Basic Principles of the Law of the WTO and Some Legal Problems of Them

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It is already 20 years after establishment of the WTO, by which non-discrimination and free trade was confirmed as international trade rules. During these two decades volumes of international trade are increased and economic exchanges are more in close. The more globalization, however, produce "the rich get ever richer and the poor get ever poorer" and it is accompanied by severe economic crisis of developing countries.

The great leader Comrade **Kim Jong Il** said as follows.

"It should protect the independent national economy by developing foreign trade on the principle of complete equality and mutual benefit, and by having economic relations with other countries suited to the interests of our people and as required by the laws of the Republic." ("**KIM JONG IL** SELECTED WORKS" Vol.13 P. 255)

It is very important to do external transactions in accordance with the interests of our people and as required by the laws of the Republic to improve our foreign trade and we should understand more correctly about some typical international trade organizations, which regulate international economic relationship.

The WTO, which is the biggest international economic organization to regulate international trade relationship, was established on 1st. Jan. 1995.

It has 154 member states and over 30 observers as dated of Mar. 2011 and it was based on "Marrakesh Agreement Establishing the World Trade Organization"(The WTO Agreement), concluded on 15th. Apr. 1994. This agreement has 4 Annexes and each of them was included over tens annexed agreements.

The WTO Agreement and annexed agreements are called as the Law of the WTO.

The Law of the WTO inherits the "General Agreement on Tariffs and Trade"(GATT), which was established by hosting of the US on Oct. 1947. For example, the WTO Agreement regulates as follows; "to develop an integrated, more viable and durable multilateral trade system encompassing the GATT, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations".

Man can deal the basic principles of the Law of the WTO like as; Most-Favored Treatment (MFN), National Treatment, Transparency and Free Trade.

These principles are fundamentally represented of developed countries and as the result, there are many limitations. So we must consider more correctively on them to make fair international trade rules and regulations.

First, MFN Treatment is one of basic principles of the Law of the WTO.

MFN is one of international treatment on foreigner, by which a state treats another one as the same as with other, already contacted, in connection with international economic relations.

Under the regulations of "the Rules of UNCITRAL on MFN Clause", MFN means a particular privilege granted by one party only extends to other parties who reciprocate that privilege, rather than

to all parties with which it has a most favored nation agreement. The clause, stipulated MFN, is called as “MFN Clause”.

MFN treatment is, generally, divided as conditional MFN and unconditional MFN. Conditional MFN requires no compensative treatment by other but unconditional MFN required compensated treatment with its same treat.

MFN treatment, stipulated on the law of the WTO, is treating other people equally under the WTO agreements and countries cannot normally discriminate between their trading partners. Thus it is a grant someone a special favor (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

There are some exceptions on application of this principle, such as; general exception, security measures, regional integration, etc.

Then why the WTO, advocated its function as “to cease any discrimination and support the fair competition opportunities” for world trade liberalization, recognized such many exceptions on application of non-discriminated treatment? The reason is based on interests of developed countries like as the US. The US requires today to other countries to cease unreasonable discrimination realize the trade liberalization but it insists still on protective trade policy as the “Super 301” and escape from regulates of WTO MFN agreements in order to tide over sustained economic and severe financial crisis.

This reality shows that the MFN principle of WTO agreements is based on the interests of developed countries and wouldn’t be one of the fair international trade rules.

Second, national treatment is one of basic principles of the Law of WTO.

National treatment is also one of foreign treatment system for the foreigners to take same civil rights with citizens of host country and does important role in international economic relation with MFN principle, too.

Both treatments are the same non-discriminative treatment for foreigners. But they have distinguished differences on application and scope.

National treatment requires that treat foreign goods not disadvantageously than domestic one like as discriminative taxation. But MFN requires that all of treatment to foreign goods must be same.

This means that national treatment is one of methods to support equity between foreign and domestic goods, while the MFN is prerequisite for equity of international trade relations. So we could say MFN as “external equity” and national treatment as “domestic equity”.

National treatment regulated by WTO agreements is the principle of equity treatment for foreign goods, after customs duty paid, to be treated equally with domestic goods. Thus it means that requirement of national treatment is equal treatment between foreign and domestic goods in domestic market of host state.

Developed countries allege that the purpose of this principle is to support same marketing between member states and so all member states of WTO should support same conditions on foreign and domestic goods in their domestic markets.

But all of economic development levels and power of economy are different state by state according to their different social system. If developing countries, which are underdeveloped than

developed one, treat all other foreign goods with same standards, their domestic industries would be destroyed and dominated by developed foreign enterprises.

The problem on application of this principle is that it would be very difficult to confirm which measures could be restricted for import.

Today there are many administrative measures accompanied by “de facto discrimination” in international trade relations between capitalist countries. De facto discriminations are produced by diversity administrative measures, which bring in fact different result from their application to domestic and foreign products in domestic marketing. For example, like as Honduras vs. Dominican Republic-Cigarettes (WT/DS 302), the administrative measure to label tax stamp requirements of all cigarettes made bad result to imported cigarettes.

WTO regulates some exceptions on application of this principle, because it is related with domestic economic policies like as taxation policy.

Third, transparency is another basic principle of the Law of the WTO.

This principle requires for all member states to efficient trade policies and rules to open to the public abroad.

WTO requires that its member states open their customs law and regulations, rules and administrative procedures relating to export and import management, usage of foreign investment, trade in service and intellectual properties and bilateral or multilateral agreements and other domestic legislations and administrative regulations to public abroad.

The fundament of this principle is trade policy review mechanism (TPRM).

TPRM is a legal framework for the WTO to regularly review trade polices of member states according to certain period. This mechanism has been applied from GATT system under the slogan of transparency of and mutual understanding on each state’s trade policy and administrative procedures through regularly review.

Developed countries, especially the US restrict international trade by using of vague rules and many non-tariff measures and otherwise press developing countries to amend their rules and administrative procedures with this principle.

This shows that it could be one measure for globalization of developed countries by representation of their own interests.

Each state has independence and they could be considered no more sovereign state without it. Today’s reality of the worldwide severe social disorder and political crisis is the result of those rules of transparency of imperialists.

Fourth, free trade is also one of basic principles of the law of the WTO.

This principle requires for member states to reduce their tariffs and remove non-tariff barriers and by the result spreading of international trade. Thus it means that mobility of goods, service and technology could be more smoothly by reducing of tariffs and removing of other trade barriers through multilateral trade negotiations under the framework of the WTO.

This principle is based on the free trade theory of classic economists. Free trade theory has influenced greatly to GATT and its successor WTO, by usage of the US after World War Ⅱ for their purpose to take abroad markets and maintain their monopolistic position through huge war benefits.

Reducing of tariff and removal of non-tariff barriers are fundaments of this principle.

Tariff (or customs duty) is tax levied by state on the goods through customs territory. And tax territory is limit line for taxation of sovereign state. Tariff is major measure to protect domestic industry and one of source state budget. Efficient usage of tariff system is very important political problem.

The purpose of this principle is not to reduce only tariff itself, but it is to reduce the negative effect of tariff in international trade.

The types of tariff reduce are divided as tariff reduction which is reducing of current tariff, tariff binding which agrees on binding current tariff rates and ceiling binding of tariff which raise not higher than agreed level if so.

Non-tariff barrier are protecting measures for trade by diversity non-tariff measures, which are some of legal and administrative measures and economic tools.

There are many types of non-tariff barrier such as; many legal and administrative measures like as complicated and intricate customs procedures, quota of import, requirement of primary usage of domestic vessels, strict sanitary, detailed conditions on quantity and packaging, standardization of customer protection and economic measures like as import levy and subsidies for export.

Today there are so many non-tariff barriers, influenced on international trade, and raised more and more.

Non-tariff barriers are invisible and so almost countries try to use them for protecting of their domestic industry and developed countries applied these measures instead of tariff reduction, because of their economic crisis, and by the result development of international trade is suffering from their protective trade policy.

Basic principles of the Law of the WTO are represented of beneficiary of developed countries and they would be even barrier to establish fair trade rules.

The protectionism of developed countries is a tool for them to legalize their newly colonial rule and plunders on developing countries. To establishment of fair trade rules it is necessary to defeat old trade rules and establish fair trade rules and regulations for newly international economic rules.

For this purpose, preferential of developing countries should be more expanded and established international law framework to devote actually for them. Especially, confirming of fair trade rules must be brought up for new discussion of ongoing Doha Round.