

学位論文及び審査結果の要旨

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論文の要旨

After World War II, under the aegis of globalism, transparency, along with other contemporary Western cultural values, became a hot topic in international law. This norm has increasingly spread from the West to the rest of the world through international organizations. To date, transparency norms have gradually been endorsed and adopted by major organizations involved in the international economy, such as the International Monetary Fund (IMF), the World Bank (WB) and the World Trade Organization (WTO). The intended goals of transparency principles or norms in these international economic organizations clearly vary according to not only their differing missions, visions, and values, but also the geopolitical and ideological features of their members. Transparency is not always considered a tool for reducing information asymmetry, as commonly thought. For example, international financial organizations tend to rely on transparency as a mechanism to clean up the difficulties in debtor nations (or recipients of funds); meanwhile, regionally-based organizations hope that transparency can build trust. Interestingly, the WTO is a unique case encompassing the aforementioned multifaceted goals of transparency norms.

The transparency policy in the WTO context has expanded beyond its focus on trade facilitation. Evidently, Article X of the General Agreement on Tariffs and Trade (GATT) 1994 is commonly known as the bedrock of transparency norms in the WTO legal context. The principle of the rule of law enshrined in Article X of GATT 1994 would help member states improve regulatory quality and government accountability, enhance due process, and promote an effective and independent judicial system. Other transparency-related provisions embedded in many WTO agreements, including the General Agreement on Trade in Services (GATS), Technical Barriers to Trade (TBT) Agreement, Sanitary and Phytosanitary Measures (SPS) Agreement, are aimed at enhancing the legitimacy of the domestic administrative process by imposing the principle of transparency and accountability, thus improving not only transparency between countries but also within countries. More generally, but less

specifically, transparency requirements in the GATS seem ambitious to establish the model of reform for domestic administration enshrined in Articles III and VI. For monitoring and surveillance, the WTO Trade Policy Review Mechanism (TPRM) evaluates individual members' trade policies and their influence on the multilateral trading system, thus serving as an instrument of counter-surveillance to reform badly-managed governments and help states build trust within the international regime. Admittedly, even though the degree to which states absorb these administrative law norms varies according to their domestic political and institutional circumstances, the WTO has successfully and effectively established a foundation for global governance under which transparency norms help promote administrative legal reform among state members.

Because of its unique model of global governance, the mission of the WTO is not only to facilitate transnational trade but also to improve its members' governance. In so doing, the WTO has clearly become a mechanism by which Western industrialized countries establish certain norms and then impose them on the weaker members with varying degrees of acceptance. Many scholars have highlighted this role of the WTO as a policy anchor hypothesis, as vehicles for policy reform in developing countries through a wide range of commitments related to domestic public policy.

The conclusion of the Uruguay Round in 1994 marked a momentous turning point in the history of international trade, as the WTO was opened to all countries or separate customs territories regardless of their political characteristics or levels of development. Nonetheless, a few current socialist countries remained outside of the WTO system until the accession of the People's Republic of China to the WTO in December 2001, which marked one of the most controversial events in the history of the world trading system. Transparency, accountability, public participation, and other Western norms diffused by the WTO seem to be at odds with ideological foundations and institutional infrastructure in Chinese-modeled Socialist-oriented states. Thus their compliances with these norms are likely to be problematic. In the face of so many obstacles to the transparency norms in these countries, such as the dictatorship of the Communist party, the ambiguity in the legal system, the WTO needs to envisage the challenge it is facing. How can it effectively deal with these obstacles to trade facilitation, progressive liberalization and beyond, without exceedingly interfering domestic politics? Understandably, differential treatment exercised in WTO-plus obligations from the China's WTO accession negotiations aims to not only improve the compliance but also address the institutional issues in China and its "comrade" countries toward good governance and democracy.

Existing WTO rules on transparency, due process, and even-handedness with multifunctional paradigm seemed to be inadequate for the case of China, thus creating an unprecedented accession protocol in which a set of special requirements that went beyond existing rules. Arguably, the WTO-plus obligations were purposively interpreted as if they would fill the loopholes in China's existing rules which were inappropriate and incomprehensive, with the expectation that China's compliances with multilateral agreements would improve. Then, the question arises as to whether or not (and to what extent) socialist states have improved their rule of law, good governance, and democracy from the time of being a WTO member?

This thesis finds that WTO transparency norms have significantly promoted regulatory transparency in socialist states, per contra, these countries have no significant change regarding due process. Relating to the elements of good governance, theoretical and empirical analyses show that the impact of WTO transparency norms on the performance of responsiveness and accountability and control over corruption in socialist states has been progressive, but slowly and gradually. In a long-term view, this progressive trend is likely to be significant. On the other hand, the impact of WTO transparency norms on the performance of public participation in socialist states is not remarkable, due to the openness

dilemma. Taken together, we can observe that the WTO transparency norm has partly, and incompletely, opened the closed regimes. The “sooner or later” of this transition process heavily relies on political will. In fact, in this transitional process, the socialist states have to deal with a dilemma in a complex context in which economic openness and political openness cannot work in a tandem. Opening the economy and maintaining the status quo of the political order have caused the openness dilemma.

Empirically, China and Vietnam present a significant increase in the level of trade freedom since WTO accession, but trade openness does not go hand in hand with freedom, liberty, and democracy. Although the WTO transparency has successfully promoted the freedom of information and opened the market system in these socialist states, on the other hand, it has posed a threat to the leadership of Communist parties. As a consequence, the ruling parties have reinforced control over the free press more and more strictly to prevent political dictatorship from the influence of democratic values enshrined in WTO agreements, such as transparency, responsiveness, accountability, and public participation.

Quo Vadis? The Socialist States

From economic growth to social mobilization, middle class tends to generate a growing nascent civil society that may open the closed door of a regime. From the increase of civil liberties in Vietnam, the slight and slow progress in voice and accountability performances in China and Vietnam, I believe that social mobilization will be a motivation for democratically progressive trend. Of course, this path to development is lengthy, painful, and stepped. Transparency norms should play a role of catalyst for this transformation by enabling interactions between elements of good governance toward building an open government and democracy.

To demonstrate this transition process, this thesis uses the case study of Vietnam to exemplify the openness dilemma that socialist states have to deal with, and shed more light on the path to development in which transparency norms has played the role as a vital catalyst. In 2007, Vietnam became a WTO Member in 2007 following 11 years of negotiation. Consequently, Vietnam has had to comply with a set of institutional norms including transparency. The WTO accession is clearly the beginning of a new era in Vietnam, the era of globalization through which economic diplomacy is associated with domestic needs. Vietnam has been changing, gradually and progressively, to meet the goal of compliance with the WTO provisions regarding regulatory transparency. However, regulatory transparency does not go hand in hand with government transparency, because government transparency within a country can only have an indirect impact or side-effect, or secondary policy outcome from transparency norms. Clearly, the transformation from an isolated economy into an open economy has reshaped and improved the legal system of Vietnam, leading to regulatory and administrative reforms. Nonetheless, due to the openness dilemma, Vietnam has to strike the balance between regulatory transparency and government transparency without affecting the political stability. To illustrate this quandary, this thesis has concentrated on two case studies:

(1) Drafting Law on Access to Information in Vietnam

The transparency policy dilemma is that while political elites want to expedite the passage of Freedom of Information (FOI) bill at the National Assembly in order to adapt to the principle of transparency enshrined in the rule of international organizations and to make the country more attractive to foreign investors, they are equally aware that there is an absolute need for the stability of the institution. The passed FOI law cannot interrupt the political status quo. Ultimately, this policy dilemma gives rise to informational ambivalence and the law on access to information will become formalistic and instrumentalist after getting effective. Because of this struggle, a FOI law for Vietnam has been stalled since 2009.

(2) Building the system of e-government

Vietnam has recently implemented a “two faces” policy, through which, it promotes the effectiveness of e-government and public services on the one hand, and controls and restricts the political e-participation on the other hand. Because e-government is just an instrument of open government, a non-democratic e-government in Vietnam eventually cannot constitute an open government. The theory of “democracy by osmosis” brings the hope for institutional change in Vietnam toward building an open government, and of course, this will be a long-term study. Further, the Trans-Pacific Partnership (TPP) brings the hope for a stronger “wind of change” with more positive impact on the Vietnamese institution.

審査結果の要旨

本論文は、世界貿易機関(WTO)の透明性規範、すなわち関税及び貿易に関する一般協定(GATT)第 10 条の規定を中心とする一連の規定が貿易政策の枠組みを超えて WTO 加盟国の法制度全般に影響を与えているのではないかとの問題意識から、新規加盟交渉手続を経て WTO 加盟国となったアジアの社会主義国（具体的には中国、ベトナム、ラオス）がいかに WTO の透明性規範を受容し、各国の法制度に内部化したか、また、それが法制度全般の改革にどのような意味をもっていたのかという点について、特にベトナムの経験を中心に解明したものである。 本論文は、全体で 6 章から成る。

第 1 章は序説と位置づけられる章であり、透明性(transparency)という概念の淵源にまでさかのぼり、この分野における先行研究を整理した上で、この論文で解明すべき論点として次の 5 点を挙げる。①透明性に関する理論的・規範的議論の整理（序説）、②国際経済機構における透明性規範の役割、③WTO における透明性規範の目的、④WTO の透明性規範が社会主義国の法制度改革に及ぼした影響、⑤WTO の透明性規範がベトナムの法制度改革に及ぼした影響。これを受けて第 1 章から第 5 章までの議論が展開され、最終章である第 6 章につながっていく構成となっている。

第 6 章は結論部分であり、WTO の透明性規範が加入交渉の圧力を通じてアジアの社会主義国の法制度改革をもたらしたことについての要約が述べられている。また、中国やラオスと異なり、ベトナムは環太平洋パートナーシップ協定 (TPP) にも参加しており、TPP には透明性確保と並んで腐敗防止の問題が明示的に取り上げられていることや国有企業についても義務が強化されていることから、第 5 章において示されたような改革の方向が一層加速されることが示唆されている。

本論文は、Padideh Ala' i らの先行研究に依拠しつつ、WTO の透明性規範の受容が「よい統治」をもたらし、WTO 加盟国の国内体制改革に寄与するという命題をアジアの社会主義国、とりわけベトナムの経験に即して検証しようと試みたものである。国際経済法学から政治学にわたる多数の先行研究を渉猟し、ベトナムの政府資料を丹念に分析して本論文をまとめあげた著者の努力は高く評価すべきであり、抽象的な議論に留まりがちであった先行研究の結論をベトナムの現実に即して検証したという点は独創的である。

WTO 規範の分析としては、GATT 第 10 条の規範構造を明らかにした上で、その国内的受容のあり方を検証した点で優れた論文であると評価できるが、加入議定書上の義務が社会主義国内の制度改革にもたらす影響を分析するに当たっては、中国における検閲制度に伴う貿易制限の問題が WTO で争われた事件において、パネル・上級委員会が検閲制度については GATT 第 20 条(a)の例外（「公徳の保護のために必要な措置」）に該当すると判断したことなども検討の対象にすべきであったかとも思われる。しかし、これは著者が検討の対象を透明性規範に絞ったことと主としてベトナムの経験に即して議論を展開していること（ベトナムはこれまで WTO の紛争解決手続において被申立国となったことがない。）が原因であって、本論文の致命的欠陥となるものではない。むしろ今後の研究課題として検討されるべきものである。

以上のことから、本論文審査委員一同は、Tran Van Long 氏の学位請求論文「Beyond Trade: The Impact of WTO Transparency Norms on Socialist-Oriented Countries, With an Emphasis

on Vietnam' s Legal Reform」が顕著な研究業績であると認め、本学府の博士号審査基準③に照らして、博士（国際経済法学）の学位を授与するに値するものと判断する。