Ponomarova A. M.,
student,
National University «Odesa Law Academy»

HOW DO PRIVATE LAW FIRMS CONTRIBUTE TO THE FUNCTIONING OF THE WTO'S DISPUTE SETTLEMENT SYSTEM?

Trade is one of the things that accompanied humanity through ages starting from prehistoric times. It was an integral part of every nation's life and thus it developed along with people, their culture, language, way of life etc. In order not to go deep into history I suggest switching to one of the most important event in the long path of trade relations' development. On January 1, 1995 the World Trade Organization was founded. Today it includes159 member states, so it will not be exaggeration to stipulate that the WTO law is of great value because of its global character. The WTO performs the following functions:

– it is a forum of multilateral negotiations on international trade;

– it provides an interpretation of international trade agreements of the WTO system;

– it monitors the implementation of international trade agreements of the WTO system through Trade Policy Review Mechanism.

Moreover, a system of international dispute resolution was established in order to ensure compliance with the obligations under multilateral agreements of WTO Member States. It allows those member states, which were affected by the breaches of obligations under WTO law by another state, to initiate quasi-judicial proceedings and restore the status quo. Annex 2 of the Agreement Establishing the WTO is Understanding on Rules and Procedures Governing the Settlement of Disputes in 1994 (hereinafter – the DSU). Article 3 of the DSU expressly states that «The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system».

The only participants in the dispute settlement system are the governments of the WTO member states. They can take part as disputing parties or the third parties. However, the DSU does not specifically address the issue of who may represent a party before panels and the Appellate Body. Therefore it could be considered that a government could be represented by private lawyers before the Dispute Settlement Body. For example attorneys can write the argumentations of the state, which

is represented or take part in oral pleadings at hearings on its behalf. This ruling may be considered to be a right of sovereign states to be represented by people of their choice. For instance, in 2002 a private law firm from Chaoyang, named *King & Wood Mallesons* represented the Chinese government in initiating a dispute settlement proceeding against the U. S. challenging its global safeguard measures on steel.

This provision also gives small states the possibility to seek legal services abroad, in case they don't have their own competent lawyers. There are no tariffs on international trade lawyers, and the work can be done remotely, relying on telecommunication services for the exchange of information. Those law firms, with special departments which deal with WTO area, usually are multinational corporations with no particular allegiances even to their home country governments. Here are the examples of U. S.-based law firms which have helped the governments of foreign countries in DSU claims, including a number in which the respondent was the United States' government: *Willkie Farr & Gallagher* represented Australia in dispute *Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat* against the United States; some time later Korea was a client of this law firm in a dispute called *Countervailing Duty Measures Concerning Dynamic Random Access Memory (DRAM) Semiconductors from Korea,* and the other party was also the U. S.

Indeed, there is no place for private sector in the WTO dispute settlement. Nevertheless, disputes usually concern such economic sectors of WTO Members, as business undertakings, imports or exports, and often specifically individual firms. These cases are usually called *trade remedy cases.* In these instances the claiming state defends the interest of a specific export sector, or of a distinct group of enterprises, if not of a named company. It can be seen even from the names of the disputes which turn out to be the names of the firms directly involved or affected. Probably the brightest examples would be *the Fuji – Kodak* dispute; *Boeing – Airbus* dispute. Thus WTO litigation becomes an integral part of the legal services that international trade law firms are expected to offer to their clients, no matter if it is a government or a private legal entity. Speaking about the latter, it involves handling a case not only before domestic authorities and courts, but also at international meetings, and finally presenting it to the national authorities in order to convince them to pursue WTO remedies.

All the 159 members of the WTO joined this organization, seeking for a better regulation of international trade relations. But if we look through the practice of the Dispute Settlement Body, we will find that the overwhelming majority of the cases are brought by well-developed states like the U. S. and members of the European Union, while weak countries are more likely to be targeted, less likely to settle cases and bring counter-clams to the WTO. To make it short and clear, there are 2 main problems of developing countries: law and money. Speaking about the first one, there is a serious lack of legal expertise. In some states there isn't a single lawyer who works in the sphere of international trade and there are no opportunities for law students to study it. As a result governments become dependent on education of their own students at law schools in the United States and Europe. Here is one more situation where private law firms can help. For example, Brazilian law firms agreed to teach interns, that in future will work for the government in the sphere of WTO law.

Another serious challenge for the developing countries is the lack of financial resources to provide legal assistance. The point is that international trade lawyers are quite valuable and their work in the sphere of the WTO is time-consuming. Therefore they charge their clients with huge amounts of money. For instance, lawyers for Kodak and Fuji in *the Japan-Photographic Film case* respectively charged their clients fees of $10 million dollars. These sums are unthinkable for developing countries, but it's not a 'blind alley'. Specially for them the Advisory Center on WTO law (ACWL) was organized. Its aim is to provide developing countries with legal services and charge them less than they would be charged if they hired some private law firm. Surely they have to pay for their membership and for the assistance in certain case, but the fees are comparatively low and they differ from country to country depending on their per capita income, share of world trade and some other factors. Most of the amount of money spent for the functioning of this Center was given by well developed countries. And private law firms also contribute to the ACWL. It maintains a «Roster of External Legal Counsel» of attorneys willing to provide counsel to LDCs and other ACWL Members if a conflict of interest arises so that ACWL cannot provide services through its own attorneys. As of April 2005, nine law firms and two individuals had registered to offer their services through the ACWL.

In conclusion, it should be mentioned that the importance of the work which the law firms do is hard to overestimate. The main functions,

which are performed by law firms, is legal assistance. They provide the governments and private parties with needed information, represent them before the WTO, write written pleadings and act on behalf of their clients during the hearings of panels or Appellate body. Private attorneys are of particular importance in developing countries, because they can represent these states and also contribute to their legal expertise.

Руссева В. М.,
студентка,
Национальный университет «Одесская юридическая академия»

РОЛЬ ОФФШОРНЫХ ЗОН В МИРОВОЙ ЭКОНОМИКЕ

С развитием рыночных отношений экономическая деятельность различных субъектов стала всё больше приобретать международный характер. Невозможно отрицать влияния на всех национальных производителей товаров и услуг интеграционных процессов. Но каждое предприятие независимо от того охватывает его деятельность только национальный рынок или ещё и международный, обязано платить налоги согласно национальному законодательству той страны, в которой оно осуществляет свою деятельность.

В связи с достаточно сильным налоговым бременем многие предприниматели сейчас пытаются не уклоняться от налогов, а правильно планировать и оплачивать их, при этом стараясь максимально уменьшить их размер или вообще добиться нулевой ставки. Одним из таких способов является использование оффшорных зон и создание оффшорных компаний. Хоть создание и деятельность таких предприятий не противоречит закону, правительства многих стран видят угрозу, которую представляет оффшорная деятельность их граждан, и принимают различные меры по борьбе с данным видом деятельности.

Территории, которые имеют оффшорную юрисдикцию, в литературе имеют различное название: «оффшорные страны», «налоговый рай», «налоговая гавань», «оффшор». Но обычно под оффшорными зонами понимают такие независимые страны или отдельные территории других государств, законодательство которых позволяет существование юридических лиц-нерезидентов со значительными налоговыми льготами. Основными