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Ксенія Володимирівна Смирнова

Кафедра порівняльного та європейського права
Центр досконалості Жана Моне
Інститут міжнародних відносин
Київського національного університету імені Тараса Шевченка
Київ, Україна

МЕХАНІЗМИ ВИРІШЕННЯ СПОРІВ, ПЕРЕДБАЧЕНІ УГОДАМИ ПРО АСОЦІАЦІЮ, УКЛАДЕНІ ЄВРОПЕЙСЬКИМ СОЮЗОМ З ТРЕТІМИ КРАЇНАМИ

Анотація. *Міжнародне врегулювання суперечок має таку ж довгу історію, як і міжнародні відносини. Усі угоди ЄС про асоціацію мають відповідні механізми з урегулювання суперечок, які певною мірою різняться між собою. Основним завданням даного дослідження виступає визначення міжнародно-правових механізмів вирішення спорів, включені в Угоду про асоціацію між ЄС та Україною. Крім того, особливої актуальності набуває мета дослідження у контексті процесу розв'язання першого в практиці України торгівельного спору Україна-ЄС щодо національних обмежень на експорт деревини. Порівняння різних договірних засад співпраці Євросоюзу із третіми країнами дає змогу констатувати, що найвищим рівнем захисту осіб через функціонування механізму вирішення суперечок характеризуються угоди про асоціацію, причому деякі з них навіть нагадують «арбітражне застереження». Встановлено, що критеріями порівняльного аналізу стали самі типи механізмів вирішення спорів, процедури консультацій та арбітражна процедура, процедура посередництва та правила процедури. Відповідно до даних критеріїв було встановлено, що угоди про асоціацію містять майже однакові положення про процедури консультацій та арбітражну процедуру, за виключенням деяких угод, де арбітраж представлений у звуженому масштабі. Положення про процедури посередництва в представлених угодах майже ідентичні, як й Кодекси поведінки арбітрів та Правил процедури, які слугують шаблонними документами, дубльованими в різних угодах. Детально проаналізовані угоди про асоціацію між ЄС та Україною, Грузією та Молдовою, охарактеризовані спільні й відмінні риси. Відмінність у деталях механізмів урегулювання спорів може свідчити про побоювання у сторін щодо імовірності й інтенсивності виникнення спорів. Угода про асоціацію між Україною та ЄС для врегулювання суперечок передбачає використання різних способів: проведення консультацій, арбітраж, створення третейської групи. Особливу увагу приділено аналізу першого випадку торговельного спору, який вирішується із застосуванням арбітражної процедури в рамках Угоди про асоціацію з Україною щодо експорту необробленої деревини.*

Ключові слова: арбітраж, переговори, Україна, соціально-економічні реформи, інтеграційно-орієнтована угода.

Kseniia V. Smyrnova

Department of Comparative and European Law
Jean Monnet Center of Excellency
Institute of International Relations
Taras Shevchenko National University of Kyiv
Kyiv, Ukraine

DISPUTE SETTLEMENT MECHANISMS PROVIDED BY THE ASSOCIATION AGREEMENTS CONCLUDED BY THE EUROPEAN UNION WITH THIRD COUNTRIES

Abstract. *International dispute settlement and international relations both have a long history. All EU association agreements have appropriate dispute settlement mechanisms, which differ to some extent. The main task of this study is to determine the international legal mechanisms for resolving disputes included in the Association Agreement between the EU and Ukraine. Furthermore, the purpose of the study becomes especially relevant in the context of the process of resolving the Ukraine-EU trade dispute on national restrictions on timber exports, which is the first dispute in Ukrainian practice. A comparison of the various treaty principles of EU cooperation with third countries suggests that the highest level of protection of individuals through the functioning of the dispute settlement mechanism is described by association agreements, and some of them even resemble an "arbitration clause". It was found that the criteria of comparative analysis were the types of dispute resolution mechanisms, consultation procedures and arbitration procedure, mediation procedure and rules of procedure. According to these criteria, it was found that the association agreements contain almost identical provisions on consultation procedures and arbitration, with the exception of some agreements where arbitration is presented on a narrower scale. The provisions on mediation procedures in the submitted agreements are almost identical to the Code of Conduct for Arbitrators and the Rules of Procedure, which serve as template documents duplicated in the various agreements. The association agreements between the EU and Ukraine, Georgia, and Moldova are analysed in detail, and common and distinctive features are described. Differences in the details of dispute settlement mechanisms may indicate that the parties have concerns about the likelihood and intensity of disputes. The Association Agreement between Ukraine and the EU for the settlement of disputes makes provision for the use of various methods: consultations, arbitration, the establishment of an arbitration panel. Particular attention is paid to the analysis of the first case of a trade dispute, which is resolved with the use of the arbitration procedure under the Association Agreement with Ukraine on the export of raw wood.*

Keywords: *arbitration, negotiations, Ukraine, socio-economic reforms, integration-oriented agreement.*

INTRODUCTION

The Association Agreement between Ukraine and the EU is the largest international legal instrument in the history of Ukraine and one of the largest international agreements with a third country ever concluded by the European Union in terms of its scope and subject matter. It defines a qualitatively new format of relations between Ukraine and the EU on the principles of "political association and economic integration" and constitutes a strategic guideline for systemic socio-economic reforms in Ukraine. The Association

Agreement with Ukraine, as an integration-oriented agreement, is not intended to prepare Ukraine for EU accession, but seeks to "gradually bring the parties closer together, based on common values and close privileged ties". Dispute settlement mechanisms stipulated by the Association Agreements concluded by the European Union (hereinafter referred to as the EU) with third countries play the role of a stabilising factor in the further development of relations between the parties.

Notably, these provisions vary in different agreements, considering the factors of in-depth trade cooperation. This subject is of particular importance to the EU, especially in the context of the current global crisis in World Trade Organisation (WTO) dispute settlement mechanisms (due to the blocking of the election of members of the WTO Dispute Settlement Body in 2019). At the political level, some progress is already being made, and in March 2020 the EU proposed a Provisional Arbitration Agreement on Appeals, which largely reflects the usual WTO dispute settlement rules and can be used between any WTO members wishing to join. until the WTO Appellate Body is fully operational. Instead, the provisions of the Association Agreements already concluded by the European Union indicate the active practice of including provisions on the settlement of disputes that differ from each other.

International dispute settlement has as long a history as international relations. The application of international trade rules has been identified as a top priority in the European Commission's 2015 Trade for All strategy, and the Court of Justice has recently approved the use of dispute settlement mechanisms in trade agreements in its recent Opinion 1/17 [1]. In this Opinion on the validity of the Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA), the Court of Justice recognises that in modern trade agreements the EU may establish a permanent court composed of judges, appointed by the states that have signed the relevant international agreement to resolve disputes between the investor and the state. This is a big step forward in approving the creation of a single, independent and open judicial protection system for the legitimate interests of EU investors. However, so far there is no practice of using these mechanisms.

The matter of dispute resolution mechanisms was raised in the studies of M. Cremona and R. Wessel [2]. Researchers are analysing the current debate and the specific angles of the confused link between dispute resolution at EU level and the resolution of international disputes. Particular attention is paid to the issues of dispute settlement mechanisms within free trade areas (hereinafter referred to as FTAs), concluded between the EU and other countries, in a study by I. Barcero [3]. The emergence of disputes and their resolution in accordance with the Association Agreement between Ukraine and the EU has been studied by such scholars as Ya.M. Kostyuchenko [4], Ya.P. Lyubchenko [5], N.A. Mazaraki [6], V.I. Muravyov [7], W. Shin [8], C. Davis [9], D.J. Kuenzel [10], J. Kucik [11], C. Capucio [12], S.L. Robertson [13], R.K. Idrees [14], A. Altamimi [15], etc. The doctrine states that to a considerable extent the architecture of the dispute settlement mechanism determines whether it is effective or not. Both the costs and potential benefits of taking part in a dispute resolution process constitute important elements in determining its effectiveness. Too long a procedure may deter the complainant from taking the case out of the consultation phase. The scope of the dispute settlement is also important: if a trade agreement excludes certain trade provisions or

trade-related provisions from the application of the dispute settlement mechanism, credibility in those provisions is undermined. If the matter is referred to arbitration, it is crucial that all parties recognise the final decision of the arbitrators and that legal remedies are available to enforce it. On the other hand, recourse to dispute settlement mechanisms, especially in EU practice in association relations with other countries, is an unusual practice and may indicate an ineffective negotiation process between the parties.

The main task of this study is to determine the international legal mechanisms for resolving disputes included in the Association Agreement between the EU and Ukraine with the use of a comparative legal method of analysis. Furthermore, the purpose of the study becomes especially relevant in the context of resolving the Ukraine-EU trade dispute on national restrictions on timber exports.

1. MATERIALS AND METHODS

The study in this paper is based on the laws and principles of dialectics, which contribute to the study of the interdependence of international and social processes, which are constantly interconnected and implemented through legal mechanisms within the EU association with third countries. The general laws of dialectics have also found their application in the study. For example, the method of systematic analysis was used to clarify the internal links between legal provisions that develop the international legal aspect of the EU association's relations with other countries.

Due to the method of system analysis, the provisions of international agreements on the establishment of dispute settlement mechanisms were studied. The method of induction and deduction provided the definition of the components of Association Agreement, systemic and structural-functional analysis was used to comprehensively describe the features of the deep and comprehensive FTA between the EU and Ukraine, including in the context of establishing dispute resolution mechanisms. The forecasting method was also used to determine the prospects of applying the practice of resolving trade disputes in the EU practice, which is becoming important. The use of a comparative legal method, a comparative analysis of individual provisions of the association agreements was conducted. The application of this method is also relevant in the study of EU contractual practice with countries such as Moldova and Georgia, as the content of the provisions of the Association Agreements between the EU and these countries is virtually identical to the text of the Association Agreement between Ukraine and the EU. This method allows to identify commonalities and differences in the provisions of the agreements.

The EU-Ukraine dispute settlement mechanism in the Association Agreement makes provision for a modern and “quasi-judicial” dispute settlement model, which has been included in all EU FTAs since 2000 and is largely based on the WTO Dispute Settlement Understanding. The use of the historical method of legal analysis helped to establish that a new model of dispute settlement mechanisms was first included in 2000 (in the EU-Mexico Association Agreement). Notably, the European Commission's approach to resolving disputes in trade agreements is being developed, starting with the traditional diplomatic approach observed in the Association Agreements and other EU agreements until 2000. The dynamics of the development of these legal relations, the matter of the application of mechanisms continues to be relevant for further studies.

Furthermore, the initiation of an arbitration procedure for resolving a dispute between the EU and Ukraine has not yet been covered in the doctrine at all. To examine the main legal aspects of dispute settlement, this study uses a method of comparing similar provisions in agreements between the EU and some selected countries, including Israel, Albania, as well as a detailed analysis of EU-Georgia association agreements, Moldova, and Ukraine.

2. RESULTS AND DISCUSSION

2.1 Dispute settlement mechanisms in early selected EU Association Agreements

All EU association agreements have proper dispute settlement mechanisms, which vary to some extent. In this regard, V. Muravyov notes: "There is no single model of dispute settlement mechanism for all Union agreements on association. The mechanisms set out in such agreements differ, first of all, in terms of structure, decision-making procedures and their legal force, etc. In some of them, preference is given to political means of settlement, in others – to judicial and quasi-judicial. However, this may suggest the basic models for agreements concluded with the countries of a particular region. Each of these models may have minor differences that do not affect its essence" [7].

According to Kostyuchenko, dispute resolution in these agreements has two main aspects [16]: (i) settlement of trade or trade-related disputes (in fact, disputes related to the FTA); and (ii) resolving disputes concerning the interpretation and application of other provisions of the agreement. The first aspect is described by the fact that the WTO had a certain influence on the design of mechanisms for settling this category of disputes, as the FTAs in these agreements were created according to the "WTO approaches". However, dispute settlement in association agreements is still different from that in the WTO.

The Association Agreements make provision for arbitration for the settlement of disputes (except for the Association Agreement with Israel). The EU's Association Agreements with Ukraine, Moldova, and Georgia contain another additional mechanism – mediation, which is not in the agreements, for example, with Bosnia and Herzegovina, and Israel. Some of these agreements also make provision for a consultation mechanism as a preliminary stage ("pre-stage") before arbitration. Notably, the provisions on mediation procedures in the submitted agreements are almost identical to the Code of Conduct for Arbitrators and the Rules of Procedure, which serve as template documents duplicated in the various agreements.

The most developed basis of the association for relations between the EU and neighbouring non-EU countries is the European Economic Area (hereinafter referred to as the EEA), which entered into force on January 1, 1994 [9]. Within the EEA, the members of the European Free Trade Association, except for Switzerland, have legal relations with the EU closer than any other third country. Under the EEA Agreement, disputes concerning the interpretation and application of its provisions, which are essentially identical to the relevant provisions of the EU's founding treaties, in particular the Treaty on the Functioning of the EU (TFEU) and acts adopted by its institutions, are referred to the Joint Committee. It is attended by representatives of the parties to the agreement. If the issue cannot be resolved, the dispute is considered by the Court of

Justice by mutual agreement of the parties (Article 113). In some cases (application of protection measures) an arbitration procedure may be used (Article 111.4).

Comparing the agreements concluded by the EU with the countries of Central and Eastern Europe (the so-called "European agreements") before their accession to the EU, the dispute was decided by the Association Committee (Article 105.2 of the European Agreement with Poland). It included representatives of the parties to the agreements. As decisions in the committee were made by consensus, this allowed one of the parties to block the resolution of the dispute. It also made provision for recourse to arbitration (Article 105.4). However, this method of settlement was ineffective. Defendant had the possibility of blocking the election of arbitrators by delaying or even refusing to appoint a second arbitrator. On the other hand, the defendant had the opportunity to disagree with the appointment of a third arbitrator, taking advantage of the need for the parties to agree on its candidacy. Moreover, the decisions of the arbitrators were not binding on the parties (Article 104). There was also no procedure for approval and no measures that could be applied to the offender (Article 115.2).

All the provisions of the Stabilisation and Association Agreements on dispute settlement are virtually identical. The only body for their settlement is the Association Council (Article 113 of the Stabilisation and Association Agreement with Croatia). Its decisions are binding (Article 112). The agreements do not make provision for recourse to arbitration. However, the parties could use coercive measures if the other party fails to perform its obligations under the agreement (Article 120.2).

2.2 Dispute settlement mechanisms stipulated by the Association Agreements with Israel and Albania

In both agreements, only two articles cover dispute resolution – Article 75 of the main text and Article 33 of Protocol 4 to the Agreement with Israel[1]; and Article 119 of the main text and Article 33 of Protocol 4 to the Agreement with Albania[2]. Below, the study considers them in more detail. The agreement with Israel[3] (Article 75) stipulates that all disputes concerning the application and interpretation of the agreement are referred to the Association Council. The dispute is resolved by a decision of the council, which is subject to execution by the parties. If the dispute cannot be resolved in this way, either party may initiate arbitration proceedings. According to this procedure, each party appoints one arbitrator, the Association Council appoints a third arbitrator. The decision shall be taken by the arbitrators by a majority of votes and the parties shall take all measures to implement it [17-19].

Protocol 4 to the Agreement with Israel, which regulates the concept of "origin of goods" and methods of administrative cooperation, contains another article that regulates the settlement of disputes, but only those disputes that arise between the customs services of the parties to verify proof of origin and interpretation of the protocol. Notably, such

[1]EU-Israel Association Agreement. (2020). Retrieved from http://www.eeas.europa.eu/archives/delegations/israel/eu_israel/political_relations/agreements/index_en.htm

[2] EU-Albania Stabilization and Association Agreement. (2006). Retrieved from https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX%3A22009A0428%2802%29

[3] EU-Israel Association Agreement, op. cit.

disputes are referred to the Customs Cooperation Committee. It is worth paying attention to the specific features of the Association Agreement with Israel. The agreement with Israel is the least similar to all other agreements. Thus, like the agreements with Ukraine, Moldova, and Georgia, it is also concluded within the framework of the European Neighbourhood Policy, but this is another regional direction of this policy. Unlike these agreements, the Association Agreement with Israel does not make provision for a detailed dispute settlement mechanism.

Thus, the Agreement with Israel contains only two articles dealing with this issue:

– Article 33 of Protocol 4 on trade (if there is a dispute between the customs authorities of the states concerning the confirmation of the origin of goods, and this dispute cannot be resolved at the level of these authorities, it shall be referred to the Customs Cooperation Committee);

– Article 75 – concerns the settlement of disputes by the Association Council regarding the interpretation and application of the provisions of the agreement. Therewith, the settlement of disputes by the Association Council in the Association Agreement with Israel has its specifics compared to a similar mechanism of other agreements: if the council failed to resolve the dispute, the parties may apply to arbitration (which, incidentally, is not specified in the agreement). Each of the parties appoints the arbitrator, and the third arbitrator is elected by the council itself. Other agreements do not make provision for arbitration in this context.

There are no other provisions in the Association Agreement with Israel for resolving disputes. This exhausts the dispute settlement mechanisms. The agreement with Albania cannot boast of more detailed regulation. Article 119 of the main text of the agreement stipulates that disputes concerning its application and interpretation shall be referred to the Stabilisation and Association Council, which shall make a decision binding on the parties with a view to resolving the dispute. Like the agreement with Israel, this agreement holds additional regulations for resolving disputes arising between the customs services of the parties regarding the verification of evidence of origin and interpretation of the protocol. Such disputes are also referred to the Stabilisation and Association Council (i.e. even to a special customs committee). Such regulation is poor. Many issues have not been resolved, such as deadlines, appeals, lack of intention of the parties to resolve the dispute. There are also no additional stages of dispute resolution, such as consultations, mediation, etc.

2.3 Dispute settlement mechanisms stipulated by the Association Agreements with Georgia, Moldova, and Ukraine: a comparative aspect

The latest generation of association agreements are those concluded within the framework of the Eastern Partnership policy – with Moldova[1], Georgia[2], and Ukraine[1].

[1] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part. (2014). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG

[2] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0830%2802%29

The provisions of these agreements are aimed at opening markets through the introduction of "deep and comprehensive free trade areas", which differ from the classic FTAs. All three association agreements make provision for three types of dispute settlement mechanisms:

– settlement of disputes concerning the interpretation and application of the trade section of agreements (Chapter IV in the agreement with Ukraine and in the agreement with Georgia[2], Chapter V in the agreement with Moldova[3]) – the mechanism for resolving such disputes is set out in a separate chapter entitled "Dispute Resolution" (Ch. 14 in the agreement with Ukraine and Chapter 14 in the agreements with Georgia and Moldova);

– mediation – this mechanism may be used to settle disputes concerning any measures affecting the trade interests of the parties (agreement with Georgia), trade or investment (agreement with Moldova) or concerning any measures falling within the scope of the provisions regarding the national regime and access of goods to the market (agreement with Ukraine);

– general mechanism – applies to disputes concerning the interpretation, performance or fair application of the agreement in so far as it does not relate to the trade section.

The greatest attention in all three agreements is paid to the mechanism of settlement of disputes on trade issues, because the association agreements primarily constitute trade agreements on the establishment of a free trade area. In general, the procedure for resolving this category of disputes is similar in all three agreements and is two-stage. At the first stage, consultations are envisaged to reach a mutually agreed solution (Article 305 of the Agreement with Ukraine, Article 246 of the Agreement with Georgia, and Article 382 of the Agreement with Moldova). The consultation phase begins with one contracting party submitting a written request to the other party and the Trade Committee on the disputed measure with reference to the particular provisions of the agreement. After that, generally, 30 days are provided for consultations on the territory of the respondent party. At the same time, consultations on urgent matters, in particular on perishable or seasonal goods, take 15 days, and urgent consultations on energy – up to 3 days. If the consultations were not held within the specified period or the parties did not reach an agreement, the complaining party has the right to proceed to the second stage – the creation of an arbitration panel.

The Association Agreements with Ukraine, Moldova, and Georgia similarly regulate the establishment and operation of arbitration groups. As stipulated by the provisions of these agreements, the establishment of an arbitration panel is initiated by the complainant party submitting a request to the respondent party and the Trade Committee. It should be emphasised that, unlike the agreements with Georgia and

[1] Law of Ukraine No 1678-VII "On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand". (2014, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1678-18#Text

[2]Agreement between the Government of Ukraine and the Government of the Republic of Georgia on free trade. (2019). Retrieved from https://zakon.rada.gov.ua/laws/show/268_078#Text

[3] Free Trade Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova. (2005). Retrieved from https://zakon.rada.gov.ua/laws/show/498_073#Text

Moldova, the Association Agreement (AA) with Ukraine distinguishes the concept of the mandate of the arbitration panel. Thus, the standard mandate makes provision for the authority of the arbitration panel to examine the issue raised in the request, to decide on the compatibility of the disputed measure with the provisions of the AA and to make a decision in accordance with the requirements of the agreement. Therewith, part 2 of Article 306 of the agreement with Ukraine allows for the possibility of creating an arbitration group with a special mandate. In this case, the written request of the complaining party, apart from the disputed measure and a brief description of the legal grounds of the complaint, must also contain the proposed text of the special mandate.

Following the provisions of these association agreements, the arbitration panel includes three arbitrators, whose nominations are agreed by the parties within 10 days. If the parties fail to agree on the composition of the group, the relevant appeal shall be submitted to the chairman of the committee, which shall select arbitrators by lot from a list of 15 independent experts in the field of international trade and international law. After the selection of the arbitrators, the arbitral tribunal shall submit a preliminary report within 90 days and issue a ruling on the merits of the dispute within 120 days. Notably, all the above deadlines are halved if the dispute concerns seasonal and perishable goods or energy. Furthermore, if the subject of the dispute is the issue of energy and there is a complete or partial cessation of transit of oil, gas, or electricity, the party may request the chairman of the arbitration panel to act as a mediator for the immediate settlement of the dispute. Perhaps the only difference between the association agreements with Ukraine, Georgia, and Moldova in terms of the establishment and operation of arbitration groups is the possibility provided in the agreements with Georgia and Moldova to suspend the arbitration group at the request of both parties for up to 12 months.

The Association Agreements with Ukraine, Georgia, and Moldova hold identical provisions on the mandatory implementation of the arbitration panel's rulings. Moreover, all three agreements will address remedies in case of urgent energy disputes, interim remedies in the event of non-compliance, and the right of the parties to agree on a mutually agreed solution at any stage of the dispute. Notably, the Rules of Procedure and the Code of Conduct for Arbitrators, set out in appendices XXV and XXIV to the agreement with Ukraine, appendices XX and XXI to the agreement with Georgia and appendices XXXIII and XXXIV to the agreement with Moldova, make provision for almost identical procedure for consideration of issues by the arbitration panel and similar standards of proper conduct of arbitrators. All three agreements require arbitrators to use the provisions of the Vienna Convention on the Law of Treaties of 1969 and the practice of the Dispute Settlement Body within the WTO when interpreting agreements, and to seek interpretation from the Court of Justice.

As a rule, in case of failure of consultations, a party may request a violation of the arbitration procedure for dispute settlement. The tribunal includes three arbitrators. Under the agreements with Moldova and Georgia, the parties must agree on the procedure for appointing arbitrators. If such a procedure is not agreed, each of the parties shall appoint one arbitrator, and the third shall be appointed by the Chairman of the Association Committee in the trade configuration. Under the agreement with Ukraine, after no agreement on the appointment procedure between the parties, all three arbitrators are appointed by the Chairman of the Trade Committee. It is important that the

agreements with Georgia and Moldova make provision for the need to replace arbitrators, as well as a separate article on the suspension and closure of arbitration proceedings. There are no comparable articles in the agreement with Ukraine.

An alternative mechanism for settling trade disputes is the institution of mediation. This mechanism is stipulated in Ch. 15 of the Association Agreement with Ukraine for the settlement of disputes concerning any measures falling within the scope of the provisions on national treatment and market access, as well as in separate Appendices XIX and XXXII to the EU agreements with Georgia and Moldova. The mediation procedure in all three agreements is similar. The complaining party first submits a request for a contentious issue, to which the other party must provide an answer. The complaining party may then request that the mediation procedure be initiated by sending a written request to the other party. The contracting parties have 15 days to approve the candidacy of the mediator, and in case of failure to agree on the identity of the mediator within the specified period, the parties apply to the chairman of the Trade Committee. After determining the mediator, the parties are given 60 days to reach a mutually agreed decision, which can be further confirmed by the decision of the committee. During negotiations, the mediator has the right to propose their solution to the dispute, which the parties have the right to accept or reject.

The third dispute settlement mechanism is the so-called general dispute settlement procedure, which applies to the interpretation, execution, and application of agreements in so far as it does not concern trade sections. The general mechanism is also similar in all three agreements (Articles 476-478 of the Agreement with Ukraine, Articles 421-422 of the Agreement with Georgia, and Articles 454-455 with Moldova[1]). To start the procedure, one of the parties sends a formal request to the other party and the Council of the Association on the disputed issue. The parties should then make every effort to resolve the dispute through consultations within the Association Council or other body of the agreement (for example, the Association Committee or even the relevant subcommittee). Until the dispute is resolved, the relevant issue should be considered at each meeting of the Association Council. If the parties reach a compromise solution, the Council of the Association may, by agreement of the parties, make a binding decision based on the results of the dispute. Therewith, if the parties have not been able to reach an agreement in the Council of the Association within three months, it is allowed to take appropriate measures on the part of the complainant party. All three association agreements contain a so-called "essential elements" clause, according to which in case of violation of the basic political and legal principles of the agreement (democracy, human rights, respect for sovereignty, territorial integrity, inviolability of borders, non-proliferation of weapons of mass destruction, etc.) the complaining party reserves the right to immediately suspend the agreement.

Attention should also be paid to certain dispute settlement provisions in other sections of the agreements. Inter alia, the Association Agreements with Moldova and Georgia state that disputes concerning the provisions on global special measures (Articles

[1] Agreement between the Government of Ukraine and the Government of the Republic of Georgia on free trade. (2019). Retrieved from https://zakon.rada.gov.ua/laws/show/268_078#Text. Free Trade Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova. (2005). Retrieved from https://zakon.rada.gov.ua/laws/show/498_073#Text

158-160 and Articles 37-39, respectively) and the provisions of the Anti-Dumping and Countervailing Agreement (Articles 161-164 and Articles 40-43, respectively) are not affected by the chapter on dispute resolution. Furthermore, the provisions of the chapter on the settlement of disputes also do not apply to the rules of the anticompetitive agreement and merger. Similar provisions on global extraordinary measures, anti-dumping, and anti-competitive actions are stipulated in the Association Agreement between Ukraine and the EU[1]. However, the agreement with Bosnia and Herzegovina and the agreement with Israel do not address these issues at all, and therefore do not contain reservations about the non-application of the dispute settlement procedure stipulated in the agreement. Notably, the association agreements with Ukraine, Georgia, and Moldova contain a similar article on the settlement of disputes between service providers (Articles 123, 112, and 239, respectively). In accordance with this provision, the parties shall ensure that in case of disputes between service providers rendering electronic communications networks or services, the relevant regulatory authority is obliged, at the request of either party, to take a binding decision as soon as possible. Therewith, it should be noted that the older agreements with Israel and Bosnia and Herzegovina do not have a corresponding provision.

Thus, the dispute settlement mechanism in the EU Association Agreements with Ukraine, Georgia, and Moldova is almost identical. This is due to the small time difference between their initialling (agreements with Georgia and Moldova were generally initialled on the same day), as well as their conceptual and structural similarity as agreements on a deep and comprehensive free trade area.

2.4 The practice of applying the dispute settlement provisions in the EU Association Agreement with Ukraine

The Association Agreement between Ukraine and the EU for the settlement of disputes makes provision for the use of various methods: consultations, arbitration, the establishment of an arbitration panel (Chapter 14). Notably, these provisions and, in general, dispute resolution mechanisms do not apply to decisions or any possible cases of inaction of the bodies established by the agreement. The Association Agreement stipulates general observance of the principle of a fair trial and the principle of legal certainty (Article 24). Either party may request consultations on specific issues related to the application of trade defence instruments (Article 50 bis). In this case, the consultations are given a period in which they must be held, which is 21 days.

There is a two-stage dispute settlement mechanism, which includes consultations prior to the violation of the arbitration stage of dispute settlement. Consultations are held through diplomatic channels within 30 days or within 15 days on urgent issues. In case of failure to complete the settlement of the dispute within the specified time, the party may request the establishment of an arbitration panel (paragraph 6 of Article 305). The procedure for creating such an arbitration group is stipulated by Article 306 of the Association Agreement and contains a standard clause for granting a mandate to the arbitration panel. Association Agreement holds a detailed description of the creation of the arbitration group and its timing. Article 308 details the procedure for consideration of

[1] Association Agreement between Ukraine and the EU. Retrieved from https://www.kmu.gov.ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyu

a dispute by an arbitration panel, its authority to draw up a report, etc. According to Article 310, the arbitration panel shall take its decision within a largest period of no more than 150 days after its establishment. In addition, Article 321 makes provision for a decision-making procedure by an arbitration panel, which becomes binding on the parties to the agreement and does not impose specific rights and obligations on individuals and legal entities. In other words, the state party to the agreement is obliged by its national mechanisms to implement the decision made by the arbitration group. A separate procedure is prescribed for the category of energy relations related to energy carriers (paragraph 3 of Article 310, Article 314).

An essential element in the dispute resolution is the issue of compliance with the decision of the arbitration panel, as well as non-performance of obligations by either party. Article 315 of the Association Agreement makes provision for the possibility of imposing temporary measures in case of non-compliance in the form of temporary compensation. Moreover, temporary measures may take the form of raising tariff rates to the level applicable to other WTO members.

There are several other components of the dispute settlement mechanism under the agreement. First of all, in cases of disputes over access of goods to markets, the mediation mechanism is applied (Article 327). Articles 330 and 331 indicate the procedure for electing a mediator, the procedure for conducting mediation. If the dispute between the parties concerns the interpretation of acts of the EU institutions in the field of regulatory convergence, the agreement makes provision for a separate procedure, which is that the arbitration group applies to the Court of Justice to obtain its decision on this matter. In this case, the arbitral award is not rendered until the Court of Justice has given its ruling. The decision of the Court of Justice is binding on the arbitral tribunal (Article 322). Apart from certain procedures for resolving disputes between the parties, such a mechanism also involves joint institutions and bodies established by the Association Agreement.

For the EU, recourse to dispute settlement procedures set out in association agreements is an unusual practice. However, in accordance with the Association Agreement with Ukraine, the European Union, for the first time in its practice, applied this mechanism and initiated the establishment of arbitration. According to the EU, there have been attempts to resolve the dispute over the export of raw timber through negotiations, but this has not yielded any results. Notably, the consultations did not find a solution to the problem, and therefore the EU moved to the next stage of the process, requiring the establishment of an arbitration commission comprising three arbitrators (Articles 306-307 of the Association Agreement).

Membership of arbitration panels is often a stumbling block in resolving disputes, and the AA between Ukraine and the EU seeks to ensure the establishment of a commission through a set of complex balancing rules for the appointment of arbitrators. This dispute is the first commercial dispute to be resolved through an arbitration procedure under the Association Agreement. The parties to the dispute are, respectively, the parties to the Agreement, namely Ukraine and the EU.

In January 2019, the EU Delegation to Ukraine sent a verbal note No. 005/2019 to the Ministry of Foreign Affairs with a request to initiate consultations to resolve the dispute that arose in connection with the ban on exports of raw wood from Ukraine. On

June 20, 2019, in accordance with Article 306 of the Association Agreement with Ukraine, the European Union initiated an arbitration procedure regarding restrictions applicable to Ukraine in respect of exports of certain types of wood products. Pursuant to the provisions of this article, the EU, as the complaining Party, must submit to the respondent Party, Ukraine, as well as to the Association Committee in trade configuration, both a request for an arbitration panel and a summary of the legal grounds to the considered factual and legal questions.

At present, when examining the procedural aspects of the dispute between Ukraine and the EU within the AA, it should be generalised that the Parties resolve the dispute solely based on the provisions of Chapter 14 "Dispute Resolution" of the AA:

– EU request of January 15, 2019 for consultations with Ukraine in accordance with Article 305 of the AA;

– holding consultations on February 7, 2019 in order to achieve a mutually agreed result, which was not achieved by the Parties;

– EU request of June 20, 2019 for the establishment of an arbitration panel in accordance with Article 306 of the Association Agreement and in accordance with the procedure for establishing the arbitration panel in accordance with Article 307 of the AA, as well as the relevant provisions of the dispute settlement rules contained in Appendix XXIV to Chapter 14;

– approval of the composition of the arbitration group on January 29, 2020 and, accordingly, approval of the working procedure of the arbitration group, as well as the schedule of meetings of the arbitration group.

In support of its position, the EU refers to the fact that the permanent ban on exports of timber and lumber, which was introduced in accordance with the Law of Ukraine No. 2860-IV "On specific features of state regulation of business entities related to the sale and export of timber"[1] dated 08.09.2005 (Article 2) and a temporary ban on the export of all other unprocessed timber for a period of 10 years in accordance with the Law of Ukraine "On Amendments to the Law of Ukraine "On the specific features of state regulation of business entities related to sale and export of timber" regarding the temporary ban on exports of timber in its raw form"[2] dated 09.04.2015 (Article 2-1) are "bans" on exports from Ukraine to the European Union in the content of both the first sentence of Article 35 of the AA and Article XI:1 of GATT 1994 and as such are incompatible with Article 35 of the AA. In its written claim, the European Union states that these measures have "explicit protectionist objectives" and "are not applied in conjunction with an effective restriction on domestic consumption" [20]. It is worth recalling that Article 35 of the AA prohibits the restriction of imports and exports of any goods assigned for the territory of the other Party, excluding the exceptions specified in the UA or in accordance with Article XI of GATT 1994.

However, Ukraine argues that such a ban was imposed by the fact that the export ban introduced by the state in 2005 did not make provision for any commercial purposes,

[1] Law of Ukraine No 2860-IV “On the peculiarities of state regulation of business entities related to the sale and export of timber”. Retrieved from https://zakon.rada.gov.ua/laws/show/2860-15#Text

[2] Law of Ukraine “On Amendments to the Law of Ukraine" On Peculiarities of State Regulation of Business Entities Related to the Sale and Export of Timber” on the temporary ban on the export of raw timber”. (2015, April). Retrieved from https://zakon.rada.gov.ua/laws/show/325-19#Text

but was introduced for environmental reasons: in 2005 valuable and rare wood species were considered as endangered and therefore at a high risk of extinction. This, in turn, can lead to deforestation and other environmental problems. Furthermore, the Ukrainian side emphasises that the 2005 export ban applies only to the export of lumber of valuable and rare species of wood. Ukraine handles the conservation of these unique species, which make a major contribution to the country's ecosystem.

As for the export ban, as regulated by the Law of Ukraine "On Amendments to the Law of Ukraine "On specific features of state Regulation of business entities related to the sale and export of timber" on the temporary ban on the export of raw timber"[1] dated 09.04.2015, Ukraine motivates its position by the fact that this measure is temporary, as it was introduced only for 10 years. Furthermore, a temporary ban on exports in 2015 was introduced in combination with restrictions on domestic production or consumption in accordance with the requirements of paragraph "g" of Article XX of GATT 1994, concerning the conservation of depleted natural resources.

Thus, from the comparative analysis of existing dispute resolution mechanisms for Ukraine in the process of European economic integration of Ukraine, it can be concluded that the AA not only creates new opportunities for trade for Ukraine, but also makes provision for a special process of involvement in the dispute settlement mechanism. In essence, such a mechanism stipulated in the agreement is closely interlinked with the mechanisms stipulated in the WTO and is not mutually exclusive. Apart from certain procedures for settling disputes between the parties, such a mechanism also involves joint institutions and bodies established by the agreement. By mutual consent, the Association Council adopts decisions that are binding and recommendatory in nature. The Council of the Association may amend the appendices to the AA, considering the evolution of EU law and the current standards set in international instruments (Article 463). The parties to the Association Agreement may refer any dispute concerning the interpretation, implementation, or good faith performance of the AA to the Council. The Council may resolve the dispute by making binding decisions.

The AA makes provision for general observance of the principle of a fair trial and the principle of legal certainty. The Association Agreement between Ukraine and the EU for the settlement of disputes stipulates the use of various methods: consultations, arbitration, the establishment of an arbitration panel (Chapter 14). These provisions and, in general, dispute settlement mechanisms do not apply to decisions or any possible cases of inaction of the bodies established by the agreement.

CONCLUSIONS

The rapid development of regional trade liberalisation leads to the emergence of new institutional mechanisms for interstate cooperation and cooperation with international integration associations. A comparison of the various treaty principles of EU cooperation with third countries suggests that the highest level of protection of individuals through the functioning of the dispute settlement mechanism is described by association

[1] Law of Ukraine "On Amendments to the Law of Ukraine" On Peculiarities of State Regulation of Business Entities Related to the Sale and Export of Timber" on the temporary ban on the export of raw timber". (2015, April). Retrieved from https://zakon.rada.gov.ua/laws/show/325-19#Text

agreements, some of which even resemble an "arbitration clause" (in particular, the EU-Chile agreement). Therewith, the Free Trade Agreement with the EFTA countries is also similar to the dispute settlement mechanism within the EU agreements but has a narrower nature of action.

Thus, each of the analysed agreements holds provisions for resolving disputes regarding its interpretation and application. The dispute settlement mechanisms in the EU Association Agreements with Ukraine, Georgia and Moldova are almost identical due to the slight difference in time between their initialling and the conceptual similarity of their provisions as FTA+ agreements with European WTO members. The approach of these agreements to delineate the general dispute settlement procedure through the Association Council and the special procedure for the commercial division of agreements through consultations, arbitration groups and mediation is justified and appropriate.

An analysis of the recent agreements signed with Ukraine, Georgia, and Moldova suggests that the approach to regulating dispute settlement mechanisms is largely uniform. Differences in the details of dispute settlement mechanisms may indicate that the parties are concerned about the likelihood and intensity of disputes.

It is safe to say that there is no universal model for resolving disputes in association (and stabilisation) agreements. However, among the agreements submitted for consideration, the greatest similarity of dispute settlement mechanisms can be traced in the agreements concluded within one policy area and region.

The process of resolving the first Ukraine-EU trade dispute in Ukraine regarding national restrictions on timber exports has been studied. Notably, the European Union, for the first time in its practice, applied the mechanism for resolving trade disputes and initiated the establishment of arbitration in accordance with the provisions of the Association Agreement. According to the EU, there have been attempts to resolve the dispute over the export of raw timber through negotiations, but this has not yielded any results. This dispute is the first commercial dispute to be resolved through an arbitration procedure under the Association Agreement. Currently, this dispute is procedurally at the stage of studying the positions of the parties.

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Kseniia V. Smyrnova

Doctor of Law, Professor
Professor of the Department of Comparative and European Law
Member of Jean Monnet Center of Excellency
Institute of International Relations
Taras Shevchenko National University of Kyiv
02000, 36/1 Illenko Str., Kyiv, Ukraine

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