საქართველოს
იუსტიციის
სამინისტრო

იუსტიცია
Iustitia

№ 1, თებერვალი 2022
No 1, February 2022

საქართველოს
იუსტიციის სამინისტრო
THE MINISTRY OF JUSTICE OF GEORGIA

იუსტიცია

IUSTITIA

№1

თებერვალი, 2022
FEBRUARY, 2022

რედაქტორი
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ჟურნალი დაკაბადონდა და დაიბეჭდა საქართველოს საკანონმდებლო მაცნეში
THE JOURNAL WAS TYPESET AND PRINTED AT THE LEGISLATIVE HERALD OF GEORGIA

ISBN 978-9941-486-57-9

FREE TRADE AGREEMENT:
MORE THAN LAW, MORE THAN TRADE

VICTOR KIPIANI
Senior Partner,
MKD Law

Keywords: free trade, trade agreement, law

The „free trade agreement“ has recently become firmly established in the colloquial Georgian dictionary when communicating with foreign countries. In official messages or during the communication, such phrase designates a system of actions with specific content. It would not be an exaggeration to say that the proper implementation of such system is important for our country, as it determines another means and a practical algorithm of the integration of Georgia into the international community. In addition to other means, on the basis of such algorithm, the compliance with specific, recognised norms and principles of coexistence are determined both by Tbilisi and its international partners; it is a measure of success of changes to be made in the country and, at the same time, of our admissibility to the foreign arena.

Therefore, the circumstance is quite natural that, as a result of appropriate activities in recent years, the vector of foreign relations of Georgia has been broken into multilateral (including with the EU and the European Free Trade Association) and bilateral agreements of free trade regime, be it with Turkey, China, Central Asia, Ukraine, Russia or with other markets important to us. Moreover, the signing of agreements of such category seems to have become a matter of self-esteem for the Georgian authorities before the internal and external audiences, and the signing of such new agreements has become a sign of successful activities in the field of foreign and economic diplomacy.

It is doubtless that the free trade agreement regime is a necessary tool for our country, both for integrating in the global economic system, and for facilitating the development of the national economy. At the same time, perceiving facts and circumstances only in contrasting colours has become a kind of trademark of Georgian, and not only Georgian, political and public consciousness. And it happens when there is a rich gamma of colours between such contrasts, the identification and study of which is, at the very least, a matter of mere curiosity. Taking a very practical approach, all of these are matters of specific benefits and needs for planning international political or economic activities as well as for sculpting the self-sufficient and free- from-foreign influence origins of the Georgian economy.

The aim of this short article is therefore to show the „big picture“ of the free trade regime in realistic colours, through the general marking of its certain (may be quite arguable and disputable) aspects only. It is obvious that no statement or evaluation presented in this article claims to be indisputable; on the contrary, each thesis or assumption, as a criti-

cal overview of this or that nuance of such a big topic, is an attempt to stir up, in a sound manner, a desire for their further compliance. We deliberately try to avoid the discussion of individual schemes of an agreement (which would lie beyond the scope of this article) as well as the overloading of the article with statistical data that we definitely do not lack thanks to many sources.

Shortly saying, we would like to observe the nature of free trade, to a certain extent, from the top view. In addition, we would imagine the additional emphasising of benefits granted under free trade agreements signed by Georgia, to be the accompanying result of our discussion. At the same time, it is also vital to realise the accompanying risks of such agreements, as well as to provide impartial discussion of optimal means of their tailoring to the interests of Georgia.

BRIEF INTRODUCTION TO „AN AGREEMENT FOR THE SAKE OF AGREEMENT“

Since the 1980s of the past century, most developing countries have begun striving towards a market system, which, alongside with other steps, implied a liberalisation of the trade rules. Specific steps taken towards increasing the openness of the global trade in goods and services are considered to be the origins of such fundamental changes. In particular, the 1994 Uruguay Round of Negotiations resulted in the establishment of the World Trade Organization in 1995. Thus, the ten-year negotiation process, the main goals of which can be grouped in two, is practically over. One of its most important tasks (further considering the Doha round) was to reduce obstacles in accessing markets of goods and services, while the second important task was to introduce compulsory and unified rules and procedures for market access to the extent possible, for which the so-called „maximum tariff rates“ were established. The thing is that, in accordance with the approach established previously, the market access was mainly achieved through the flat preferential tariffs on the selective basis, in relation to „most favoured nations“ and strictly determined nomenclature of goods and services.

Briefly saying, as a result of these processes during the past century, the dynamics of the liberalisation of trade rules has noticeably increased. In parallel with different versatile instruments, the dynamics also expressed itself in agreements signed in bilateral format. The latter circumstance is much more significant, since the bilateral trade agreements were better tailored to the principle of the so-called „ new-type regionalism“ − each country tried its best to achieve its aims in the field of trade, to establish tariff schemes favourable for itself, to obtain the consent of the other party to the agreement with regard to its own version in relation to the origin of goods, as well as technical, procedural and other formal requirements. Depending on certain sources, multilateral, especially bilateral trade agreements have multiplied and gained a foothold with an effect of „a running spring“.

These different versatile changes did not delay the immediate economic effect, which was reflected in a significant reduction of average tariff rates. Also, in some cases, free trade turnover, be it in this or that format, has significantly increased (for instance, in the 1990s of the

20th century, by 65% between the EU countries, and by two and a half between the parties to the free trade pact between Mercosur and Andean Community).

Naturally, the most tangible effect − the reduction of tariffs − has turned out to be an additional and, at the same time, critically important effect as a result of a number of necessary domestic reforms by national governments, without which the achievement of the necessary result of free trade would have been impossible.

It is also noteworthy that the approach based on the principles of mutual dependence and reciprocity in free trade, has contributed to the improvement of the international arena. The point is that countries of different strategic or non-strategic goals or ranges, different scales and ambitions have had to agree on common rules of conduct, more often by harmonising different approaches. A peculiar accompanying advantage of these agreements has become the establishment and further development of a culture of consensus in the field of international law and in other fields of public relations.

Recent years, for example, have been distinguished in the free trade format by the institutional harmonisation of regulation of such matters as intellectual property, health care, safety and labour standards, labour migration, investment security, banking and financial activities, dispute resolution and so on. It is noteworthy that new approaches have created a new class of such agreements, the so-called „modern free agreements“ that resonate with the modern agenda of economic integration and current challenges. It is however questionable how far the process will go without reforming the World Trade Organization, and without its involvement in the process. Another rather controversial issue is the increase in the number of free trade agreements, which is a result of quite unsuccessful Doha Round of Negotiations held in 2001. Truly, the Uruguay Round of Negotiations gave a sufficiently significant stimulus to the spread of this category of agreements. For more illustration, it should be noted that more than sixty free trade agreements were entered into force during the period between the Uruguay and Doha Rounds of Negotiations, that is, practically at a time when the reforming of the World Trade Organization was still a topic of great hopes.

SEMANTICS AND ESSENCE

In a word, with the power of the free trade agreement, two or more countries refuse to initiate „the tariff war“ when trading in goods produced by each country, maintaining the lever of setting tariffs in relation to third countries. It is also noteworthy that, with different free trade agreements, the nomenclature of goods is also different, whereas for their precise determination it is important to establish the origin of goods. Moreover, it practically happens, and it is quite often, when the choosing of nomenclature of goods may become the result of training of this or that lobbying group, and the preferences, and this is also a reality which is characteristic to the process of working on an agreement. This must be the reason why it has been repeatedly suggested that this category of agreement be called a „preferential trade agreement“ instead of a „free trade agreement“.

Therefore, unlike a customs union, being parties to a free trade agreement, countries maintain their external tariffs, but use preferential tariff rates in relation to countries that are

parties to the free trade agreement. This approach is given a special role both for avoiding the „forwarding“ of trade flows, and for the correct combination of the principle of preferential tariffs and the principle of origin of goods. This does not enable a country, which is not a party to the agreement, to transport goods with preferential tariffs through the territory of a country, which is a party to the agreement, to another country which is also a party to the agreement. Obviously, alongside with the formal requirement, the process also requires the right and lawful administration, whereas its sustainability is a prerogative of relevant supervisory and executive agencies. It is also worth mentioning that special attention is paid to the right adjustment of the criteria of the origin of goods, and in this regard a relevant classification has already been developed.

This time, however, we would like to focus on other quite essential economic factors.

One of these factors, which is also very important, is linked to the supply of goods. This is to maintain the ability to increase national production and exports of own products within a particular economic system while competing with imported goods as a result of the entry into force of a free trade agreement in the same economic system. It is obvious that a proper evaluation of the mentioned factor depends on many direct or indirect circumstances. For example, such evaluation should take into account not only the country's trade and industrial policy, but also the fact that other components of human resources and the country's competitiveness, which are related to the trade institutional infrastructure, requires the correct judgment.

It is of utmost importance that the discussion on the factor of supply of goods be based on as objective economic circumstances as possible. It is important to remember this, because decision-makers might appear entrapped by different subjective and marker-determined assumptions and, therefore be separated from pure economic categories or rationalism. What is not excluded is that the negotiating party to a free trade agreement may miss critical inaccuracies, may be unable to completely analyse the possible outcomes of the agreements or may fail to strike the right balance between the obligations undertaken by the agreement and the national tasks. Any such mistake or inaccuracy may become especially costly for a country, if it is not ready for a free trade regime, both in terms of competence and on the institutional level.

The signing of a free trade agreement in a hasty manner, especially when it comes to the negative economic consequences of the supply of goods, is also linked to such processes, which gradually emerge over time. More precisely, it is the abundance of tariff schemes for trade with different countries for a particular country and the risk caused by their possible differentiation. Leaving aside the trade imbalance, which is already a dangerous anomaly, the implementation of distinguished tariff schemes is also related to the difficulties of their practical administration. When speaking of determining factors it is also important to note the compliance of trade, which is related to the quality of compliance of the trade structure of one country with the trade structure of another. In other words, it is the task of the contracting country to determine to what extent the new rules and requirements laid down in the agreement change imports made prior to the conclusion of the agreement. In the course of such analysis, one must consider the level

of development of the national economy, the quality of the diversification of resources and the export potential.

It is obvious that only the correct compatibility and mutual balance of many matching parameters determines the success of individual free trade agreements (e.g. in practice this is the case with the North American Free Trade Association − NAFTA) and the actual effectiveness for the parties. In this regard, a real active asset for the Georgian economy could not only be the fact of signing the agreement, but also the tangible economic effects of the agreement.

HOWEVER, IT SHOULD BE REMEMBERED THAT ...

...On the one hand there are data of the total trade turnover of countries that are parties to the free trade agreement, both within and beyond the free trade regime, and data of the trade turnover obtained on the basis of such particular agreements, on the other hand. In the latter case, they are relatively poor and comprise only 30% of data available in the first instance…

At a glance, such a gap might be even surprising, but it has some explanations. One point is that trading in significant part of goods within the free trade regime is already possible using the status of the so-called „most favoured nations“ (when tariff rates are minimal or even equal to zero); the second point is that many countries exempt from taxes such import material, which they use for producing their own goods for export; it should be also noted that it is a common practice when goods with high tariffs are already excluded from the free trade agreement; another circumstance is the popularity of the e-commerce and its accelerated growth rate, especially given the specifics of the pandemic and post-pandemic period (in which case it is worth noting that the e-commerce is practically exempt from taxes under the WTO Information Technology Agreement (ITA) of 2006); and, finally, an entrepreneur may refuse to use the free trade agreement due to direct and indirect costs related to the administration of the benefits granted by the agreement.

IT SHOULD BE ALSO REMEMBERED THAT …

...The effect of free trade agreements on attracting investments to the country is not a straightforward fact. Undoubtedly they have a particular but not a decisive role in this process. In fact, the compliance with other more essential requirements serves to support the investment environment. In addition, there is an assumption that the effect of a free trade agreement is mostly absorbed by bilateral investment agreements oriented towards the security of investment…

The correlation between different legal instruments or economic mechanism in a country’s economic development is the subject of discussion. Nor do we support that any of them is given a role that is more than permissible. It is also a fact that the balanced and inclusive growth of the national economic model is conditioned by the correct selection and adjustment of tools and mechanisms. Despite such dilemma, it is obviously necessary to mention the practical assistance that a free trade agreement (when used correctly) shows in

relation to the integration of national production into global production. The use of such agreements as a „transmitting" mechanism for the contemporary knowledge and experience is also worth mentioning. The latter will benefit through its extra use during the formation of a new global supply chain in the conditions of pandemics and post-pandemics, and will better show the contours of compatibility of the Georgian economic system with the new configuration of the global supply chains.

THE NON-ECONOMIC SIDE OF THE AGREEMENT

In a word, the economic benefits of free trade agreements are sometimes under question. But where these benefits appear to be real, they need to be transformed into actions. The adjustment of such a complex instrument to one's own needs, in addition to the right economic modelling or appropriate infrastructure, also requires the meeting of necessary conditions as minimum. Some of them, which in our opinion are most essential, we have already mentioned above.

When speaking of free trade agreements, it is practically impossible to avoid their non-economic, the so-called political side. Signing such agreements is often dictated by political assumptions and is the result of developments in the field of foreign or security policy.

This feature is especially evident in the way in which the United States perceives free trade agreements. For us, the Georgians, the better analysis of such perception (i.e. the way the USA perceives) is even more important if we consider our clearly declared will to sign the document of such status with our main strategic partner, especially in the circumstances where multidimensional close cooperation between our two countries directly requires and stipulates the existence of a free trade agreement.

It is obvious that in the arsenal of the U.S. foreign policy, free trade agreements pursue foreign political aims rather than those of trade, as it is proven by the list of countries with which the United States has signed such agreements. Naming just a few will suffice to fortify the above stated assumption: Israel and Jordan, Morocco, Bahrain and so on.

It is a fact that U.S. interests in relation to each country or region are far greater than trade alone. It is true that, in practice, any such agreement has several purposes, the most important of which is a very specific US foreign agenda in relation to a specific party to a specific agreement. We, therefore, believe that the free trade agreement between Georgia and the United States of America should mostly be based upon bilateral foreign and safety interests. This would be the most correct, rational and, if you wish, the decent approach to the matter.

Here we would like to present some additional assumptions on the Georgian-American process around free trade agreements: we would like to mention once again that such agreements are only logical and necessary links in the chain of multi-annual bilateral relations, and they will naturally be added to a number of key documents that are fundamental for the partnership, including the US-Georgia Charter on Strategic Partnership, which has a „constitutional" meaning. In the meantime, the future free trade agreement will become a further example of demonstrating an equilibrium between large and small economies, which is not

an easy task to accomplish. This is why, the Georgian-American free trade agreement should mostly be dedicated to trade policy matters and not to a guaranteed trade turnover, which would seem inappropriate for us due to various circumstances.

In a few words, in the said document the respective parties should be united by their „narrow corporate-national“ interest. From the side of the United States of America, this is another powerful demonstration of US support for Georgia beyond security and military cooperation, as well as the support for Georgia's economic self-sufficiency by reducing its dependence on foreign aid (including that by the United States).

As for Tbilisi, alongside with general political goals, of course, the major benefit for the Georgian side would be improving access to highly profitable market of the United States. We would reiterate that expanding access to the existing format is a rather delicate process given the specifics of economies of two different scales. At the same time, the additional sound Georgian-American interest may be expressed in motivating the Georgian government − once again through a free trade agreement − to pursue domestic reforms in response to international commitments. In addition to all the above, we would also like to mention the additional political and moral significance of such a high status agreement in the context of the occupation of the territories of our country and the occasional conditions of this or that kind of embargo or the threat of economic blockade that might face the country.

In addition to the above, the free trade agreement would become another test of the Georgian-American partnership, because the entry into force of this type of agreements in some cases requires the support from both the executive and legislative authorities of the United States. Consequently, the Georgian-American trade agreement still leads us to the double-chamber and double-party support necessary for us, without which a healthy strategic-political partnership between Georgia and the United States is inconceivable. It is also worth thinking that the successful practice of concluding such an agreement with Georgia may lay ground for a regional trade bloc, but we also realise that this is the future and much more difficult challenge.

OUTLOOK

Of course, the conclusion of free trade agreements with new partners offers Georgia some further opportunities for integration with the European, Euro-Atlantic and global economic space. And, as already mentioned in this article, this process not only serves the purposes of economic cooperation, but also has a much broader agenda. Especially, since the dominant trend in the world arena − against the background of systemic challenges facing the World Trade Organization – remains to be multilateral trade unions on a bilateral or regional basis.

At the same time, we would like to underline one of the main messages of this piece of article: covering the new geographic markets through the principle of free trade regime and offering own economic space for geographic markets must not become the senseless ritual of respect for international protocol; obviously, this cannot be used as a reverence for self-approval on a political note.

An objective analysis of each particular case of every agreement is therefore vital, that is, free trade agreements must be evaluated on the basis of the so-called Georgian „stress test". For a qualified evaluation, such „stress test" should include the recording of directly or indirectly linked factors necessary for evaluation, as well as the mechanism of their usage and adjustment. In the course of a political and legal decision-making with regard to an agreement, the answer to the main question − whether the agreement contributes to the real development of the national economy through its organic and not pretentious or harmful integration in its external economic system − only such a thorough analysis and approach is considered to be the main means.

With Georgia being a party, the free trade agreement should, as minimum, facilitate the following: (1) achieving economic growth; (2) improving the dynamics of business environment; (3) stimulating direct investments; (4) further optimising government expenses; and (5) improving the availability of contemporary knowledge and technologies.

Obviously, in terms of overcoming economic challenges, protectionism would be the worst „way out". Particularly it would not be worth for a national economy with scarce and insufficient resources and critical need of being linked with the outside world necessary for its development. Such need is indisputable and does not require the revision. The only point is that any such link must be made thoughtfully, reasonably, with a correct and unbiased analysis of further outcomes, in order to meet a realistic development-oriented expectation rather than an ambitious conjunctural ego. This short article and its separate critical and equally disputable notes or assumptions are only meant to serve as a reminder thereof.

