

Law

Political Stability and Trade Agreements

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In the following paper the relationship between political stability and trade agreements as well as the empirical model of political stabilization in WTO member states that affects international trade, are analyzed. The author considers three approaches to domestic political economy of trade agreements setting special focus on national security, which safeguards their simplicity, stability and neutrality. Social and economic development provides for political stability, crucial for ensuring democracy and healthy economic processes in the WTO countries. Dramatic political changes, like a coup d'etat, cause shock, slow down/reverse of economic growth and deteriorate welfare of the population. On the other hand, trade stability is achieved through the unique political arrangement of the World Trade Organization, the complex mechanism of power redistribution (*checks and balances*), the diversity of member states, and the constant struggle between supra-nationalism and intergovernmentalism in decision-making. The author explores the level of trade stability, simplicity and neutrality in view of the specific cases as well as the conducted research. It is concluded, that political stability promotes regional and good neighborly relations, thus affecting the trade stability of the EU/WTO countries at different degrees. The research is based on the theorists' arguments on political stability. © 2020 Bull. Georg. Natl. Acad. Sci.

World Trade Organization, Regional Trade Agreement, European Union, General Agreements of Tariffs and Trade

Today all members of the WTO, like many other multilateral institutions, are confronted by multiple challenges, ranging from the threat of protectionism and unilateralism, the risks of a trade war and political instability, to the inability to forge consensus on core issues, some of which have underpinned the world trading system for decades since the end of the World War II.

There are several perspectives on political stability discussed in below. For instance, according to Helliwell's argument about the indirect

effect of democracy on the economic growth, there is an indirect effect of democracy on growth through the channel of political stability. Taylor and Hudson proposed the three varieties of instability mentioned earlier, namely, "irregular government change", "major regular government change" and "minor regular government change". The "conflict school", in particular, Sirowy and Inkles, argues that democracy hinders economic growth, particularly in less developed countries (LDCs) [2].

Empirical Model of Political Stabilization in WTO Member States

Political stabilization is a long-term commitment to the specific region (every country in EU) both in terms of political effort, financial and human resources. The centerpiece of the stabilization process is the conclusion of the agreement which represents a far-reaching contractual relationship between the politicians and society. Such “agreement” can have high political value since it is based on the gradual implementation of reforms designed to achieve the aim of moving closer to the high social standards. Importantly, political stabilization focuses on respect for key democratic principles and the core elements at the heart of the political society. The political stability encourages the active development of regional co-operation and good neighborly relations in the WTO.

The tools of political stabilization are the means necessary to encourage these countries to adopt real reforms towards the immediate objectives. The mechanisms of stabilization themselves will allow the WTO countries to prioritize reforms, shape them according to WTO models, solve problems and monitor their implementation. Below is a practical model of political stabilization, created by the author. The model identifies the main factors that ensure, and contribute to, the political stabilization (Fig. 1).

As a result of investigation by the author, these factors are observed to impact the *trade* stability in different rates (%) in the EU/WTO countries.

Although democracy is alleged both to promote or to inhibit economic development, some scholars consider democracy and growth to be unrelated. Speaking about political instability it is sometimes identified both as a cause of poor economic growth and as its consequence.

The author believes that democracy, along with regime stability, offers flexibility and the opportunity for major government change within the political system. At the same time, he argues that nation’s rapid growth requires autocratic control and reduced freedom. And the fact that the developing countries, in particular, cannot achieve rapid economic growth without a strong centralized government only proves this consideration. As a good example, he gives the case of Georgia which displayed rapid economic growing between 2004-2018 in the conditions of young/fragile democracy with strong centralized government in the Presidential Republic, which even survived the Russian aggression in 2008.

Meanwhile, democratic processes as well as the existence and exercise of fundamental civil liberties and political rights are maintained to generate the social conditions most conducive to economic development. Political and economic freedom

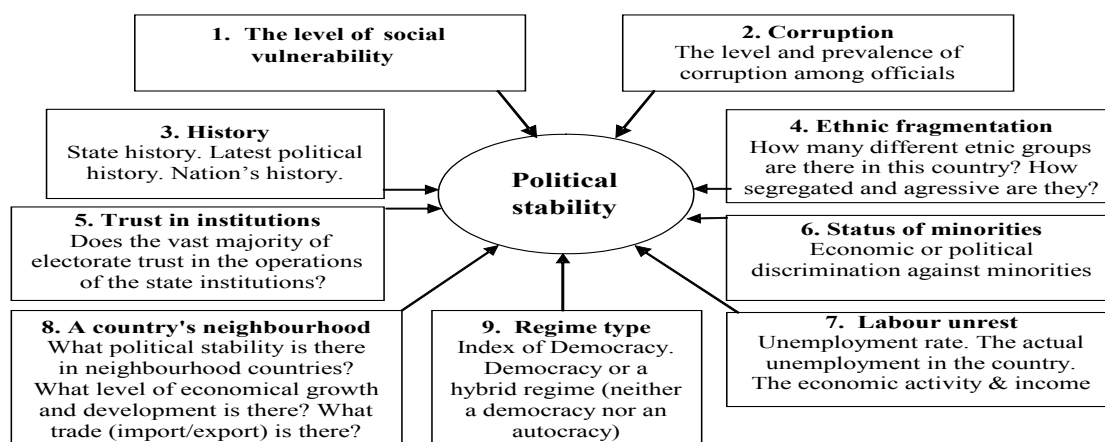


Fig. 1. Factors affecting political stability (developed by the author).

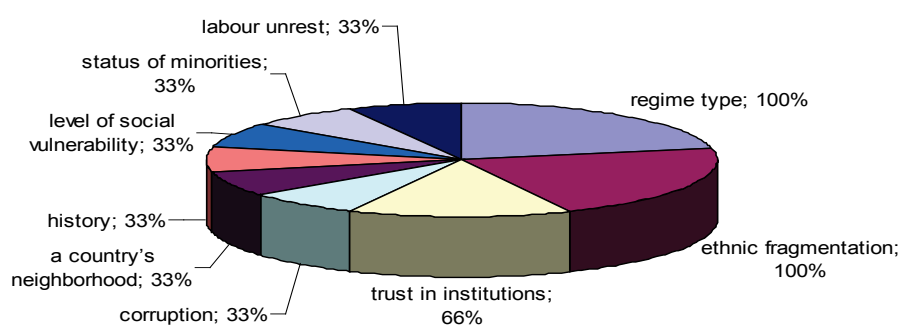


Fig. 2. Rate of factors affecting trade stability in the EU/WTO countries (developed by the author).

enhances property rights and market competition, thus promoting economic growth [3]. Nevertheless, from the “skeptical” perspective, there is no systematic relationship between democracy and economic development [4].

Three Approaches to Domestic Political Economy of Trade

Democracy and political stability provide conditions for promoting free trade, which in its turn may increase wealth and reduce poverty, and, thus, it may contribute to social stability through the economics of comparative advantage.

It is important to note that the domestic politics shape countries’ strategic decisions to negotiate regional trade agreements (RTAs), and are even more important in determining at the tactical level what kinds of commitments countries seek or grant in these agreements [5].

To simplify, the political scientists who look to domestic political factors in order to explain countries’ choices between openness and closure tend to fall into three general camps. The oldest and perhaps largest school of thought depicts this choice as the outcome of struggles between competing economic interests. Openness represents the triumph of pro-trade interests such as exporters, retailers, and consumers over import-competing industries, labour unions, or others that are typically trade-skeptical. A second category of explanations shifts the locus of conflict from civil

society to government, and sees openness as the triumph of pro-trade institutions (e.g. the executive branch in general, the foreign ministry, etc.) over their trade-sceptical rivals (e.g. legislatures or client-oriented ministries). Yet a third approach pays more attention to ideas than to interests. Analysts in this school argue that openness represents the victory of liberal ideology over protectionist doctrines. While the debates among the proponents of these three schools of thought are sometimes conducted as if the explanations were mutually exclusive, it is possible that each one captures some part of the truth. In any given country the decision to open the market may be influenced by a mixture of sectoral, institutional, and ideological factors.

National security in the WTO

National security plays an important role for simplicity, stability and neutrality of trade.

Governments use national security to uphold important national security interests, as well as to adopt trade restrictive measures for reasons of supposed national security, defined as self-sufficiency [6]. Rarely do such attempts hold up to careful scrutiny, but the temptation is always present [7].

When originally established, the General Agreement on Tariffs and Trade (GATT) was intended to deal with a technical matter – the regulation of transnational trade. Other Bretton

Woods institutions, notably the United Nations, were to deal with issues of national or international security and peace. Accordingly, most of GATT's exceptions deal primarily with "technical" problems caused by imports or exports of goods. However, the exceptions in Articles XX and XXI deal with a different kind of situation, (though Article XXI of GATT is the primary source of discussion about national security in the WTO, there are similar provisions in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The provision in GATS is Article XIVbis, which is virtually identical to GATT Article XXI other than the focus upon services in Article XIVbis(b)(i). The provision in the TRIPS Agreement is Article 73, again virtually identical to GATT Article XXI). Compared to the broad exceptions of Article XX, [8] Article XXI provides extensive discretion, the precise limits of which remain largely unexplored in GATT/WTO jurisprudence. Thus, WTO members, otherwise bound by technical rules [9], have been viewed traditionally in matters of national security as being largely freed of any legal bonds imposed on them (John Jackson, Founder and Faculty Director, Institute of International Economic Law, Georgetown Law, USA and leading GATT legal authority, has noted that the exceptions found in Article XXI "provide a dangerous loophole to the obligations" contained in the agreement. Jackson, J., *supra* note 3, at 748. While recognizing that Article XXI has a legitimate role to play, Jackson expressed concern regarding its potential for abuse and the possibility for the "arbitrary exercise of economic power". *Id.* at 752. He went on to note that "[i]n addition to possible abuse for international political reasons, Article XXI may also shelter some measures that, although ostensibly imposed for security reasons, may actually be protectionist-oriented". *Id.* at 752).

Many GATT members stated the belief that Article XXI (b) was self-defining. The GATT contracting parties adopted a ministerial declaration

stating that "... the contracting parties undertake, individually and jointly: ... to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement", (L/5424, adopted on 29 November 1982, 29S/9, 11. This situation also resulted in an unusual decision by the GATT membership which recognized "... that recourse to Article XXI could constitute, in certain circumstances, an element of disruption and uncertainty for international trade and affect benefits accruing to contracting parties under the General Agreement ...", L/5426, 29S/23).

The notion of self-definition came under renewed scrutiny with the launch of the WTO and its dispute settlement system that no longer allows a member to block formation of panels, thus no longer limiting the ability of another member to question the legitimacy of a measure defended on the basis of national security [10].

In the US-Helms-Burton panel proceedings [11] – the only case on Article XXI to date under the WTO regime (The national security issue could have been raised by the United States in the later dispute with the European Union over Cuba-related issues in the "Havana Club" rum case, United States – Section 211 Omnibus Appropriations Act of 1998 (WT/DS176/AB/R), which in the context of the US boycott of Cuba found that the United States violated the national treatment and MFN provisions of the TRIPS Agreement. However, the United States did not raise Article 73 of TRIPS as a national security defence) – the US informed the WTO that it would not participate in panel proceedings since it viewed the Act as outside the scope of WTO law and thus not in the panel's jurisdiction [12]. The US stated that the disputed embargo was about diplomatic and security issues, and "was not fundamentally a trade matter" [13]. However, "few Members shared this opinion", as noted by Peter Van den Bossche, Member, Appellate Body of the World Trade Organization, Geneva and Professor of International Economic Law, Maastricht University, Netherlands [14].

Thus, there has been no WTO proceeding to determine these issues. The most recent invocation of Article XXI in a possible WTO challenge appears to be the issue of US, Canadian and European Union (EU) sanctions against Russia over Crimea and other issues related to Ukraine [15]. A Russian official involved in the matter opined that Russia would not expect the national security exception would be available to the US in the same sweeping, self-defining way that some legal experts have asserted [16].

In this context, the author argues that Russia had been spared of sanctions after the disproportional aggression against Georgia in 2008, which was a wakeup call for Europe 6 years earlier than Russian Aggression against Ukraine. Moreover, the author also reminds how at all Russia became the WTO member 2011. Georgia had been a member of the WTO since July 14, 2000. It took 18 years for the Russia Federation to become a member. According to the WTO rules, accession of a new country requires the approval of all member states. In this context the author claims that Georgia was one of the final obstacles for Russia to join the WTO. The disagreement between Georgia and Russian Federation was clearly political as Russia has occupied 20% of the territories of Georgia and recognized the disputed territories as independent states.

The compromise agreement partly meets Georgia's long-standing demand for monitoring the traffic of goods between the Russian Federation and the two breakaway regions. The agreement does not mention any geographic name, only geographic coordinates. The agreement establishes three trade corridors: Adler – Zugdidi; the village of Nar (North Ossetia) – Gori; and Zemo Larsi – Kazbegi. All goods entering and exiting these corridors would be subjected to monitoring by the neutral private company.

When the Agreement was signed between Russia and Georgia in 2011, it was presented as a huge political victory, as by signing the agreement

Russia was supposedly indirectly recognizing the territorial integrity of Georgia. It was also assumed that Georgia managed to achieve this because it used the existing situation and forced Russia to sign an agreement which was beneficial to us. However, this is not the reality. Georgia did it only through international coercion and giving in to the Obama Administration's pressure as making Russia the member of World Trade Organization was a part of the Reset Policy. Hence, if we look at it objectively, the Government of Georgia found itself trapped at some point. Hence, an agreement needed to be signed and in the conditions, when Georgia was at a disadvantage with already much more powerful Russia.

The Agreement between the Government of Georgia and the Government of the Russian Federation on the Basic Principles for a Mechanism of Customs Administration and Monitoring of Trade in Goods was signed on November 9, 2011 and entered into force on August 22, 2012. As was stipulated by the agreement, the Swiss Confederation selected the neutral company SGS Societe Generale de Surveillance SA for oversight functions. Georgia and Russian had to enter separately into contract with the company.

In January-February 2016 Georgia finalized the contract with SGS; however, the Russian side still has issues to clarify. Consultations continue. It is obvious that the negotiations are dragging on. The mechanism of monitoring is still not in effect, and the parties continue to debate technical and legal details. On 6 February 2019, the first meeting of the joint committee for overseeing the implementation of the Russo-Georgian agreement on monitoring of freight passing through Abkhazia and South Ossetia took place.

Conclusions and Recommendations

The research has shown that the Political Stability plays a key role for Stability, Simplicity and Neutrality of Trade. Firstly, the concept of trade stability, simplicity and neutrality should be

acknowledged as a multi-faceted phenomenon. The research has demonstrated that different theorists view trade stability simplicity and neutrality from different angles, and all these perspectives on trade stability are equally important. For instance, Helliwell argues that it is through the channel of stability that democracy indirectly impacts on the economic growth, thereby linking an actual state of trade stability in a country with the country's economy. Taylor and Hudson, in turn, distinguish three varieties of instability, such as "irregular government change", "major regular government change" and "minor regular government change", emphasizing that it is exactly regular and irregular government changes that are likely to have a

serious impact on a country's economic growth. Secondly, realizing the interrelationship of political stability, economic conditions and social cohesion, the author of the present research has developed two models of trade stability. The minor model puts forward the most significant economic factors that contribute to trade stability, namely, unemployment, the level of tax, growth in incomes and inflation. The major model of trade stability, proposed by the author of this article, illustrates how factors, such as the level of social vulnerability, corruption, history, ethnic fragmentation, trust in institutions, status of minorities, labour unrest, a country's neighborhood and regime type, impact on the overall level of trade stability in a country.

სამართალი

პოლიტიკური სტაბილურობა და სავაჭრო ხელშეკრულებები

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(წარმოდგენილია აკადემიის წევრის ჯ. ხეცურიანის მიერ)

წინამდებარე სტატიაში განხილულია ურთიერთკავშირი პოლიტიკურ სტაბილურობასა და სავაჭრო ხელშეკრულებებს შორის; გაანალიზებულია პოლიტიკური სტაბილიზაციის ემპირიული მოდელი მსო-ს წევრ სახელმწიფოებში, რაც გავლენას ახდენს საერთაშორისო ვაჭრობაზე. ავტორი წარმოგვიდგენს სავაჭრო ხელშეკრულებების სამ მიდგომას შიდა პოლიტიკური ეკონომიკის კრილში. ხაზგასმულია, რომ ეროვნული უსაფრთხოება უზრუნველყოფს სავაჭრო ხელშეკრულებების სიმარტივეს, სტაბილურობასა და ნეიტრალურობას. სოციალურ-ეკონომიკური მდგრადობა განაპირობებს პოლიტიკურ სტაბილურობას, რაც უაღრესად მნიშვნელოვანია მსო-ს ქვეყნებში დემოკრატიისა და ჯანსაღი ეკონომიკისთვის. დრამატული პოლიტიკური ცვლილებები, მაგალითად, *coup d'état* იწვევს შოკს, ანელებს/უკუაქცევს ეკონომიკურ ზრდას და აუარესებს მოსახლეობის კეთილდღეობას. მეორე მხრივ, სავაჭრო სტაბი-

ლურობის მიღწევას ხელს უწყობს მსოფლიო სავაჭრო ორგანიზაცია თავისი უნიკალური პოლიტიკური მოწყობით, ძალაუფლების გადანაწილების კომპლექსური მექანიზმით (*checks and balances*), წევრი ქვეყნების მრავალფეროვნებით, ასევე გადაწყვეტილებების მიღების პროცესში ზენაციონალურისა და მთავრობათაშორისო ინტერესების მუდმივი კონკურენციით. ავტორი განიხილავს სავაჭრო სტაბილურობის, სიმარტივისა და ნეიტრალურობის დონეს, როგორც კონკრეტული მაგალითების, ისე ჩატარებული კვლევების გათვალისწინებით. იგი ასკვნის, რომ პოლიტიკური სტაბილურობა ხელს უწყობს რეგიონალური სავაჭრო თანამშრომლობისა და კეთილმეზობლური ურთიერთობების განმტკიცებას, რაც სხვადასხვა ხარისხით აისახება ევროკავშირის/მსო-ს ქვეყნების სავაჭრო სტაბილურობაზე. კვლევა ეფუძნება მეცნიერულ არგუმენტებს პოლიტიკური სტაბილურობის ასპექტში.

REFERENCES

1. Alesina et al. (1992) Political instability and economic growth, *NBER Working Paper*. 4173:1-7.
2. Cohen Y. (1994) Radicals, reformers and reactionaries: The prisoner's dilemma and the collapse of democracy in Latin America, p. 23. The University of Chicago Press.
3. Riker W. and W. D. (1993) The economic and political liberalization of socialism: the fundamental problem of property rights. *Social Philosophy and Policy*, 10(2):84
4. McKinlay R. and Cohan A. (1975) A comparative analysis of the political and economic performance of military and civilian regimes: a cross-national aggregate study. *Comparative Politics*, 8(1): 5.
5. Kyle W. Bagwell & Petros C. Mavroidis eds., (2011) Preferential trade agreements: a law and economics analysis, p.31. Cambridge Univ. Press
6. Jackson J., A. Sykes and W. Davey (2002) Legal problems of international economic relations: *cases, materials and text*, 4th edition: 20-21. West Group.
7. Jackson J. (1969) World trade and the law of GATT. Bobbs-Merrill, pp.60-97.
8. Dam K. (1970) The GATT: law and international economic organization, p.490. The University of Chicago Press.
9. Jackson J. (1969) World trade and the law of GATT. Bobbs-Merrill, p.30.
10. Van den Bossche P. (2012) The law and policy of the world trade organization, 2nd edition: 666. Cambridge University Press.
11. Request for consultations, US - Cuban Liberty and Democratic Solidarity Act (Helms-Burton Act), WT/DS38/1, 13 May 1996.
12. Van den Bossche, P. (2012) The law and policy of the world trade organization, 2nd edition: 667. Cambridge University Press.
13. WTO dispute settlement body p.7 - WT/DSB/M/24, of 16 October 1996.
14. Van den Bossche, P. (1996) Supra note 9 at 668, citing WT/DSB/M/24, of 16 October, at 8-9.
15. Russian PM says Moscow to challenge U.S. sanctions at WTO, world trade online at inside U.S. trade, 27 June 2014, <http://insidetrade.com/node/142496>.
16. Russia's WTO claims against U.S. sanctions unlikely to prevail: experts, world trade online at inside U.S. Trade, 2 May 2014, <http://insidetrade.com/inside-us-trade/russias-wto-claims-against-us-sanctions-unlikely-prevail-experts>

Received September, 2020