Judicial Application of WTO Law in Southeast Europe

Tamara Perišin

1 Introduction

This chapter deals with the application of the law of the World Trade Organization (WTO) in eight countries of Southeast Europe (SEE): Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia. Five of these countries, Albania, Croatia, Macedonia, Montenegro and Slovenia, are WTO members[1]; two countries, Bosnia and Herzegovina and Serbia, have observer status and their accession is in progress; Kosovo has yet to start these processes. The WTO membership of Slovenia is specific since this country is an EU Member State so a large share of the competence in the field of WTO law is conferred on the EU and the status of WTO law is largely governed by EU law. The same is true for Croatia following the country's accession to the EU on 1 July 2013, but this chapter entails research on the application for WTO law prior to EU accession.

The chapter has two main parts. The first deals with the effects that WTO law is aimed to produce in general, and within the EU legal order in particular. The effects of WTO law in the EU are taken as relevant because all SEE countries see their future there, so they might be willing to recognise such effects even before EU accession. The second part looks at the effects that WTO law has so far had in SEE countries. It shows that WTO law has only rarely been applied in SEE countries and that in most of them there has not been a single case where a national court has relied on WTO law or where parties have cited WTO law to support their claims. The concluding part looks at reasons for the poor application of WTO law in SEE.

Research for this paper was completed in June 2013.

[1] The dates of their accession are as follows: Albania—8 September 2000; Croatia—30 November 2000; Macedonia—4 April 2003; Montenegro—29 April 2012; Slovenia—30 July 1995.

T. Perišin (✉)
Faculty of Law, University of Zagreb, Zagreb, Croatia
e-mail: Tamara.perisin@pravo.hr

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2 WTO Law and Its Effect

It is well known that the WTO was established in 1995 as an umbrella organisation covering a large number of diverse agreements on trade in goods, services, intellectual property, dispute settlement, and trade policy reviews. All WTO members must be parties to all multilateral agreements which are covered by the WTO umbrella, but there is also a smaller number of plurilateral agreements which are optional.

The WTO is an international, not a supranational, organisation, so its treaties have the legal effect of general international law. The idea that WTO law should *per se* have direct effect in all its member states (similarly to the effect of EU law) was explicitly rejected during the Uruguay round, and, for example, the Panel in *US—Sections 301–310 of the Trade Act of 1974* explicitly mentioned how neither the GATT nor any part of WTO law was ever interpreted as having direct effect.[2] However, this Panel held:

> [t]he fact that WTO institutions have not... construed any obligations as producing direct effect does not necessarily preclude that in the legal system of any given Member, following internal constitutional principles, some obligations will be found to give rights to individuals. [The Panel's]... statement of fact does not prejudge any decisions by national courts on this issue.[3]

This means that the effect of WTO law in WTO members depends on their own constitutional principles, primarily on whether the country is monist or dualist.

Within the EU legal order, the European Court of Justice (ECJ) took very early on the position that the General Agreement on Tariffs and Trade (GATT) had no direct effect. In *International Fruit Company*, it considered that the characteristics of the GATT, primarily the 'great flexibility of its provisions, in particular those conferring the possibility of derogation' and the possibility to unilaterally suspend, withdraw or modify its concessions made it impossible for this agreement to have direct effect.[4] Later, when the WTO was established, new litigants tried persuading the Court that this new legal system was such that its agreements should have direct effect within the EU. The Court rejected this possibility. In *Portugal v Council*, it held that 'having regard to their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions' and that 'by its nature, the Agreement establishing the World Trade Organisation, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts'.[5]

However, the Court did (both before and after the establishment of WTO law) allow for some narrow exceptions under which WTO law could be invoked by

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[2] United States—Sections 301–310 of the Trade Act of 1974, WT/DS152/R, 22 December 1999, para 7.72.

[3] Ibid, fn. 661.

[4] Case 21–24/72 *International Fruit Company NV and others v. Produktschap voor Groenten en Fruit* [1972] ECR 01219 paras 21, 26, 27.

[5] Case C-149/96 *Portuguese Republic v. Council of the European Union* [1999] ECR I-08395, paras 47, 48.

individuals and used to assess the validity of EC/EU law. These were situations where the EU measure expressly referred to precise provisions of WTO agreements (*Fediol*)[6] or where the EU measure was intended to implement a particular WTO obligation (*Nakajima*).[7] The Court has also allowed WTO law to have interpretative effect, so both European and national legislation must be interpreted in its light.[8]

3 Application of WTO Law in SEE

The analysis of the application of WTO law in eight SEE countries is based on national reports containing answers to a questionnaire inquiring about various aspects of WTO accession, the application of WTO law, and education in the field. These answers were provided by rapporteurs in charge of national reports to this book and by other contributors, who are all academics dealing with EU and international law issues, well acquainted with their country's legal order, the functioning of national institutions, including the judiciary, and domestic legal education.[9]

3.1 Status and Availability of WTO Law in SEE

The first part of the questionnaire dealt with the status and availability of WTO law in SEE. The reports confirmed that all eight SEE countries covered by this research have a monistic understanding of the relationship between national and international law. The Constitutions of Albania,[10] Croatia,[11] Kosovo,[12] Macedonia,[13]

[6] Case 70/87 *Fédération de l'industrie de l'huilerie de la CEE (Fediol) v. Commission of the European Communities* [1989] ECR 01781 paras 19, 21.

[7] Case C-69/89 *Nakajima All Precision Co. Ltd v. Council of the European Communities* [1991] ECR I-02069 para 31.

[8] See ECJ cases C-61/94, *C* v. *Germany* [1996] ECR I-03989, para 52 on the interpretative effect of international agreements; and C-53/96 *Hermès International* v. *FHT Marketing Choice BV* [1998] ECR I-03603, the interpretative effect of WTO law.

[9] The rapporteurs on the application of WTO law were the following: Semir Sali and Gentian Zyberi—Albania; Zlatan Meškić, Aida Mulalić and Darko Samardžić—Bosnia and Herzegovina; Tamara Perišin—Croatia; Kushtrim Istrefi and Visar Morina—Kosovo; Marija Risteska and Kristina Miševa—Macedonia; Dušan Rakitić—Montenegro; Mirjana Drenovak Ivanović, Maja Lukić—Serbia; Janja Hojnik—Slovenia.

[10] Art. 122 of the Constitution of Albania. http://www.km.gov.al/skedaret/1231927768-Constitution%20of%20the%20Republic%20of%20Albania.pdf. Accessed 3 June 2013.

[11] Art. 141 of the Constitution of the Republic of Croatia, NN 85/10.

[12] Art. 19 of the Constitution of the Republic of Kosovo. http://www.assembly-kosova.org/common/docs/Constitution1%20of%20the%20Republic%20of%20Kosovo.pdf. Accessed 3 June 2013.

[13] Art. 118 of the Constitution of the Republic of Macedonia. http://www.sobranie.mk/en/?ItemID=9F7452BF44EE814B8DB897C1858B71FF. Accessed 3 June 2013.

Montenegro,[14] Serbia[15] and Slovenia[16] expressly state that international agreements which have been properly ratified and published in the official journal are a part of the country's internal legal order and that they enjoy priority over national laws. The Constitution of Bosnia and Herzegovina is silent on the legal status of international agreements in general,[17] but its Article 2(2) expressly states that the European Convention on Human Rights (ECHR) is directly applicable and hierarchically superior to other national laws,[18] and the Constitution's Annex I lists some other agreements for the protection of fundamental rights which also appear to be self-executing.[19] All this suggests that WTO treaties to which SEE countries are parties are also a part of the internal legal order of these countries (except perhaps in Bosnia and Herzegovina), and that they are hierarchically superior to national laws.

However, while formally there should be no problems in the application of WTO treaty texts, a practical problem derives from the fact that WTO law is mostly unavailable in the official languages of the SEE countries. The situation of Slovenia and Croatia is special in this respect, as the WTO Agreement and all of its annexes are available in their official languages through the EU database EUR-Lex.[20] As regards other SEE countries which are not EU members, data collected through questionnaires reveals Macedonia is the only one which has translated the WTO Agreement with its annexes into Macedonian.[21] In Croatia and Montenegro, there are official translations of the countries' accession protocols with some schedules of concessions.[22] In Serbia, a commercial database offers a translation of TRIPS into

[14] Art. 9 of the Constitution of Montenegro. http://www.dri.co.me/1/index.php?option=com_wrapper&view=wrapper&Itemid=51&lang=en. Accessed 3 June 2013.

[15] Arts. 16 and 194 of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia No. 98/2006. http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution. Accessed 3 June 2013. These provisions do not mention publication in the official journal as a condition for international treaties to become a part of the internal legal order.

[16] Art. 8 of the Slovenian Constitution, Official Gazette RS, Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04 and 68/06. http://www.us-rs.si/en/about-the-court/legal-basis/constitution/. Accessed 3 June 2013.

[17] Ustav Bosne i Hercegovine http://www.ccbh.ba/pblic/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf. Accessed 3 June 2013.

[18] Ibid.

[19] Ibid.

[20] E.g. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21994A1223(01):EN:NOT. Accessed 11 November 2014.

[21] According to the national report, the Macedonian Official Gazette contains the Macedonian Protocol of Accession to the WTO in the Macedonian language (Zakon za ratifikacija na protokolot za pristapuvanje na Republika Makedonija kon Svetskata trgovska organizacija; Služben vesnik na Republika Makedonija- megunarodni dogovori br.7/03 od 24.01.2003). There is also a book which contains the WTO Agreement with all the annexes translated into Macedonian: Dimitrovski et al. (2003).

[22] For Croatia, see Zakon o potvrđivanju Protokola o pristupanju Republike Hrvatske Marakeškom ugovoru o osnivanju Svjetske trgovinske organizacije, NN-MU 13/00; for Montenegro, see Law No. 30-1/12-1/4 EPA 778, 27 February 2012.

Serbian.[23] The situation is even worse when it comes to WTO case law, as neither full cases nor even case excerpts are available in any of the SEE languages. Only the Macedonian rapporteurs reported that information on WTO law which includes excerpts from selected cases can be obtained in Macedonian through translations in certain books and textbooks.[24]

3.2 *Attitude of SEE Countries' Legislative and Executive Branches Towards WTO Law*

The second part of the questionnaire inquired about the attitudes of the SEE countries' legislative and executive branches towards WTO accession and WTO law. For all eight SEE countries covered by this survey, WTO accession was or is among the governments' priorities. This is visible in various documents, most frequently from WTO working party reports containing official government statements.[25]

However, in SEE countries, WTO accession is not considered very important *per se*. Countries do not show great interest in what WTO rules have to offer in terms of trade liberalisation and benefits for imports and exports. These countries do not expect to achieve significant trade at the global level because the circle of their trading partners is relatively narrow. The lion's share of SEE countries' trade is within the region and with the EU,[26] and these trade relations have been liberalised through special agreements going beyond WTO obligations. For example, all of the SEE countries (with the exception of Slovenia) are parties to the Central European Free Trade Agreement (CEFTA) which liberalises trade between them (and with Moldova).[27] Furthermore, all of the SEE countries (except Slovenia which has had a Europe Agreement since 1996)[28] have concluded Stabilisation and

[23] Paragraf Lex. www.paragraf.rs/. Accessed 3 June 2013.

[24] E.g. Dimitrovski et al. (2003), Macušita et al. (2009), Krugman and Obstfeld (2009) and Kikerkova (2008).

[25] E.g. Report of the Working Party on the Accession of the Former Yugoslav Republic of Macedonia, WT/ACC/807/27, 26 September 2002, para 6; Report of the Working Party on the Accession of Montenegro to the World Trade Organization, WT/ACC/CGR/38, WT/MIN(11)/7, 5 December 2011, para 4; Report of the Working Party on the Accession of Albania to the World Trade Organization, WT/ACC/ALB/51, 13 July 2000, para 4.

[26] See e.g. EU DG Trade Statistics: Croatia—EU Bilateral Trade and Trade with the World, 26 April 2013. http://trade.ec.europa.eu/doclib/docs/2006/September/tradoc_113370.pdf. Accessed 3 June 2013.

[27] http://www.cefta2006.com/. Accessed 3 June 2013. Zakon o potvrđivanju ugovora o izmjeni i dopuni i pristupanju Srednjoeuropskom ugovoru o slobodnoj trgovini, NN-MU 6/2007.

[28] Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, OJ L 51, 26.2.1999, pp. 3–195.

Association Agreements (SAA) with the EU.[29] Croatia's relations with the EU were regulated by an SAA until its EU membership, and currently the SAAs of Albania, Macedonia and Montenegro are in force, while Bosnia and Herzegovina and Serbia have interim agreements[30] pending completion of the SAAs' ratification process in all EU Member States. Kosovo is currently the only SAA country which has not yet concluded an SAA, but the first steps are being taken in that direction.[31] Consequently, SEE countries have achieved significant trade liberalisation with their major trading partners through means other than WTO membership. CEFTA and the SAAs thus make WTO accession less important in terms of trade liberalisation benefits.

Nevertheless, for SEE countries, WTO accession was or is important for political reasons, especially since it is one of the prerequisites for EU membership. The political (rather than trade) dimension of WTO membership can be detected from the comments of Montenegrin officials where WTO accession is put in the broader political context of integration with non-trade related organisations, as heard, for example, in the statement that WTO accession is the "third most important integration process after the EU and NATO accession goals".[32]

The consequence of this political rather than economic importance of WTO membership is that SEE countries will always want to appear to be acting in a WTO compatible manner, but they might not want to invest real effort into screening their rules for WTO noncompliance and removing WTO incompatible measures so as to achieve greater economic efficiency. In practice, this means that legislative acts might invoke WTO law,[33] and government representatives may claim that certain

[29] In order of entry into force: Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, OJ L 84, 20.3.2004, pp. 1–197; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, OJ L 26, 28.1.2005, pp. 3–220; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, OJ L 107, 28.4.2009, pp. 166–502; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, OJ L 108, 29.4.2010, pp. 3–354.

[30] In order of entry into force: Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part, OJ L 169, 30.6.2008, pp. 13–807; Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Serbia, OJ L 28, 30.1.2010, pp. 2–397.

[31] Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, SWD (2012) 339 final, Brussels, 10.10.2012, COM (2012) 602 final.

[32] Statement of the Montenegrin Minister of Economy, Mr. Kavarić, in 'Montenegro breaks deadlock in WTO-accession negotiations with Ukraine', Government of Montenegro Homepage. www.gov.me/en/News/108761/Montenegro-breaks-deadlock-in-WTO-accession-negotiations-with-Ukraine.html. Accessed 3 June 2013.

[33] E.g. Trademark Laws of Montenegro, OG MNE No. 72/10 (e.g. in Art. 3) and of Croatia, NN 173/03, 54/05, 76/07, 30/09, 49/11, (e.g. in Art. 19) explicitly mention the WTO.

parts of the legal system have been made compliant with WTO rules.[34] However, WTO noncompliance is never mentioned, even for measures that remained in force from before WTO membership. One can guess that there are WTO incompatible measures in all SEE countries (as generally in any WTO member), but since there have been no challenges against these measures, they could remain in force indefinitely (see below Sect. 4).

3.3 *Application of WTO Law by National Courts in SEE Countries*

The third part of the questionnaire concerned the judicial application of WTO law in SEE. The survey showed that WTO law has almost never been applied by the courts of SEE. This is despite the fact that these countries have monist systems. However, there are some differences between the countries.

It seems that Croatian courts have been the most active in the region in applying WTO law, but the total number of decisions citing WTO law which are available online (through a commercial database[35]) barely reaches double figures. The most prominent case concerns a foreign law firm wanting to set up a branch in Croatia on the basis of the General Agreement on Trade in Services (GATS). The Zagreb Commercial Court (ZCC) decided on the law firm's request for registration three times, and each time its decision to allow the registration was appealed by the Croatian Bar Association—in the first two appeals the High Commercial Court (HCC) annulled the decision of the ZCC and remanded it for new proceedings.[36] In the view of the HCC, the first two requests for registration and the ZCC decisions allowing registration were too broad and went beyond the obligations which Croatia took in its GATS schedule of commitments.[37] Namely, according to the HCC, Croatia had not liberalised the sector of legal services in a way which would allow foreign companies to operate in the same way as domestic ones, e.g. to represent clients before courts, to consult on matters of Croatian law, etc. In the view of the HCC, the registration of a foreign company's branch was only permissible for the activity of consultancy related to the service provider's home country law, and foreign and international law.[38] Other types of legal services were strictly

[34] E.g. according to the Montenegrin representative in WTO accession negotiations, the Montenegrin intellectual property rules are compliant with the TRIPS. Report of the Working Party on the Accession of Montenegro to the World Trade Organization, WT/ACC/CGR38, WT/MIN(11)7, of 5 December 2011, 55.

[35] www.iusinfo.hr/. Accessed 3 June 2013.

[36] See decisions of the Croatian High Commercial Court Pž 1406/05-6, 14.06.2005; Pž 4219/06-3, 18.07.2006; and Pž 5819/07-3, 15.01.2008.

[37] Decisions of the Croatian High Commercial Court Pž 1406/05-6, 14.06.2005 and Pž 4219/06-3, 18.07.2006.

[38] Ibid.

regulated by Croatian law and conducting them required membership of the Croatian Bar Association.[39] Ultimately, on the basis of the GATS, the foreign company's branch was registered (albeit for limited types of legal services).[40] The Croatian Bar Association challenged this before the Croatian Constitutional Court which decided that the challenge was unfounded, and in its decision it cited WTO law.[41] References to WTO law before the Croatian courts have also been made in several other cases.[42]

For Slovenia, the national report states that TRIPS is the only part of WTO law which has been applied by regular courts and the Constitutional Court. For example, TRIPS was invoked by a wine producer challenging Slovenian rules concerning wine with the indication of the recognised traditional name—Cviček—before the Slovenian Constitutional Court which determined that neither the TRIPS nor the Slovenian Constitution had been breached.[43] The national rapporteur reported finding no case law applying other WTO agreements, although in some cases these agreements were mentioned, but then not applied to the facts of the case.[44]

In Albania, WTO law was once invoked before the Constitutional Court.[45] The national report states that a private company invoked WTO law and the Albanian Stabilisation and Association Agreement arguing that these had been violated by Albanian rules giving preferential treatment to domestically produced diesel fuel.[46] The Albanian Constitutional Court established that there had indeed been a breach of the SAA, but it did not analyse the compatibility of the measures with WTO rules.[47]

The reports from Macedonia and Montenegro stated that no national court has ever applied WTO law or made any reference to it, and that they are not aware of any instance where the application of WTO law was sought by the parties. In both

[39] Ibid.

[40] Decision of the Croatian High Commercial Court Pž 5819/07-3, 15.01.2008.

[41] Decision of the Croatian Constitutional Court U-III/1337/2008, 20.05.2009.

[42] E.g. in decisions of the Croatian Administrative Court Us-624/2000-8, 30.01.2002; Us-1702/2007-11, 24.03.2010; Us-9440/2006-6, 07.10.2010.

[43] Decision of the Slovenian Constitutional Court No. U-I-228/00, 8 November 2001, Official Gazette RS, No. 101/00, Official Gazette RS, No. 96/01 and OdlUS X, 182. http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/82B4DD99BBFF9458C125717200288B3B. Accessed 3 June 2013.
English abstract at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/9F68BC0DA0B0C902C125717200280AF6. Accessed 3 June 2013.

[44] See e.g. the decision of the Slovenian Constitutional Court U-I-148/93, 20.01.1994. http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/A63AAA295D32311DC12571720028877E. Accessed 3 June 2013; U-I-368/98, 08.07.1999. http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/3D7E365D4CDADF96C125717200280E64. Accessed 3 June 2013.

[45] *Shoqata e Shoqërivetë Hidrokarbureve v. Këshilli i Ministrave*, judgment of the Albanian Constitutional Court, No. 24, 24. 07. 2009.

[46] Ibid.

[47] Ibid.

countries, judgments of the national courts are freely available online[48] so if WTO law was applied, it would be relatively simple to determine this.

Finally, for three SEE countries which are not WTO members, Bosnia and Herzegovina, Serbia and Kosovo, reports logically do not mention any cases where WTO law was applied or invoked before a national court.

3.4 Education and Expertise on the WTO

The application of WTO law by national courts and other institutions correlates with legal education in the field. The fourth part of the questionnaire was thus aimed at determining whether judges, practising attorneys and other lawyers have the opportunity or duty to learn about WTO law within their basic or advanced legal education or when preparing for professional exams.

The national reports revealed that in most SEE countries there is not a single course with a dominant focus on WTO law. The only exception is Croatia where the Faculty of Law, University of Zagreb, offers a Jean Monnet module "EU and WTO in a comparative perspective".[49] In some of the SEE countries, the WTO is briefly covered within broader courses at faculties of law or of economics (e.g. within courses on international law, international business, international economic relations, etc.).

WTO law is also not a part of any courses organised for judges, public prosecutors, public defenders, private lawyers, and it is not examined within the bar exam. However, there has been some training for civil servants and diplomats working on WTO-related issues (e.g. in Montenegro[50] and in Serbia[51]).

[48] In Montenegro through 'The Courts of Montenegro'. Portal http://sudovi.me. Accessed 3 June 2013; and in Macedonia through www.pravda.gov.mk/novost_detail.asp?lang=mak&id=406 or directly on the website on the particular court: www.vsrm.mk; www.asskopje.mk/; www.asbitola.mk/; www.asstip.mk/; www.asgostivar.mk/; www.osskopje2.mk/; www.osskopje1.mk/. All sites accessed 3 June 2013.

[49] The course is taught be the author of this chapter.

[50] See e.g. Questionnaire on information required from the Government of Montenegro by the European Commission for the purpose of preparing the Opinion on the Application of Montenegro for European Union membership, Additional Questions, Government of Montenegro, Ministry of Economy, 12 April 2010, Section 30, External Relations, 8. www.upitnik.gov.me/. Accessed 3 June 2013.

[51] E.g. www.mfa.gov.rs/sr/index.php/diplomatska-akademija/program-diplomatske-obuke?lang=lat. Accessed 3 June 2013.

4 Concluding Remarks: Reasons for the Lack of Application of WTO Law in SEE

The survey demonstrated that there is hardly any judicial application of WTO law in SEE countries. There are several possible explanations for this.

First, it is theoretically possible that all the national rules in all SEE countries comply with WTO law so that it was never necessary to directly apply WTO law itself in any dispute. This is an improbable reason for the non-application of WTO law.

Second, it is highly relevant that there have not been any WTO disputes involving an SEE country as a complainant, respondent or a third party. The only exception is Croatia, against whose measures affecting imports of live animals and meat products[52] Hungary requested consultations in 2003,[53] but Croatia changed its measure[54] so WTO bodies were never required to decide on the matter. The reason for almost no challenges against SEE countries' measures cannot be due to perfect compliance with WTO rules, but rather to the specificities of the countries involved. Perhaps most importantly, all of the SEE countries are relatively small (ranging from the smallest SEE country of Montenegro with an estimated population of 630,261, to the largest SEE country Serbia with an estimated population of 7,258,745[55]) and have small markets. This means that for other WTO members which might be interested in exporting to an SEE country it is simply too costly to go through a WTO dispute in order to improve its access to such a small market. Furthermore, in all SEE countries there are other significant problems facing exporters, making business activities there less attractive. These problems are related to corruption,[56] long bureaucratic procedures, outdated laws and in general a business unfriendly climate.[57] These are the kind of problems that the WTO cannot address, so other WTO members might not be interested in litigating to

[52] Naredba o zabrani uvoza u Republiku Hrvatsku živih životinja i proizvoda životinjskog podrijetla radi sprječavanja unošenja u Republiku Hrvatsku transmisivnih spongiformnih encefalopatija, NN 89/2003; Naredba o zabrani uvoza u Republiku Hrvatsku goveda, proizvoda od goveda, kao i krmiva animalnog podrijetla radi sprječavanja unošenja u Republiku Hrvatsku transmisivnih spongiformnih encefalopatija, NN 89/2003.

[53] Croatia—Measure Affecting Imports of Live Animals and Meat Products—Request for Consultations by Hungary, G/L/636 G/SPS/GEN/411 WT/DS297/1.

[54] Naredbe o zabrani uvoza u Republiku Hrvatsku živih životinja I proizvoda životinjskog podrijetla radi sprječavanja unošenja u Republiku Hrvatsku transmisivnih spongiformnih encefalopatija, Narodne novine 96/2003, 100/2003, 121/2003, 141/2003, 7/2004.

[55] Data taken from the World Bank website: http://data.worldbank.org/indicator/SP.POP.TOTL. Accessed 3 June 2013.

[56] See Transparency International data: http://cpi.transparency.org/cpi2012/results/. Accessed 3 June 2013.

[57] See European Bank for Reconstruction and Development data http://www.ebrd.com/pages/research/economics/data/macro.shtml#ti. Accessed 3 June 2013.

remove a WTO-incompatible measure when they know that exports would remain very difficult even without that measure.

Third, foreign companies that do manage to conduct their business in an SEE country are also not very keen to push their governments to start a WTO dispute or to go before a national court and seek the application of WTO law. It seems that interested companies try to resolve the issue with national authorities without entering any dispute (even when that means sustaining some losses). So, the vigilance of individuals does not operate in the same way as with the enforcement of EU law or of fundamental rights and freedoms guaranteed by the ECHR.

Finally, the average level of knowledge about WTO law in the legal profession in SEE countries is low. In all SEE countries (except Croatia), there is no university law course focusing on WTO law, there are no professional courses on this topic organised for practising lawyers or judges, and WTO law is not part of the bar exams. In contrast, for other areas of international/supranational law such as the ECHR or EU law which were equally new for these countries, there have been numerous types of educational activities and projects targeted at the legal profession throughout the region. The lack of education in the field is probably one of the reasons why practising lawyers do not rely on WTO law.

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