

- 6- The Future of the World Trade Organization (Critical Attitudes), Translators: Vahid Bozorgi et al., Representative Office of the Islamic Republic of Iran, Commercial Printing and Publishing Company, First Edition, 2007, p. 35
- 7- Adlung, Rudolf, "negotiation for safe havens and subsidies in services: a never-ending story?", Journal of international economic law, 10 (2), 2007 b. visited on: <http://jiel.oxfordjournals.org/cgi/content/full/10/2/235>.
- 8- Recognition of the World Trade Organization, Translator: Mohammad Javad Iravani, Institute for Trade Studies and Research, First Edition, 2004, pp. 12-24
- 9- Feichtner, isable, "the waiver of the power of the wto: opening the wto for political devouille on the reconciliation of competing interests", European Journal of International Law, 1998-2007. Visits to: <http://jiel.oxfordjournals.org>
- 10- Joseph E. Stigitz, Andrew Charlton, Ibid, p. 124
- 11- How to join the World Trade Organization, the UNCTAD Secretariat, Translator: Abulqasem Binat, Trade Representative of the Islamic Republic of Iran, Commercial Printing and Marketing Company, First edition, Feb. 2003, p. 19
- 12- Joseph E. Stiglitz, Ibid, p. 132
- 13- Ibid, p. 135
- 14- Ibid, p. 137

the design of trade agreements that are more likely to promote economic development (14).

11. Conclusion:

Finally, it can be concluded that with the consideration of preferential treatment for the developing and less countries, it is possible to contribute to the process of commercial liberalization and this preferential treatment has many benefits for both groups of countries (developed and developing). Therefore, despite the opposition to the preferential treatment strategy, this approach will gradually open up the trade space between the industrialized and advanced countries and developing countries to enable the developing countries to strengthen their existing economic infrastructure by adopting restrictive obligations or imposing commitment in longer time. At the same time, they could open up to the poorer countries to promote South-South trade and on the other hand, the developed countries could provide trade opportunity to the developing countries by the liberalization process and find an appropriate market for their exclusive products.

Therefore, the implementation of the principle of preferential treatment is not only beneficial for developing and poor countries, but also has many benefits for the developed countries.

References:-

- 1- Kojians Sani, E., 2016, Iran's legal jurisprudential barriers to join the World Trade Organization, Thesis for Master's Degree, Law, Islamic Azad University
- 2- Ibid, P: 63
- 3- Paragraph 2 of the "Article 11" of the agreement on the establishment of the World Trade Organization, "Legal documents of the World Trade Organization", the results of the multilateral trade negotiations in Uruguay round, Translators: Tarom Seri, Masoud and colleagues of the Institute for Trade Studies, Second Edition, 2006, p. 15
- 4- Kojians Sani, E., ibid, p: 67
- 5- Joseph E. Stigitz, ibid, Joseph E. Stigitz, Andrew Charlton, "Fair Trade for All", Translator: Masood Karbasian, Nashr-Cheshmeh, First Edition, 2008, p. 125

preferential treatment with the less developed or developing countries (11).

9. Charlton Theory

According to the Doha round of talks that began in 2001, and based on the Charlton Plan in 2005, it was proposed that to maintain south-south liberalization, all members of the World Trade Organization could commit to grant access to their markets to the poorer and smaller developing countries. They also believe that globalization reduces the economic isolation of many poor people in the world, especially in developing countries, and makes science and industry accessible to many of their peoples.

In this way, all developing countries can expect free access to all markets with more gross domestic product and per capita gross domestic product (12).

This strategy requires the developing and developed countries equally for trade liberalization. Most of the Doha round estimates suggest that the welfare achievements for developing countries are more due to liberalization in these countries rather than the liberalization in developed countries (13).

Based on the above suggestion (the Charlton Plan), the highest level of liberalization is required for developed countries and the minimum level is prescribed for the less developed and developing countries. It also gradually distributes market access and ensures that the most benefit is gained by the smallest and poorest countries, liberalization commitments are gradually distributed and largest and richest countries are required to make most liberalization.

10. Hackman's theory:

To implement the principle of preferential treatment, Hackman's theory in 2004 could also be adopted, which suggests the creation of a multilateral consultative mechanism within the framework of the World Trade Organization. In this way, he divides the rules of the World Trade Organization into nuclear and non-nuclear agreements, and believes that "nuclear" regulations should be accepted by all countries without any conditions. However, in case of non-nuclear regulations, it allows developing countries not to engage in development-related contracts. Such a different behavior facilitates

so that in the culture of international relations, some countries of the world are known as developed countries, which are few in number. Some countries are called the developing countries that include more countries in the world and the rest are known as the less developed countries or even undeveloped countries known as the fourth world. There is, of course, no definite distinction in this regard, but dividing countries into the developed and developing countries is more common (10). Another reason for explaining the principle of preferential treatment is in the basic difference between the needs of poor and developing countries with the developed countries. Accordingly, the poor and developing countries are mainly focused on achieving economic development and modernization of economic, scientific and technical infrastructures in a modern way. However, such changes have occurred in the developed countries many years ago and they are now in more advanced stages. Therefore, because the needs of developing countries are fundamentally different from the needs of developed countries, the principle of preferential treatment in the World Trade Organization has considered a certain amount of discrimination in favor of developing countries.

8. The WTO's approach to this principle:

Like GAAT, the WTO has paid attention to the special needs of developing countries through “preferential treatment” and in Article 11 of the agreement on the establishment of the World Trade Organization along with the definition of the main members of the organization has made the developing and less developed countries exempt from the implementation of certain obligations. Alternatively, it limited the implementation of these commitments to the level of development of the member states. The World Trade Organization acknowledges that the trade policies that create maximum prosperity in wealthy industrialized nations may not be the same as policies that maximize welfare in the poorest countries. Studies reveal that the developed countries want to deem the World Trade Organization merely as commercial liberalization, but the developing countries believe that development is the main goal of this organization. Therefore, integrating different and conflicting views of countries with different levels of development in a single trade system seems difficult. Therefore, the same rules of trade should not be applied to both of these groups and this belief justifies the principle of

The previous experiences of GAAT multilateral trading system and the World Trade Organization show that the aforementioned principle's nature has made it an ideal example rather than an applicable one because it is often difficult and controversial to determine the conflict of rule with the interests of developing countries that lead to disagreement over the exact implementation of this principle. In addition, the plurality of developing and the least developed countries among the members of the organization and repeated and multiple use of this principle have violated its exceptionality and caused problems (7).

Differences in the views of the members of the organization on how this principle is implemented also reduce its effectiveness. Therefore, correct and accurate implementation of this principle is difficult due to different trade and political positions.

6. GAAT's approach to this principle:

With regard to the above cases, it is now worth considering the reasons of the proponents of the history of preferential treatment towards the developing countries in the GAAT. Within the seven rounds of trade negotiations before the Uruguay Talks (8), the role of the developing countries and paying attention to their concerns was limited, while the developing countries were not involved in the trade liberalization negotiations associated with the General Agreement on Tariffs and Trade (GATT). However, this situation changed somewhat throughout Uruguay round of talks and negotiators in this round come to believe that the organization of the world trade system regardless of the role of less developed or developing countries is not possible. Therefore, they attempted to consider privileges regarding this group of countries by adopting regulations in the law system and obligations of this organization. To provide their active participation in this novel trade system while encouraging them (9). Thus, the preferential treatment with less developed and developing countries was recognized as one of the fundamental principles of the World Trade Organization in 1995.

7. Why preferential treatment?

One of the most important arguments for the principle of preferential treatment is the diverse and unbalanced development of countries in the world politically, economically, socially and culturally

convergence of developing countries in the multilateral trading system in various WTO agreements (4).

The Doha Ministerial Conference in 2001 and the start of the new round of talks provided a new movement to follow the developing considerations in developing countries. The Doha Ministerial Conference made decisions to expand the scope for technical cooperation and capacity building and demanded strengthening the rules for the preferential treatment with developing countries and examining the consequences of adopting the unnecessary provisions of these regulations.

5. Challenges facing the principle of preferential treatment

Regarding the preferential treatment, two proponent and opponents groups defend their beliefs by giving their own reasons. The proponents believe that the specific conditions in developing countries require greater freedom to pursue industrial development through trade policies, even if these policies have negative outcomes for other countries. The opponents, on the contrary, argue that the preferential treatment is a waiver of the countermeasure principle and another group of the opponents believes that preferential treatment leads to the application of supportive trade policies, which is an inefficient tool for the industrial development (5).

They say that by granting WTO exemptions, members of the organization will cause losses to the developing countries by encouraging their support, lengthening their exclusion from the global economy and preventing their access to the benefits of trade liberalization.

Another disadvantage is that the principle of preferential treatment has no legal guarantee, that is, it does not oblige industrialized countries to apply such behavior in relation to the developing countries.

Among other objections against the above principle is the conflict between the principles of preferential treatment and non-discrimination. As the WTO agreements and their general objectives show, the non-discrimination principle is a fundamental principle and the principle of preferential treatment (6) is an exemption, which is applied temporarily and in specific cases to the developing countries.

Each World Trade Organization (WTO) agreement predicts a particular behavior with developing countries in different ways. In general, these rules are divided into three main categories:

(A) Provisions for facilitating trade in developing countries

They include the unilateral measures by developed countries to grant preferential preferences to the developing countries as follows:

- Generalized system of preferences
- "Empowerment Condition" regarding the different and more preferred behavior, mutual interaction and full participation of developing countries, November 1979
- Trade preferences to countries of specific geographical areas based on temporary exemptions from Article 1

GAAT 94 (most favored nation principle)

- Complete elimination of customs duties on goods exported by the developing to developed countries
- The possibility of establishing South-South trade arrangements by modifying the provisions of Article 24 of the GATT
- More attention to the liberalization of the goods of export interest in developing countries based on Chapter IV of GAAT

B) More flexibility for developing countries in accepting commitments

- Flexibility in supporting the establishment of new industries
- Applying the restrictive measures at the time of payment balance problems
- Exemption from certain provisions in the framework of GATT 94 and other agreements of the World Trade Organization
- Longer transitional periods for implementing commitments and flexibilities and wider exemptions for the developing countries

C) Providing technical assistance to the developing countries

This assistance is intended to assist the underdeveloped countries regarding their vast commitments to be able to fulfill their obligations under the WTO agreements, including various arrangements aimed at providing technical assistance to build specialized, institutional and necessary legal instruments for the

organization, composed of representatives of all member states that must meet at least once every two years. The Ministerial Conference is competent to make any decision under the multilateral agreements of the organization.

The WTO is affiliated with the General Council, which is under the control and supervision of the Ministerial Conference and consists of all members. The General Council is held almost once a month and it is responsible for the duties of Ministerial Conference in its absence and reports the results to the Ministerial Conference. The General Council has three sub-councils called the Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights and Council for Trade in Services (2).

The General Council has the capability to turn into dispute settlement or the analysis of trade policy principal. In other words, the General Council is formed, whenever necessary, at the dispute settlement or the consideration of policies and measures principal. The Secretary-General is located at the top of the Secretariat elected by the Ministerial Conference.

3. The concept and mechanism of the principle of preferential treatment

Preferential treatment means special strategies that give special privileges to the developing and least developed countries, which allows the developed countries to have preferential treatment towards the developing countries relative to other WHO member states and it has only obliged the least developed countries to adopt commitments based on their development level. It is worth noting that the establishment of the World Trade Organization relates the degree of development of members to the United Nations Development Criteria on development in the definition of the main members of the Organization (3).

4. Preferential treatment mechanisms:

More than two-thirds of the members of the WTO are the developing countries. The regulations for the development of developing countries, which were formed during the decades before the establishment of the World Trade Organization, were transferred to the World Trade Organization through the GATT 94.

policies and measures of its members every four years (every two years in relation to major trading companies) and provide a report in this regard. This report is released to other countries in conjunction with the explanations provided by the government of that country. Any reaction by countries is based on such reports. The purpose of the regulations regarding the mechanism for reviewing trade policies is to ensure that members are loyal to the rules of the organization and monitor their obligations. These studies will make the rules and policies of the countries transparent and have a clear understanding of the policies and measures adopted by the members (1).

2.2. Creating a permanent principle for dispute settlement

According to WTO regulation, members should not take unilateral decisions against each other. They are required to settle their claims through the World Trade Organization Dispute Settlement and in accordance with the rules of the organization. If the parties to the dispute agree, the matter will be resolved based on mediation, compromise or good offices. In the event of disagreement or failure of mediation or conciliation, the plaintiff may request a settlement of the dispute in accordance with legal requirements. Settlement of disputes will take place in accordance with the Memorandum of Understanding on settlement of disputes and the principle of settlement of claims will be responsible for its administrative duties.

2.3. Establishing a regular procedure for the meetings of the Ministers of Member States

According to the World Trade Organization, a systematic procedure is foreseen for the meeting of the ministers of the member states. According to Article 4 of the agreement on the establishment of the World Trade Organization, the Ministerial Conference will be held at least every two years, the first of which was in Singapore in late 1996. These regulations are adopted to create regular and high-level meetings to discuss the existing problems, improve the international trade system and prepare drafts for future multilateral negotiations. With this regular arrangement, it is hoped that the previous problems in GATT would not be repeated in summing the supreme representatives of the countries to hold talks. In the organization and decision-making bodies of the World Trade Organization, the Ministerial Conference is the supreme body of the

identification of their legitimate right to achieve economic development

The benefits of membership in the WTO are summarized as follows:

- Each WTO member can easily enter the market of a country that is officially a member of this organization
- Any limitation considered for goods in a country is applied to another country automatically.
- Continuous access to the WTO member states with reliable and established customs duties
- Trade facilities with member states without having to conclude bilateral agreements with each of them

One of the tasks of the World Trade Organization is to review trade policy of the member states continuously and release regular reports in this regard. For this reason, the transparency of policies and regulations is of great importance. This is done in two ways within the framework of the WTO:

- By requiring governments to notify the member states and organization about their policies and regulations
- By carrying out systematic reviews of each member state and its trade policies

2. The structure of the World Trade Organization

2.1. Creating a permanent framework for exploring trade policies

Although the GAAT1947 was merely a multilateral treaty and it was going to be implemented under the control and supervision of the International Trade Organization (WTO), due to lack of establishment of the organization, GATT had a poor organization limited to secretariat. One of the important successes of the Uruguay negotiations is to create a coherent and permanent global trade organization instead of the GAT Secretariat. The WTO has a more coherent and appropriate organization in terms of three points:

The principle of reviewing trade policies is responsible for checking policies and measures adopted by members on trade in goods and services continuously. This principle is required to review

Introduction:

Events and innovations in the field of trade, technology and investments have raised new issues internationally. In other words, it was necessary to define these new relationships within a specified framework. The establishment of the World Trade Organization was, in fact, an answer to these new global developments. The World Trade Organization is probably the most important established organization in the post-Cold War (after the collapse of the Soviet Union). The organization has a regular and systematic structure for trading issues of the member countries and it is based on valid principles. Some of these principles are: universalization of international trade rules, non-discrimination, free trade, transparency, encouragement of "fair competition" and principle of preferential treatment that is addressed in this study.

1. The objectives of the World Trade Organization

The goals of the GATT and the WTO are announced in the introduction of the General Agreement on Tariffs and Trade (GAT) as well as the agreement on the establishment of the World Trade Organization.

- Living standards improvement
- full employment guarantee
- Large amount and constant increase in real income and effective demand
- Full use of the world's existing resources
- Development and expansion of trade and production of goods in the agreement on the establishment of the World Trade Organization are accomplished as follows
- Developing and expanding the trade and production of goods and services
- Optimal use of the available resources in the world
- Preservation and protection of the environment
- An attempt to increase the share of developing countries, especially those with very little share of development and the

Abstract:-

In recent years, the establishment of the World Trade Organization (WTO) is one of the most important phenomena in the field of international relations. Due to the vast and subjective geographical scope of the organization, the legal system governing this organization also has special features. One of the important features of the World Trade Organization legal system is the establishment of specific rules for two groups of the developing and least developed countries (LDC), considering the special economic and social status of these two groups of states. Although a preferential approach was adopted towards the under developed countries in the framework of the GATT 1974, with the establishment of the World Trade Organization, this approach was significantly institutionalized (1). That is because two-thirds of the 164 member states of WHO until 2016 were in the developing and least developed countries and considering the needs of these countries is one of the most important issues of this organization (2). Therefore, in the present article, through descriptive-analytic method, after examining the concepts of the principle of preferential treatment, the existing challenges and GATT 1947 and WTO 1995 approaches on this principle are investigated and the theories of the scholars and experts are analyzed.

Keywords: Challenges, World Trade Organization, Principle of Special Behavior, World Legal System.

الملخص:

إحدى أهم الظواهر في مجال العلاقات الدولية في السنوات الأخيرة هو إنشاء منظمة التجارة العالمية (WTO). بسبب النطاق الجغرافي الكبير وفي الوقت نفسه موضوع المنظمة المعنية، فقد تم التعامل مع النظام القانوني الذي يحكم المنظمة على وجه الخصوص. من أهم سمات النظام القانوني لمنظمة التجارة العالمية وضع قواعد محددة لكل من البلدان النامية وأقل البلدان نمواً فيما يتعلق بالوضع الاقتصادي والاجتماعي المحدد لهذين البلدين.

على الرغم من أن اتفاق الغات لعام ١٩٧٤ كان له نهج محدد تجاه البلدان المتخلفة، لكن مع إنشاء منظمة التجارة العالمية، فقد تم إضفاء الطابع المؤسسي على هذا النهج بشكل كبير حيث يندرج ثلثا البلدان الـ ١٦٤ التي تشكل منظمة التجارة العالمية حتى عام ٢٠١٦ في فئة البلدان النامية وأقل البلدان نمواً، وتعد تلبية احتياجاتها إحدى أهم القضايا بالنسبة لمنظمة التجارة العالمية. هذا ونحن في هذا البحث الوصفي التحليلي بعد دراسة المفاهيم المرتبطة بمبدأ السلوكيات الخاصة، نتطرق إلى تحليل التحديات المواجهة لمنظمة Gatt 1947 و WTO 1995 ونناقش آراء المفكرين والمنظرين للتصدي لهذه التحديات.

الكلمات الرئيسية: التحديات، منظمة التجارة العالمية، مبدأ السلوك الخاص، النظام الحقوقي العالمي.

Challenges Faced by the World Trade Organization in the Principle of Preferential Treatment

Afshin Jafari

Assistant Professor of Payame Noor University, Tehran, Iran
jafari.afshin@yahoo.com

التحديات التي تواجه منظمة التجارة العالمية في تطبيق مبدأ

السلوك الخاص

أفشين جعفري

أستاذ مساعد في جامعة پیام نور، طهران، إيران