THE INTERPRETATION OF ARTICLE XX (G) OF THE GATT 1994 IN THE CONTEXT OF "UKRAINE − WOOD PRODUCTS": LEARNING FROM ERRORS

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1. After long negotiations and a difficult struggle of the Ukrainian people for the European future and a political independence from the Russian Federation during the Revolution of Dignity (the Euromaidan) and the military conflict in the East of Ukraine the Association Agreement between Ukraine, of the one part, and the European Union and its Member States, of the other part (hereinafter the Association Agreement), was finally signed in 2014 and entered into force in 2017. Shortly after the first dispute between the parties that finished with the arbitration panel establishment arose. The dispute concerned the restrictions applied by Ukraine on exports of certain wood products as it was found by the arbitrators is being in breach of international obligations of Ukraine under Article 35 of the Association Agreement. The Final Report of the Arbitration Panel established pursuant to Article 307 of the Association Agreement in Lugano (Switzerland) was delivered on 11 December 2020.

This paper is devoted to the study of some aspects of the interpretation and application of Article XX (g) of the GATT 1994 in the context of this dispute. The topic is relevant due to the novelty of the arbitration decision and the need of its implementation for Ukraine, however the final form of which has not been determined yet. The EU insists on lifting the 2015 ban on exports of unprocessed timber[1], representatives of the Ukrainian authorities claim that "the award of the arbitrators gives wide freedom to choose the measures for the award implementation"[2]. This topic is also of interest in a broader context of the fundamental human rights protection. We are talking, in particular, about the rights of the so-called third generation,

[1] European Commission, *Ukraine Wood Export Ban Found Illegal in Independent Panel Ruling*, available at: https://trade.ec.europa.eu/doclib/press/index.cfm?id=2223, 12 December 2020.

[2] *The Arbitration Panel Has Recognized Ukraine's Right to Limit Timber Exporting* (*Арбитражный суд признал, что Украина может и имеет право ограничивать экспорт леса), Экономическая правда*, https://www.epravda.com.ua/rus/news/2020/12/13/669120/, 13 December 2020.

among which "there is at least a trend that has brought out the human right to live in an environment that is "healthy", "adequate" and "clean"[3]. The Covid-19 crisis has shown that "meeting global challenges such as those stemming from the climate change (global warming), protecting the environment, meeting sustainable development goals, ensuring basic needs and respecting fundamental rights for all should not be relegated in a second place"[4]. In fact, the saving of Ukrainian forests, especially in the Carpathian region, is important not only for Ukraine, but for the whole Eastern Europe.

So, more generally the dispute on the Ukraine's ban on timber exports is a dispute over the balance of economic and environmental interests of states. The balance of these interests, in turn, seems to be necessary to achieve the goals of sustainable development, recognized in many states and at the international level as the only possible way of development and, supposedly, the survival of mankind. Even though the importance of the sustainable development interpretive approach[5] is ever more emphasized, the WTO Dispute Settlement Body practice has shown that when it comes to environment protection the organization prefers a more reserved and "rigid" approach. In *China − Raw Materials* it "missed the opportunity to further enhance the protection ensured within the WTO system to the fundamental values of conservation and public health"[6].

At the same time, the environmental objectives can be used in an inappropriate way in order to gain advantages for national industries. As far as to achieve the goals of sustainable developments the balance between environmental, economic and social priorities of different states should be found. We can't sacrifice one country's economic growth for ecological purposes of another, especially when the last one doesn't strive by itself to achieve them. It was once again confirmed by the conclusions of the arbitration panel in *Ukraine − Wood Products.*

However, so as not to depart from the main purpose of

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[3] RUOTOLO, *Knock on wood - Il contenzioso UE/Ucraina sul divieto di esportazione di legname tra tutela ambientale e libera circolazione delle merci*, *SIDIBlog*, http://www.sidiblog.org/2019/07/23/knock-on-wood-il-contenzioso-ueucraina-sul-divieto-di-esportazione-di-legname-tra-tutela-ambientale-e-libera-circolazione-delle-merci/, 23 Luglio 2019.

[4] SACERDOTI, *"Quo Vadis" WTO after Covid-19? Bocconi Legal Studies*, https://ssrn.com / abstract=3610617, 25 May 2020.

[5] GAGLIANI, *The Interpretation of General Exceptions in International Trade and Investment Law: Is a Sustainable Development Interpretive Approach Possible. Denver Journal of International Law & Policy*, 2020, https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1078&context=djilp

[6] ESPA, *The Appellate Body Approach to the Applicability of Article XX GATT in the Light of China – Raw Materials: A Missed Opportunity? Journal of World Trade*, 2012, https://www.wti.org/media/filer_public/ 3e/01/ 3e01261e-a17e-4702-9aa4-2dbaf0654b0d/ trad_4628629_ilaria 20espa.pdf

the study, we would like to focus our attention on the peculiarities of Article XX (g) of the GATT 1994 interpretation in the context of the above mentioned dispute. After the first introductory remarks, in Section 2 we are going to set out factual aspects of the dispute. Section 3 is devoted to the examination of the general theoretical framework and the interpretation practice of Article XX (g) of the GATT 1994. While in Section 4 the specific analysis of Article XX (g) of the GATT 1994 in the context of *Ukraine-Wood Products* is performed the general conclusions of which are presented in Section 5.

2. The story of the arbitration settlement of the dispute began on 15 January 2019 when the European Union requested consultations pursuant to Article 305 of Title IV of the Association Agreement with respect to the export bans applied by Ukraine in 2005 and 2015. The first one imposed a permanent prohibition on exports of timber and sawn wood of ten "valuable and rare" wood species (hereinafter − the "2005 export ban") and the second one introduced a temporary prohibition, for a period of 10 years, on exports of all other unprocessed timber (hereinafter − the "2015 export ban"). According to the European Union's position these bans were in breach of Ukraine's obligations pursuant to Article 35 of the Association Agreement.

In fact, Article 35 states that "no Party shall adopt or maintain any prohibition or restriction or any measure having an equivalent effect on the import of any good of the other Party or on the export or sale for export of any good destined for the territory of the other Party, except as otherwise provided in this Agreement or in accordance with Article XI of the GATT 1994 and its interpretative notes"[7].

During the arbitration procedure Ukraine tried to justify the measures by ecological urgency of Ukrainian forests saving and also referring to the provisions of Article 36 of the Association Agreement that sets out that "nothing in this Agreement shall be construed in such a way as to prevent the adoption or enforcement by any Party of measures in accordance with Articles XX and XXI of the GATT 1994 and its interpretative notes, which are hereby incorporated into and made an integral part of this Agreement"[8].

After the unsuccessful consultations of the parties that were held on 7 February 2019, on 20 June 2019 the European Union requested the establishment of an arbitration panel pursuant to Article 306 of the Association Agreement, and in accordance with the procedure for the composition of the arbitration panel set out in Article 307

[7] *The Association Agreement between Ukraine, of the one part, and the European Union and its Member States, of the other part ("Association Agreement"), of 2014*, art. 35, available at: https://www.kmu.gov.ua/ storage/ app/ media/uploaded-files/TITLE%20IV.pdf
[8] *Association Agreement,* art. 36.

and the relevant provisions of the Rules of Procedure for Dispute Settlement in Annex XXIV to the Association Agreement[9]. On 20 August 2019 Ukraine accepted the proposal of the European Union by diplomatic note[10].

The Arbitration Panel's terms of reference were to issue a ruling in accordance with Article 310 of the Association Agreement to the effect that: 1) the 2005 export ban and the 2015 export ban are inconsistent with Ukraine's obligations under Article 35 of the Association Agreement; and 2) therefore, Ukraine is required to take any measure necessary to comply with those obligations[11].

Among others one of the important tasks of the panel was to analyze the applicability of Article XX of the GATT 1994 to the dispute and to decide whether this article could justify the export bans of Ukraine. After a long examination of parties' legal positions and relevant international and national regulations the arbitration panel had come to the conclusion that Ukraine's 2005 export ban was incompatible with Article 35 of the Association Agreement forbidding export prohibitions, but that it was justified under Article XX (b) of the GATT 1994, as made applicable to the Association Agreement by Article 36 of the Association Agreement ("General Exceptions"), as a measure "necessary to protect….plant life", taking also into account relevant provisions of Chapter 13 of the Association Agreement on trade and sustainable development[12].

At the same time the arbitrators found that Ukraine's 2015 temporary export ban was incompatible with Article 35 of the Association Agreement forbidding export prohibition, and that it was not justified under Article XX (g) of the GATT 1994, because that export ban was not "relating to the conservation of exhaustible resources…made effective in conjunction with restrictions on domestic production or consumption"[13].

So, the incompatibility of the Ukraine's restricting measure with the provisions of Article XX (g) of the GATT 1994 served as the main reason for the recognition of the "2015 export ban" being in breach of Article 35 of the

[9] European Union, Delegation to Ukraine, *Request Concerning the Restrictions Applied by Ukraine on Exports of Certain Wood Products to The European Union*, Note Verbale of 20 June 2019, n. ARES(2019)3929269, available at: https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157943.pdf

[10] Diplomatic Note of 20 August 2019, n. 3111/31-200-1698.

[11] Written Submission by the European Union, *To the Arbitration Panel established pursuant to Article 306 of the Association Agreement between the European Union and the European Atomic Energy and their Member States and Ukraine in the dispute "Ukraine - Export prohibitions on wood products*, 17 February 2020.

[12] *The Final Report of the Arbitration Panel on "Restrictions applied by Ukraine on exports of certain wood products to the European Union" ("Ukraine-Wood products")*, 11 December 2020, par. 507, available at: https://trade.ec.europa.eu/ doclib/docs/2020/december/tradoc_159181.pdf

[13] *Ukraine-Wood products*, par. 507.

Association Agreement.

So, further in our report we are going to concentrate on the analysis of the above mentioned provisions of Article XX (g). In this regard the review of relative WTO dispute settlement practice as well as the review of legislation and policies of Ukraine will be presented.

As we have already mentioned the first step of the panel was to find if the Ukraine's 2005 and 2015 export bans were incompatible with Article 35 of the Association Agreement. After the incompatibility was shown, the second step was to establish whether Article 36 of the agreement used in conjunction with Article XX of the GATT 1994 could justify bans application.

First of all, it seems necessary to outline that according to the provisions of the Association Agreement some WTO rulings form an integrated part of the agreement between Ukraine and the EU. This works also in the case of Article 35 whose second phrase states that "to this end, Article XI of the GATT 1994 and its interpretative notes are incorporated into, and made an integral part of, this Agreement"[14] and Article 36 where Articles XX and XXI of the GATT 1994 and its interpretative notes are also referred to as an integral part of the agreement. Notwithstanding Ukraine tried to contest the inclusion of the entire Article XI of the GATT 1994 into the Association Agreement, claiming that Article 35 incorporates only "exceptions" mentioned in Paragraph 2 of Article XI of the GATT, the arbitration panel accepted the EU's reasoning and recognized that the incorporation of Article XI "as a whole is consistent with the object and purpose of the Association Agreement"[15].

It's worth mentioning that Ukraine has been a WTO member since 2008 only. The process of Ukraine's accession to the WTO started on November 30, 1993 by submitting the official application of the Government of Ukraine about its intention to join the GATT. The Protocol on Ukraine's accession to the WTO was signed on 5 February 2008 in Geneva and ratified by the Verkhovna Rada (the parliament) on 10 April 2008. On 16 April 2008 the President of Ukraine V. Yushchenko signed the Law on the ratification of the Protocol on Ukraine's accession to the WTO. According to the WTO procedures Ukraine became a full-fledged member of the Organization on 16 May 2008[16]. The Ministry for Development of Economy, Trade and Agriculture of Ukraine is a central executive authority that is responsible for cooperation of Ukraine with the WTO.

[14] *Association Agreement,* art. 35.
[15] *Ukraine-Wood products,* par.189.
[16] Ministry of Foreign Affairs of Ukraine, *Ukraine and WTO*, available at: https://mfa.gov.ua/en/ about-ukraine/cooperation-international-organizations/ukraine-and-wto, 18 December 2018.

During almost 15 years of membership, as of 2021, Ukraine has been involved into 13 disputes settlement procedures of the Dispute Settlement Body of the WTO (9 times as a complainant, 4 times as a respondent). Unfortunately, the experience hasn't always been successful as long as only one dispute that came to the panel establishment (some of them have already finished without settlement or are being in consultations) was solved positively for Ukraine (*Russia – Railway Equipment* (2020).

In spite of it the activity of Ukraine in WTO proceedings (it also has participated as a third party in 50 disputes) shows that it finds very important to use adjudicative methods of disputes settlement for its economic rights defense. Especially since Ukraine has no other means for it at the moment. In this context the deep knowledge of the WTO law is indispensable, especially considering the fact that some of its provisions form "an integral part" of the Association Agreement between Ukraine and the European Union and can be used for their eventual future disputes settlement.

So, in order to give a better understanding of the arbitration panel findings on the dispute on "Restrictions applied by Ukraine on exports of certain wood products to the European Union" we are going to proceed to the analysis of application and interpretation peculiarities of Article XX (g) of the GATT.

3. The GATT of 1994 permits the members of the WTO to derogate from their obligations, but if they comply with several conditions. In our context we should pay a special attention to the provisions of Article XX "General Exceptions" that contain a number of legitimate public policy goals – paragraphs (a) to (j) – which may be appealed to justify a violation. Governmental policies that are in breach of the GATT may aim to protect legitimate social values and interests such as human, animal and plant life or health, exhaustible natural resources, national treasures of artistic, historic or archaeological value and public morals.

It's important to mention that the chapeau of article requires measures taken with such goals not to be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade"[17].

According to the GATT jurisprudence and practice it is necessary to determine whether that measure is inconsistent with any of the provisions of the GATT 1994 before proceeding to the analyzes of exceptions conditions

[17] *General Agreement on Tariffs and Trade*, available at: https://www.wto.org/english/res_e/res_e.htm

compliance. It's obvious that otherwise there is no need to talk about exceptions. The same step was implemented during the arbitration procedure in the Ukraine − EU dispute but on the subject of the compatibility of the restricting export bans of Ukraine with the Association Agreement[18].

At the same time Article XX should not be construed as an absolute justification of any derogation or violation of the GATT. Its provisions and the exceptions under Article XX need to be considered in balance. The Appellate Body in *US – Gasoline* mentioned that the exceptions "may not be read so expansively as seriously to subvert the purpose and object" of other GATT provisions. Nor may other provisions of the GATT 1994 "be given so broad a reach as effectively to emasculate" the exceptions and the values they defend[19]. The Appellate Body came to the conclusion that the "general exceptions" of Article XX should be studied on a case-by-case basis, "by careful scrutiny of the factual and legal context in a given dispute, without disregarding the words actually used by the WTO Members themselves to express their intent and purpose"[20].

The general approach to the determination of exceptions validity requires from the dispute settlement panel to comply with a certain order of analyzes. Firstly, the panel should determine whether the measure at issue in general falls within the scope of one of the particular exceptions listed under Article XX of the GATT 1994 and meet the requirements specified therein. If this condition is not met, there is no sense to move to the next phase of analysis. Secondly, it should find whether the measure at issue satisfies the requirements of the chapeau of Article XX. The burden of proof in this test is on the defending party invoking an exception.

Such an order is well-known as the so-called "two-tiered" test. The necessity of its compliance was confirmed by the GATT dispute settlement practice. For example, the body stared in *US – Shrimp* that "the sequence of steps indicated above in the analysis of a claim of justification under Article XX reflects, not inadvertence or random choice, but rather the fundamental structure and logic of Article XX. ... The task of interpreting the chapeau so as to prevent the abuse or misuse of the specific exemptions provided for in Article XX is rendered very difficult, if indeed it remains possible at all, where the interpreter (like the Panel in this case) has not first identified and examined the specific exception threatened with abuse. … What is appropriately characterized as "arbitrary discrimination" or "unjustifiable discrimination", or as a "disguised restriction

[18] *Ukraine-Wood products*, par.189.
[19] Appellate Body Report, *US − Standards for Reformulated and Conventional Gasoline ("US – Gasoline")*, WT/DS2/AB/R, adopted 20 May 1996, paragraphs 16-17.
[20] *Ibid.*

on international trade" in respect of one category of measures, need not be so with respect to another group or type of measures. The standard of "arbitrary discrimination", for example, under the chapeau may be different for a measure that purports to be necessary to protect public morals than for one relating to the products of prison labor"[21]. So, we are going to proceed following the same logic of the analysis.

In order to find whether the disputed measure is provisionally justified under Article XX (g), three questions need to be answered through the prospective of the so-called "three-tiered test": whether the measure relates to "conservation of exhaustible natural resources"; whether the measure "relates" to conservation of exhaustible natural resources; whether the measure is "made effective in conjunction with restrictions on domestic production or consumption"[22].

The element of "conservation of exhaustible natural resources" includes both non-living and living species. It's worth mentioning that the concept of "exhaustible natural resources" was significantly enriched by the dispute settlement practice of the WTO as long as originally it was thought to be relating to non-living resources only[23].

The notion of "exhaustibility" is of great importance for the interpretation of the article. In *US – Shrimp* the Appellate Body adopted an advanced interpretation of Article XX (g): "…We do not believe that "exhaustible" natural resources and "renewable" natural resources are mutually exclusive. One lesson that modern biological sciences teach us is that living species, though in principle, capable of reproduction and, in that sense, "renewable", are under certain circumstances indeed susceptible of depletion, exhaustion and extinction, frequently because of human activities. Living resources are just as "finite" as petroleum, iron ore and other non-living resources"[24].

In the report it was also mentioned that "the words of Article XX (g), "exhaustible natural resources", were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. … From the perspective embodied in the preamble of the WTO Agreement, we note that the generic term "natural resources" in Article XX (g) is not "static" in its content or reference but is rather "by

[21] Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products ("US – Shrimp"*), WT/DS58/AB/R, adopted 6 November 1998, paragraphs 119−120.
[22] *Dispute Settlement. World Trade Organization. 3, 5 GATT 1994*, New York, Geneva, United Nations, 2003, p. 64.
[23] RUOTOLO, *op.cit*.
[24] Appellate Body Report, *US – Shrimp*, par. 128

definition, evolutionary"[25].

This understanding was taken into consideration in the context of the EU – Ukraine dispute as far as forests were qualified as "exhaustible natural resources", though being on their face "renewable". We will return to the analysis of this question later.

Another element of Article XX (g) that should be proved is the relation of restrictive measures to conservation of exhaustible natural resources. Measure at issue must be "primarily aimed at conservation" to satisfy this requirement[26]. Furthermore, its relationship with the environmental policy must be "observably a close and a real one"[27]. Applying the standards to the facts of the case *"US – Shrimp"*, the Appellate Body said: "In its general design and structure, therefore, Section 609 is not a simple, blanket prohibition of the importation of shrimp imposed without regard to the consequences (or lack thereof) of the mode of harvesting employed upon the incidental capture and mortality of sea turtles. Focusing on the design of the measure here at stake, it appears to us that Section 609 … is not disproportionately wide in its scope and reach in relation to the policy objective of protection and conservation of sea turtle species. The means are, in principle, reasonably related to the ends. The means and ends relationship between Section 609 and the legitimate policy of conserving an exhaustible, and, in fact, endangered species, is observably a close and real one …."[28].

So, using the wording of the Appellate Body, the party to a dispute should demonstrate a real and close relation between ends and means. This approach was also confirmed by the Appellate Body in *China-Raw Materials*.

The inconsistency of Ukraine's 2015 export ban to this criterion became one of the most important reasons that explain why it was considered incompatible with Article XX (g) of GATT. In Section 4 of the article we will present a more detailed analysis of the case.

The third element of the test under Article XX (g) requires that the measures were made effective in conjunction with restrictions on domestic production or consumption. In this regard the so-called "even-handedness" of a measure at issue should be proved. The Appellate Body stated in *US–Gasoline*: "In the present appeal, the baseline establishment rules affect both domestic gasoline and imported gasoline, providing for − generally speaking – individual baselines for domestic

[25] *Ivi*, paragraphs 129−130.
[26] Panel Report, *Canada – Measures Affecting Exports of Unprocessed Herring and Salmon ("Canada – Herring and Salmon")*, adopted 22 March 1988, BISD 35S/98, paragraphs 4.4-4.6.
[27] Appellate Body Report, *US – Shrimp*, par. 141.
[28] *Ibid.*

refiners and blenders and statutory baselines for importers. Thus, restrictions on the consumption or depletion of clean air by regulating the domestic production of "dirty" gasoline are established jointly with corresponding restrictions with respect to imported gasoline"[29].

The Appellate Body rapport on *China – Raw Materials* made another contribution to the above-mentioned concept development stating that the measures in question "must not only be applied jointly with restrictions on domestic production or consumption, but must also ensure the effectiveness of those domestic restrictions"[30].

Another moment to take into account is a joint application of Article XX (g) of the GATT with other exceptions under this article, in particular with Article XX (i). It is clearly expressed in the Panel Rapport on *China – Raw Materials* that Article XX (i) provides explicitly that any export restrictions on domestic materials cannot be imposed to increase the protection of the domestic industry. Hence, the restrictions remain subject to the core GATT principles of non-discrimination[31]. According to the abovementioned panel's point of view Article XX(g), in requiring the domestic restrictions to be made effective in conjunction with the (challenged) export restriction, specifies that both the export restrictions and the related domestic restrictions operate at the same time[32].

Last stipulation is of great significance in the EU − Ukraine dispute as long as Ukraine imposed restrictions on domestic production and consumption only 3 years after the unprocessed timber export was prohibited in 2015.

Due to the fact that the 2015 export ban was found incompatible with Article 35 of the Association Agreement between Ukraine and the European Union and unjustifiable under Article XX(g) of the GATT 1994, the Arbitration Panel following the two-tiered test rules didn't pass to the analysis of the ban compatibility with Article XX chapeau requirements. But in order to complete the study of Article XX (g) application we are going to comment the aforementioned provisions.

As it has already been said Article XX sets out the two-tiered test to determine whether a measure that was found GATT inconsistent can be justified. If it is proved that the measure meets the elements of a particular exception, it is also necessary to prove that the same measure corresponds to the requirements of the chapeau of Article XX. The

[29] Appellate Body Report, *US – Gasoline*, pp. 20-22.
[30] Appellate Body Reports, *China – Measures Related to the Exportation of Various Raw Materials ("China – Raw Materials")*, WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 30 January 2012, par. 92.
[31] Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R, Add.1 and Corr.1 / WT/DS395/R, Add.1 and Corr.1 / WT/DS398/R, Add.1 and Corr.1, adopted 5 July 2011, par. 7.386.
[32] *Ivi*, par. 7.398.

chapeau sets out that the measures at issue "are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade"[33].

So, the purpose of the chapeau, as it was determined by the Appellate Body in *US – Gasoline*, is to "address not so much the measure at issue, but rather the manner in which that measure is applied, and that its purpose and object are to prevent abuse of the exceptions of Article XX that would result in defeating and frustrating the objectives of the GATT 1994"[34]. Later, in *US – Shrimp*, the Appellate Body underlined that "the chapeau of Article XX is an emanation of the general principle of good faith in international law"[35].

Talking about the chapeau test, there are three standards contained: arbitrary discrimination between countries where the same conditions prevail; unjustifiable discrimination between countries where the same conditions prevail; and a disguised restriction on international trade[36]. They all should be respected for a measure to be justified under Article XX.

Firstly, it should be determined whether the application of measures in question doesn't constitute "discrimination" that is "arbitrary" and "unjustifiable". In other words, if the discrimination is not arbitrary or unjustifiable, it may be authorized pursuant to the chapeau of Article XX. In that sense, the concept of "discrimination" under Article XX differs from that in the other provisions of the GATT[37].

In order to determine whether the application of measures at issue constitute arbitrary or unjustifiable discrimination, three elements must be satisfied: the application of the measure must result in discrimination; the discrimination must be arbitrary or unjustifiable in character; the discrimination must occur between countries where the same conditions prevail[38]. The detailed analysis and interpretation of these criteria were realized by the WTO Appellate Body in *US – Shrimp.* The recent studies have discovered the potential of the situational discrimination concept from a development perspective of WTO law[39].

As regards the "disguised restriction on international trade" condition, the interpretation of measures at issue

[33] *General Agreement on Tariffs and Trade of 1994*, available at: https://www.wto.org/english/res_e/res_e.htm
[34] Appellate Body Report, *US – Gasoline*, pp. 20-22.
[35] Appellate Body Report, *US – Shrimp*, paragraphs 156-159.
[36] *Ivi*, par. 150.
[37] *Dispute Settlement*, op.cit., p. 67.
[38] Appellate Body Report, *US – Shrimp*, par. 150.
[39] LYDGATE, *Do the Same Conditions Ever Prevail? Globalizing National Regulation for International Trade. Journal of World Trade*, 2016, n. 50 (6), http://sro.sussex.ac.uk/id/eprint/61063/1/ Situational%20 discrimination% 20E%20Lydgate.pdf

under this criterion should be undertaken based on "arbitrary or unjustifiable discrimination" interpretation reasoning. The Appellate Body stated the following in *US – Gasoline*: "Arbitrary discrimination", "unjustifiable discrimination" and "disguised restriction" on international trade may, accordingly, be read side-by-side; they impart meaning to one another. It is clear to us that "disguised restriction" includes disguised discrimination in international trade. It is equally clear that concealed or unannounced restriction or discrimination in international trade does not exhaust the meaning of "disguised restriction." We consider that "disguised restriction", whatever else it covers, may properly be read as embracing restrictions amounting to arbitrary or unjustifiable discrimination in international trade taken under the guise of a measure formally within the terms of an exception listed in Article XX. Put in a somewhat different manner, the kinds of considerations pertinent in deciding whether the application of a particular measure amounts to "arbitrary or unjustifiable discrimination", may also be taken into account in determining the presence of a "disguised restriction" on international trade"[40].

Thus, after the study of the general rules of Article XX(g) application we would like to proceed with a more detailed analysis of the Arbitration Panel's findings about the Ukrainian "2015 export ban" in the context of the EU − Ukraine dispute concerning restrictions applied by Ukraine on exports of certain wood products to the European Union.

4. As it has been already mentioned the Arbitration Panel carried out an analysis of the "2015 export ban" of Ukraine according to the WTO "two-tiered" test. It means that, firstly, they found out whether the ban at issue in general falls within the scope of Article XX (g) of the GATT 1994 and meets the requirements specified therein. Secondly, they should have found whether the ban at issue satisfies the requirements of the chapeau of Article XX.

Proceeding with the analysis of the "2015 export ban" the panel had to answer three questions: whether the measure relates to "conservation of exhaustible natural resources"; whether the measure "relates" to conservation of exhaustible natural resources; whether the measure is "made effective in conjunction with restrictions on domestic production or consumption". Such a division is quite formal as long as all parts of Article XX (g) of the GATT are closely interlinked that will be shown lately during the case analysis.

As for the first question Ukraine tried to support her position underlying three characteristics of the 2015 restrictions: exhaustion of forests ("its forest ecosystem is

[40] Appellate Body Report, *US – Gasoline*, p. 25.

used beyond its carrying capacity"); the temporary nature of the measure ("Ukraine needs the temporary measure to improve the effectiveness of the forest management and to stop uncontrolled deforestation"); and the restriction on domestic production or consumption (introduced in 2018 by Law № 2531-VIII "in line with Article XX of the GATT 1994 at the level of 25 million cubic meters per year, relating to the conservation of exhaustible natural resources")[41].

The argument of "exhaustion of forests" was accepted by the panel as long as according to the WTO jurisprudence it was acknowledged that "living species, though in principle, capable of reproduction and, in that sense, "renewable", are in certain circumstances indeed susceptible of depletion, exhaustion and extinction"[42]. The panel emphasized that "both parties agree that timber is an unprocessed (first transformation) product of forest trees, which are undoubtedly exhaustible natural resources within the meaning of Article XX(g) of the GATT 1994"[43].

Another objective for Ukraine was to prove that the 2015 export ban was applied for forest conservation reason within a broader conservation policy. It pretended that the restriction is a part of a general national policy structured by Resolutions of the Cabinet of Ministers of Ukraine (the government) "State strategies related to public policy in forest management" in 2002 and 2009. The purpose of the policy was to increase Ukrainian forest cover from 15,6 to 16,1 %[44]. As long as the purpose had not been achieved Ukraine decided to apply the ban as "the only possible way to achieve the objective of conservation of exhaustible natural resource"[45].

At the same time the EU claimed that there was no concrete evidence showing "the existence of intensive deforestation in Ukraine or an overall reduction of the forest area" as far as "the data in Table 8 and 9 of Ukraine's Written Submission, allegedly based on data from the Global Forest Watch and its own State Statistical Service that would show loss of forest coverage, intensive deforestation and "forest plantation death" do not indicate the respective sources"[46].

It is worth mentioning that the last allegation has its grounds due to the fact that according to the report of the

[41] Written Submission of Ukraine, *Ukraine – Measures Related to Certain Ukrainian Export Restrictions on Wood*, 11 March 2020.
[42] Appellate Body Report, *US – Shrimp*, par. 128
[43] *Ukraine-Wood products*, par. 421.
[44] Order of the Cabinet of Ministers of Ukraine, *On Adoption of the State Target Program "Forests of Ukraine" for 2010- 2015* (*Про затвердження Державної цільової програми "Ліси України" на 2010-2015 роки)*, n. 977, 16 September 2009, available at: https://zakon.rada.gov.ua/laws/show/977-2009-п#Text
[45] *Ukraine-Wood products*, par. 405.
[46] *Ivi*, par. 413.

Accounting Chamber of Ukraine that was published on its site on 27 January 2020 "in Ukraine, forests are not recorded, their real condition is not monitored, the state forest inventory is not maintained, and in general the proper state policy in the field of forestry and hunting is not ensured. … The auditors came to the conclusion that due to the lack of maintaining of the state forest inventory, the authorized bodies do not have reliable information on the qualitative and quantitative composition of the forest resources of Ukraine. The last state forest inventory in Ukraine took place before 2011, and has not been conducted since"[47]. Such a negative assessment of Ukrainian forests inventory condition by an authority body of Ukraine shows that the information presented by the Ukrainian party during the arbitration was supposedly outdated. It made more difficult for Ukraine to substantiate its legal position regarding the measures restricting the domestic consumption of unprocessed timber. On the contrary, if Ukraine could have proved a really dangerous condition of its territory deforestation, it would have strengthened its argumentation.

Notwithstanding the above situation, the Arbitration Panel mentioned that "from a general point of view, it cannot be denied that the 2015 temporary export ban "relates" to the conservation of exhaustible natural resources since it is a measure specifically applicable to unprocessed timber enacted with a view to protecting forests as a natural, exhaustible, resource"[48]. But at the same time they also were trying to find "a close and genuine relationship" of the forests conservation purpose and the 2015 export ban showing that the last one "relates to" conservation within the meaning of Article XX (g) of the GATT 1994.

As it has been already mentioned such a relationship means that measures at issue should be "primarily aimed at conservation". In this connection the EU fairly mentioned the Explanatory Note to the Law of Ukraine № 325-VIII of 9 April 2015 "On Amendments to the Law of Ukraine "On Elements of the State Regulation of Business Operators' Activities Related to the Sale and Export of Timber" Concerning the Temporary Export Ban for Unprocessed Timber". Unfortunately this document clearly showed the main reason of the 2015 export ban law adoption. Even if this document is not a legally binding one, it can be taken into consideration in the context of international treaties interpretation rules being a part of the law "travaux

[47] Accounting Chamber of Ukraine, *There Is No Forests Accounting, nor Their Conditions Monitoring and the State Forests Inventory doesn't function in Ukraine* (*В Україні відсутній облік лісів, моніторинг їх стану та не ведеться державний лісовий кадастр)*, 27 January 2020, available at: https://rp.gov.ua/PressCenter/News/?id=798

[48] *Ukraine-Wood products*, par. 428.

préparatoires". Chapter 2 of the note sets out that the draft law was "designed to restore the woodworking and furniture industries, create jobs, and reorient exports of wood unprocessed materials to products of a higher degree of processing"[49]. Unfortunately, the conservation reason wasn't even mentioned as an objective or a task of the law.

The lack of relationship between the ban and the forest conservation end was also confirmed by the absence of effective domestic consumption restriction that should have been applied at the same time with the export ban to provide for an effective complex regime of forest conservation. On the contrary, it looks like it has not ceased the export of unprocessed timber and only triggered the development of the shadow export[50].

In fact, Ukraine began to restrict the domestic production and consumption only in 2018 that was done in a rather strange way. On 6 September 2018 the Law of Ukraine № 2531-VIII "On Amendments to Certain Legislative Acts of Ukraine on the Preservation of Ukrainian Forests and Preventing the Illegal Export of Unprocessed Timber" was adopted. Criminal responsibility measures mainly in relation to illegal logging and smuggling of timber were strengthened and the Law of Ukraine "On Elements of the State Regulation of Business Operators' Activities Related to the Sale and Export of Timber" was complemented by Article 4 "Restriction of domestic consumption of unprocessed timber". The limit of domestic consumption of unprocessed domestic timber was set at 25 million cubic meters per year[51]. The law entered into force only on 1 January 2019.

Lately on 9 July 2019 when the EU had already requested the Arbitration Panel establishment the President of Ukraine issued the decree "About Some Measures for Forest Conservation and Rational Use of Forest Resources" № 511 / 2019. According to its provisions the procedure for monitoring of domestic consumption of unprocessed

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[49] Explanatory Note to the Draft Law, *On Amendments to the Law of Ukraine "On Features of State Regulation of Entrepreneurs' Activities Connected with Timber Trade and Exporting (in Regard to the Ban on Export of Raw Wood Materials)* (Пояснювальна записка до проекту Закону, *Про внесення змін до Закону України "Про особливості державного регулювання діяльності суб'єктів підприємницької діяльності, пов'язаної з реалізацією та експортом лісоматеріалів" (щодо мораторію на експорт лісо- та пиломатеріалів у необробленому вигляді)*, 10 December 2014, available at: http://w1.c1.rada.gov.ua › pls › zweb2 › webproc34

[50] KISIL, *EU-Ukraine Arbitration on the Export of Wood: Will Protectionism Prevail? Lexology*, 2020, https://www.lexology.com/library/detail.aspx?g=be02a9c8-ba70-49c4-93e5-b9df0524fc8e

[51] Law of Ukraine, *On Amendments to Some Legislative Acts on Preservation of Ukrainian Forests and Prevention of Illegal Raw Wood Products Exporting (Про внесення змін до деяких законодавчих актів України щодо збереження українських лісів та запобігання незаконному вивезенню необроблених лісоматеріалів)*, 6 September 2018, available at: https://zakon.rada.gov.ua/laws/show/2531-19#Text

timber, as well as the procedure aimed at verifying that the volume of domestic consumption of unprocessed timber would not exceed the limit were expected to be established[52].

It is well noted that all these measures were taken much later than the introduction of the moratorium on timber exports. But according to the WTO jurisprudence on the matter such measures at issue "must not only be applied jointly with restrictions on domestic production or consumption, but must also ensure the effectiveness of those domestic restrictions" (*China − Raw materials*)[53].

We need to mention another contradictory fact that worked against Ukraine. According to the statistics that was given by Ukraine itself during the procedure the Ukrainian domestic consumption was at the level of 15,6 million cubic meters per year. Ukraine also informed that in 2013 the total logging of harvestable timber in all types of felling amounted to 18 million cubic meters and that there was a rise of logging in 2015-2018 from 21,9 to 22,5 million cubic meters[54]. Taking into account these figures the restriction of domestic production and consumption at the level of 25 million cubic meters per year has no sense as long as the measure doesn't absolutely seem a restrictive one.

So, the panel accepted the above mentioned arguments in deciding whether the 2015 export ban "relates" to conservation of exhaustible natural resources and whether it is "made effective in conjunction with restrictions on domestic production or consumption". As the consequence the panel concluded that "the 2015 temporary export ban, even in conjunction with the 2018 Amendment introducing a domestic consumption cap of 25 million cubic meters per year, does not meet the requirements of Article XX (g) of the GATT 1994"[55].

This finding of the panel became a crucial one for the Ukraine's 2015 temporary export ban being found incompatible with Article 35 of the Association Agreement and unjustified under Article XX (g) of the GATT 1994.

Given this fact the panel didn't have to carry out a deep analysis of the ban compatibility with the chapeau requirements. At the same time for the sake of completeness of our study we are going to pay attention to this issue. In this regard it looks like reasonably to refer to the panel's findings on the "2005 export ban" compliance.

The Arbitration Panel found that "the 2005 export

[52] Decree of the President of Ukraine, *On Some Measures for Forests Preservation and Sustainable Use of Forests Resources* (*Про деякі заходи щодо збереження лісів та раціонального використання лісових ресурсів),* n. 511/2019, 9 July 2019, available at: https://zakon.rada.gov.ua/laws/show/511/2019#Text

[53] *China – Raw Materials*, par. 92.

[54] *Ukraine-Wood products*, par. 447.

[55] *Ivi*, par. 465.

ban's application is compliant with the requirements of the chapeau of Article XX of the GATT 1994 since it does not "constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" or "a disguised restriction on international trade"[56]. They came to the conclusion due to the following reasoning.

Firstly, the panel found that "it is irrelevant whether in Ukraine and the EU "the same conditions prevail," since it has reached the conclusion that the ban, having regard to the context, does not discriminate between the Ukrainian market and the EU imports of wood from Ukraine of the ten species"[57]. Before coming to the conclusion the Arbitration Panel studied whether the ban had led to a "national treatment-type discrimination arising from the difference in treatment accorded to the like product when destined for export, as compared with the treatment of the like product when destined for domestic consumption"[58]. In this regard Ukraine succeeded to prove that "its export ban applies to all exports of the covered species, without discrimination between countries of possible destination"[59] and also doesn't discriminate between the EU and Ukrainian markets. The last statement was enhanced by two facts. Due to the lack of statistical information the panel came to the conclusion that "there was no sizeable industrial demand for these species from Ukraine on the EU market"[60]. Thus, "the 2005 export ban appears in practice not to have changed the previous situation, with the exception of rendering illegal any export of wood from Ukraine of those species obtained by illegal felling"[61]. In addition the EU didn't raise the question about the 2005 ban during the Association Agreement negotiations or thereafter before the 2015 export ban introduction that shows the 2005 ban irrelevance for the EU market[62].

Secondly, the Arbitration panel acknowledged that "there is no doubt that the law providing for the 2005 export ban was enacted after having gone through public legislative proceedings and that its text is public". It means that on its face the ban isn't a disguised restriction. At the same time the panel stressed that "concealed or unannounced restriction or discrimination in international trade does not exhaust the meaning of "disguised" restriction" and "that the same kind of considerations

[56] *Ukraine-Wood products*, par. 373.
[57] *Ivi*, par. 369.
[58] Panel Reports, *China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum ("China − Rare Earths")*, WT/DS431/R, Add.1 and Corr.1 / WT/DS4342/R, Add.1 and Corr.1 / WT/DS433/R, Add.1 and Corr.1, adopted 24 August 2014, par. 7.190.
[59] *Ukraine-Wood products*, par. 358.
[60] *Ivi*, par. 363.
[61] *Ibid.*
[62] *Ivi*, par. 364.

pertinent to assessing whether the 2005 export ban constitutes arbitrary or unjustifiable discrimination have a bearing in the determination of the "disguised restriction standard"[63]. In this regard the previous finding about the absence of discrimination between exports to the EU and the Ukrainian domestic market allowed the panel to conclude that that the 2005 ban is also consistent with "disguised restriction" standards.

Applying the same line of thinking to the 2015 export ban compatibility with the chapeau requirements we should stress the difference between the bans application. While the 2005 export ban concerns only ten tree species the felling of which was also limited inside Ukraine the 2015 export ban deals with all types of unprocessed wood. Such wood export volumes are important both for the EU and Ukrainian markets. This ban has changed the situation mostly for the EU market while the Ukrainian market has gained an advantage. The national woodworking and furniture industries have ended up in a good price position to compare with the EU companies that could be qualified as a national treatment type discrimination. Moreover, due to the fact that arbitration panel had already found the lack of a genuine and real connection between the 2015 ban ends and means, such discrimination could also be seen as "unjustified" and, thus, incompatible with the requirements of the chapeau of Article XX of the GATT 1994.

5. Hence, the analysis of the circumstances and conclusions of the EU-Ukraine arbitration proceedings regarding the inapplicability of the provisions of Article XX (g) of the GATT as grounds justifying Ukraine's failure to comply with the provisions of Article 35 of the Association Agreement, has allowed us to draw some conclusions. First of all, it is necessary to reiterate the importance of WTO law in the context of the settlement of the current and potential future disputes between Ukraine and the EU regarding non-fulfillment or improper fulfillment of the provisions of the Association Agreement. In this regard, the Ukrainian legal science should pay more attention to the WTO Dispute Resolution Body case-law study, since it gives a deep understanding of various agreements signed within the WTO. The provisions of agreements are interpreted by the arbitrators not only in the statics of their content at the time of conclusion, but also in their dynamics, reflecting changes in international trade in particular and international relations in general.

Speaking about the interpretation of the provisions of Article XX (g) of the GATT in the context of the EU-Ukraine dispute, we would like to emphasize the key points that were important for the conclusions of the panel. As is

[63] Appellate Body Report, *US – Gasoline*, p. 25.

well known, Article XX of the GATT contains a number of exceptions that may serve as grounds for the application by states of certain restrictive measures, which are generally inadmissible in international trade relations between the WTO members. It may create a temptation to refer to this article as a pretext under which decisions made at the national level can serve the benefits of certain groups lobbying for their economic or any other interests. It is important to remember that these exceptions cannot be used as excuses to disguise measures that are in fact restrictive or discriminatory.

In order to prevent such use of Article XX, the WTO Dispute Settlement Body, or any other judicial or arbitration body competent to apply WTO rules and practice to a specific dispute, must undertake a thorough analysis of whether a State's conduct meets a number of criteria. With regard to Article XX (g), these criteria have emerged: a) measures at issue must be implemented with the aim of conservation of exhaustible natural resources; b) measures at issue must have a close and genuine relationship with the aim of such resources conservation; c) measures at issue must be carried out effectively in conjunction, which means also in parallel, with restrictions on domestic production or consumption. It should be noted that the concept of "exhaustion" of resources covers, among other things, resources that can be renewable, but are in unfavorable conditions for this. In this sense, Ukrainian forests are absolutely consistent with the criterion.

The same cannot be said about the other two criteria by which the 2015 ban on export of unprocessed timber was analyzed. Ukraine failed to prove a real connection of the ban with the purpose of forest conservation, since it didn't exist at the time of its adoption. This was clearly demonstrated, on the one hand, by the provisions of the Explanatory Note to the ban draft law, and on the other hand, by the absence of other effective forest protection measures that would demonstrate the existence of an efficient general state policy aimed at forest conservation. Although Ukraine tried to justify the ban imposition by the fact that it was the only measure available at that time, it sounds unconvincing against the background of the lack of effective government counteraction to illegal logging and smuggling of timber. On the contrary, it seems that the 2015 export ban has boosted illegal logging activities.

The Ukraine's attempt to justify the ban in terms of the third criterion under Article XX (g) was even less successful. Neither in 2015, nor even in 2017, when the ban came into full force, there were no internal restrictions imposed on the consumption of unprocessed timber. This happened later, indeed in 2019, when such restrictions came into force, and, as can be assumed, was due to the

understanding of the controversial situation that had arisen and the negative prospects for its settlement for Ukraine. Finally, the attempt to impose restrictions on domestic consumption of unprocessed timber at the level of 25 million cubic meters per year was even more unconvincing, if not to say curious, given the fact that, as the statistics showed, the volume of domestic consumption and exports together never exceeded this figure.

So, it should be once again emphasized that restrictive measures, in order for them to be justified under Article XX (g), must be introduced, firstly, in parallel with internal restrictions, and secondly, must be really effective. This means that the restriction of domestic consumption should not be formal, "on paper", but real, such that would really lead to a reduction in the consumption of the natural resource to whose protection it is supposedly directed.

The compliance of restrictive measures with the provisions of the chapeau is also important in the context of the analysis of the requirements of Article XX of the GATT. In the case of the dispute under consideration, this analysis was not required, since the panel, following the logic of the two-tiered analysis of the WTO Dispute Settlement Body and demonstrating that the 2015 export ban did not comply with the conditions of Article XX (g), did not pass to it. However, for the sake of completeness it is worth recalling that contested measures should also not become a means of arbitrary or unjustified discrimination between countries in which the same conditions prevail, or a disguised restriction on international trade. In this regard it is essential to understand that discrimination is possible, but it should not be arbitrary or unjustified. In addition, the measure should not be discriminatory both in relation to all third countries and in relation to the internal market.

From this point of view, even if the 2015 timber export ban had reached the stage of analysis for compliance with the requirements of the introductory part of Article XX, it is unlikely that it would have passed this test, because the ban apparently put the Ukrainian and European members of the timber industry in an unequal economic position. At the same time, such discrimination could hardly be justified by some considerations, given the fact that the conservation objective of the ban was no longer recognized by the arbitrators as the main motivation for its imposition.

One can only hope that the results of the arbitration will become a lesson for the Ukrainian authorities in terms of realizing the need to develop comprehensive, timely and consistent legislation on both environmental protection issues and other issues important for good faith fulfillment of international obligations under the Association Agreement and other international treaties signed by Ukraine.

According to Article 311 of the Association Agreement each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling[64]. In this regard on 18 November 2021 the Verkhovna Rada of Ukraine approved as a base for a future law the Draft Law "On timber market" that as of 30 April 2022 is still under consideration[65]. The bill provides for the possibility of timber exporting with the exception of wood materials of tree species listed in the Red Book of Ukraine and wood material harvested in natural reserve fund zone[66]. This measure looks reasonable and consistent with Ukraine's obligations since the panel found the 2005 ban compatible with the Association Agreement. At the same time it is worth mentioning that Article 29 of the draft law sets out guarantees of raw wood materials international circulation sustainability. According to Paragraph 1 the sale outside the customs territory of Ukraine of not processed timber in the customs regime of export by economic entities is allowed in the presence of a certificate of origin of timber and certain wood products and subject to the requirement of wood harvesting only during selective felling in forests of artificial origin in the regions where the level of protective forest cover is not less than the one established in standards and subject to confirmation of the absence at the site of felling of species listed in the Red Book of Ukraine[67]. To this end exporting companies will be expected to present tree types of certificates: 1) a certificate of origin of timber and certain wood products issued by the central executive body implementing state policy in the field of forestry and hunting, 2) a certificate of origin of wood from areas where the level of protective forest cover is not less than the one established in standards issued by the central executive body implementing state policy in the field of environmental protection, and 3) a certificate of absence of tree species listed in the Red Book of Ukraine in the areas where timber was harvested issued by the central executive body implementing state policy in the field of environmental protection[68]. All certificates are valid for 60 days[69]. Taking into consideration the absence of standards for the establishment of protective forest cover zoning in Ukraine, a complicated procedure of certificates issuance and their brief validity period it can be supposed that the aforementioned provisions can create unnecessary obstacles to international trade and consequently be

[64] *Association Agreement*, art. 311.
[65] Draft Law of Ukraine, *On Timber Market (Про ринок сировини)*, n. 2035-IX, 10 September 2021, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=4197-%D0%B4&skl=10
[66] *Ivi*, art. 26.
[67] *Ivi*, art. 29, par.1.
[68] *Ivi*, art. 29, par. 2.
[69] *Ivi*, art. 27, par. 3, art. 30. par, 3, art. 31, par. 4.

contested by the EU. Hopefully the Parliament of Ukraine will take it into account and relevant provisions of the draft law creating technical trade barriers will be brought into conformity with the Association Agreement.

Speaking about the positive consequences of the dispute, it should be noted that Ukraine being quite new and unpracticed in the WTO dispute settlement has got an invaluable experience during this arbitration proceedings. In addition, in an attempt to remedy the situation and justify the ban under Article XX (g) of the GATT 1994, the Ukrainian government has adopted several laws and regulations that should really contribute to the goals of forest conservation in Ukraine. We are talking about strengthening criminal responsibility for various types of illegal tree felling, as well as smuggling of timber. In addition, important steps have finally been taken to inventory Ukrainian forests, and the internal consumption of unprocessed timber is being monitored. Since 2020 monthly reports on the volumes of domestic consumption are available on the website of the State Agency for Forest Resources of Ukraine. The State Strategy for Forest Management until 2035 is at an active stage of discussion. Within its framework the territory of forests should reach at least 18%. As they say, "every cloud has a silver lining".