also of various structures, businesses and organizations. At first glance, these are multi-order and multi-directional phenomena that cannot harmoniously combine with each other, but, as world practice shows, the development and interaction of the global and regional are the essence of the modern world order, including its fundamental component along with the rule of law - the economic order. The complication of international trade relations has led to the formation of a special branch in the doctrine of international law - *lex mercatoria*. [2] In modern conditions, this term denotes a concept that reflects the trend towards the formation of an autonomous system of legal norms, containing the norms provided for in international conventions, trade customs, widely recognized legal principles intended to regulate international trade.

Our current existence in the context of the intertwining of interests of states, business corporations, and the population of various countries cannot be imagined without a powerful international actor, under whose leadership the states could coordinate their positions on economic issues. Within the framework of the international system, this kind of actor is the World Trade Organization

[1] World Trade Organization, Members of the WTO multilateral trading system must respect it and use it properly-says director-general Ruggiero. Specht P. The Dispute Settlement Systems of WTO and NAFTA - Analysis and. Comparison, Georgia J. Int'l & Comp, 1998. p. 60

[2] Lukashuk I. I. Mezhdunarodnoe pravo. Osobennaya chast: uchebnik dlya studentov yur. faculteta. 3rd, Moskva. Walters Kluver, 2005. p. 124

(hereinafter - the WTO). The WTO consists of 25 observer states and 164 members,[3] 163 states and one international organization - the European Union (hereinafter referred to as the EU). The process of becoming a member is unique for each applicant country, and the conditions for joining depend on the level of economic development and the current trade regime. Thus, taking into account the classifications and criteria adopted and established in international law, the WTO can be confidently attributed to the universal international organizations of an economic nature, whose competence includes issues of international trade in their broadest sense.[4]

Today, almost all WTO member states are members of at least one regional trade agreement (hereinafter - RTA).[5] Most of them participate in two or more preferential trade agreements. When the General Agreement on Tariffs and Trade (hereinafter - GATT) came into being in 1947, regional agreements were considered an exception. This was the case until the beginning of the European integration process in the 1950s, when a significant part of international trade became preferential. In the following years, a number of other preferential agreements emerged, but only by the 1980s did they become an important component of world trade.[6] The main increase in the number of RTA has occurred in the last 30 years. Because it is easier and faster to negotiate through RTA. International negotiations within the WTO are a rather lengthy process, the Doha Round has been going on since 2001 and is now in a deep crisis, while the RTA can provide for more stringent obligations than at the WTO level, or agree on new ones that have not yet been accepted in the WTO. By April 2021, the number of RTAs that entered into force was 346.[7]

In accordance with Bela Balassa's theory[8] of integration, integration gradually evolves from the lowest stage to the highest in the framework of a gradual transition from a free trade zone to a customs union, then to a common market, then to an economic and monetary union, and finally to full integration. In practice, this theory was implemented mainly through the RTA within the framework of free trade zones (the absolute majority of RTAs), in which customs tariffs on trade between the countries of this zone are completely eliminated or radically reduced. At the same time, the countries retain the right to regulate their own relations and customs tariffs with third countries. Less commonly in world practice, one can find other forms of integration, such as a customs union or a common market. At the moment, within the framework of the Eurasian

[3] WTO: Members and Observers.
[4] Kashirkina A. A., Morozov A. N. Rossiya, Yevraziyskiy ekonomicheskiy soyuz i Vsemirnaya torgovaya organizatsiya. Monographiya. INFRA-M, 2015. p.11
[5] WTO: Regional Trade Agreements.
[6] Ruzhin A. Regional Trade Agreements in the GATT / WTO System: The Role of Principles of International Economic Law, Legal Concept, No 1, 2013. p. 88
[7] WTO: Regional Trade Agreements.
[8] Kostyunina G. M. Regionalizm v sovremennoy mirovoy ekonomike: evolyutsiya i osnovnyye tendentsii. Vestnik Rossiyskogo universiteta druzhby narodov. Seriya: Mezhdunarodnyye otnosheniya, No 20 (2), 2020. p.304

Economic Union (hereinafter - the EAEU), there is a transition from an ordinary customs union to the formation of a common market. But the most comprehensive common market in the format of a single internal market and an economic union has been functioning since 1993 only within the framework of the EU. The fundamental difference between free trade zones and customs unions is that customs unions provide not only the elimination of customs barriers within the union, but also the transfer of powers to regulate trade with third countries to a special supranational body (the Commission in the EU, the Eurasian Economic Commission in the EAEU). These bodies are endowed with the right to make binding decisions, and therefore all customs unions presuppose the presence of a permanent court both for resolving disputes between states and for monitoring the legality of the acts of these bodies, including through claims from private individuals. There are no such supranational bodies in free trade zones, therefore there is no need for judicial control in the form of a permanent court, and disputes between states are resolved through the creation of ad hoc arbitrations.

The author V. Tarasov noted that the entry into the WTO of large regional integration formations, such as the EU or the Southern Common Market (hereinafter – MERCOSUR), leads to a significant change in the role of the WTO in regulating trade flows and the procedure for considering and resolving conflict situations between states that are part of regional integration formations.[9] In other words, the universal character of the WTO presupposes special types of interaction with regional integration structures dealing with issues of trade and economic cooperation in a particular region of the world.

It is important to remember that this work is only a tiny fraction of the broader debate about regionalism and globalization. The author will focus on the regional integration structure in the Eurasian region, the EAEU, and the WTO. It is obvious that the five countries that are members of the EAEU, which at the same time have become (Republic of Kazakhstan, Russian Federation, Kyrgyz Republic, Republic of Armenia) or are trying to become members of the WTO (Republic of Belarus),[10] will face issues of international legal and domestic conjugation of various vectors established documents of the WTO and EAEU. It should be noted that the WTO law and the EAEU law regulate similar legal relations, while they are independent legal regimes. Therefore, the risk of collisions between them actually exists, since their areas of regulation overlap. In particular, this concerns customs-tariff and non-tariff regulation, technical regulation, sanitary and phytosanitary measures. In addition, one should take into account the fact that the EAEU countries entered the WTO on different conditions, which are rather difficult to bring to a common

[9] Tarasov V. I. REEFs on the way to the WTO Eurasian Economic Integration, No 3 (20), 2013. p.58
[10] Accession status: Belarus – WTO.

denominator, as well as the fact that not all EAEU member states have become WTO members yet. Accordingly, the international obligations of the EAEU member states, which they assumed within the WTO and within the EAEU, do not coincide.

The purpose of this study is to analyze the relationship and possible conflicts between the law of the WTO and the EAEU. This entails determining the basis of the relationship between the WTO and the EAEU, the relationship between their legal regimes and their place in international law. Likewise, the author determines the fundamentals of the main contradictions between the provisions of the EAEU and the provisions of the WTO agreements and what problems this may lead to. Ultimately, this study seeks to propose solutions that can be applied to resolve these conflicts, by analyzing and comparing the practices of other RTAs in this area and highlighting perspectives.

Consequently, the research problem outlined in this thesis is a problem of the interaction of these two legal regimes, the inconsistency of the norms and obligations of the EAEU and its member countries with the provisions of the WTO Agreement, the lack of elaboration and ambiguity of the rules of law of the EAEU and the WTO in relation to each other.

In connection with the above circumstances, the thesis is constructed around the hypothesis that the EAEU as an international organization cannot fully defend its norms in the Dispute Settlement Body of the WTO, since it is not a member of the WTO as the EU. That is, it cannot defend its position regarding the violation of WTO norms in the WTO, as a single member. The current practice of WTO Dispute Settlement Body decisions in relation to the EAEU member states is as follows: if any WTO member does not agree with the policy of any EAEU member, which it follows in accordance with the EAEU norms, a WTO member can file a complaint with the WTO Dispute Settlement Body (or DSB) only against a member of EAEU, and not EAEU itself - the norms of the entire organization. This may lead to the fact that only one member of the EAEU, which took part in the dispute, will have to change its approach to the one proposed in the WTO, and other EAEU states may refuse to comply with such a decision regarding themselves, since the decision was not given directly from the Dispute Settlement Body of the WTO or from the EAEU. Moreover, as mentioned above, the Republic of Belarus has not yet joined the WTO, therefore it cannot participate in the WTO Dispute Settlement Body disputes. As a result, this can lead to collisions within the EAEU itself. Thus, at the first stages of work on the master's thesis, the author believes that an important drawback for the EAEU is the lack of membership in the WTO and the inability to coordinate the actions of its participants.

For the purposes of the thesis, it will be necessary to answer the following questions:

1) Do the WTO rules have priority over the EAEU law?

2) Can the EAEU countries use the WTO Dispute Settlement Body decisions in the EAEU court?

3) How can the practice of other RTAs help in solving problems related to WTO law?

Although it is true that the topic of EAEU law is a frequently discussed topic in the Eurasian post-Soviet space, the author regretfully finds that the issues discussed by scholars are mainly aimed at eliminating internal barriers between EAEU members,[11] administrative issues,[12] expanding cooperation,[13] etc. Scholars are reluctant to conduct research on the relationship between the EAEU and WTO law and the problems that exist due to poor elaboration of norms in this area, unclear legal regime, hierarchy issues, etc. The author assumes that this is caused by the multiplicity of internal problems in the EAEU and its member countries,[14] constant conflicts between the members of the Union in the international arena, and that this topic, in the opinion of these pundits, is more related to the future prospects for the development of the EAEU than to a reality. However, in fact, the WTO law for the EAEU plays an important role, being the legal basis for the formation of trade processes and an important factor influencing the implementation of national foreign economic policy. Moreover, the writers are not ready to openly criticize the EAEU for political reasons and strong indirect pressure from states on academic circles. It should also be noted that the problem of interaction between WTO law and EAEU law has not yet been studied by academic circles outside the Eurasian region.

The initial data for this work include, first of all, the widest possible range of theoretical, legislative, international legal and empirical sources on the topic being developed. Their central part, the information core are international treaties concluded within the EAEU and the WTO, the decision of the Supreme Eurasian Economic Council, judicial acts of the EAEU Court and the ECJ, reports of the WTO Dispute Settlement Body, and academics research by recognized specialists in the field of international trade law and related fields of knowledge.

At the same time, the author considers it necessary, realizing the uniqueness of each of the listed scholars, to especially emphasize in the context of the problems under consideration the

[11] Podobuyeva, M. A. Bar'yery, iz"yatiya i ogranicheniya v YEAES. Sotsial'no-ekonomicheskiye problemy v sovremennoy Rossii: Sbornik nauchnykh trudov prepodavateley i magistrantov. Moskva, Nauchnyy konsul'tant, 2017.
[12] Ibragimov A. G. YEAES: problemy i perspektivy. Postsovetskiye issledovaniya, Vol. 1, No. 8, 2018.
[13] Perspektivy rasshireniya finansovogo sotrudnichestva mezhdu YEAES i KNR obsudili eksperty na videoforume «YEAES – KNR «Odin poyas, odin put'» (Prospects for expanding financial cooperation between the EAEU and the PRC were discussed by experts at the video forum "EAEU - PRC" One Belt, One Road"). 27.10.2020.
[14] Shadurskiy V. G. Aktual'nyye problemy teorii i praktiki tamozhennogo dela v usloviyakh mezhdunarodnoy ekonomicheskoy integratsii: materialy mezhdunar. nauch.-prakt. konf., Resp. Belarus', Minsk : BGU, 2019.

significance of the works of A. Ispolinov,[15] O. Karpovich, V. Mantusov,[16] T. Neshataeva,[17] M. Entin,[18] L. Anufrieva[19] and especially D. Boklan,[20] whose work the author was inspired by when choosing this topic. The study of their opinions and views made it possible to consider the issues of correlation between WTO law and EAEU law, the problems of law enforcement in the activities of the EAEU Court through the prism of urgent practical tasks of integration construction in the Eurasian space.

It is worth taking into account the work of academics on the relationship between RTAs and WTO law: P. Specht,[21] who wrote a very useful work on the relationship between RTA and WTO, Colin B. Picker,[22] who researched the RTA and WTO as part of the reform of Article XXIV. M. Ovádek, I. Willemyns,[23] who clearly described with examples all existing customs unions and their relationship with the WTO, B. García, G. Garmendia,[24] whose works contain useful material from the EU and the WTO.

The methods used by the author in this study are primarily comparative and analytical. The analytical method will be used to analyze the EAEU and WTO documents, judicial acts, decisions, reports, academic articles and books, to identify conflicts and research problems such as the inconsistency of the norms and obligations of the EAEU and its member countries with the provisions of the WTO Agreements. Using the comparative method, the author will study the relationship between the legal regimes of the two legal systems, compare and analyze the law of other RTAs.

The work consists of three chapters. In the first chapter, the author makes a small introduction to the WTO law and the EAEU law, identifies the features, formation, existing difficulties and legal

[15]Ispolinov Aleksey Stanislavovich, Associate Professor, Department of International Law, Moscow State University, Many of his works are related to the topic of research.
[16] Karpovich O.G., Mantusov V.B. K26 Yevraziyskiy ekonomicheskiy soyuz v kontekste novykh global'nykh izmeneniy: monografiya, RIO Rossiyskoy tamozhennoy akademii, 2018.
[17] Judge of the Court of the Eurasian Economic Union, many of her works are related to the topic of my research
[18] Entin Mark Lvovich, Head of the Department of European Law, Moscow State Institute of International Relations (U), Ministry of Foreign Affairs of Russia. I watched his speech at the International Conference of the EAEU Court "New Challenges to EAEU Integration: Legal Dimension" and read two of his works on topics related to the EU and the EAEU
[19] Anufrieva L.P. Pravo VTO: teoriya i praktika primeneniya : monografiya, INFRA-M, 2016.
[20] Boklan D. S., Lifshits I. I. Eurasian Economic Union Court and WTO Dispute Settlement Body: Two Housewives in One Kitchen Russian Law Journal, No 7(4), 2019 and many of her other works on this topic
[21] Specht P. The Dispute Settlement Systems of WTO and NAFTA—Analysis and. Comparison, Georgia J. Int'l & Comp, 1998.
[22] Colin B. Picker, Regional Trade Agreements v. The WTO: A Proposal for Reform of Article XXIV to Counter this Institutional Threat, 2005.
[23] Ovádek M., Willemyns I. International Law of Customs Unions: Conceptual Variety, Legal Ambiguity and Diverse Practice, European Journal of International Law, Vol. 30, Issue 2, 2019.
[24] García B., Garmendia G. The EU as an actor at the WTO: its strengths and weaknesses throughout history," Eastern Journal of European Studies, Centre for European Studies, Alexandru Ioan Cuza University, Vol. 3, 2012.

framework, taking into account the context of today. The first chapter also contains a paragraph that clarifies the place of the WTO and EAEU law in the system of international law.

In the second chapter the relationship between the two legal systems and the possibility of the existence of conflicts will be considered through the study, analysis and comparison of the issue of the hierarchy of these two systems, the issue of jurisdiction, the practice of the EAEU Court and the WTO Dispute Settlement Body reports in relation to the EAEU member states. Also in this part, the author explores what consequences this can lead to.

The third chapter contains a comparative analysis of the law of the EAEU and other RTAs in relations with the WTO, their similarities and differences, a study of their precedent practice. Also, the author will suggest some improvements in connection with this comparative analysis in relation to the EAEU.

Key Words: *regional trade agreements, WTO law, EAEU law, correlation of EAEU law and WTO law*

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1. THE LAW OF THE WTO AND THE EAEU AND THEIR PLACE IN THE SYSTEM OF INTERNATIONAL LAW

In the 21st century, international organizations are active participants in international relations. The multidirectional trends in the development of not only modern law, but also the world order in general - universality and regionalism - can be most clearly traced precisely in the activities of the currently functioning international organizations. At the same time, the correlation and interaction of universal and regional organizations in the international arena is becoming an increasingly tangible problem since the competence of several international organizations begins to overlap. Customs and trade cooperation falls within the competence of a larger number of international organizations, among which the WTO is generally recognized as having a universal place, while interstate customs unions are, as a rule, regional in nature and are not as stable as the WTO and can be transformed considering political and other changes. The EAEU legal norms, as well as the norms of the WTO agreements, mainly regulate international trade relations. Thus, the spheres of relations regulated by the WTO law and the EAEU law often coincide. Moreover, the Treaty on the EAEU contains references to the WTO agreements.

Therefore, in order to study the issues of interaction between the law of the WTO and the EAEU and the issues of correlating one legal phenomenon with another, of course, the definitions of both the first and the second have an initial meaning. Thus, the author in the first two paragraphs of this chapter will make a small introduction to the WTO law and the EAEU law, identifies the features, formation, existing difficulties and legal framework, considering the context of today.

The effective coexistence of universal and regional international economic organizations and how their activities are perceived and assessed by the international community, not least of all, depends on how the relations between them are built, how they are perceived in relation to the system of international law. Therefore, the last paragraph of the first chapter will be devoted to the issue of determining the place of the law of these organizations in international law.

1.1 Features of the WTO law in the context of the modern world

First of all, one should state the abundance of works devoted to the WTO: the origins of its creation, the history of the GATT, the sphere of activity, organizational aspects of functioning, legal

framework, etc.[25] Many authors today talk about the uniqueness of the WTO as an international organization.[26] Without going into the details of confirming or refuting this, it is still important to define the main features of the WTO as an international formation and legal system that plays a key role in the modern international economic legal order. Strictly speaking, the analysis of the phenomenon of the WTO law in its essence implies mainly two directions: the definition of the legal nature and the identification of its structure - the constituent elements.

The term "WTO law" has long and firmly entered the academic and practical use on a global scale. In the literature, the concept of "WTO Legal System" is also widespread. Analyzing only the definition of the concept of "WTO law", the author of the thesis met a variety of different points of view on this issue. I. Gudkov and N. Mizulin[27] refer to this - the WTO Agreement and its annexes containing various agreements, principles and norms regulating specific issues of international trade, including GATT, GATS and others. Some researchers argue that it should have been viewed from the perspective of the "internal law" of the WTO as an integral element of an international institution. Others see WTO law as part of public international law or as a reflection of the national legal system. Some other authors like J. Jackson, W. Davey and A. Sykes[28] see in the WTO law only a system of agreements that are accepted by the subjects of the WTO. There is a point of view that asserts that WTO law includes the entire package of agreements of the Uruguay Round of multilateral trade negotiations and the text of the GATT 1947. Scholars are still thinking about whether the reports of the WTO DSB or decisions and acts of other WTO bodies are part of WTO law or not. Since the WTO Agreement *expressis verbis* provides for the establishment of various bodies of the organization and gives them the authority to create norms (Article IV of the Marrakesh Agreement), it seems logical to conclude that acts or decisions of the WTO bodies should be included in the "elemental" composition of the WTO law. However, a reservation should be made here that we should not talk about all decisions, but only about those that form the new content of legal provisions, clarifying or specifying the existing norms of the covered agreements. For example, in the dispute China - Measures Related to the Exportation of Various Raw Materials[29] the panel decided that the accession protocol is an integral part of the Agreement Establishing the WTO. U. Dadush and C. Osakwe in their article "WTO accessions and trade

[25] Anufrieva L.P. Pravo VTO: teoriya i praktika primeneniya : monografiya, INFRA-M, 2016.
[26] Smbatyan A. S. Vsemirnaya torgovaya organizatsiya: unikal'nost' i adekvatnost'. Pravo VTO, № 1, 2012. Shumilov V. M. Fenomen prava VTO i zakonodatel'stvo Rossii, Sovremennyy yurist, No 2 (3), 2013.
[27] Gudkov I., Mizulin H. Pravila VTO: problemy pryamogo deystviya i effektivnosti mer otvetstvennosti za narusheniya // Pravo VTO, No 1, 2012. p. 11
[28] Jackson J., Davey William J., Sykes Alan O. International Economic Relations: Cases, Materials and Text on the National and International Regulation of Transnational Economic Relations, St. Paul, Minn.West, 6th ed, 2013. p. 33
[29] China - Measures Related to the Exportation of Various Raw Materials - Understanding between China and the United States regarding procedures under articles 21 and 22 of the DSU, 23 January 2013. para. 7.113

multilateralism: Case Studies and Lessons from the WTO at Twenty"[30] emphasize that, based on the totality of decisions adopted in the framework of the WTO DSB, the accession protocols and reports of the working groups of the WTO members have become an integral part of the WTO law. However, do not forget that this work is aimed at analyzing the relationship and possible conflicts between the law of the WTO and the EAEU, and not only analyzing the definition of WTO law, therefore the author will not do a detailed analysis of the advantages and disadvantages of each point of view, but only to draw the conclusion to which the author came on the basis of all of the above. Each of these points of view has its own grain of truth, therefore, the WTO law, being part of public international law, is a system of principles and norms contained in the Agreement Establishing the WTO and its annexes, providing for the rights and obligations for all WTO members, includes trade agreements between the subjects of the WTO, the protocols adopted to them, the explanation of which is ensured through additional means of interpreting the norms of WTO law, decisions of the WTO bodies, including the WTO DSB, as well as protocols on accession to the Agreement Establishing the WTO.

As mentioned in the introduction, the WTO has 164 members, including the EU along with states. In addition, 25 states are observers at the WTO. It should also be noted that under the WTO bodies, observer status has been granted to a large number of international organizations. Within the framework of this study, it is worth emphasizing that a member of the Trade Board of the Eurasian Economic Commission (hereinafter - EEC) A. Slepnev, during his working trip to Switzerland in March 2021, met with N. Okonjo-Iweala, the seventh Director-General of the WTO, during which the parties discussed issues of more active involvement of the EEC in the activities of the working bodies of the WTO, including in the status of an observer, and agreed to continue working on these issues.[31]

The legal complex underlying the WTO determines the legal conditions on the basis of which the world trade in goods and services should be carried out. The governments of the WTO member countries, having assumed strict obligations, at the same time create for their exporters and importers, entrepreneurs and consumers more open, universal (in terms of their coverage of many countries) and predictable rules of conduct.[32]

[30] Dadush U., Osakwe C. WTO accessions and trade multilateralism: Case Studies and Lessons from the WTO at Twenty, Cambridge: Cambridge University Press, 2015. p. 7

[31] Andrey Slepnev obsudil s novym gendirektorom VTO perspektivy sotrudnichestva. (Andrey Slepnev discussed the prospects of cooperation with the new WTO Director General). 29 March 2021. Available at: http://eec.eaeunion.org/news/andrej-slepnev-obsudil-s-novym-gendirektorom-vto-perspektivy-sotrudnichestva-eek-so-vsemirnoj-torgovoj-organizatsiej/?sphrase_id=23778 (07.04.2021)

[32] Mitin A. N. Pravo VTO v kontekste diversifikatsii mezhdunarodnogo prava, Rossiyskiy yuridicheskiy zhurnal, No 4, 2013. p.27

As M. Magomedov notes,[33] the entire history of international trade relations is associated with the desire of the exporting states to obtain the most favorable conditions for access to the markets of the importing countries, which, in turn, tried to protect their producers with the help of tariff and non-tariff measures. Legal regulation in this area is still determined by the balance between the interests of liberalization and protectionism.[34]

Considering the historical and legal aspects of the formation of the WTO, it should be mentioned that the World Trade Organization emerged as the successor to the General Agreement on Tariffs and Trade as a result of the Uruguay round of multilateral trade negotiations 1986-1994, held under the auspices of the GATT. The Uruguay Round ended on April 15, 1994 with the Marrakesh Protocol, which opened the Agreement on the Establishment of the WTO for signature.

The WTO began its activity on January 1, 1995, but its prehistory begins in 1947, from the moment of the conclusion of the GATT. Then this agreement united 23 states in the field of legal regulation of international trade in goods. Over time, the GATT was supplemented and transformed. All the changes were the result of the complication of trade and economic relations and the accession of new member countries to the GATT. Here, periodically held conferences played an important role - the rounds, thanks to which the entire system developed. The first rounds mainly focused on tariff cuts, but later the negotiations covered other areas such as anti-dumping and non-tariff measures. The Uruguay Round significantly expanded the scope of the GATT to cover trade in services and trade aspects of intellectual property rights. Thus, the legal system of the WTO is in a state of constant development and modification, carried out through multilateral trade negotiations aimed at the fullest possible coverage of international trade. In addition, the 1947 GATT system, being in fact an international organization, was not formally such. Despite the fact that the goals of the GATT and the WTO are similar, these structures differ from each other: if the GATT was a system of trade agreements, then the WTO is both a system of agreements and an international organization; The WTO has a more sophisticated governance structure and strengthens control over countries' compliance with trade agreements. The principles on which these agreements are based: non-discrimination (most favored nation and national treatment provisions), freer terms of trade, additional provisions for least developed countries, resolution of trade disputes through consultation and negotiation, etc.

[33] Widmer M. Printsipy regulirovaniya mezhdunarodnoy torgovli v VTO. (Principles of regulation of international trade in the WTO). 07.07.2013. Available at:: http://business-swiss.ch/2013/07/wto-prinzipien (12.03.2021)
[34] Ibid.

The Marrakesh Agreement is the basic constituent international treaty and the legal basis for the functioning of the WTO, which consists of XVI articles and four annexes. In accordance with Art. III of the Marrakesh Agreement, it is worth highlighting those WTO functions that are necessary within the framework of this study and understanding of the WTO:

«1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement. …»

The first step to investigating the thesis hypothesis and its problem is to pay attention to the important articles of this agreement concerning interconnection, compliance with obligations and decision making. Thus, Article XII (1), states: "Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto". According to Article XVI (3): "In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict." This is a very significant provision regarding the research topic. Also important is Article XVI (4) of the Marrakesh Agreement, according to which: "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements". That is, the EAEU at the moment, as a possible member, does not comply with these provisions, since the Republic of Belarus, an EAEU member state, has not yet become a WTO member state and, therefore, cannot ensure the compliance of its laws and administrative procedures with its obligations, arising from the WTO Agreements. Article IX (1) specifically states that "At meetings of the Ministerial Conference and the General Council, each Member of

the WTO shall have one vote and where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States which are Members of the WTO" - this confirms that membership in the WTO of all member states of the Union is mandatory. In general, the Marrakesh Agreement Establishing the WTO regulates issues such as the establishment of the WTO, its sphere of activity, the functions of the WTO and its structure, the status of the WTO, relations with other organizations, decision-making within the WTO, accession to the WTO, withdrawal from it, etc. etc.

With the creation of the WTO, the member states committed themselves to about 60 agreements and decisions totaling 550 pages, the main ones among them: General Agreement on Trade and Tariffs (GATT 1994), General Agreement on Trade in Services (hereinafter -GATS), Agreement on Trade Aspects rights to intellectual property, the Agreement on Investment Measures Related to Trade, etc. Agreements operating within the framework of the WTO cover the legal regulation of the circulation of goods and services, the protection of intellectual property, agriculture, textiles, public procurement, sanitary, technical regulations, etc. etc.

Obviously, given even the mere mention of the European Communities in the Marrakesh Agreement Establishing the WTO, the process of forming the GATT and WTO system could not ignore the issue of regional economic integration. Ideally, it was necessary not only to establish criteria for satisfying the activities of such associations with the rules of GATT 1947 and the WTO, but also to assign the appropriate control functions to the organization. Therefore, Article XXIV of the GATT and Article V of the GATS create the appearance that the WTO has the authority to supervise the creation and operation of free trade zones, customs unions and other forms of regional economic associations. Article XXIV of the GATT was originally included in the text of GATT 1947. As a result of the Uruguay round of multilateral trade negotiations, the text of the GATT was developed, in which Article V, by analogy with Article XXIV of the GATT, deals with regional integration issues.

The provisions of the GATT and GATS establish the criteria that free trade zones and other integration associations must comply with during their creation and further functioning. In particular, pursuant to Article XXIV (5) (a) of the GATT, duties and other trade control measures in force against third countries prior to the creation of the customs union should not become generally higher or more restrictive than those applied to the constituent its territories before the formation of such an alliance.

It is also worth considering the provisions of Article XXIV (12) of the Understanding on the Interpretation of Article XXIV of GATT 1994, which provides that each member of the WTO is

fully responsible under GATT 1994 for compliance with all its provisions and takes all reasonable measures at its disposal to enforce them. regional and local governments and authorities within their territory.

In addition, regional integration agreements must be submitted to the WTO Regional Integration Committee for an opinion on its compliance with the criteria set out in Article XXIV of the GATT. Nevertheless, more than half a century of practice in the application of Article XXIV of the GATT clearly shows that the activities of the Regional Integration Committee do not contain any practical benefit.[35] This issue will be discussed in more detail in the second chapter of the thesis.

More research and a more complete understanding of the WTO system should be given to the WTO Dispute Settlement Body. This body is the central structure that ensures the functioning of the Understanding on rules and procedures governing the settlement of disputes (hereinafter referred to as the DSU), monitors the progress of the process and controls the execution of decisions. The real possibilities of the WTO in terms of overseeing compliance by member states of the organization with the rules for the creation and functioning of regional integration associations are as follows. In accordance with Article 4 of the DSU, if a WTO member believes that during the creation or during the operation of the integration association, its interests were violated, in particular, the advantages granted to it by the states that established the integration association were canceled or reduced, then at it request the WTO Dispute Settlement Body, in accordance with the procedure established by the DSU, initiates the proceeding procedure, starting with consultations. If these consultations are unsuccessful, the applicant state can raise the question of the formation of the panel at a meeting of the WTO Dispute Settlement Body and the process will move on to the next stage. Arbitration groups are composed of 3-5 members who act in their personal capacity without representing their states. Considerable attention is paid to confidentiality. The terms for consideration of cases are clearly regulated by the DSU: the consideration of a case by an arbitration group should not exceed 6 months, in urgent cases - 3 months. The final report of the panel is subject to the approval of the WTO Dispute Settlement Body if neither party has indicated its desire to appeal the report to the Appellate Body. As of April 2021, since 1995, 600 disputes have been brought to the WTO and over 350 rulings have been issued. As a general rule, the appeal procedure should not exceed 60 days. The findings of the Appellate Body must be presented in a report, which must also be approved by the WTO Dispute Settlement Body. The approved reports of the panel and the Appellate Body are binding on the parties to the dispute. It should be noted, however, that the WTO Dispute Settlement Body is not

[35] Smbatyan A. S "VTO i regional'nyye integratsionnyye obyedineniya: sootnosheniye «Pravovykh sil» v uregulirovanii torgovykh sporov, Rossiyskiy vneshneekonomicheskiy vestnik, No 8, 2011. p. 75

limited to the approval of reports, but also monitors the execution of the decisions made until they are fully implemented. If the decision has not been enforced within the time limit provided, the claimant state has the right, with the consent of DSB, to impose sanctions against the offending state. These sanctions are expressed in the suspension of concessions and other obligations assumed by the claimant state under the WTO in relation to the infringing state that does not comply with the instructions of the Dispute Settlement Body. These rules contribute to the effectiveness of the WTO dispute resolution mechanism. In the entire history of the existence of the possibility of suspending concessions, since 1948, this right has been exercised by GATT / WTO members only a few times.[36] This is because the suspension of concessions tends to be more detrimental to the consumers of the state that resorts to the suspension of concessions than to the offending state.

At the conclusion of this clause of the thesis, we can say that the WTO law, including the organizational and legal mechanisms of this universal international organization, is a more complex system of interrelated international treaties and other international documents through which the member states regulate their relations in the trade and economic sphere. In addition, in addition to purely economic factors, participation in the WTO is also determined by political factors, which, despite the fact that relations between states should be built on a pragmatic economic basis, continue to dominate the system of international relations. This is also reflected in the crisis that the WTO is currently experiencing in connection with the paralysis of the WTO Appellate Body, the race between China and the United States and the spread of the COVID-19 pandemic. The Appellate Body is in critical condition, it can no longer comply with the three-member quorum required to review appeals under Section 17.1 of the DSU. This leads to the suspension of the WTO dispute resolution mechanism, if the parties to the dispute decide to appeal, the case can be postponed indefinitely, because there are not enough members of the Appellate Body to consider the case and the dispute cannot since 2021 be resolved. It should be noted that the percentage of panel reports that have been appealed from 1996 to 2018 is approximately 67%.[37] Thus, a serious threat to the existence of the WTO Appellate Body and the inevitable crisis for the proper functioning of the WTO dispute resolution system. All this, in turn, affects regional and national legislation and law enforcement practice, since the international legal regulation of relations between states, including within the framework of the WTO, affects the domestic sphere of each member state, economic entities, citizens who are consumers goods and services.

[36] Ibid., p. 76
[37] Annual Report for 2018. APPELLATE BODY. Appellate Body Secretariat World Trade Orgainzation. March 2019. p.13

1.2 EAEU law in the context of global integration processes

As part of the study of the thesis, the author previously analyzed the WTO law, deduced a definition, identified the important features, formation, existing difficulties and legal framework of this organization, taking into account the context of the modern world. Now let us dwell in more detail on the second important point in this thesis - the EAEU law.

Before starting the analysis, it is nevertheless worth paying attention to the fact that legally Eurasian integration is a new phenomenon that has not consolidated trends in legal learning from generally recognized positions. The EAEU was established to develop the goals of integration cooperation of the countries that are members of the Customs Union, the Common Economic Space, created within the framework of the EurAsEC by the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, to which Armenia and the Kyrgyz Republic have joined. And when considering the problems of correlation between the WTO law and the law of Eurasian integration, sometimes it is necessary to refer to documents that have become invalid due to the creation of the EAEU.

In accordance with the Treaty on the Eurasian Economic Union, the parties establish a union, within which the freedom of movement of goods, services, capital and labor is ensured, the implementation of a coordinated, agreed or unified policy in the sectors of the economy defined by this Treaty and international treaties within the Union. According to Article 1 of the Treaty on the EAEU, the Union is presented as an international organization for regional economic integration with international legal personality, which seeks to further strengthen economic, mutually beneficial and equal cooperation with other countries, as well as international integration associations and international organizations. A. Kapustin also argues that “in relation to the international legal concept of the EAEU, one cannot proceed from the fact that we are talking about the creation of a traditional international intergovernmental organization,” but the concept of the Union used in the Treaty on the EAEU “is not so straightforwardly associated with the concept of supranationality, the perception of which in the EAEU member states cannot be considered as absolutely benevolent for various, including political, reasons"[38].

The analysis of the category "EAEU law" is partly facilitated by the fact that the provisions of Article 6 of the Treaty on the EAEU directly fix the list of its components. So, in the concept of

[38] Kapustin A. Y. Pravo Yevraziyskogo ekonomicheskogo soyuza: podkhody k kontseptual'nomu osmysleniyu, Sovremennyy yurist, No 1, 2015. p. 59

the EAEU law, as it is presented in the Treaty on the Establishment of the EAEU itself, is "normative" approach[39] and consists of: this Agreement; international treaties within the Union; international agreements of the Union with a third party; decisions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission, adopted within the framework of their powers provided for by this Treaty and international treaties within the Union. At first glance, it may seem that this article contains an exhaustive list of sources of EAEU law that constitute the law of the EAEU, since this article does not prescribe the openness of this list. Nevertheless, analyzing the content of the Treaty on the EAEU, the practice of the EAEU Court, dissenting opinions of the judges of the EAEU Court, as well as the doctrine,[40] it possible to conclude that the EAEU law is a much broader and more multifaceted phenomenon, and it continues to evolve continuously. If we analyze all the clauses of Article 6 of the Treaty on the EAEU in interconnection, we will see that this article consolidates the hierarchy of individual sources of EAEU law and does not approve an exhaustive list of sources of EAEU law. So, paragraph 1 of Article 6 of the Treaty on the EAEU provides that the law of the Union includes a certain set of sources, the hierarchy of which is disclosed in paragraphs 2-4 of Article 6 of the Treaty on the EAEU, establishing that the Treaty on the EAEU has the highest power, other treaties concluded in the Union should not contradict it. The decisions of the Union bodies cannot contradict the treaties, and the decisions of the EEC must not contradict the decisions of the Supreme Eurasian Economic Council and the Intergovernmental Council.

In addition, Article 6 of the Treaty on the EAEU does not correlate with the preamble and Article 3 of the Treaty on the EAEU, which establish that the Union is formed considering the generally recognized principles and norms of international law and the WTO rules, as well as paragraph 50 of the Statute of the EAEU Court. In particular, paragraph 50 of the Statute of the EAEU Court states that the Court applies in the administration of justice: generally recognized principles and norms of international law; Treaty, international treaties within the Union and other international treaties to which the states - parties to the dispute are parties; decisions and orders of the bodies of the Union; international custom as evidence of a general practice accepted as law. Consequently, the EAEU Court has the right to apply those sources of law that are not named in Article 6 of the Treaty on the EAEU (in particular, generally recognized principles and norms of international law, international custom). As a consequence, the EAEU Court can use more tools than the one named in Article 6 of the Treaty on the EAEU. In this regard, it should be emphasized that it is precisely

[39] Anufriyeva L. P. YEAES i «pravo YEAES» v mezhdunarodno-pravovom izmerenii. Moskovskiy zhurnal mezhdunarodnogo prava, No 4, 2016. p. 57

[40] Kapustin A. Y. Pravo Yevraziyskogo ekonomicheskogo soyuza: podkhody k kontseptual'nomu osmysleniyu, Sovremennyy yurist, No 1, 2015.p. 60.

in the issue of determining the content of the EAEU law that one of the most important differences from the EU lies, which is an extremely closed entity for the "penetration" of international law into its legal system.[41] In addition, it is important to note that the text of the Treaty on the EAEU contains a sufficient number of norms that establish that certain issues of the functioning of the EAEU still continue to be regulated by the national legislation of the member states (for example, control over compliance with technical regulations in accordance with Article 53, collection of indirect taxes according to clause 4 of Article 72, responsibility for violation of the rules of the EAEU in the field of public procurement in accordance with clause 1 of Article 88). Therefore, the fact that the Treaty refers to the generally recognized principles and norms of international law and the norms and rules of the WTO, as well as the application of the national law of states in individual cases in the aggregate, imply that the law of the EAEU is much broader and cannot be squeezed into the norm contained in paragraph 1 of Article 6 of the Treaty on the EAEU.[42]

According to the preamble to the Treaty on the EAEU, the states created the Union, taking into account the norms, rules and principles of the WTO. However, this wording, dedicated to the WTO, is not the only one in the Treaty on the EAEU and was disclosed in the Protocol on the functioning of the Eurasian Economic Union within the framework of the multilateral trading system, which is Appendix No. 31 to the Treaty on the EAEU. So, within the Union, the Treaty on the functioning of the Customs Union within the framework of the multilateral trading system of May 19, 2011 applies to the relevant relations. Paragraph 1 of Article 1 of the Treaty, among other things, established that from the moment of accession of one of the parties to the WTO, the WTO law becomes part of the legal system of the Customs Union. In the practice of the EurAsEC Court, a legal position was developed that determines the relationship between the WTO law and the law of the Customs Union. This issue will be discussed in more detail in the second chapter of this thesis.

On July 10, 2018, the EAEU Court issued an advisory opinion on the application of the Ministry of Justice of the Republic of Belarus on the issue of the validity of the decisions of the Customs Union Commission in the EAEU law. As a result, the decisions of the body that functioned prior to the creation of the EAEU were recognized as part of the EAEU law, decisions of the Customs Union Commission, in effect as of January 1, 2015 and not contradicting the Treaty on the EAEU, are included in the EAEU law, are binding on the member states and are subject to direct

[41] Eckes C. International law as law of the EU: The role of the Court of Justice // Cleer Working Papers, No 6, 2010. p. 20

[42] Myslivskiy, P. P. Istochniki prava Yevraziyskogo Ekonomicheskogo Soyuza na sovremennom etape, Rossiyskoye pravosudiye, No 11, 2018. P. 47

application in the territories of the member states of the Union.[43] In this case, it can be concluded that the EAEU Court chose a position according to which it recognized that the formation of the EAEU was not a one-time process, but took place over time. Consequently, the decisions that were made by the Commission of the Customs Union before the entry into force of the Treaty on the EAEU continue to be in force and form part of the law of the Union.

It should be noted that currently there are two approaches to the inclusion of the practice of the EAEU Court in the law of the Union. The first approach is based on the formal statement of the absence of mention of the practice of the Court in Art. 6 of the Treaty.[44] As a consequence, the practice of the EAEU Court is not part of Union law. The second approach is described in the paper of T. Neshataeva and is based on the fact that, since the EAEU Court, by virtue of its Statute, is intended to establish uniformity in the application of the EAEU legal norms, and also interprets the legal norms enshrined in the EAEU, its practice is generally binding.[45] This is confirmed by the fact that the national judicial authorities of the EAEU member states take into account the acts of the EAEU Court when considering specific cases.[46]

In particular, the staffing of the EAEU Court does not occur in accordance with any international treaty or national legislation of the EAEU member state, but in accordance with the EAEU internal law act30. Subsequent labor activity in the EAEU Court is also regulated by the internal law of an international organization. This allows us to conclude that the law of the EAEU consists not only of those acts that are adopted to regulate international trade in the EAEU space, but also of the acts specified for the subsequent internal functioning of the Union's bodies.[47]

National law is not specified in Art. 6 of the Treaty on the EAEU as constituent parts of the EAEU law. However, as observed in the practice of the Court of the EAEU,[48] the administrative and criminal liability of individuals and legal entities for violation of the norms of the EAEU law occurs, as a rule, in accordance with the national law of the member states of the Union. This allows us to emphasize the nature of the Union's law as a "polysystemic complex",[49] at the same

[43] Ibid., p. 49
[44] Blokker N.M. & Schermers H.G. International Institutional Law: unity within diversity, Leiden/Boston: Martinus Nijhoff Publishers, 2011. p. 1276
[45] Neshatayeva T. O problemakh v deystvii resheniy organov YEAES v natsional'nykh pravoporyadkakh gosudarstv-chlenov, Mezhdunarodnoye pravosudiye, No 3(19), 2016. p.11
[46] Postanovleniye Plenuma Verkhovnogo Suda Rossiyskoy Federatsii ot 12 maya 2016 g. N 18 g. Moskva "O nekotorykh voprosakh primeneniya sudami tamozhennogo zakonodatel'stva" (Resolution of the Plenum of the Supreme Court of the Russian Federation of May 12, 2016 N 18 Moscow "On some issues of the application of customs legislation by courts"). 18.05.2016. par. 2 p. 3
[47] Myslivskiy, P. P. Istochniki prava Yevraziyskogo Ekonomicheskogo Soyuza na sovremennom etape, Rossiyskoye pravosudiye, No 11, 2018. p. 48
[48] Ibid., p, 49
[49] Ibid.

time raises the question of how uniformly liability is regulated in different member states of the Union, as well as how proportional are the corresponding sanctions from the point of view of Union law. In addition, the Treaty on the EAEU contains a significant number of norms according to which the relevant issue is regulated by the national legislation of the respective state. Separately, it should be noted that when the member states of the Union implement an appropriate coordinated or agreed policy in a specific area, national legislation is harmonized, from which the corresponding agreed or coordinated approaches are subsequently formed, which are implemented within the EAEU. This phenomenon can give rise to the problem of a clash of law and order - Union and national: the member states of the Union, in the course of establishing coordinated or agreed approaches in national legislation, may invade the competence of the Union, which was established in accordance with the Treaty on the EAEU. This situation requires the establishment of a balance between the legal order of the Union and the EAEU member states.

Turning to the EAEU itself, it should be especially noted that, according to Article 3 of the Treaty, the EAEU carries out its activities within the competence granted to it by the member states in accordance with this Treaty, based on the following principles: respect for the universally recognized principles of international law, including the principles of sovereign equality of states members and their territorial integrity; respect for the peculiarities of the political structure of the member states; ensuring mutually beneficial cooperation, equality and consideration of the national interests of the Parties; adherence to the principles of a market economy and fair competition; functioning of the Customs Union without exceptions and restrictions after the end of the transition periods.

At the same time, the member states create favorable conditions for the EAEU to fulfill its functions and refrain from measures that could jeopardize the achievement of goals. The Union, as stipulated by the Treaty, has the following goals: creating conditions for the stable development of the economies of the member states in the interests of improving the living standards of their population; striving to form a single market for goods, services, capital and labor resources within the Union; comprehensive modernization, cooperation and increasing the competitiveness of national economies in the global economy (Article 4).

Forming a single economic space, within the framework of the Union, a coordinated policy is being pursued, providing for the development and implementation of joint actions of the member states in order to achieve a balanced development of the economies of the member states. The areas of coordination include: the functioning of the Customs Union, the formation of a common market for medicines, the Union's foreign trade policy, customs and tariff regulation and non-tariff

regulation, technical regulation, customs administration, distribution of import customs duties, competition policy, energy policy, migration policy, application of sanitary, veterinary and sanitary and quarantine phytosanitary measures and much more.

For the purposes of this work, one should also dwell on the institutional system of the EAEU, which, according to Art. 8 of the Agreement is as follows:

- The Supreme Eurasian Economic Council is the supreme body of the EAEU, which includes the heads of the member states (Article 10);
- The Eurasian Intergovernmental Council, which, according to Article 14 of the Treaty, is the body of the Union, consisting of the heads of government of the member states;
- The Eurasian Economic Commission is a permanent regulatory body of the Union and consists of the Council and the Board (Article 18);
- The EAEU Court is a permanent judicial body that operates on the basis of the Statute (Article 19).

The decisions of the Supreme Eurasian Economic Council and the Eurasian Intergovernmental Council are subject to implementation in national law. EEC decisions are of a regulatory nature and are binding on the member states of the Eurasian Union, are subject to direct application in the member states of the Union, and thus have a supranational character.

However, as noted by Zh. Kembaev, significant centralization of power within the member states, as well as the heterogeneity of the subject composition of the EAEU and the lack of balance between the members of the alliance seriously impede the creation of effective supranational bodies within the EAEU, endowed with the competence to independently make effective decisions in favor of the entire Union, and not in the interests of (often contradictory) of individual member states.[50] In 2019, the Commission held a scientific and expert council with the participation of experts from the EAEU states, in which they confirmed that there is a problem of differences in national legislation and only regulatory convergence, the practice of implementing supranational regulation at the national level can solve the problem. It is necessary to revise the decision-making

[50] Kembaev Z. M. Regional integration in Eurasia: main features, problems and prospects, Russian legal journal, No. 2, 2016.

mechanism and transfer more competences to the EEC in order for the Commission to operate more effectively.[51]

In particular, it can be said that the unification and harmonization of technical regulations has a stronger impact on increasing trade than a further reduction in customs tariff barriers. Currently, the EAEU has not completed the formation of uniform technical standards in relation to all types of products, which affects the economic efficiency of the union (the presence of non-tariff barriers to trade within integration).[52] In the absence of uniform technical standards and the presence of disagreements over the quality of goods within the EAEU, it is impossible to talk about effective interaction of the EAEU with the WTO and other subjects of international economic relations, which will cause the establishment of non-tariff barriers, growth of inefficiency and complexity of cooperation with the EAEU. Although the assessment of many goods is carried out in accordance with the requirements of the unified technical regulations of the Union, the formation of a system of unified technical regulation has not been completed, since the EAEU does not have an effective body to monitor compliance with the requirements specified in the standards. What complicates the process of eliminating non-tariff regulation the most is the lack of transparency of standards, their arbitrary interpretation, as well as the presence of mutually exclusive or conflicting requirements in the standards, which leads to the impossibility of full compliance of goods with the requirements of the standard.[53] However, it is worth noting that the Commission and the EAEU countries are actively working to eliminate the differences. One of the positive examples of the effectiveness of this mechanism is, in particular, the Decision of the EEC Board dated January 22, 2019 No. 11 "On the fulfillment by the Russian Federation of obligations within the framework of the functioning of the EAEU internal market"[54], which states that the RF violates certain norms of the Treaty on the EAEU and the need to eliminate it. On May 21, 2019, based on the results of the consideration of the issue at the Intergovernmental Council, this decision entered into force.[55]

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[51] Yevraziyskiye eksperty o YEAES: u Soyuza yest' bol'shoy potentsial razvitiya i rosta. (Eurasian experts about the EAEU: the Union has great potential for development and growth). 15.10.2019. Available at: http://www.eurasiancommission.org/ru/nae/news/Pages/15-10-2019-1.aspx (12.03.2021)

[52] O situatsii po ustraneniyu prepyatstvuyushchikh funktsionirovaniyu vnutrennego rynka Yevraziyskogo ekonomicheskogo soyuza bar'yerov dlya vzaimnogo dostupa, a takzhe iz"yatiy i ogranicheniy v otnoshenii dvizheniya tovarov, uslug, kapitala i rabochey sily: analit. dokl. Yevraz. ekon. Komissii, EEC, 2015. p. 44

[53] Vorotyntseva, T. M. Institutsional'nyye ramki torgovli tovarami v yevraziyskom ekonomicheskom soyuze, Vestn. RUDN, Seriya: Ekonomika, No 1, 2018. p. 42

[54] Resheniye Kollegii YEEK ot 22.01.2019 № 11 "O vypolnenii Rossiyskoy Federatsiyey obyazatel'stv v ramkakh funktsionirovaniya vnutrennego rynka Yevraziyskogo ekonomicheskogo soyuza" (Decision of the EEC Board dated January 22, 2019 No. 11 "On the fulfillment by the Russian Federation of obligations within the framework of the functioning of the internal market of the Eurasian Economic Union"). 22.01.2019.

[55] Yelena Babkina, kandidat yuridicheskikh nauk, dotsent, zaveduyushchiy kafedroy mezhdunarodnogo chastnogo i yevropeyskogo prava BGU, sovetnik yuridicheskoy firmy Sorainen. (Elena Babkina, Candidate of Legal Sciences, Associate Professor, Head of the Department of Private International and European Law, BSU, Counselor of the law

V. Tolstykh, commenting on the effectiveness of the EAEU Court, noted that "In general, for seven years the Court has not formulated any major concepts that complement and enrich the law of the EAEU; even its resounding decision in Southern Kuzbass can hardly be considered innovative, since it rather fills the gap and eliminates ambiguity. At the same time, the need for these concepts is great: many issues related to the operation of Union law in the national legal order, hierarchy of sources, interaction with WTO law, and functioning of the common economic space remain unresolved. Some judges try to answer these questions in their separate opinions, whose impact, however, is limited".[56]

As part of considering the hypothesis, it is also worth considering the issue of the Republic of Belarus in its relations with the EAEU and the WTO. On the one hand, being not a WTO member, it cannot use the rights protection mechanism in force in this organization. On the other hand, Belarus is bound by international legal obligations arising from the WTO membership of the EAEU member states. Such obligations are established by the Agreement on the functioning of the Customs Union within the framework of the multilateral trading system of 05/19/2011, which is the direct source of the EAEU law by virtue of the Protocol on the functioning of the Eurasian Economic Union within the framework of the multilateral trading system (Appendix 31 to the Treaty on the Eurasian Economic Union). So, according to paragraph 1 of Article 1 of this Agreement, from the date of accession of any of the parties to the WTO (4 out of 5 EAEU countries have already joined), the provisions of the WTO Agreement become part of the legal system of the Customs Union. In addition, in accordance with paragraph 2 of Article 1 of the Treaty, from the moment of accession of a member state of the EAEU to the WTO, the rates of the Unified Customs Tariff must not exceed the rates of the import tariff provided for in the List of Concessions and Obligations for Access to the Goods Market, which is an annex to the Protocol of Accession of this State to the WTO. Thus, despite the fact that the Republic of Belarus does not have the right to use the WTO instruments to protect the interests of the state and its subjects, in connection with its actions, the EAEU member states, which are WTO members, may be required to violate international legal obligations under the WTO.[57]

firm Sorainen). 2019. Available at: https://www.sorainen.com/wp-content/uploads/2019/11/Vsemirnaya-torgovaya-organizatsiya.-Poryadok-razresheniya-sporov.pdf (15.03.2021)

[56] V Tolstykh V. Between a "Heavenly" Life and an "Earthly" Life: Jurisprudence of the Court of the EAEU from 2012–2019, Russian Law Journal, No 7 (3), 2019. p. 201

[57] Yelena Babkina, kandidat yuridicheskikh nauk, dotsent, zaveduyushchiy kafedroy mezhdunarodnogo chastnogo i yevropeyskogo prava BGU, sovetnik yuridicheskoy firmy Sorainen. (Elena Babkina, Candidate of Legal Sciences, Associate Professor, Head of the Department of Private International and European Law, BSU, Counselor of the law firm Sorainen). 2019. Available at: https://www.sorainen.com/wp-content/uploads/2019/11/Vsemirnaya-torgovaya-organizatsiya.-Poryadok-razresheniya-sporov.pdf (15.03.2021)

Summing up this paragraph, the above allows us to conclude that the EAEU law is a complex and complex legal phenomenon. Despite the fact that individual sources of EAEU law are not indicated in Article 6 of the Treaty on the EAEU, which is entitled "Union law", this does not mean that these sources do not regulate public relations and cannot be used in EAEU law. However, such an extensive list of sources, which constitutes the EAEU law at this stage, entrusts the EAEU Court, as well as the national judicial authorities, with the extremely important task of establishing an appropriate balance of law and order. To the greatest extent, the strengthening of economic integration is contradicted by the presence of obstacles to mutual trade (exemptions, barriers, restrictions), which prevents building transparent and stable relations with third parties. And for effective cooperation with the outside world, the EAEU should unify and harmonize technical regulations and standards within the Union (the basis for creating common markets). In addition, the main factor important for the successful functioning of the EAEU in the world market as a single actor is the formation of supranational legislation of the EAEU, taking into account the norms and principles of the WTO.

1.3 Place of WTO and EAEU law in the system of international law

Daria Boklan, proposes to consider the issue of the place of the WTO and the EAEU law in the system of international law, using the view of this from the UN International Law Commission (hereinafter - the ILC), which pointed to the emergence of specialized and (respectively) autonomous norms or complexes of norms, legal institutions in the international rights. The ILC classified trade law among such specialized autonomous complexes of norms and indicated the presence of its own principles and institutions.[58] The ILC characterizes such complexes of norms as "closed" regimes and defines them as a group of norms and principles related to a special subject of regulation and considers them as lex specialis.[59]

In accordance with Art. 1 Under the WTO Dispute Settlement Arrangements, the WTO Dispute Resolution Body applies only covered agreements in dispute resolution, i.e. the WTO Agreement. However, in accordance with Art. 3.2. DSU, Members of the WTO recognize that the dispute settlement system is intended to clarify the current provisions of these agreements in accordance with the usual rules of interpretation of public international law. In interpreting this provision, the

[58] Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Yearbook of International Law Commission. Vol. II. Part II. Chapter XII, Document A / CN.4 / L 682, Geneva, 13 April 2006. para 243.
[59] Ibid. Para 247, 251 (11)

WTO DSB Appellate Body indicated that the customary norms of international law on the interpretation of international treaties referred to in Art. 3.2. DSU, enshrined in Art. 31 of the UN Vienna Convention on the Law of Treaties 1969 (hereinafter - VCLT) and that the General Agreement cannot be read objectively in isolation from public international law.[60] As G. Marceau writes, the arbitration groups and the Appellate Body are obliged to interpret the WTO norms, taking into account all the relevant norms of international law in force between the WTO members.[61] Moreover, WTO members have the right to refer, when considering a dispute between them, to the provisions of an agreement in force between them, which is not included in the WTO "package" to form a defensive position.[62] However, the Appellate Body stressed that in accordance with the DSU, the Appellate Body and panels have no reason to consider disputes arising from agreements outside the WTO framework.[63]

Thus, international trade law, including WTO law, is viewed as an integral part of international law.[64] WTO law is not a closed, closed system isolated from international law.[65] As noted by M. Anufreeva: «The absolute nature of the closed nature of the WTO law, separation from other treaty regimes is not traced in any of the cases considered by the DSB. In fact, the existing treaty regimes cannot and should not be truly closed».[66] WTO law is not a separate "system", it is a "subsystem" of international law.[67] The WTO legal norms regulate the interstate relations between the members of this international organization. The sources of WTO law in the formal legal sense are international treaties, and the mechanism for creating norms and the method of legal regulation of these relations is the coordination of wills, that is, the process and result of the development of international agreements, decisions of the organization's bodies containing international legal rules of conduct for its members.[68]

As for the law of the EAEU, Article 3 of the Treaty on the EAEU defines "respect for the generally recognized principles of international law" as one of the basic principles of the EAEU functioning.

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[60] Appellate Body Report and Panel Report, United States - Standards for Reformulated and Conventional Gasoline, 20 May 1996. para 16
[61] Marceau G. Conflicts of Norms of Jurisdictions: The Relationship between the WTO Agreement and MEAs and Other Treaties, Journal of World Trade, No 6, 2001. p. 1129
[62] Pauwelyn J. Conflict of Norms in Public International Law: How WTO Law Relates to Other Norms of International Law, Cambridge, 2003. p. 473, 491
[63] DS308: Mexico — Tax Measures on Soft Drinks and Other Beverages, AB-2005-10 - Report of the Appellate Body, 06 March 2006, para 56
[64] Van den Bossche P., Zdouc W. The Law and Policy of the World Trade Organization: Text, Cases and Materials, Cambridge University Press; 3rd edition, 2012. p. 60
[65] Ibid., p. 61
[66] Anufrieva L.P. Pravo VTO: teoriya i praktika primeneniya : monografiya, INFRA-M, 2016. p. 328
[67] Pauwelyn J. Conflict of Norms in Public International Law: How WTO Law Relates to Other Norms of International Law, Cambridge, 2003. p. 38
[68] Tyurina N. Y. Fragmentatsiya mezhdunarodnogo prava v kontekste «prava VTO». Rossiyskiy yuridicheskiy zhurnal, 2011.

Moreover, the generally recognized principles and norms of international law are listed among the sources that the EAEU Court applies when resolving disputes. The EAEU Court in its Advisory Opinion of October 30, 2017 on the clarification of Article 29 of the Treaty on the EAEU mentioned that it applies the VCLT to interpret the law of the EAEU.[69]

Consequently, the WTO law and the EAEU law governing international trade relations can be attributed to (relatively) autonomous sets of norms, such as trade law as understood by the ILC.[70] However, they are not isolated from the system of international law and should be interpreted and applied on the basis of the principle of harmonization, taking into account the goal of system integration. The ILC points out that "trade law" is evolving as a means of responding to the opportunities created by comparative advantage in international relations.[71] The emergence of RTAs, to which the Treaty on the EAEU belongs, is just such a reaction.

It should be noted that the norms of the EAEU law, as well as the norms of the WTO agreements, mainly regulate international trade and related relations. The spheres of relations, as mentioned by the author of the thesis above, regulated by the WTO law and the EAEU law, often coincide. Moreover, most regional trade agreements, including the EAEU Treaty, contain references to WTO agreements. In the opinion of the ILC, when several rules deal with the same issue, they should, to the greatest extent possible, be interpreted in such a way as to establish a single set of compatible obligations.[72] This provision is called the principle of harmonization. Thus, the principle of harmonization should underlie the multilateral trading system, which consists of both the rules operating at the universal level of the WTO and the rules of preferential trade agreements, both bilateral and multilateral. Together they form a global system.[73]

In order to clarify some of the question about the hierarchy that the author asked in the introduction to the thesis, it is first necessary to find an answer to the question - can the Treaty on the EAEU and the WTO agreements be attributed to treaties concluded on the same issue in the understanding of Article 30 of the VCLT (Application of successive treaties relating to the same subject-matter)? And if so, then we will already move on to the dissertation question - which norms should have

[69] Konsul'tativnoye zaklyucheniye Suda Yevraziyskogo ekonomicheskogo soyuza ot 30 oktyabrya 2017 g. N SE-2-2/2-17-BK (Advisory opinion of the Court of the Eurasian Economic Union Concerning Interpretation of Article 29 of the Treaty on the EAEU). 30.10.2017
[70] Fragmentation of International Law: Difficulties..., Chapter XII, para 243
[71] Ibid., para 247
[72] Ibid., para 253
[73] Cottier T., Foltea M. Constitutional Functions of the WTO and Regional Trade Agreements / Bartels L., Ortino F. Regional Trade Agreements and the WTO Legal System. Oxford, 2010. p. 46-47

priority in the event of a conflict: the norms of the Treaty on the EAEU or the norms of the WTO agreements?

In answering the first question, it is important to note that Article 30 of the VCLT o refers to the most complex provisions of the Convention, and its subject matter remains an unclear aspect of the law of treaties.[74] In the international legal doctrine, two opposing points of view are expressed, whether the RTA and the WTO agreements are treaties relating to the same issue in the context of Art. 30 VCLT.[75] In the comments of the ILC to this article, it is indicated that the conclusion of a subsequent agreement is absolutely legitimate if it is a development or addition to a previously concluded agreement.[76] However, the provisions of the Treaty on the EAEU do not constitute a development and addition to the WTO agreements, since the relevant provisions of the Treaty on the EAEU are lex specialis in relation to the corresponding provisions of the WTO agreements, which means “are outside the scope of Art. 30 VCLT".[77]

At the same time, even if we consider the Treaty on the EAEU as pertaining to the same issue as the WTO agreements, it must be emphasized that in accordance with Art. 30.2 VCLT, “When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail”. This is the meaning of the provision that is established in the Treaty on the EAEU in Appendix No. 31, codifying the Treaty on the functioning of the Customs Union within the framework of the multilateral trading system. In accordance with Article 2 of this Treaty, the parties will take measures to bring the legal system of the Customs Union and decisions of its bodies in line with the WTO Agreement, and before these measures are taken, the provisions of the WTO Agreement take precedence over the corresponding provisions of international treaties concluded within the framework of the Customs Union, and decisions made by its bodies.

Consequently, regardless of whether the EAEU Treaty and the WTO agreements are "relating to the same subject-matter" in the meaning of Article 30 of the VCLT, in the event of a conflict between the WTO agreement and the EAEU Treaty, the WTO agreement shall apply.

It should be noted that in accordance with Article 41 of the VCLT “two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone”.

[74] Villiger M. Commentary on the 1969 Vienna Convention on the Law of Treaties, The Hague, 2009. p. 411
[75] McRae D. The WTO in International Law: Tradition Continued or New Frontier? JIEL. No 3, 2000. p. 21-47; Cottier T, Foltea M. p. 43-76
[76] Draft Articles on the Law of Treaties with Commentaries 1966 / Yearbook of the International Law Commission. Vol. II, 1966. p. 217
[77] Villiger M. Commentary on the 1969 Vienna Convention on the Law of Treaties, The Hague, 2009. p. 403

The ILC notes that “modify” means a deviation from the provisions of the treaty only between certain parties, which distinguishes a change from an amendment that is agreed upon by all states parties to the treaty.[78] A modify in a broad sense can be carried out in the form of a separate treaty, the conclusion of which changes the legal relationship between the WTO member states.[79] However, in D. Boklan's opinion, RTAs are not “agreements on modify” of multilateral WTO agreements between the participants of such RTAs.[80] In support of the provision on the application of Article 41 of the VCLT, experts refer to Article XXIV of the GATT and Article V of the GATS, which allow the creation of free trade zones and customs unions. These articles of the GATT and GATS do not consider the RTA as amending the WTO agreements. These articles deal with permissible, lawful exceptions, i.e. cases when the WTO member states have the right to derogate from the provisions of the GATT and GATS, moreover, subject to certain conditions specified in the GATT and GATS.

The WTO Appellate Body in its report on the Turkey-Textiles case indicated that “that Article XXIV may, under certain conditions, justify the adoption of a measure which is inconsistent with certain other GATT provisions ...”.[81] In addition, in the Peru-Agricultural products case, the Appellate Body emphasized that “the WTO agreements contain specific provisions addressing amendments, waivers, or exceptions for regional trade agreements, which prevail over the general provisions of the Vienna Convention, such as Article 41” [82]. Consequently, from the point of view of the WTO Appellate Body, RTAs are inherently exceptions to the legal regime of the GATT and GATS, and not agreements to amend multilateral agreements of the WTO. That is, the conclusion of the RTA is not a change in the WTO agreements. This conclusion is also confirmed by the opinion of the WTO Appellate Body on the possibility of using the provisions of the RTA for the interpretation of the WTO agreement in the case of Peru-Agricultural products.

Although the WTO Appellate Body emphasized that it does not answer the question of whether the RTA is "the norms of international law" in the context of Art. 31 VCLT,[83] it pointed out that Art. 31 The VCLT “is aimed at establishing the ordinary meaning of treaty terms reflecting the common intention of the parties to the treaty, and not just the intentions of some of the parties.

[78] Draft Articles on the Law of Treaties with Commentaries 1966 / Yearbook of the International Law Commission. Vol. II, 1966. p. 232; Villiger M. p. 533
[79] Pauwelyn J. p. 31
[80] Boklan D.S. Yevraziyskiy ekonomicheskiy soyuz i Vsemirnaya torgovaya organizatsiya: sootnosheniye pravovykh rezhimov. Pravo. Zhurnal Vysshey shkoly ekonomiki, No 2, 2017. p. 223-236
[81] DS34: Turkey — Restrictions on Imports of Textile and Clothing Products, Notification of Mutually, Appellate Body Report, 31 May 1999, para 45
[82] DS457: Peru — Additional Duty on Imports of Certain Agricultural Products, Appellate Body Report ,2015, para 112
[83] Ibid., para 5.99

While an interpretation of the treaty may in practice apply to the parties to a dispute, it must serve to establish the common intentions of the parties to the treaty being interpreted".[84] In the international legal doctrine, could be find an even more radical point of view that RTAs "cannot be used to interpret WTO law".[85]

In the conclusion of this paragraph, although the author of the thesis, guided by the approach of the ILC, defined WTO law and EAEU law as part of international law, constituent parts of an autonomous set of rules governing international trade relations within the framework of the multilateral trading system, however, within the framework of the WTO, RTA norms are not considered as the rule of law, but as measures taken by the states parties to such agreements.

[84] Ibid., para 5.95
[85] Qureshi A. H. Interpreting WTO Agreements: Problems and Perspectives. Business & Economics. Cambridge University Press, 2015. p. 349

2. THE RELATIONSHIP BETWEEN THE TWO LEGAL SYSTEMS AND POSSIBLE CONFLICTS ASSOCIATED WITH IT

The relationship between WTO law and EAEU law is a sensitive matter.[86] Since part of the powers of the member states to regulate trade has been transferred to the supranational level, in the EAEU, it is important to ensure that the EAEU bodies fulfill the obligations of the member states that are members of the WTO. On the other hand, the categorical subordination of the EAEU law to the WTO law undermines the legislative and political autonomy of the integration association. It is necessary to strike a balance between the observance of commitments to the WTO and the goals of a regional integration association. In order to study the issues of interaction between the law of the WTO and the EAEU and the correlation of one legal phenomenon with another, as well as to study possible problems that arise in connection with such interaction, the following issues will be considered in the second chapter: the issue of the hierarchy of these two systems will be clarified, an analysis and comparison of the relationship between the EAEU and WTO law will be carried out, the issue of jurisdiction will be considered, the practice of the EAEU Court on the role of WTO law in the EAEU legal system will be studied. The possibility of the existence of conflicts will be investigated through the study of the WTO Dispute Settlement Body reports in relation to the EAEU member states. Also in this part, the author explores what consequences this can lead to.

2.1 Place of the EAEU law within the WTO

On the issue of the place of the EAEU law in the WTO, it is worth starting with the general place of the RTA law in the WTO system. As mentioned above, WTO agreements do not prohibit WTO member states from concluding RTAs among themselves. According to Article XXIV of the GATT, its provisions should not prevent members of the WTO from forming a customs union or a free trade zone. As conditions for the creation of a customs union or free trade zone, this article, in accordance with paragraph 5 (a) and paragraph 8 (a), specifies the obligation not to impose duties and other trade regulation measures generally higher or more restrictive than the general area duty actions and trade regulation measures applied prior to the formation of the customs union or free trade zone.

[86] 19. Smirnova, A. A. Pravo VTO v Yevraziyskom ekonomicheskom soyuze: v poiskakh balansa interesov i avtonomiiю Pravo VTO. No 1, 2015.

In interpreting Article XXIV, the Panel indicated that member states have the right to create customs unions in such a way that the obligations of third WTO member states in accordance with the primacy of the WTO are not violated, as evidenced by the Singapore Declaration.[87] But this interpretation of Art. XXIV does not mean that the RTA norms that do not comply with the WTO agreements are recognized as invalid or null and void. In response to the adoption of such measures, third states have the right to demand their cancellation or compensation for the damage caused. The WTO Appellate Body has established a two-step test, which must comply with the measures taken by the RTA member states restricting trade with third countries. First, it is necessary to demonstrate that the measure was taken due to the consciousness of the customs union, which fully complies with the criteria of Art. XXIV 8 (a) and 5 (a). Second, it must be demonstrated that the creation of a customs union is contingent on such a measure.[88]

GATS Article 5 also does not prevent any of its members from participating in or entering into any agreement aimed at liberalizing trade in services between the parties, provided that such agreement covers a significant number of sectors and does not discriminate or substantially eliminates all discrimination. It should be noted that Article V of the GATS does not distinguish between a customs union and a free trade area. This is due to at least two circumstances. Firstly, customs duties and taxes are not levied on services, therefore, for the legal regime of trade in services, it does not matter whether they are provided within the framework of the customs union or within the framework of a free trade zone. Secondly, liberalization in the sphere of trade in services is inherent in a higher level of economic integration, as indicated by the term enshrined in article V of the GATS - "Economic Integration". The international legal doctrine states that not all customs unions or free trade zones provide for the liberalization of trade in services.[89]

In the Treaty on the EAEU, Section XV and Appendix No. 16 provide for the legal regime for trade in services within the Union. At the same time, the liberalization of trade in services is fixed as the main goal - Article 65.1 and Article 66 of the Treaty on the EAEU, as well as the principles of national treatment and most favored nation treatment in trade in services - paragraphs 21-29 of Appendix No. 16 to the Treaty.

[87] DS34: Turkey — Restrictions on Imports of Textile and Clothing Products, Notification of Mutually, Appellate Body Report, 31 May 1999, para. 9.183 / 4
[88]Ibid., para. 49.229
[89] Krajewski M. Services Liberalization in Regional Trade Agreements: Lessons for GATS “Unfinished Business?”, Bartels L., Ortino F. (eds.), Regional Trade Agreements and the WTO Legal System, Oxford University Press, Oxford, 2006. p. 178

In general, despite the differences in the legal regime of trade in services and goods, Article V of the GATS contains conditions similar to Article XXIV of the GATT, namely: a regional trade agreement must cover a significant proportion of the services sectors (Article V.1 of the GATS), a similar provision is contained in Article XXIV.8 GATT; the agreement should not increase the general level of barriers to trade in services (Article V.4 of the GATT), a similar provision is contained in Article XXIV.5 of the GATT. Thus, the GATT and GATS, subject to certain conditions, allow WTO member states to take measures that would be considered "preferential trade exemptions". Such measures would be inappropriate to the WTO, but their adoption is allowed as a legitimate exception from the most favored nation regime in order to ensure the economic integration of the WTO member states.[90]

Practice has made it clear that there is no effective control mechanism for compliance with Article XXIV, and according to the former Deputy Director General of the WTO Patterson, Art. XXIV is the most frequently violated provision of the WTO Agreement.[91]

The WTO attempted to resolve this situation, in 2006, the WTO General Council adopted a Decision on a Transparency Mechanism for Regional Trade Agreements[92]. According to which, now the WTO agreements establish their own transparency regime, requiring member states to immediately publish measures of general application, the text and all RTA annexes in one of the official languages of the WTO, notifying the organization, as well as providing information at the request of another WTO member. Compliance with the requirements is monitored by the RTA Committee, but due to the rules of consensus, it was unable to accept a single report on the non-compliance of the RTA with the WTO despite repeated recorded discrepancies. The role of the Committee was limited only to the receipt of the RTA texts. No other control mechanisms are envisaged within the WTO framework. Therefore, the states, concluding various RTAs, are already accustomed not to be afraid of this article.

Turning directly to the EAEU law in the WTO legal order, it should be noted that in three cases, which will be analyzed in more detail by the author in more detail below in this chapter of the thesis, where Russia is the defendant, the applicants put before the WTO DSB the question of recognizing the EAEU legal norms as inconsistent with WTO law. For example, in the case "Russia: measures affecting the import of railway equipment", Ukraine asked to recognize not only the decisions of the EEC, but also the Technical Regulations of the Customs Union as a

[90] Van den Bossche P., Zdouc W. The Law and Policy of the World Trade Organization: Text, Cases and Materials, Cambridge University Press; 3rd edition, 2012. p. 648
[91] Ispolinov A. S. VTO i regional'nyye torgovyye soglasheniya ili chto nam delat' s VTO i YEAES, 2015.
[92] General Council - Transparency Mechanism for Regional Trade Agreements - Decision of 14 December 2006.

measure contrary to WTO law, and at the same time indicated as a legal basis for the introduction of the contested measures section on technical regulation of the Treaty on the EAEU. In all these cases, the EAEU legal norms are considered as measures taken by one of the EAEU member states, namely Russia, since the EAEU is not a member of the WTO. Moreover, all actions of the EAEU or its bodies are assigned to each member of the EAEU, including Russia.

The issue of the compliance of the RTA with the WTO law only once came to the consideration of the WTO DSB, when at the very end of the 1990s India tried to appeal the quotas on textiles introduced by Turkey as a result of the creation of a customs union between the EU and Turkey. In its judgment in Turkey - Textiles, the WTO Appellate Body recognized that the creation of a customs union or free trade zone could in principle be considered a justification for taking a measure contrary to WTO law, provided that the requirements of Art. XXIV GATT. However, having stated this, the Appellate Body avoided resolving the issue of the compliance of the customs union created by the EU and Turkey, stating that these issues are not the time to resolve these issues now - "The resolution of those other issues must await another day", paragraph 65 of the judgment. In the same report on the Turkey-Textile case, the Panel stressed that where states act through a common body, each such state becomes responsible for an incorrect act, and the actions of the common body cannot be considered otherwise than in the context of the behavior of each separate state.[93] In a report on the Russia-Tariff Regulation case, the Panel indicated that the measures taken by the EEC "we also observe that they were not adopted by Russia, but by the Eurasian Economic Union (EAEU), an international organization of which Russia is a member state".[94] Therefore, it is obvious that the act of application of customs duties is assigned to Russia.[95]

Thus, it can be summed up that the WTO DSB considers the EAEU legal norms only as measures taken by an individual member state, and not as international law norms in the understanding of the UN ICL. Moreover, the WTO DSB is not going to deal with the issues of WTO and RTA compliance, and today it is already obvious that it will not recognize any RTA as contradicting the WTO Agreement. This conclusion answers part of the thesis hypothesis, which says that without EAEU membership in the WTO, like an ordinary RTA, the EAEU cannot fully defend its norms and achieve any decisions directly related to it from the WTO

[93] DS34: Turkey — Restrictions on Imports of Textile and Clothing Products, Panel Report, 31 May 1999. para. 9.37
[94] DS485: Russia — Tariff Treatment of Certain Agricultural and Manufacturing Products, Panel Report, 28 September 2016. para 7.42
[95] Ibid., para 7.46

DSB. It can be concluded that these issues should not be dealt with by the WTO, but by the states themselves.

2.2 Place of WTO law within the EAEU

Before starting the analysis, it should be noted that the issue of the place of the WTO law in the EAEU law has already been slightly touched upon in the first chapter of the thesis. But it is still worth repeating that, according to the preamble to the Treaty on the EAEU, the states created the Union, taking into account the norms, rules and principles of the WTO. However, this wording on the WTO is not the only one in the Treaty on the EAEU and was disclosed in the Protocol on the functioning of the Union within the framework of the multilateral trading system. Clause 1 of Article 1 of the Treaty establishes that from the moment of accession of one of the parties to the WTO, the WTO law becomes part of the legal system of the Union. In accordance with Article 3 (3) of the 2014 Treaty on the termination of the activities of the Eurasian Economic Community, the decisions of the EurAsEC Court remain in their previous status. Moreover, the EAEU Court referred to the position of the EurAsEC Court, basing this reference on Article 3 (2), and noted that the jurisprudence of the EurAsEC Court can be used by the EAEU Court as a stare decisis.[96]

The international legal doctrine states that "a very difficult issue is the question of the direct and indirect effect of the WTO legal norms in the legal order of the Customs Union, i.e. on the right of individuals to refer to the norms of WTO law in the EurAsEC Court to challenge the acts of the Eurasian Commission or when interpreting the law of the customs union".[97]

The predecessor of the EAEU Court, the EurAsEC Court, in its decision of June 24, 2013 on the case of steel forged rolls of rolling mills, better known as the claim of the Novokramatorsk Machine-Building Plant,[98] pointed out about the relationship between WTO law and EurAsEC law. The court refers to paragraph 1 of Art. 2 of the Treaty on the functioning of the Customs Union, where it is established that prior to the adoption of measures to bring the legal framework of the Customs Union in line with the WTO Agreements, the provisions of the WTO Agreements take precedence over the provisions of treaties concluded within the Customs Union and decisions

[96] Judgment of the Panel of the Court of the Eurasian Economic Union on the application of the CJSC "General Freight", 4 April 2016. para 11
[97] Ispolinov A. S. Voprosy pryamogo primeneniya prava VTO v pravoporyadke Rossii, Zakonodatel'stvo, No 2, 2014. p. 69
[98] Judgment of the Panel of the Court of the Eurasian Economic Community of on the application of the Public JSC "Novokromatorsky Mashine Engeneering Plant", 24 June 2013.

taken by its bodies. Based on this, the Court decided that the WTO rules have priority only in the event of a conflict with the Customs Union rules.[99]

The argument of the Court about the need for a contradiction between the norms of the WTO and the Customs Union to establish the priority of the former deserves special attention. The court found no contradictions between the Customs Union agreements and the WTO agreements regarding the transitional period and, on this basis, refused to give priority to the WTO norms. However, the Court did not explain what it means by a contradiction. Meanwhile, in the practice of international courts and in the doctrine of international law, there are different approaches to the concept of contradiction. The UN ILC, in its report on the fragmentation of international law, has identified a strict approach to the concept of conflict of norms (conflict) and a more flexible approach. According to the first approach, a contradiction exists if, in order to fulfill the norm of one agreement, a party must violate the norm of another agreement. A broader understanding of the contradiction implies that the norms of one agreement contradict the goals of another in the absence of any strict conflict between the norms of these agreements.[100] What kind of concept of "contradiction" between the norms was used by the Court in its reasoning, unfortunately, the decision is not specified. Thus, the question of what constitutes a contradiction as a condition for giving priority to WTO norms remained open. However, today the EAEU Court has every opportunity to fill in the gaps left by the EurAsEC Court (for example, the concept of contradiction of norms), and correct its judicial position.

In addition, it should be borne in mind that according to paragraph 3 of Article 2 of the Treaty on the Functioning of the Customs Union within the Multilateral Trading System, in the event that certain norms of the Union's legal system are more liberal than the WTO Agreement, but do not contradict it, the parties are provided with application of such rules for the purpose of effective functioning of the Union and the development of international trade.

It should be noted that paragraph 185 of the Report of the Working Group on the Accession of the Russian Federation to the WTO states that “the rights and obligations of the Member States of the Customs Union arising from the WTO Agreement ... cannot be canceled or limited by the decision of the bodies of the Customs Union, including the Court ... the rights and obligations of a member of the Customs Union under the WTO Agreement will prevail over all past and future agreements of the Customs Union and decisions of the bodies of the Customs Union”. Further, paragraph 186

[99] Ispolinov A. S. Voprosy pryamogo primeneniya prava VTO v pravoporyadke Rossii, Zakonodatel'stvo, No 2, 2014. p. 20

[100] Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. Yearbook of International Law Commission. Vol. II. Part II. Chapter XII, Document A / CN.4 / L 682, Geneva, 13 April 2006, para. 24

indicates that a violation of these rights and obligations by a member state of the Customs Union or by a body of the Customs Union may be appealed by a member state of the Customs Union or the Commission of the Customs Union in the Court.

The competence of the EAEU Court is defined in paragraph 39 of the Statute of the EAEU Court, in accordance with which the Court considers disputes arising on the implementation of the Treaty on the EAEU, international treaties within the Union and (or) decisions of the Union bodies. The law applicable by the EAEU Court is defined in paragraph 50 of the Statute of the Court. These include: generally recognized principles and norms of international law; The Treaty on the EAEU; international treaties within the Union; other international treaties to which the states parties to the dispute are parties; decisions and orders of the bodies of the Union; international custom as evidence of a general practice accepted as law. Can the WTO agreements be attributed to international treaties within the Union or to other international treaties to which the states parties to the dispute are parties? The definition of an "international treaty within the Union" is given in Art. 2 of the Treaty on the EAEU, which is understood as an international treaty concluded between the member states on issues related to the functioning and development of the Union. Obviously, the WTO agreements do not belong to this category of international agreements.

As for the concept of “other international treaties to which the states parties to the dispute are parties”, in the decision of June 21, 2016, the EAEU Court of Appeal on the complaint of General Trade CJSC against the decision of the EAEU Court Board of April 4, 2016, on the refusal to satisfy the application “General Trade" and the recognition of the EEC decision of July 18, 2014 No. 117 "On the classification of the refrigerating machine "chiller" according to the unified Commodity nomenclature of foreign economic activity of the Customs Union" corresponding to the Treaty, international treaties within the EAEU established the criteria necessary for the application of an international treaty that is not an international agreement within the Union. The decision indicates the need for two cumulative conditions, which must comply with an international treaty that is not a treaty within the Union, namely: the membership of all EAEU states in such a treaty and that the scope of such an treaty should fall within the scope of a single policy within the EAEU.[101] Today, even according to the first criterion, the WTO agreement cannot be attributed to other international treaties to which the states parties to the dispute are parties since Belarus is not a party to the WTO agreements.

[101] Judgment of the Panel of the Court of the Eurasian Economic Union on the application of the CJSC “General Freight”, 21 June 2016. para 14

In addition, there is an opinion in international legal doctrine that the WTO DSU has exclusive jurisdiction over disputes arising from covered agreements, i.e. WTO agreements.[102] This conclusion is drawn from the interpretation of Art. 23 DSU. In accordance with this article, WTO member states are "required to refer to and follow the procedures" of the DSU. "Members of the WTO are obliged to launch a quasi-automatic, fast and efficient mechanism for resolving WTO disputes, thus excluding the competence of other dispute resolution mechanisms to determine the existence of a violation of WTO law".[103] A similar conclusion can be drawn from the practice of the WTO DSB. Interpreting Art. 23 DSU, the Panel emphasized that WTO member states "should refer to the dispute resolution system provided by the DSU as exclusive among any other systems, in particular, systems of unilateral execution of rights and obligations provided for by the WTO".[104] This provision was also confirmed later by the Arbitration Group in the case "EU - Commercial Courts", which indicated the exclusive jurisdiction of the WTO DSB with respect to other international forums.[105]

Thus, it also follows from the WTO DSB practice that the RTA Courts, including the EAEU Court, do not have jurisdiction to consider disputes arising from the WTO agreements. At the same time, the question arises, can the EAEU Court, when resolving disputes arising from the EAEU law, interpret the EAEU law, taking into account the WTO law?

In general, RTAs are based on WTO law, contain references to it and repeat many of the provisions of the WTO agreements.[106] This is also true of the EAEU Treaty. Obviously, when interpreting the law of the EAEU, including the provisions of the Treaty on the EAEU, the EAEU Court is guided by the rules on the interpretation of international treaties enshrined in the VCLT, taking into account the fact that all EAEU member states participate in the VCLT and that the provisions of the VCLT on interpretation are a codification of the usual rules international law. In accordance with Art. 31.1 VCLT "the treaty shall be interpreted in good faith in accordance with the usual meaning to be given to the terms of the treaty in their context and in the light of the object and purpose of the treaty". As mentioned earlier, the preamble to the Treaty on the EAEU states that the parties "take into account the norms, rules and principles of the World Trade Organization", which can be considered as the "context" in which all provisions of the Treaty on the EAEU should

[102] Van den Bossche P., Zdouc W. The Law and Policy of the World Trade Organization: Text, Cases and Materials, Cambridge University Press; 3rd edition, 2012. p. 161–162
[103] Kwak K., Marceau G. Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements / Bartels L. Ortino F. (eds.). Regional Trade Agreements and the WTO Legal System, Oxford University Press, Oxford, 2006. p. 467
[104] Panel Report, US — Section 301 Trade Act (2000), para 7.43
[105] Panel Report, EC — Commercial Vessels (2005), para 7.193.
[106] Qureshi A. H. Interpreting WTO Agreements: Problems and Perspectives. Business & Economics. Cambridge University Press, 2015. p. 350–355

be interpreted. Furthermore, in accordance with Art. 31.3 VCLT "along with the context, any relevant rules of international law applicable in relations between the parties shall be taken into account". At the moment, for all EAEU member states, except Belarus, the WTO agreements refer to such norms of international law.

At the same time, the right of the EAEU Court to interpret the rules of the EAEU law, taking into account the rules of the WTO law, does not entail the obligation to follow the interpretation of the WTO DSB. The International Tribunal for the Law of the Sea has indicated that "Considering also that the application of international law rules on interpretation of treaties to identical or similar provisions of different treaties may not yield the same results, having regard to, inter alia, differences in the respective contexts, objects and purposes, subsequent practice of parties and travaux préparatoires".[107] L. Hsu pointed out that there should be no blind or servile references to interpretations of the WTO, since regional trade agreements are separate international treaties, on a par with WTO agreements, falling under the rules of interpretation of international law.[108]

Thus, the EAEU Court, when using the WTO law for the purpose of interpreting the Treaty on the EAEU, should be guided by the goals, object of the Treaty on the EAEU, as well as the practice of the member states in its application and preparatory materials. This approach was used by the EAEU Court in its decision on the ArcelorMittal Kryvyi Rih case of April 27, 2017, in which the EAEU Court took into account GATT[109] when interpreting the anti-dumping provisions of EAEU legislation. The court emphasized that Article VI of the GATT is implemented in EAEU legislation, in particular , Article 49 (2) of the Treaty on the EAEU.[110] Moreover, the Chamber of the Court takes into account the law enforcement practice of the WTO Dispute Settlement Body in terms of establishing the period for which the damage to the economy should be analyzed. In particular, the panel of the WTO Dispute Settlement Body in paragraph 7.30 of the report of January 27, 2017 in the case of Russia - Anti-dumping duties on light commercial vehicles form Germany and Italy confirmed the position that the Anti-Dumping Agreement does not establish any specific period investigation or the period for collecting data in the course of an anti-dumping investigation. The Court confirmed this position in the Advisory Opinion mentioned in the first chapter, referring to Article XX of the GATT and indicating that for the purpose of a correct

[107] Mox Plant Case (Ireland v United Kingdom). Order on Provisional Measures, 3 December 2001. para 51
[108] Hsu L. Applicability of WTO Law in Regional Trade Agreements: Identifying the Links' / L. Bartels, F. Ortino (eds.), Regional Trade Agreements and the WTO Legal System, Oxford University Press, Oxford, 2006. p. 541
[109] Judgment of the Panel of the Court of the Eurasian Economic Union on the application of the Public JSC "ArcelorMittal Kryvyi Rih", 27 April 2017. p. 5–6.
[110] Ibid., p. 22–23.

understanding of the principles of the functioning of the internal market for goods, it is of practical importance to exercise freedom of movement of goods in accordance with WTO legislation.[111]

According to the report of the Institute of Trade Policy of the National Research University Higher School of Economics,[112] within the framework of interviewing experts from the Ministry of Economic Development of the Russian Federation and the EEC, any special procedure for considering the issue of bringing, for example, the rates of import customs duties in accordance with the obligations in the WTO in comparison with the usual initiative proposal Member States of the Union on the adjustment of the rates of import customs duties, is absent. That is, based on the results of a dispute within the WTO, the interested member state sends an initiative proposal to the EEC, and after passing the necessary procedures, the proposal is submitted for consideration by the Board of the Commission or the Council of the Commission.[113] In accordance with Article 18 of the Treaty on the Union, decisions of the Council of the Commission are adopted by consensus, and decisions of the Board of the Commission - by a qualified majority. Since decisions, for example, when referring an issue to the competence of the Board of the Commission are made by voting, the question arises whether the Members of the Board, when making a decision, should be guided by the decisions taken by the WTO DSU with respect to one of the Union member states. This situation, apparently, should be resolved by Article 2 of the Treaty on the Functioning of the CU in the WTO, which stipulates the following: “The Parties will take measures to bring the legal system of the Customs Union and decisions of its bodies in line with the WTO Agreement, as fixed in the Protocol of Accession each of the Parties to the WTO”.

However, this legal link of international treaties does not always work.[114] So, in accordance with the "Protocol on certain issues of import and circulation of goods in the customs territory of the EAEU" dated October 16, 2015, when importing goods from third countries into the territory of the Republic of Kazakhstan, reduced rates of import customs duties are applied, taking into account the conditions provided for in paragraph 307 of the Working Group Report on the accession of the Republic of Kazakhstan to the WTO as a condition for accession. Reduced rates of import customs duties are applied in accordance with the List approved by the EEC. At the same time, in accordance with the Rules of Procedure of the EEC Commission, this issue is attributed

[111] Advisory Opinion Concerning Interpretation of Article 29 of the Treaty on the EAEU, supra note 16, para. 7
[112] Danil'tsev A.V. Otchet o nauchno-issledovatel'skoy rabote Analiz praktiki zarubezhnykh yurisdiktsiy po privedeniyu mer zashchity vnutrennego rynka v sootvetstviye s resheniyami Organa po razresheniyu sporov Vsemirnoy torgovoy organizatsii i razrabotka rekomendatsiy po yeye uchetu v deyatel'nosti Yevraziyskoy ekonomicheskoy komissii, Moskva, 2018. p. 208
[113] Ibid., p. 209
[114] Ibid., p. 211

to the powers of the Council of the Commission, that is, decisions on this issue are taken by consensus. Initially, the List was approved by the decision of the Council of the Commission dated October 14, 2015 No. 59 and was subject to annual updating in accordance with the schedule of tariff obligations of the Republic of Kazakhstan under the WTO.

However, the annual update of the List from December 1, 2016 and December 1, 2017 did not take place due to the lack of consensus when making a decision by the Commission Council on this issue. In connection with the failure to make the appropriate decision at the supranational level, in the period from March 23, 2017 to April 6, 2018, the Republic of Kazakhstan applied exemptions from the EAEU CCT in accordance with the national act - order of the Minister of National Economy of February 9, 2017 No. 58.1 And only since On April 6, 2018, the Republic of Kazakhstan resumed the application of exemptions from the ETT of the EAEU on the basis of the supranational act of the Eurasian Economic Commission, decision of the Commission Council dated January 26, 2018.[115]

As this example shows, in the presence of objections from at least one of the Union member states, the Union bodies, due to the established procedures, are not able to ensure the adoption of a decision at their level, even if such a decision is mandatory in accordance with the Treaty and international treaties within the Union. The Agreement on the functioning 2011 stipulates that in the course of negotiations on accession to the WTO on issues within the competence of the Union bodies, any newly acceding party in the areas of legal relations referred to the competence of these bodies should strive to form such a volume of obligations that would be maximally focused on the obligations of the party that first entered the WTO. If, as a result of the negotiations, fundamental deviations from such obligations were formulated, then they are subject to urgent discussion and agreement by the parties. In this regard, it should be noted that the Treaty proceeds from the premise that the member states should strive to create a situation where the volume of their obligations corresponds to the obligations assumed by the first party entering the WTO. However, the process of accession to the WTO is based on the reconciliation of the interests of the member states and the acceding state, and this does not guarantee that the systemic obligations of the further acceding CU member states to the WTO will fully coincide. This paragraph brings us to some of the collisions that exist today.

Thus, current practice shows that when the EAEU member states join the WTO not as a single bloc, but as separate countries, there are multiple contradictions between national interests of the EAEU states, regional interests of the EAEU as a whole, and international interests in the form of

[115] Ibid., p.217

the WTO. In 2015, the rate of the EAEU Unified Customs Tariff was 8.4%, the problem for that year was that the rates of obligations of Kazakhstan and Kyrgyzstan were 6.1% and 7.5% by 2015, respectively.[116] And in order to comply with the rate of the Unified Customs Tariff of the EAEU, Kazakhstan and Kyrgyzstan would need to increase their tariff rates, that is, in this way they would violate their obligations to the WTO. Now, in order to solve such a problem, in particular cases, the coordination of tariffs is frozen for a certain period, for example, as in the case of the coordination of the Single Customs Tariff between Kazakhstan and the EAEU after its accession to the WTO, which to some extent undermines the foundations of the Union itself. Thus, documents were adopted defining the peculiarities of the circulation of certain goods imported into the territory of Kazakhstan from third countries or originating from the territory of Kazakhstan, and appropriate instructions were given to study the issue of the possibility of changing the rates of the EAEU Common Customs Tariff in relation to certain goods in accordance with Kazakhstan's obligations to WTO.[117] Armenia and Kyrgyzstan, which at the time of accession to the EAEU, were already members of the WTO, also faced problems of adapting legal regimes. In other cases, the agreed conditions create a situation in which serious damage is caused to a separate national economy, quite often it is caused to Belarus, due to significant differences in the commodity structures of foreign trade, since it is not a member of the WTO. Consequently, it is advisable to amend the legal framework of the CU after all member states have entered the WTO. As mentioned several times above, only the Republic of Belarus remained, which planned to complete negotiations on accession to the WTO by the 2020 WTO Ministerial Conference, however, due to sanctions in connection with numerous human rights violations due to the political regime and the COVID-19 pandemic, this did not happen. Until the moment of its accession, the mechanism of priority application of the obligations provided for by the international WTO treaties should be used, if they establish other rules than those provided for by the international legal acts of the Union. Thus, based on all of the above, the author can answer more fully the two questions posed in the introduction to thesis.

First, to clarify the issue of hierarchy a little more, this issue has already been touched upon in chapter one. So, in the modern understanding of the issue, WTO law takes precedence over the relevant provisions of international treaties and decisions concluded within the EAEU or adopted by its bodies. It is also worth remembering the Court's remark in the case on the claim of the Novokramatorsk Machine-Building Plant that the WTO rules have priority only in the event of a

[116] Z. Zhanaltay. World Trade Organization's Regulation Harmonization with Other Organization: Eurasian Economic Union. 2015. Accessible: https://eurasian-research.org/publication/world-trade-organizations-regulation-harmonization-with-other-organization-eurasian-economic-union/ (20.04.2021)

[117] Decision of the Supreme Eurasian Economic Council. No 22 "On some issues related to the accession of the Republic of Kazakhstan to the World Trade Organization". 16.10.2015.

conflict with the Union's rules, and about paragraph 2 of Article 3 of the 2011 Treaty, which states that if the Union regime offers a more liberal regime than the Agreement WTO, then the EAEU law will apply in this case.

Secondly, although the application of WTO law is not within the competence of the EAEU Court, however, the Court can interpret the EAEU law, relying on WTO law and DSB jurisprudence if such interpretation is consistent with the context and object of the EAEU Treaty. Therefore, the EAEU can countries use the WTO Dispute Settlement Body decisions in the EAEU court.

Considering the above, it can be concluded that the EAEU law is not fully protected from periodic amendments to it, which is associated with the gradual accession to the WTO of the EAEU member states. This, in turn, may negatively affect the stability of the EAEU legal framework in the field of a unified industrial policy, which is aimed at harmonization and unification. After all the EAEU member states enter the WTO, it will be possible on a systematic basis to make the necessary changes in the general legal framework of this interstate integration association, which will lead to a more efficient and high-quality construction of a unified industrial policy on a stable international legal basis.

2.3 Ratio of WTO and EAEU jurisdictions in dispute resolution

An important problem for the WTO and the EAEU is the ratio of their jurisdictions to their dispute resolution bodies. This issue has been discussed a bit in the thesis points above, but a more complete picture will be analyzed here. The EAEU Court is a regional international judicial institution, and the WTO Dispute Settlement Body operates at a universal level, therefore, it is necessary to find out whether the same disputes can be considered by both the EAEU Court and the WTO DSB. The subjects of the appeal to the WTO Dispute Resolution Body are the WTO member states, and the subjects of the appeal to the EAEU Court are the EAEU members and legal entities. In this case, the possibility of applying the res judicata principle is interesting if the losing party in the case considered in the EAEU Court applies to the WTO DSB. It should not be forgotten that both institutions consider disputes arising on the implementation of EAEU and WTO normative acts and given the fact that the WTO law is implemented in the EAEU law, the same dispute can arise both from the EAEU Treaty and from the WTO agreements. There is a risk of competition between jurisdictions.

International lawyer Y. Kozheurov points to a real problem related to the jurisdiction of the two mechanisms of justice: “The issue of the possibility of the transfer of disputes by the EAEU

member states between themselves on issues affecting, inter alia, obligations under the EAEU law, to other international judicial institutions remains open".[118]

An analysis of the Treaty on the Establishment of the EAEU shows that the authors of this document bypassed the issue of resolving disputes in other international organizations. The question remains open due to the absence of a provision on its exclusivity in relation to the EAEU Court, as, for example, established in relation to the EU Court of Art. 344 of the Treaty on the Functioning of the European Union. The Treaty on the Eurasian Economic Union of 2014 also does not contain clear provisions allowing the EAEU member states the right to choose a dispute resolution procedure outside the EAEU, there are no clear prohibitions or restrictions on transferring a case to another international court, nor provisions allowing the EAEU member states to decide for themselves where this dispute will be considered. The current state of affairs can be called a gap in international law, which leaves the issue of jurisdiction open and can lead to unpleasant collisions that negatively affect integration processes.

There is an opinion that one of the options for solving this problem in order to exclude a conflict of jurisdictions in the future is to include a forum exclusion clause in the text of the regional trade agreement, which would not allow consideration of similar issues by another judicial institution.[119] This idea seems untenable, firstly, since it is not specified what exactly is meant by a similar issue - a claim or a dispute. Secondly, the idea clearly follows the principle of res judicata, but at the same time diminishes the right of the parties to seek resolution of the dispute in both organizations of which they are members. Thirdly, there is a risk of the need to recognize any judicial mechanism (the WTO DSB or the EAEU Court) as superior over another, and this does not contradict the very nature of these mechanisms.

Indeed, if we follow the logic of paragraph 1 of Art. 1 of the Treaty on the functioning of the CU, which establishes that integrated WTO agreements become part of the EAEU legal system, and clause 1 of Art. 2, which obliges the parties to bring the legal system in line with the WTO Agreement, then it can hardly be said that the dispute resolution system within the EAEU prevails over the WTO DSB.

Y. Kozheurov also notes that competition of jurisdictions may arise, but this depends on the parties to the dispute themselves: "If the respondent state does not object to the use of this procedure and

[118] Kozheurov Y. S. «Instituty mezhdunarodnogo pravosudiya i pravo Yevraziyskogo ekonomicheskogo soyuza: "Cmotr pravovykh sil". Rossiyskiy yuridicheskiy zhurnal, No 4, 2016. p.105

[119] Pauwelyn J. Legal avenues to "Multilaterising Rigionalism": Beyond article XXIV, the Conference on Multilateralising Regionalism, WTO – HEI, 2007.

does not declare in the EAEU bodies, including the Court, that the plaintiff has violated its integration obligations to adhere to a unified procedure for resolving the dispute, the Court will be deprived of the opportunity to even speak on this matter. If the respondent state opposes the transfer of the case to the WTO DSB and challenges the actions of the claimant state in the EAEU Court, then the latter will face a difficult task".[120] That is, if the courts' competences overlap, then there is a potential possibility of conflicting decisions.

Thus, it can be concluded that the appeal of the EAEU members to other international institutions of justice, in particular to the WTO DSB, is not excluded. The situation is complicated by the fact that, in the opinion of many experts, for a large number of states, the WTO DSB is the most preferred dispute resolution mechanism due to its authority and the holistic practice of interpreting and applying the provisions of the WTO rules.[121] The practice of the EAEU Court today is too scarce to make confident conclusions about its effectiveness, therefore, the confidence of the EAEU member states will largely depend on the EAEU Court itself: only its further practice will show itself as an impartial body of justice.

2.4 The practice of challenging the EAEU measures in the WTO Dispute Settlement Body

The need to construct a deeply thought-out and carefully verified conceptual approach to the issue of appropriate legal means of ensuring the relationship and correlation of the autonomous legal regime of the EAEU integration association and the WTO law is now fully faced by theory and practice in connection with several disputes, where the EAEU member state is a defendant, and the applicants, members of the WTO, put before the WTO DSB the question of recognizing the norms of the EAEU law as not consistent with the WTO law. In order to study the thesis problem, the author will carefully analyze the following disputes and academic works of D. Boklan, who analyzed such disputes with a special emphasis on challenging the measures taken within the EAEU.[122] Based on this analysis, the author of the thesis, as part of research, chose three disputes in which the Russian Federation acted as the defendant, and the problem directly or indirectly related to the EAEU law, in order to show all aspects of the relationship between EAEU and WTO law. These are the disputes: " Russia - Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy"; "Russia - Tariff Treatment of Certain Agricultural and Manufacturing

[120] Kozheurov Y. S. «Instituty mezhdunarodnogo pravosudiya i pravo Yevraziyskogo ekonomicheskogo soyuza: "Cmotr pravovykh sil". Rossiyskiy yuridicheskiy zhurnal, No 4, 2016. p.100
[121] Ispolinov A. S. Odnazhdy 20 let spustya // Plany reformy ORS VTO (Once Upon a Time 20 Years Later // WTO LDP Reform Plans). Accesseble: http://zakon/ru/Blogs/odnazhdy_20_let_spustya__plany_reformy_ors_vto/17428 (25.04.2021)
[122] Boklan D. S., Lifshits I. I. Eurasian Economic Union Court and WTO Dispute Settlement Body: Two Housewives in One Kitchen Russian Law Journal, No 7(4), 2019. p. 178

Products." and "Russia - Measures Affecting the Importation of Railway Equipment and Parts Thereof".

When comparing the two treaty regimes - the WTO law and the EAEU law - the second aspect of their correlation is also essential: the interpretation of the EAEU law by the WTO member states and especially by the Dispute Resolution Body. So, in the above three disputes, the grounds for complaints were the actions of a member of the EAEU - the Russian Federation, due to international obligations that arise either from international treaties or from decisions of the bodies of an integration association - first, the customs union and the single economic space, and now the economic union.

In the first case, compliance with Art. VI GATT and the Agreement on the Application of Art. VI GATT on the Anti-dumping Code, anti-dumping duties introduced by the decision of the EEC Board in relation to light commercial vehicles imported into the territory of the CU from Germany, Italy and Turkey. The second case is related to the customs duties established by four decisions of the EEC at once, which the EU considered to be inconsistent with Russia's obligations under Art. II and VII GATT, as well as the norms of the Agreement on the application of Art. VII GATT on customs valuation. In the latter case, Ukraine asks to recognize as a measure contrary to WTO law not only the decisions of the EEC, but also the Technical Regulations of the Customs Union, and at the same time indicates as a legal basis for the introduction of the contested measures a whole section of the EAEU Treaty on Technical Regulation. In all these cases, the EAEU legal norms are considered as measures taken by one of the EAEU member states, since the EAEU is not a member of the WTO. Moreover, all actions of the EAEU and its bodies are assigned to each member of the EAEU. In these cases, the WTO DSU does not have any difficulties in establishing its jurisdiction, even if Russia declares that it cannot bear responsibility for the decisions of an independent subject of international law - an integration entity.

First, it is not the decisions of the Union bodies themselves that are being challenged, but the reduction and cancellation of benefits arising, in the opinion of the applicants, from the implementation of these decisions by Russia. Secondly, upon joining the WTO, Russia has repeatedly declared its obligation to follow the norms of agreements within the WTO, regardless of whose competence - Russia or the Union - is to resolve the relevant issue.[123]

In particular, in paragraph 178 of the Report of the working group on the accession of the Russian Federation to the WTO dated November 16, 2011, the representative of the Russian Federation

[123] Kozheurov Y. S. «Instituty mezhdunarodnogo pravosudiya i pravo Yevraziyskogo ekonomicheskogo soyuza: "Cmotr pravovykh sil". Rossiyskiy yuridicheskiy zhurnal, No 4, 2016. p.103

assured that in certain sections of this report that the Russian Federation assumed obligations to ensure that the obligations of the Russian Federation in the WTO will be fully implemented, including obligations in those areas that fall within the competence of the Customs Union authorities. Of the 163 mandatory - by virtue of clause 2 of the Protocol on the accession of the Russian Federation to the Marrakesh Agreement on the establishment of the WTO dated December 16, 2011 - the paragraphs listed in para1450 of the Report, more than 50 regulate the obligations of the Russian Federation, including on issues within the competence of the CU. For example, in paragraph 620 of the Report (which, incidentally, is referred to by the EU in the case of light commercial vehicles), it is noted: "... the representative of the Russian Federation confirmed that from the date of accession, full compliance with the provisions of the Agreement on the application of Article VI of GATT-94 will be ensured and Agreements on subsidies and countervailing measures, as well as Agreements on protective measures, both by the competent authorities of the Russian Federation and by the authorized structures of the Customs Union. It further confirmed that any trade protection measures in force from the date of accession to the WTO, as well as any procedures related to trade protection measures introduced before accession to the WTO, as well as trade protection measures arising from them, taken by the competent authorities of the Russian Federation, or competent authorities of the Customs Union, from the date of accession, will fully comply with the relevant WTO agreement".

Thirdly, even if some obligations on issues within the competence of the CU are not listed in paragraph 1450 of the Report, then according to the norms of general international law set out by the UN International Law Commission in the articles on the responsibility of international organizations, taken into account by the UN General Assembly Resolution 66/100 dated September 12, 2011 and contained in the annex to this resolution, "a member state of an international organization bears international responsibility if, using the fact that this organization is endowed with competence relevant to the substance of one of the international legal obligations of this of the state bypasses this obligation by encouraging the organization to commit an act which, if committed by the state, would constitute a violation of this obligation" (paragraph 1 of article 61). Moreover, this rule applies regardless of whether the act is internationally wrongful for the international organization itself (paragraph 2 of article 61). The assurances of the representative of the Russian Federation, recorded in the Report of the working group, can be interpreted in the context of Art. 62: "A State member of an international organization is responsible for an internationally wrongful act of that organization if: (a) It has agreed to be held accountable for that act to the injured party; or (b) it gave the injured party a reason to rely on its responsibility".

2.4.1 DS479: Russia - Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy

In May 2013, the Eurasian Economic Commission introduced anti-dumping duties on passenger cars from Germany (29%) and Italy (23%); this decision applied to all member states of the Union.[124] In 2014, the supplier of light commercial vehicles Volkswagen AG applied to the EurAsEC Court with a corresponding claim to invalidate the EEC decision. The EurAsEC Court dismissed the claim on procedural grounds: the applicant added new factual circumstances to the claim after the pre-trial notification submitted to the EEC, and therefore, in the opinion of the EurAsEC Court, the possibility of pre-trial settlement was not exhausted.[125] The chamber consisted of three members; one of the judges T. Neshatayeva presented a dissenting opinion, stating that the court was mistaken in finding that the applicant did not comply with the pre-trial settlement requirement, since a pre-trial notice was submitted, and the provision of the relevant agreement on the provision of this requirement did not prohibit the inclusion of new circumstances in the court not included in the pre-trial statement of claim. Dismissal of a claim on such grounds, in the opinion of Judge Neshataeva, violated the basic principles of the court decision, especially the principle of access to justice.[126] Volkswagen AG could again try to file an application with the EEC and then with the court, but it chose to act through the WTO dispute settlement system, and in 2014, the European Union initiated legal proceedings in DSB against the Russian Federation.

The European Union, the applicant in the dispute at hand, has made a number of claims in relation to anti-dumping duties levied by Russia on certain light commercial vehicles from Germany and Italy. According to the EU, the described measures did not comply with Article VI of the GATT and a number of articles of the Agreement on the application of Article VI of the GATT. The Panel and the WTO Appellate Body attributed the actions of the EEC to the Russian Federation and found that it violated a number of provisions of the Anti-Dumping Agreement, but at the same time rejected most of the EU claims.

[124] Boklan D. S., Tonkikh P. N., Kozlova M. D. Spor Rossiya – Zheleznodorozhnoye oborudovaniye i drugiye spory ob osparivanii mer Yevraziyskogo ekonomicheskogo soyuza v Organe po razresheniyu sporov VTO. Mezhdunarodnoye pravosudiye, No 3 (27), 2018. p. 19

[125] Judgment of the Panel of the Court of the Eurasian Economic Community on the application of the company Volkswagen A.G., 7 October 2014. p. 2–3

[126] Dissenting Opinion of Judge T.N. Neshataeva on the application of the company Volkswagen A.G. 7 October 2014. p. 1–2.

In accordance with Article 4.1 of the Anti-Dumping Agreement, domestic industry means not only all manufacturers of similar goods, but also those whose aggregate production of these goods constitutes the bulk of all domestic production.

The EEC Department for the Protection of the Internal Market has defined the domestic industry as consisting of one manufacturer, which accounts for more than 87% of domestic production.[127] Based on this definition, the EEC Board adopted the previously mentioned decision on anti-dumping duties. The panel concluded that the establishment of a quantitative threshold provided for in Article 4.1 is a necessary but insufficient condition for meeting its requirements in general, since the definition of domestic industry in Article 4.1 has both quantitative and qualitative aspects. The panel noted that the EEC Department for the Protection of the Internal Market decided not to include in its definition the well-known manufacturer of a similar product from the Gorky Automobile Plant, which provided the data, as a result of which the risk of material distortion was evident in the subsequent analysis of damage.[128]

The Appellate Body pointed out that producers of domestic like products could not be excluded from the definition of domestic industry on the basis of considerations or selection methods that, by their very nature, could distort the subsequent definition of damage.[129] And supported the panel in its conclusions and noted that the EEC Department for the Protection of the Internal Market had acted in violation of Article 4.1 of the Anti-Dumping Agreement in its definition of the term "domestic industry" and, therefore, violated Article 3.1 of the said Agreement, as it conducted its analysis of damage and causation-investigative communication based on information concerning the incorrectly defined branch of domestic industry.[130]

The European Union raised ten claims related to the definition of damage, nine of which were rejected. The panel came to the conclusion that the EEC Department for the Protection of the Internal Market had incorrectly determined the dumping margin, the procedure for determining which is provided for in Article 3.4 of the Anti-Dumping Agreement, without taking into account the consequences of the financial crisis in its analysis of price reductions. It pointed out that this error undermines the definition of a causal relationship between dumped imports and damage to domestic industries, in violation of Articles 3.1 and 3.5 of the Anti-Dumping Agreement.[131] The

[127] Boklan D. S., Tonkikh P. N., Kozlova M. D. Spor Rossiya – Zheleznodorozhnoye oborudovaniye i drugiye spory ob osparivanii mer Yevraziyskogo ekonomicheskogo soyuza v Organe po razresheniyu sporov VTO. Mezhdunarodnoye pravosudiye, No 3 (27), 2018. p. 22
[128] Appellate Body Report, Russia - Anti-Dumping Duties, para 3.1
[129] Ibid. para 5.13
[130] Ibid. para 5.40
[131] Ibid. paras 7.66, 7.67

Russian Federation did not appeal on the basis of incorrect attribution, so this finding was accepted as conclusive. D. Boklan, noted that "Neither the panel nor the Appellate Body mentioned[132] in the reports the EAEU Treaty or any other treaties within the EAEU, and the EU claim to bring the respondent's laws and regulations in conformity with the Anti-Dumping Agreement (Art. 18.4) was not well-founded and detailed and was rejected".[133]

The report on this dispute was adopted on April 9, 2018. The WTO Appellate Body recommended that Russia bring the measures under consideration in line with the Anti-Dumping Agreement and the GATT. On June 20, 2018, Russia informed the DSB that it had fully complied with the recommendations and decisions of the DSB on this dispute,[134] since on June 14, 2018 the period of validity of the contested measures expired, i.e. the actual cancellation of the relevant EEC decision was not required. This dispute regarding the EAEU measures, considered by the DSB, highlighted the issue of the practice of choosing the court or jurisdiction that has the most favorable rules or laws for the position being advocated for the complainant.

2.4.2 DS485: Russia - Tariff Treatment of Certain Agricultural and Manufacturing Products

Another dispute, certainly of interest from the point of view of challenging the measures taken within the framework of the EAEU, is "Russia - Tariff Treatment of Certain Agricultural and Manufacturing Products". The report of the panel on this dispute was adopted on September 26, 2016.[135] In this dispute, the EU appealed the increase in duties on certain types of goods above the binding levels recorded in the List of concessions and obligations of the Russian Federation on goods.[136] Due to the fact that customs and tariff regulation is carried out at the level of the EAEU, the decision to establish duties was made by the EAEC. The EU contested twelve measures. The first eleven measures concerned tariff regulation, in which the EAEU Unified Customs Tariff established customs duties that were allegedly inconsistent with Russia's WTO obligations under Articles II (1) (a) and (b) of GATT 1994. In defining the twelfth measure, the EU challenged the so-called practice Systematic Duty Variation, the systematic application of duties in a format

[132] WTO Panel Report, Russia – Anti-Dumping Duties, paras. 7.281, 8.3
[133] Boklan D. S., Lifshits I. I. Eurasian Economic Union Court and WTO Dispute Settlement Body: Two Housewives in One Kitchen Russian Law Journal, No 7(4), 2019. p.185
[134] Russia - Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy, Communication from the Russian Federation, WT/DS479/12, 21 June 2018
[135] Panel Report, Russia - Tariff Treatment of Certain Agricultural and Manufacturing Products, WT/DS485/FR, adopted 26 September 2016.
[136] Schedule of Concessions and Commitments on Goods, Schedule CLXV - The Russian Federation, WT/ACC/RUS/70/Add.1 (WT/MIN(11)/2/Add.1), 17 November 2011.

different from Russia's obligations in the WTO, which, according to the EU, led to a violation of Russian bound levels of tariff obligations.

Thus, the respondent in the case was the Russian Federation, but the contested measures were not taken by the respondent, but by an organ of an international organization of which Russia is a member. The panel was laconic about this: it simply referred to the report of the Working Group of Russia, which stated that the Russian Federation is obliged both in accordance with general international law and its domestic legislation to apply the duty rates contained in the Unified Customs Tariff. Consequently, the application of duty rates is directly related to Russia; however, the measures can be challenged "as such" irrespective of any act of application (as the EU did in this case). Based on these two elements, the panel built the presumption that the Russian Federation applied the duty rates contained in the Unified Customs Tariff and that EAEU measures are attributable to Russia.[137] This assumption was not refuted, and in other cases, the DSB applied it without additional justification. As a result, the panel found that eleven EEC measures were incompatible with Russia's WTO obligations.[138] With regard to the twelfth measure, the report states that the EU was unable to establish the existence of this measure.[139]

To implement the recommendations of the panel, it was necessary to amend the EAEU Unified Customs Tariff. To this end, the Ministry of Economic Development of the Russian Federation petitioned the EEC to amend the Unified Customs Tariff in accordance with Russian obligations to the WTO members. The decision of the Board of the EEC to amend the Unified Customs Tariff was adopted on January 31, 2017 and entered into force on March 3, 2017.[140] Russia has fully complied with DSB regulations; in the relevant notifications, Russia referred to the decisions of the EEC Board and Council.[141] Thus, Russia complied with the DSB recommendation, ensuring that the relevant decisions of the EAEU body were adopted. If this body refused to amend the decisions on the tariff regime, which the DSB considered incompatible with Russia's obligations to the WTO, then the contested measure would not comply with the WTO requirements, or Russia would have to change this norm only for itself, which would lead to its inconsistency the law of the EAEU. It can be concluded that the attribution of measures of the customs union to its members

[137] DS485: Russia — Tariff Treatment of Certain Agricultural and Manufacturing Products, Panel Report, 28 September 2016, supra note 35, para. 7.46
[138] Ibid. supra note 35, para. 8.1(b-f)
[139] Ibid. para. 8.1(g)
[140] Judgment of the Panel of the Court of the Eurasian Economic Union on the application of the Public JSC "ArcelorMittal Kryvyi Rih", 27 April 2017
[141] DS485: Russia — Tariff Treatment of Certain Agricultural and Manufacturing Products, Panel Report, 28 September 2016.

at the expense of the EAEU has received significant development, since prior to this case, the WTO jurisprudence contained only one case in which a similar issue was raised.[142]

2.4.3 DS499: Russia - Measures affecting the importation of railway equipment and parts thereof

In this dispute, Ukraine challenged a number of measures taken by Russia, including on the basis of the EAEU law, and accused Russia of violating a number of provisions of the Agreement on Technical Barriers to Trade and GATT related to the procedure for assessing compliance with technical regulations of railway equipment[143] supplied from Ukraine. The report of the WTO Appellate Body on this dispute was adopted on 5 March 2020.

Prior to the entry into force of the Customs Technical Regulations, the procedure for assessing the conformity of railway equipment put into circulation on the Russian market was provided for by the Rules of the Certification System for Federal Railway Transport of the Russian Federation.[144] The conformity assessment of railway equipment to the said Rules was carried out by the Register of Certification on Federal Railway Transport. After the entry into force of the Technical Regulations,[145] the conformity assessment procedure began to be regulated by the EAEU law, and, in addition to the Certification Register, other institutions began to carry out the assessment of railway equipment compliance with the Technical Regulations, both in Russia and in other member states of the Union.

According to Ukraine, it is about the alleged decision of Russia not to recognize the validity of certificates issued for Ukrainian railway products by certification bodies in other EAEU countries, which can be found in Protocol No. A 4-3 of the Ministry of Transport of the Russian Federation

[142] Turkey — Restrictions on Imports of Textile and Clothing Products, Report of the Panel, 31 May 1999. supra note 27, para. 9.6

[143] Department of Trade Negotiations. Commodity coverage: on the dispute " Measures Affecting the Importation of Railway Equipment and Parts thereof ". Accessable: http://economy.gov.ru/minec/about/structure/deptorg/201830072 (04.04.2021)

[144] Pravila Sistemy sertifikatsii na federal'nom zheleznodorozhnom transporte. Osnovnyye polozheniya (P SSFZHT 01-96) utverzhdeny ukazaniyem MPS Rossii ot 12.11.1996, No166u. (Rules of the Certification System for Federal Railway Transport. The main provisions were approved by the instruction of the Ministry of Railways of Russia, No 166u.)27.12.1996, e.i.f. 17.02.1997.

[145] Technical regulations CU 001/2011 "On the safety of railway rolling stock"; approved by the decision of the Customs Union Commission No 710. 15.07.2011. Technical regulations CU 002/2011 "On the safety of high-speed railway transport"; approved by the decision of the Customs Union Commission No 710. 15.07.2011. Technical regulation CU 003/2011 "On the safety of the railway transport infrastructure"; approved by the decision of the Commission of the Customs Union No. 710.15.07.2011.

and two separate decisions of the Federal Agency for Railway Transport Russia.[146] Ukraine argued that with the help of these requirements of these documents, Russia subordinates the application of Technical Regulations 001/2011 in order not to recognize the validity of certificates issued for railway products of Ukrainian origin by certification bodies in other EAEU countries.[147] Thus, in fact, Ukraine tried to challenge the actions of the Russian Federation on the basis of a document issued at the level of the EAEU, and not the measures of the EAEU as such.

In addition, in the dispute under consideration, Ukraine contested the alleged systematic termination of the import of Ukrainian railway products to Russia by suspending valid certificates of conformity established by suppliers of Ukrainian railway products; rejection of applications for new certificates; non-recognition of the validity in Russia of certificates issued by other countries of the CU, if the certificates covered products not produced in the country of the CU.

In the Panel's report on this dispute, it was found that Ukraine had not demonstrated the existence of an alleged systematic ban on the import of Ukrainian railroad products into Russia. It is necessary to recognize as legitimate Russia's refusal to send its inspectors to Ukraine for certification due to the risks to life and health associated with the security situation in Ukraine for 2013-2016, and this situation is not comparable with the situation in other exporting countries. It is advisable to justify Russia's actions to refuse the corresponding applications for certificates of conformity.[148] Further, the panel of judges agreed with the position of Ukraine that, in a number of cases, Russia uses the place of origin of the goods as a basis for applying the measure of non-recognition of certificates. This means that Russia recognizes certificates of conformity for goods produced in the territory of the EAEU states and refuses to recognize certificates for goods produced outside the Union, in this case in Ukraine. In particular, the arbitration group pointed to cases of Russia's recognition of certificates issued by the certification bodies of Kazakhstan and Belarus for goods produced in the countries of the Eurasian Economic Union, and to non-recognition of certificates also issued by certification bodies of Belarus, but for goods produced in Ukraine.[149] As a result, the panel of judges recognized that the way of interpreting the Technical Regulations that Russia applied, reflecting it in the Protocol of the Ministry of Transport and letters of the Federal Agency for Railway Transport, violates Article I of the GATT.

[146] DS499: Russia - Measures Affecting the Importation of Railway Equipment and Parts thereof - AB-2018-7 - Report of the Appellate Body, 04 February 2020.
[147] Ibid. para. 7.812
[148] Boklan D. S., Tonkikh P. N., Kozlova M. D. Spor Rossiya – Zheleznodorozhnoye oborudovaniye i drugiye spory ob osparivanii mer Yevraziyskogo ekonomicheskogo soyuza v Organe po razresheniyu sporov VTO. Mezhdunarodnoye pravosudiye, No 3 (27), 2018. p. 24
[149] Panel Report, Russia - Railway Equipment, paras 7.226, 7.886, 7.887, 7.909

The arbitration group noted that Russia recognizes certificates issued by the certification bodies of Belarus for goods of Russian manufacturers, and does not recognize them if issued for goods of Ukrainian manufacturers.[150] As a result, the panel confirmed that Russia had violated its obligations under Article III (4) of the GATT (National Treatment) regarding the non-recognition of certificates issued to Ukrainian producers in other countries of the Union, which, in turn, creates advantages for national producers.

In conclusion, it should be understood that although the panel request mentions Technical Regulation No. 001/2011 (part of the EAEU law) as the measure under consideration, in fact Ukraine tried to challenge another measure - certain actions and instructions of the Russian authorities. Technical Regulation No. 001/2011 was not considered by the panel in substance and is in line with WTO legislation. However, the panel considered the EAEU law, the EAEU Treaty, Technical Regulations No. 001/2011, as well as the decisions of the EEC Board in the dispute under consideration, as if they were measures taken by the Russian Federation, and not sources of international law.

Finally, this dispute shows that although the relations in question are regulated at the EAEU level, WTO members may attempt to challenge measures allegedly taken by a particular EAEU member in its national legislation based on EAEU legislation. The consequences of such a challenge affect the national legislation of this EAEU member. In connection with this dispute, legislative changes have taken place at the Russian national level. At the level of the EAEU, the Decisions of the EEC Board No. 41 of 2018 and No. 293 of 2012, which determine the procedure for registering declarations and the rules for their execution, are still in effect. At the level of Russian legislation, instead of two Orders of the Ministry of Economic Development determining the procedure for registering declarations (Eurasian and national), Order No. 478 of July 31, 2020 will be in effect. This suggests that the WTO may recognize the rules of the state as violating the law of the WTO.

Summing up the paragraph on the practice of challenging the EAEU measures in the WTO Dispute Settlement Body, it can be noted that due to the fact that the EAEU is not a WTO member, it is possible to file a complaint with the WTO DSB only in relation to one of the members of the Union, who is member of the WTO. To date, such a complaint cannot be filed only against Belarus. All actions of the EAEU bodies are assigned to the member states of the Union. The WTO dispute settlement body considers the EAEU legal norms as measures taken by the member states of the Union. For the first time in the dispute Russia - Railway Equipment, the arbitration group analyzed

[150] Ibid., para 7.926

not the EAEU legal norms as such, but their interpretation and application by the state authorities of the country in the context of compliance with obligations under the WTO agreements.

And in the dispute between Russia - Tariff Treatment of Certain Agricultural and Manufacturing Products, the EU appealed the decisions taken by the Eurasian Economic Commission, namely the overstatement of customs duties on several goods, however, for the reason that a complaint against the EAEU cannot be filed with the WTO (it is not a member of the WTO), The EU directed it against Russia. The Russian Federation has complied with the DSB recommendation, ensuring that the relevant decisions of the EAEU body are adopted. However, if this body refused to amend the decisions on the tariff regime, which the DSB considered incompatible with the country's obligations to the WTO, then the contested measure would not comply with WTO requirements and would cause an even greater heap of conflicts.

In addition, bringing the EAEU norms to a unified order with respect to all participating countries as a result of the decision of the WTO DSB may take too much time and be very difficult in practice in the legal sense - this was already mentioned in paragraph 2 of chapter two of the thesis by the example there is no well-functioning mechanism for bringing the decisions of the WTO DSB into effect through the EEC and the ministries of the state party to the dispute in the WTO. Also, the problem of responsibility for the decisions of the EEC is raised by O. Kadysheva: "Russia is not able to unilaterally cancel the decision of the EEC, moreover, the decision is binding for Russia by virtue of the relevant international legal obligations".[151] One should agree with the above statement, since, indeed, one state can participate in voting for the adoption of the contested measures, however, the change or cancellation of these measures cannot be carried out without the participation of other EAEU member states. And in this case, given the above example of the Kazakhstani List, the vote of each EAEU member state to obtain consensus is significant.

[151] Kadysheva O.V. K voprosu ob otvetstvennosti Rossiyskoy Federatsii za resheniya, prinyatyye Yevraziyskoy Ekonomicheskoy Komissiyey, Moskva, 2015. p. 192

3. ANALYSIS OF THE LAW OF THE EAEU AND OTHER RTAS IN RELATIONS WITH THE WTO TO SEARCH FOR POSSIBLE SOLUTIONS

At the beginning of this thesis, the author has already mentioned what RTA formations exist within the WTO, from conventional preferential trade agreements to the common market. The EAEU in this list is in transition from an ordinary customs union to the formation of a common market. The most comprehensive common market in the format of a single internal market and an economic union has been functioning since 1993 only within the framework of the EU. Among the RTAs, it is also worth highlighting MERCOSUR, since the problems and tasks that the EAEU countries have are similar to those that exist for the countries of this South American integration association. Thus, the third chapter contains a comparative analysis of the law of the EAEU and other RTAs, EU and MERCOSUR, in relations with the WTO, their similarities and differences, a study of their precedent practice. Also, the author will suggest some improvements in connection with this comparative analysis in relation to the EAEU.

3.1 MERCOSUR

South American experience in the field of international economic integration and integrative justice includes the legal practice of the South American Common Market - MERCOSUR, established in 1991 by the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay.[152] The problems and tasks of the EAEU countries are similar to those of the MERCOSUR countries: the search for a profitable and at the same time sustainable vector of foreign trade policy, the reorientation of exports to new frontiers and the establishment of new long-term strategic economic ties.

The new association set itself several goals: ensuring the free movement of goods, services and means of production by abolishing tariff and non-tariff restrictions, coordinating a single external customs tariff and a single foreign trade policy in relation to third countries, coordinating macroeconomic policies and harmonizing national legislations of states - members of the association in the relevant areas. After the first years of the functioning of the CU, some flaws in the integration policy of the South American Common Market were revealed, and in 2002 the so-called "Strategy for restarting MERCOSUR" was developed with the aim of reforming intra-bloc trade and eliminating any unilateral actions of the MERCOSUR member countries that interfere

[152] Posashkova A. V. Protsessy regional'noy integratsii: opyt merkosur i yeaes, Rossiya i sovremennyy mir, No 4 (97), 2017.pp. 178-193

with trade. Over time, the priorities of integration into MERCOSUR shifted from the standpoint of open regionalism to the principle of compatibility of economies and regional self-sufficiency.[153]

For two and a half decades, MERCOSUR has achieved considerable success, including the settlement of the EBTT, the adoption of the customs code, a significant increase in intraregional trade, the intensity of which is 9 times higher than trade with partners outside the region,[154] settlement of issues on the mechanism of distribution of customs revenues to the MERCOSUR countries. Currently, this group is considered as the most effective integration association in Latin America, which has had a positive impact on the state of the national economies of the countries of the region. At the same time, the cooperation of Latin American neighbors is not limited to the trade and economic sphere, but also covers industrial integration and humanitarian issues. For example, specialized sectoral clusters are being created, border crossing procedures for individuals have been simplified, agreements on the mutual recognition of diplomas and documents on education have been adopted to ensure freedom of movement of labor, compulsory study of the Portuguese language has been introduced in Spanish-speaking countries, and Spanish in Brazil.[155]

Nevertheless, researchers note many problems that block the progressive development of the integration process in the Latin American region:[156] frequent violations of the single external customs tariff unilaterally, protectionist policies of Argentina and Brazil, differences in the constitutional and legal status of international treaties, etc.[157] Additional regulation is required by such issues as technical barriers, standardization, application of countervailing and anti-dumping duties. A rather alarming situation is developing around Venezuela, whose membership in MERCOSUR was suspended due to human rights violations and the unstable political and economic situation in the country.

In accordance with Art. 38 of the Ouro Preto Protocol, the organization operates the principle of the rule of law of MERCOSUR, therefore, the member states of the association are obliged to take all necessary measures to comply with the decisions of the MERCOSUR bodies. On the one hand, decisions of the Common Market Council, resolutions of the Common Market Group and

[153] Koshkul' D. V. MERKOSUR: Integratsionnyy kompromiss stran Yuzhnogo konusa // Vestnik Finansovogo universiteta, No 3, 2015. pp. 161-168

[154]Khmelevskaya N. G. Integratsionnyye protsessy v Latinskoy Amerike cherez prizmu regional'noy torgovli (na primere MERKOSUR i Tikhookeanskogo al'yansa) // Iberoamerikan-skiye tetradi, No 3 (5), 2014.

[155] Bondarev I.I. MERKOSUR i YEAES // Voprosy ekonomiki i upravleniya. Kazan', No 1 (8), 2017. pp. 25-29

[156] Gichenkova S. S., Pestov D.D., Buletova N.Ye. MERKOSUR i yego mesto v mirovoy ekonomike, Sbornik nauchnykh statey Mezhdunarodnoy nauchno-prakticheskoy konferentsii «Globalizatsiya - put' k ob"yedineniyu», Kursk: Universitetskaya kniga, 2015. pp.80-83

[157] Paygina D. R. O roli politicheskogo faktora v integratsionnykh protsessakh (na primere MERKOSUR), Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedeniya, No 6, 2015. p. 1052

directives of the Trade Commission are binding. On the other hand, the Protocol enshrines the principle of making decisions solely on the basis of consensus,[158] this allows us to conclude that there is an "intermediate stage of supranationality",[159] but it would be premature to predict a forward movement in this direction, since Brazil and Argentina take the position that supranational structures undermine national sovereignty. First, MERCOSUR and the EAEU are young regional integration associations of developing countries. which are characterized by the accelerated formation[160] and flexibility of integration forms. A pronounced asymmetry between its member states - the GDP of Brazil, the largest economy in the region, exceeds the GDP of Argentina, the second economy of MERCOSUR, by 3.6 times and amounts to 66% of the total GDP of the integration block. In the EAEU, economic differentiation in terms of GDP is even sharper. In the 90s, MERCOSUR made a real "integration leap", building the institutions necessary for the functioning of the Customs Union, in just four to five years.[161] The EAEU and the CU and CES that preceded its formation also developed very dynamically. So, the regional integration processes taking place within the framework of MERCOSUR and the EAEU have significantly changed the geopolitical landscape of the South American and Eurasian continents. The undeniable difficulties on the way to the formation of the Common Economic Space are pushing the participating countries to a constant search for new forms of integration. The priorities of integration, the development strategy of the integration blocks, and the subject composition are being transformed. In a relatively short time of existence, these blocks managed to achieve significant progress, quickly build an institutional structure and prove their viability. At the same time, both MERCOSUR and the EAEU still have to resolve many unresolved problems. Their further development will depend on how effectively they can eliminate the existing contradictions.

Regional agreements provide for several ways to determine the jurisdiction of the dispute: the exclusive jurisdiction is not specified; exclusive jurisdiction belongs to the regional association court; named the preferred court for resolving the dispute, which can then be changed only by agreement of the parties to the dispute.[162] Notable under MERCOSUR is the 2007 case Brazil — Measures Affecting Imports of Retreaded Tyres, in which the WTO Appeal Body interpreted the law broadly. Initially, Brazil, in order to protect the environment, life and health of people,

[158] Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR. Protocol of Ouro Preto. Ouro Preto, e.i.f. 17 December 1994.
[159] Kashkin S.Y. Integratsionnoye parvo, Prospekt, 2017.
[160] Sologub V. I. Noveyshiye integratsionnyye ob"yedineniya: Ponyatiye i klassifikatsiya // Nauchnyye vedomosti Belgorodskogo gosudarstvennogo universiteta. Seriya: Istoriya. Politologiya. Belgorod, 2015. T. 19. № 36 (216). S. 178-182. 45. p.180
[161] Posashkova A. V. Protsessy regional'noy integratsii: opyt merkosur i yeaes, Rossiya i sovremennyy mir, No 4 (97), 2017. p.191
[162] Hillman J. Conflicts between Dispute Settlement Mechanisms in Regional Trade Agreements and the WTO - What should WTO Do, Cornell International Law Journal, Vol. 42, 2009. p. 195

introduced a ban on the supply of retreaded tires. This measure was challenged by Uruguay in the MERCOSUR Arbitration Tribunal, as a result of which Brazil was forced to make an exception and open the border for the supply of used tires to the MERCOSUR member states.[163] The European Communities interpreted the established preferences as a violation of the principle of non-discrimination, enshrined in the footnote to Art. XX GATT, and applied for a dispute resolution to the WTO DSB. The first instance ruled that since the restriction on the supply of tires for all states, with the exception of MERCOSUR members, was imposed pursuant to a court decision, such a measure was not unreasonable. The group also added that the discriminatory character of the measure is due to the preferential position of the MERCOSUR members in relation to each other, which does not contradict the WTO law.[164] However, the Appellate Body of the WTO DSB revised this decision, stating that the measure chosen by Brazil entails unjustified discrimination and cannot be recognized as admissible, even if taken on the basis of a decision of the MERCOSUR court. The appellate instance also noted that when resolving the dispute with Uruguay, Brazil should refer to paragraph "d" of Art. 50 of the Montevideo Treaty, which corresponds to paragraph "b" of Art. XX GATT concerning the adoption of measures necessary to protect human, animal and plant life or health as general exceptions to WTO rules, and that, in general, MERCOSUR law does not contradict WTO law. [165]

As can be noted from this, a number of problems emerge related to the imposition of the jurisdictions of the courts of regional economic organizations and the WTO DSB. As a result, there is a risk of making conflicting court decisions and the uncertainty of their subsequent execution. As follows from judicial practice, the priority is given to the decision taken by the WTO OPC. At the same time, for the states themselves, reconsideration of a dispute in an international court is associated with large financial and time costs. In addition, since the WTO DSB is not obliged to apply the rules of a regional trade agreement, this can lead to a loss of respect by states for the organization in which they are members, and even to a partial loss of the organization's objectives of its activities.[166]

A possible solution would be the recognition of force behind the first decision on the merits in accordance with the principle of the doctrine of *res judicata*.[167] According to it, if the competent

[163] Posashkova A. V. Protsessy regional'noy integratsii: opyt merkosur i yeaes, Rossiya i sovremennyy mir, No 4 (97), 2017. p.191
[164] Ibid., p. 192
[165] Ibid.
[166] Tyurina N. Y. Voprosy primeneniya mezhdunarodnykh dogovorov v praktike razresheniya sporov v VTO, Mezhdunar. nauch.-prakt. konf. "Tunkinskiye chteniya", red. Ispolinova A.S., Batalova. A.A., Moskva, Vol. 3, 2013.
[167] Smbatyan A. S. Problema parallel'nogo sudoproizvodstva v mezhdunarodnom prave, Ros. yurid. Zhurn, No 6, 2011. p. 23

court considered the case on the merits and issued a final judicial act on it, then this case cannot be re-examined. This approach meets the principle of procedural economy and excludes the occurrence of a conflict of judicial acts. Or, make it mandatory for the WTO DSBs to refer to the law of a regional treaty and to apply the rules enshrined in the interests of the member states. By virtue of Art. 3.2 Understanding the rules and procedures governing the resolution of disputes, the WTO DSB interprets the provisions of the WTO-covered agreements in accordance with the usual rules of interpretation of international law. This suggests that the WTO law is not isolated from international law and if a certain legal custom has developed at the regional level, then the WTO DSB must take it into account when making decisions. The given approach to overcoming conflicts of jurisdiction is aimed at eliminating duplication of judicial functions of the WTO DSBs and courts of regional economic associations. Of course, it is too early to talk about the severity of the problem of conflict of jurisdictions and parallel proceedings in international law, but already now its negative consequences are obvious. Therefore, it is important to prevent their occurrence, taking into account the recommendations set out and introducing the relevant provisions into the statutory documents of regional organizations.

3.2 EU

If the EAEU really intends to continue along the path of integration, the preservation of autonomy, including in the legal sphere, should become a priority for the Union. Therefore, the EU's approach to WTO law is interesting in terms of drawing possible parallels with the EAEU legal system.

The Treaty on the EAEU is in substance very similar to the Rome Treaty on the Establishment of the European Economic Community of 1957. Both documents stipulate the standard principles of regional economic integration: free movement of goods, services, labor and capital, the formation of a customs union, coordinated or agreed policies in a number of economic spheres, as well as certain transition periods. At the same time, the system of bodies of the EAEU is very different from that created within the framework of the European Economic Community. In addition to the absence of a parliamentary body, the structure of the EAEU bodies is also notable for the presence of the Intergovernmental Council, which, in the conditional hierarchy of bodies, is located between the Supreme Council and the Commission. The founders of the Eurasian Union took into account the experience of European integration, immediately formalizing the Supreme Council as the supreme body of the EAEU and including in the agreement a clause on withdrawal from the

EAEU.[168]

The European Communities have been a member of the WTO since January 1, 1995. The following is noteworthy: although in the practice of the European Court of Justice it was established that international treaties are part of the EU legal system,[169] their hierarchical status was defined as intermediate between the primary law (basic treaties) and secondary law (decisions of the bodies of the European Union).[170] Thus, the WTO agreements do not have priority over the basic agreements of the Union, although non-compliance with the WTO rules may entail international responsibility of the EU to the WTO members. However, given the complexity of the EU's legal system as an integration association, it is interesting to consider how the WTO right is superimposed on the EU law. The EU's position on the issue of direct action of the WTO law is not so straightforward and is not enshrined at the legislative level. For the first time, attention was paid to this issue within the framework of the GATT when considering the case of the International Fruit Company.[171] The court rejected the direct effect of the GATT, despite the fact that, in general, the EU Court recognizes the direct effect of EU law and other international treaties.[172] Subsequently, the position of the EU court was confirmed after the formation of the WTO. At the same time, the EU's approach to the application of WTO law is not as rigid as that of the United States. This is confirmed by two exceptions to the general rule formulated in the Fediol[173] and Nakajima[174] cases. The EU Court recognized the possibility of challenging an EU national act on the basis of WTO law, firstly, if there is a direct reference to WTO law in this regulatory act, and secondly, if this regulatory act implements this or that provision of WTO law.

When considering the issue of the participation of the European Union in the WTO, it must be borne in mind that according to Art. IX of the Marrakesh Agreement, if the European Communities exercise their right to vote, they have a number of votes equal to the number of their member states that are members of the WTO. Also, the said international treaty provides that the number of votes of the European Communities and their member states may in no case exceed the number of

[168] Smirnova, A. A. Pravo VTO v Yevraziyskom ekonomicheskom soyuze: v poiskakh balansa interesov i avtonomiiю Pravo VTO. No 1, 2015. p. 27
[169] ECJ. C-81/73 Haegeman v. Belgium. 1974. ECR 449.
[170] ECJ. C-179/97 Spain v. Commission. 1999. ECR 1-1251; ECJ. C-162/96 Racke GmbH & Co. v. Hauptzollamt Mainz. 1998. ECR I-3655. para 45
[171] ECJ. Joined Cases C-21/72 & C-24/74, Intenational Fruit Company NV v. Produktschap voor Groenten en Fruit 1972 E. C.R. I-1219. para 21
[172] Gudkov I., Mizulin H. Pravila VTO: problemy pryamogo deystviya i effektivnosti mer otvetstvennosti za narusheniya // Pravo VTO, No 1, 2012. p. 13
[173] ECJ. C-70/97 Federation de l'industrie de l'huilerie de la CEE (Fediol) v. Commission of the European Communities. 1989. ECR 1781.
[174] ECJ. C- 69/89 Nakajima All Precision Co. Ltd v. Council of the European Communities. 1991. ECR I-02069.

member states of the European Communities.[175]

The EU also refused to give a direct effect to the decisions of the WTO DSB, on the basis of which EU acts were recognized as inconsistent with the WTO agreements. The WTO ORF solutions in question are a series of hormone-based meat cases and the so-called banana saga. In the first case, the EU ban on the import of meat obtained using hormones was found to be inconsistent with the WTO Agreement on Sanitary and Phytosanitary Measures. Despite the EU's announced intention to bring the measure in line with the Agreement, after the expiration of the implementation period, the measure still violated WTO rules.[176] In addition to the WTO case, this measure became the reason for a claim to the European Court of Justice on behalf of a French company that could not import meat from the United States and demanded compensation for the damage caused by the ban. The company was denied compensation, including due to the lack of direct action of the WTO rules in the EU.[177] In the second case, the EU provided preferential market access for bananas imported from the Asia-Pacific and Caribbean region. This regime was found to violate certain provisions of the WTO agreements. Since the EU has not brought this trade regime in line with WTO rules, the US has the right to introduce retaliatory measures.[178] Affected by these measures, European exporters of batteries and plastics have applied for damages to the Court of Justice. However, the Court denied the direct effect of the WTO law and, accordingly, the payment of damage.[179]

The EU's approach in these cases is indicative. From the Union's point of view, there are situations where adherence to the decisions of the WTO DSB violates the interests of the Union. For example, in the case of a dispute over hormones, the preferred level of public health protection is not the same as permitted by the WTO Agreement. At the same time, the public demands from the Union to take measures to protect healthy nutrition.[180] In the case of the "banana saga", the EU has consistently justified discriminatory trade regimes on the fact that developing countries in the Asia-Pacific region and the Caribbean are dependent on banana exports and such preferences

[175] Smirnova, A. A. Pravo VTO v Yevraziyskom ekonomicheskom soyuze: v poiskakh balansa interesov i avtonomiiю Pravo VTO. No 1, 2015. p.28
[176] Smbatyan A. S Mezhdunarodnyye torgovyye spory v GATT/VTO: izbrannyye resheniya (1952 - 2005 gg.), Wolters Kluwer, 2006.p. 143
[177] ECJ. C-94/02 Etablissements Biret et Cie SA v. Council. 2003. ECR I-0565.
[178] T B. S., Kaushik A. The Banana War at the GATT/WTO, Centre for International Trade, Economics and Environment, Trade Law Brief, No 1, 2008. p. 1
[179] ECJ. Cases C-120/06P & C-121/06P Fabbrica Italiana Accumulatori Motocarri Montecchio SpA v. Council. 2008. ECR 6513.
[180] Sien I. A. Beefing up the Hormones Dispute: Problems in Compliance and Viable Compromise Alternatives, Georgetown Law Journal, Vol. 95, 2007. p. 577

contribute to their economic development.[181] Thus, the violation of the WTO rules became a tribute to the political course of the EU. In both cases, the lack of direct action of the WTO rules allowed the EU to preserve these measures, illegal from the point of view of the WTO, and to avoid a court ruling on their illegality in the European Union. At the same time, the European Court of Justice singled out two exceptions from the principle of the absence of direct action of the WTO rules. Firstly, if any EU act was adopted for the implementation of the WTO norm, then its compliance with the WTO agreements can be appealed.[182] Secondly, if the EU act openly refers to the specific norms of the WTO agreements, then the direct effect of the WTO law remains.[183] In addition, the European Court of Justice resorts to an indirect application of WTO law: if an EU act allows more than one possible interpretation, then interpretation is preferable in accordance with the norms of the WTO agreements.[184]

Currently, the EU is the only international organization - a member of the WTO, and in this sense it occupies a unique position in the WTO system. It would seem that with numerous assurances from the EU that it will respect the principles of WTO law and its close relationship with the Organization, one should expect the EU to grant direct action to WTO law. However, on this issue, the EU is acting pragmatically and defends the independence of the Union. On the other hand, the EAEU may well face situations like the "banana saga" or "hormones", where recognition of the direct effect of the WTO DBS decision would contradict the basic values of the Union and its political course. In order to preserve the legal autonomy of the Union, for example, the possibility not to comply with the decisions of the WTO DSB in exceptional cases, it makes sense to follow the example of the EU and protect the legal system from the most sensitive claims for violations of WTO law. Thus, considering the content of chapter three, the author answers the last question from the introduction about how the practice of other RTAs can help in solving problems related to WTO law.

As the experience of the EU shows, there is no need to categorically prohibit the direct effect of the WTO law; it is quite possible to single out exceptions from this principle. Thus, it can be summarized that the EU's participation in the WTO makes it possible to protect the interests of this interstate integration association within the framework of the multilateral trading system, which is not an end for the EU itself, but arises from the interests, primarily economic, of its

[181] Barkham P. The banana wars explained // The Guardian. 5 March 1999. Accessible: http://www.theguardian.com/world/1999/mar/05/eu.wto3 (18.04.2021)
[182] ECJ. C-70/97 Federation de l'industrie de l'huilerie de la CEE (Fediol) v. Commission of the European Communities. 1989. ECR 1781. para 22
[183] ECJ. C- 69/89 Nakajima All Precision Co. Ltd v. Council of the European Communities. 1991. ECR I-02069. paras 27 - 32
[184] ECJ. C-104/81 Hauptzollamt Mainz v. Kupferberg. 1982. ECR 3641. para 17

member states. At the same time, unlike the EU, for the EAEU, at this stage of its development, it is necessary to preserve the direct effect of the WTO law for the member states. Initially, WTO law was included in the EAEU legal system since the powers of national bodies were transferred to the supranational level and it was necessary to prevent violations of WTO law by the EAEU bodies in terms of their competence. The EAEU and WTO member states should have the opportunity to correct the Commission's mistake or bring treaties within the EAEU in line with the WTO rules. In the EU, there is no such need, since the EU itself represents the interests of the member states in the WTO and bears international responsibility for violations. In contrast to this situation in the EAEU, individual members, and not the Union as a whole, will be held liable for possible violations of WTO law.

M. Entin, in his article “Problems of supranational constitutionalization in the practice of the EU and the EAEU: for and against”, emphasizes that the EAEU member states must make a choice and finally decide how they relate to the challenges of supranationality.[185] The author fully agrees with these words. It is possible that all the problems and conflicts that were written in this thesis in their depth have this root. States must make a clear decision for themselves and build their right in the most coordinated way. In the European Union, the constitutionalization of law and the institutions of integration and the society it unites has already largely taken place.[186] It even went so far as to trigger a counter-trend. It is reflected in both practical politics and legal theory - in "Brexit", Euroscepticism, concepts and demands for the return to the national level of all or part of the powers transferred to the EU. On the contrary, constitutionalization is not typical for the EAEU. M. Entin emphasizes that moreover, at the current stage of development of Eurasian integration in the forms that it has taken in the EU, it is harmful for the EAEU, unnecessary and premature.[187] However, this does not mean that it will always be so, or that there are no problems, the answer to which is provided by supranational constitutionalization. It is more logical to assume that there are many of them, only they are so far articulated differently. States, when deciding on the present and future of the EAEU law, the WTO law, their national law, their relationship, should fully appreciate all the useful, be it positive or negative, experience of the EU and other RTAs.

[185] Entin M.L. Problemy nadnatsional'noy konstitutsionalizatsii v praktike YES i YEAES: «za» i «protiv». Vsya Yevropa, No 7-8 (142), 2019.
[186] Kashkin S.Y. Integratsionnoye parvo, Prospekt, 2017.
[187] Entin M.L. Problemy nadnatsional'noy konstitutsionalizatsii v praktike YES i YEAES: «za» i «protiv». Vsya Yevropa, No 7-8 (142), 2019.

CONCLUSION

Over the past decades, international organizations, both universal and regional, have been very active participants in international economic relations. Making an attempt to study the problem of the interaction of the legal regimes of the WTO and the EAEU as a whole, the inconsistency of the norms and obligations of the EAEU and its member countries with the provisions of the WTO Agreement, the lack of elaboration and ambiguity of the rules of law of the EAEU and the WTO in relation to each other, the author of the thesis was well aware of their complexity and inexhaustibility. So, answering one question to herself, the author asked two more new ones. And in fact, the thesis alone will not be enough to fully disclose these problems, since the research topic consists of many nuances that should be taken into account. This master's thesis is an attempt to reveal during research the essence of the problem of the relationship between the law of the WTO and the EAEU and what questions and problems are encountered in practice and in theory.

As a citizen of a country that is simultaneously a member of the WTO and the EAEU - the Republic of Kazakhstan, and a person who has studied a lot about EAEU and WTO law and defended a bachelor's thesis on a topic related to EAEU law, the author has always been interested in the relationship between these organizations, which prompted her to study this question. The relevance of the topic is not questioned, since the WTO law for the EAEU plays an important role, being the legal basis for the formation of international trade processes.

In general, the author managed to achieve the goals set - namely, to analyze the relationship and possible conflicts between the law of the WTO and the EAEU, determining the basis of the relationship between the WTO and the EAEU, the relationship between their legal regimes and their place in international law. Likewise, the author determined the fundamentals of the main contradictions between the provisions of the EAEU and the provisions of the WTO agreements and what problems this may lead to. Ultimately, this study tried to propose solutions that can be applied, by analyzing and comparing the practices of other RTAs in this area and highlighting perspectives.

For a more comprehensive consideration of the problems, several research questions were asked regarding whether the WTO rules have priority over the EAEU law; can the EAEU countries use the WTO Dispute Settlement Body decisions in the EAEU court and how can the practice of other RTAs help in solving problems related to WTO law.

It was obvious to the author that the full disclosure of the topic is a difficult task, and can be analyzed from different points of view, taking into account the reports of the Panel and the Appellate Body of the WTO DSB, decisions and final acts of the EAEU Court, EurAsEC, the EAEU Treaty, the Statute of the EAEU Court, Resolutions, VLCT, Technical Regulations, WTO Agreements, GATT, GATS, articles, books, monographs of academics, international treaties, etc. An analysis of these instruments and their provisions regarding the relationship between the WTO and the EAEU is an important step in the implementation of the thesis.

The first chapter defines two basic concepts for the purposes of this study - what is WTO law and EAEU law. The role of these two concepts in the system of international law is also revealed. In the first paragraph of the first chapter, the author established the definition of the WTO law, determined what is included in this concept, using different and sometimes contradictory opinions of academicians in law, bringing them to one common point and that, from the author's point of view, is the most accurate definition. Thus, the author concluded that the WTO law, including the organizational and legal mechanisms of this universal international organization, is a more complex system of interrelated international treaties and other international documents through which the member states regulate their relations in the trade and economic sphere.

As part of the study, the author made a brief description of the WTO, its instruments, institutions, historical aspect, regulatory framework, its legal regime, features, existing difficulties and weaknesses. Also at this point, the author took the first steps in researching the thesis hypothesis - for a more complete understanding of the issue, the necessary norms and their interrelation were indicated.

The second point is distributed approximately in the same way, but the subject of the research is focused on the EAEU law. Thus, the author laid the foundation for a more comprehensive discussion of the problem with an emphasis on understanding the essence of the matter. Thus, the author concluded that the EAEU law is a complex and complex legal phenomenon. Despite the fact that individual sources of EAEU law are not indicated in Article 6 of the Treaty on the EAEU, which is entitled “Union law”, this does not mean that these sources do not regulate public relations and cannot be used in EAEU law. However, such an extensive list of sources, which constitutes the EAEU law at this stage, entrusts the EAEU Court, as well as the national judicial authorities, with the extremely important task of establishing an appropriate balance of law and order. In the third paragraph, the author, guided by the ILC approach, defined WTO law and EAEU law as part of international law, constituent parts of an autonomous set of rules governing international trade relations within the multilateral trading system, however, within the framework of the WTO, RTA

rules are not considered as rules of law. but as measures taken by the states parties to such agreements.

Here, the author posed several questions about the relationship between the WTO and the EAEU law, using the understanding of the articles of the VLCT, tried to answer the first question of the study about the priority of norms and confirmed that the hierarchy still exists.

In the second chapter, the author clarified the issue of the hierarchy of these two systems, carried out an analysis and comparison of the relationship between the EAEU and WTO law, considered the issue of jurisdiction and studied the practice of the EAEU Court on the role of WTO law in the EAEU legal system. The author investigated the possibility of the existence of conflicts through the study of the WTO Dispute Settlement Body reports in relation to the EAEU member states. Also in this part, the author explores what consequences this can lead to.

Within the framework of the issue of the place of the EAEU law in the WTO, the author concluded that the WTO DSB considers the EAEU legal norms only as measures taken by a separate member state, and not as international law norms in the understanding of the UN ICL. Moreover, the WTO DSB is not going to deal with the issues of WTO and RTA compliance, and today it is already obvious that it will not recognize any RTA as contradicting the WTO Agreement. This conclusion answers part of the thesis hypothesis, which says that without EAEU membership in the WTO, like an ordinary RTA, the EAEU cannot fully defend its norms and achieve any decisions directly related to it from the WTO DSB. It can be concluded that these issues should not be dealt with by the WTO, but by the states themselves. To determine the role of WTO law in the EAEU, the author reviewed the jurisprudence of the Court, the reports of the working group, decisions from the WTO appellate body.

Also, in the second chapter, the author answers the questions posed at the beginning of the study. So, clarifying the issue of hierarchy more, in the modern sense, the WTO law takes precedence over the relevant provisions of international treaties and decisions concluded within the EAEU or adopted by its bodies. It is also worth remembering the Court's remark in the case on the claim of the Novokramatorsk Machine-Building Plant that the WTO rules have priority only in the event of a conflict with the Union's rules, and about paragraph 2 of Article 3 of the 2011 Treaty, which states that if the Union regime offers a more liberal regime than the Agreement WTO, then the EAEU law will apply in this case.

Secondly, although the application of WTO law is not within the competence of the EAEU Court, however, the Court can interpret the EAEU law, relying on WTO law and DSB jurisprudence, if

such interpretation is consistent with the context and object of the EAEU Treaty. Therefore, the EAEU can countries use the WTO Dispute Settlement Body decisions in the EAEU court.

The author also concluded that the EAEU law is not fully protected from periodic amendments to it, which is associated with the gradual accession to the WTO of the EAEU member states. This, in turn, may negatively affect the stability of the EAEU legal framework in the field of a unified industrial policy, which is aimed at harmonization and unification. After all the EAEU member states enter the WTO, it will be possible on a systematic basis to make the necessary changes in the general legal framework of this interstate integration association, which will lead to a more efficient and high-quality construction of a single policy on a stable international legal basis.

With regard to the issue of jurisdiction, the author concluded that the appeal of the EAEU members to other international institutions of justice, in particular to the WTO DSB, is not excluded. An analysis of the Treaty on the Establishment of the EAEU shows that the authors of this document bypassed the issue of resolving disputes in other international organizations. The question remains open due to the absence of a provision on its exclusivity in relation to the EAEU Court, as, for example, established in relation to the EU Court of Art. 344 of the Treaty on the Functioning of the European Union. The Treaty on the EAEU also does not contain clear provisions allowing the EAEU member states the right to choose a dispute resolution procedure outside the EAEU, there are no clear prohibitions or restrictions on transferring a case to another international court, nor provisions allowing states - EAEU participants decide for themselves where this dispute will be considered. The current state of affairs can be called a gap in international law, which leaves the issue of jurisdiction open and can lead to unpleasant collisions that negatively affect integration processes. The situation is aggravated by the fact that for a larger number of states, the WTO DSB is the most preferred dispute resolution mechanism due to its authority and integral practice of interpretation and application of the provisions of the WTO rules. The practice of the EAEU Court today is too scarce to make confident conclusions about its effectiveness, therefore, the confidence of the EAEU member states will largely depend on the EAEU Court itself: whether it will establish itself as an impartial justice body will only show its further practice.

In order to study the thesis problem, the author carefully analyzed three disputes where the EAEU member state is the defendant, and the applicants, the WTO members, raised the question of the recognition of the EAEU legal norms, which this EAEU member applied, as inconsistent with the WTO law. The first dispute considered by the author is of academic interest as the first full-fledged dispute in which the issues of compliance of the EAEU law with the WTO law were raised. Regarding the second dispute, the author came to the conclusion that although Russia complied

with the DSB recommendation, ensuring that the relevant decisions of the EAEU body were adopted, but if this body refused to amend the decisions on the tariff regime, which the DSO considered incompatible with Russia's obligations to the WTO, then the contested measure would not comply with the WTO requirements, or Russia would have to change this rule only for itself, which would lead to its inconsistency with the EAEU law. In the third dispute, the author came to the conclusion that the panel was not analyzing the EAEU legal norms as such, but their interpretation and application by the country's state authorities in the context of compliance with obligations under the WTO agreements.

The third chapter contains an analysis of the practice of relations between two other organizations similar to the EAEU and the WTO. In the first subparagraph, the author studied MERCOSUR, its system, its similarities and differences with the EAEU, as well as judicial practice. After analyzing the dispute between a member of MERCOSUR and the EU in the WTO, which had previously been considered in the court of MERCOSUR, the author concluded that a number of problems emerge from this, related to the imposition of jurisdictions of the courts of regional economic organizations and the WTO DSB. As a result, there is a risk of making conflicting court decisions and the uncertainty of their subsequent execution. As follows from judicial practice, the priority is given to the decision taken by the WTO DSB. At the same time, for the states themselves, reconsideration of a dispute in an international court is associated with large financial and time costs. In addition, since the WTO DSB is not obliged to apply the rules of such a regional trade agreement, this may lead to a loss by member states of respect for the decisions of this type of regional organization in which they are members, and even to a partial loss of the goals of such an organization. The author also suggested a possible solution using the principle of the doctrine of res judicata. The second organization reviewed by the author was the EU. As the experience of the EU shows, there is no need to categorically prohibit the direct effect of the WTO law; it is quite possible to single out exceptions from this principle. Thus, it can be summarized that the EU's participation in the WTO makes it possible to protect the interests of this interstate integration association within the framework of the multilateral trading system, which is not an end in itself for the EU itself, but arises from the interests, primarily economic, of its member states. At the same time, unlike the EU, for the EAEU, at this stage of its development, it is necessary to preserve the direct effect of the WTO law for the member states. The WTO law was included in the legal system of the EAEU from the outset, since the powers of the national authorities were transferred to the supranational level and it was necessary to prevent violations of the WTO law by the EAEU bodies in terms of their competence. The EAEU and WTO member states should have the opportunity to correct the Commission's mistake or bring treaties within the EAEU in line with the

WTO rules. In the EU, there is no such need, since the EU itself represents the interests of the member states in the WTO and bears international responsibility for violations. In contrast to this situation in the EAEU, individual members, and not the Union as a whole, will be held liable for possible violations of WTO law. States, when deciding on the present and future of the EAEU law, the WTO law, their national law, their relationship, should fully appreciate all the useful, be it positive or negative, experience of the EU and other RTAs. So using the comparative method, the author came to some conclusions and answered the last question asked at the beginning of the study.

Summing up the results of the work done allows us to conclude that the author, on the whole, managed to achieve the set goals.

ABBREVIATIONS

EAEU	Eurasian Economic Union
WTO	World Trade Organization
RTA	Regional Trade Agreement
EU	The European Union
WTO DSB	Dispute Settlement Body of the World Trade Organization
EurAsEC	Eurasian Economic Community
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
DSU	Dispute Settlement Understanding or the WTO Understanding on rules and procedures governing settlement of disputes
UN	
UN ILC	United Nations International Law Commission
VLCT	Vienna Convention on the Law of Treaties
MERCOSUR	Southern Common Market

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