

THE WORLD TRADE ORGANIZATION PROVISIONS ON SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

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ABSTRACT

The World Trade Organization (WTO) agreements provided some special and differential treatments for developing countries and least developed countries (LDCs) members of the WTO, but most of the provisions were not binding in character. Some developed countries were reluctant to implement the WTO provisions on the special and differential treatment for developing countries and LDCs, and they tend to abolish the provisions. The special and differential treatment for developing countries and LDCs members of the WTO were not in accordance with the WTO objective to create international free trade and violated the Most Favoured Nation principle (MFN). This article analyzed the legal problem of special and differential treatment for developing countries and LDCs under the WTO Law. Based on the analyzed data, it could be concluded that the provisions on special and differential treatment for developing countries and LDCs members of the WTO were needed for the purpose of fulfillment justice principle of the WTO Law. Therefore, the WTO should make the provisions on special and differential treatment for developing countries and LDCs enforceable and implementable as an effort to create fair international free trade.

Keywords: Special and differential treatment, free trade, most favoured nation, justice

I. INTRODUCTION

The Agreement on Establishment of the World Trade Organization (WTO) and annexes were adopted in 1994, and come into force on 1 January 1995. All of agreements under the WTO framework also called as the WTO Law. Isabel Feichtner stated: "According to a widely held view WTO law aims at enhancing economic welfare through trade liberalization. Trade liberalization has come to be seen as the predominant objective of the WTO."¹

The WTO Law provides some special and differential treatments for the benefit of developing and Least Developing Countries (LDCs). There is a need to implement the special and differential treatment for developing countries and LDCs in international trade under the WTO Law. The Preamble of the WTO Agreement stated: "Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development." The WTO provisions on special and differential treatment for developing countries and LDCs seems are not in accordance with the spirit of free trade and violate the non-discrimination principle.² Based on the non-discrimination principle, there shall be the same treatments to all of the WTO members in the international trade relations. The WTO non-discrimination principle especially is formulated in the "Most Favoured Nation" (MFN), one of the basic principles of the WTO Law. The MFN principle is regulated under Article I of the General Agreement on Tariff and Trade (GATT) 1994 and other agreements of the WTO.

The implementation of the WTO provisions on the special and differential treatment for developing countries and LDCs sometimes face some obstacles. Some developed countries member of the WTO prefer to implement the MFN principle than the WTO provisions on special and differential treatment for developing countries and LDCs in their international trade relations. In some cases, some developed countries members of the WTO create some requirements that shall be fulfilled by developing countries and LDCs in the implementation of the WTO provisions on the special and differential treatment for developing countries and LDCs. Furthermore, the requirements has become a tools of developed countries to force developing countries and LDCs doing what the developed countries want in their trade relations. For example, the Generalized System of Preferences (GSP) status sometime is given by developed countries members of the WTO to developing countries with some requirements.³ GSP is a mechanism for according special and differential treatment to the developing countries and LDCs in order to integrate them into the global trade market by increasing their export earnings.⁴

The controversial of the WTO provisions on special and differential treatment for developing countries and LDCs raise a question, should the special and differential treatment for developing countries and LDCs under WTO Law be abolished,

¹ Feichtner, Isabel. (2012). *The Law and Politics of WTO Waivers, Stability and Flexibility in Public International Law*. Cambridge University Press, New York, 21.

²As stated at the Preamble of the WTO Agreement that one objectives of the WTO is creating international free trade by reducing tariffs and other barriers to trade based on non-discrimination principle.

³For example, in giving GSP status to Indonesia, the United States of America Government made some requirements such as Indonesia had to improve the regulations of IPR, improving the human rights protection, etc. In the WTO case of cigarette product, the USA enlarged the Indonesian status of GSP after Indonesia fulfilled the requireents made by the USA. In the recent days, after the US – China trade war happened since July 2018, the US Government also has a plan to evaluate tariffs over imported products from Indonesia and will abolish the Indonesia's GSP status.

⁴Saleh, Md. Abu. (2019). The WTO Legality of Trade-Labour Sanctions in the US GSP Programme. *Manchester Journal of International Economic Law*, Vol. 16 Issue 1, 57-78.

because it violates the MNF principle and is not in accordance with the spirit of free trade? Or on the other side, should the WTO provisions of special and differential treatment for developing countries and LDCs be strengthened, because it is needed in the implementation of the WTO Law?

This legal writing will try to examine the controversy between the WTO provisions on special and differential treatment for developing countries and other WTO principles, for the purpose of enhancing the WTO objectives achievement. This study is a normative legal research. The methodology is used in this research is qualitative research method, and the conclusion is done by deductive method.

II. DISCUSSION

A. Basic principles of the WTO Law

It can be said that the WTO Agreement is the most important multilateral trade treaty in the recent days, and the WTO has become the most important international trade organization since its establishment in the year of 1995.⁵ The WTO Agreement is not a single instrument, but consist of some instruments with annexes. Annex I of the WTO Agreement consist of three important agreements namely, the Agreement on Multilateral Trade in Goods (Annex IA), the General Agreement on Trade in Services (GATS/Annex IB), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS/Annex IC).

Relating to the international trade in goods, it has been regulated under the GATT 1947, the WTO previous agreement and organization. Under the WTO Agreement, the GATT 1947 is become a part of the GATT 1994, the main WTO agreement (Umbrella Rules), which is dealing with the regulation of trade in goods.

The GATT 1947 (as amended in the year of 1965) consist of 4 parts and 38 articles. Part One consist of Article I and Article II, Part Two consist of articles III to XXIII, Part Three consist of articles XXIV to XXXV and Part Four consist of articles XXXVI to XXXVIII. Part Four of the GATT 1947 was added in the GATT 1947 text in the year of 1965, under the title of Trade and Development was intended to accommodate the economic interests of the developing and low income country parties of the GATT 1947.

Different from the GATT 1947, which is dealing only with the regulation of international trade in goods, the WTO Law also dealing with the regulation of international trade in services and Intellectual Rights Property (IPR). In the GATT 1947 Uruquay Round Negotiation, which was resulted the WTO Agreement, trade in services and IPR had become new topic of negotiation, beside trade in goods. As the results of the negotiation, under the WTO Law, trade in services is regulated under the GATS, trade in aspects of IPR is regulated under the TRIPs and trade in goods is regulated under the WTO Multilateral Agreement on Trade in Goods.

In regulating the international trade, according to Bernard Hoekman, the WTO is more concerns with the ways in regulating international trade than the outcome of the international trade. Furthermore, according Bernard Hoekman, there is five basic principles of the GATT and the WTO that are, non-discrimination, reciprocity, enforceable commitments, transparency, and safety valves principles.⁶ The five basic principles of the GATT and WTO reflects the spirit of free trade (liberalization of the World trade).⁷

Another writer, Munir Fuadi, said that there is four basic principles of the WTO Law, that are, Most-Favoured Nations, Tariff Binding, National Treatment and Non-Tariff Barriers.⁸ According to Peter Van den Bossche, there is six groups of principles and important regulations of the WTO : 1). the principles of non-discrimination; 2). the rules of market acces, including rules of transparency; 3). the rule of unfair trade; 4). the rules on conflicts between trade liberalization and other societal values and interest; 5). the rule on special and differential treatment for developing countries; 6). and a number of key institutional and procedural rules relating to decision-making and dispute settlement.⁹

Based on the opinion of some writers and the WTO agreements, it can be known that there is some basic priciples and important regulations of international trade under the WTO includes the principles of non-discrimination, reciprocity, enforceable commitment, tariff protection and tariff binding, fairness, transparency, non-quantitative restriction, savety valve and special and differential treatment for developing countries and LDCs.

⁵ By the year of 2020, the WTO has 164 members and 23 observers, www.wto.org > english > news_e > news20_e, UK Notifies WTO Members of Withdrawal from the EU, Accessed 3 February 2020.

⁶ Bernard Hoekman stated : "The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy game, not with the results of the game. Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO: nondiscrimination, reciprocity, enforceable commitments, transparency, and safety valves". See Hoekman, Benard, et.all, (ed). (2002). *Development, Trade, and the WTO*. The World Bank, Washington DC, 42.

⁷ Paingot Rambe Manalu. (2000). *Hukum Dagang Internasional*. CV. Novindo Pustaka Mandiri, Jakarta, 16.

⁸ Munir Fuadi. (2004). *Hukum Dagang Internasional (Aspek Hukum dari WTO)*. PT. Citra Aditya Bhakti, Jakarta, 69.

⁹ Bossche, Peter Van den. (2005). *The Law and Policy of the World Trade Organization*. Cambridge University Press, 39.

B. Special and differential treatment for developing countries and LDCs

As has been mentioned, one principle of the WTO Law is special and differential treatment for developing countries and LDCs members of the WTO. The special and differential treatment for developing countries and LDCs had been struggled by developing countries to be accepted as an international trade and economic relation principle since the year of 1960s as an effort to improve the international economic order. The regulation of international economic relation after the Second World War under the Bretton Woods Economic Institutions (the GATT 1947, the World Bank and the International Monetary Fund) just only gave advantages to the developed countries and had caused some developing countries suffered of injustice in the international economic relations. As the result of the struggle, some improvements had been done through the modification of the GATT 1947 and the acceptance of some principles of the New International Economic Order.¹⁰

It can be said that the embryo of the special and differential treatment for developing countries in the international trade relations had been regulated under the GATT 1947, the WTO previous organization and regulation.¹¹ Under the WTO Law, the special and differential treatment for developing countries and LDCs is recognized and enlarged.

Concerning with the special and differential treatment for developing country and LDC members of the WTO, Peter Van den Bossche said : “WTO law includes many provisions granting a degree of special and differential treatment to developing-countries Members. These provisions attempt to take the special needs of developing countries into account.”¹² The provisions are intended to give some protection to the developing countries and LDCs in the economic competition against the developed countries under the free trade principle. In trade relation with the developing countries and LDCs, developed country members of the WTO have obligation to apply the special and differential treatment for developing countries and LDCs.

The Preamble of the WTO Agreement stated: “Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.”¹³ Most of the annexes of the WTO Agreement provide some special and differential treatment for developing countries and LDCs members of the WTO. For examples, the WTO agreements in trade in goods, in trade in services and trade related aspects of IPR provide some special and differential treatment for developing countries and LDCs as describe bellow.

In relation to the trade of goods, the GATT 1994 provides some special and differential treatment for developing countries and LDCs based on the Article XVIII and Chapter Four (articles XXXVI to XXXVIII) and the 1979 Agreement on “enabling clause” (Decision on Preferential Treatments, Reciprocity, and Full Participation of Developing Countries). The 1979 Agreement on enabling clause has become the juridical entitlement in giving the GSP status to the developing countries in trade relations with developed countries under the WTO Law. At the Doha WTO Ministerial 2001: Ministerial Declarations And Decisions Implementation-related issues and concerns, was stated : “Reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provisions for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994.” The statement can be interpreted if there is contradiction between the special and differential treatment for developing countries and LDCs and the implementation of the non-quantitive restriction, the special and differential treatment for developing countries and LDCs shall prevailed.

Besides the GATT 1994, some other WTO agreements provide special and differential treatment for developing countries and LDCs members of the WTO in trading of goods. For examples, based on article 15 paragraph 1 of the Agreement on Agriculture under the title of special and differential treatment is stated that : In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments. In the Preamble of the Agreement on Textiles and Clothing is stated that, there is agreement to give the developing countries and LDCs some special and differential treatments.

In relation to the trade of services, the GATS provides some special and differential treatment for developing countries and LDCs. The Preamble of the GATS among other things stated of desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports. Furthermore, point 6 of the Preamble also stated to take particular account of the serious difficulty of the LDCs in view of their special economic situation and their development, trade and financial needs. Beside the Preamble, some articles of the GATS contains some special and differential treatments for the benefit of developing country and LDC members of the WTO. Based on article IV of the GATS is stated that the increasing participation of Developing Country Members in world trade shall be facilitate through negotiated specific commitments relating to the strengthening of their domestic services capacity and its efficiency and competitiveness, the improvement of their access to distribution channels and information networks, and the liberalization of market access in sector and modes of supply of export interest to them. Other provisions of the GATS concerning with special and differential treatment for the benefit of developing

¹⁰ In 1974 the United Nations General Assembly established Resolution on the Establishment of the New International Economic Order. See Triyana Yohanes. (2015). *Hukum Ekonomi Internasional, Perpektif Kepentingan Negara Sedang Berkembang dan LDCs*. Cahaya Atma Pustaka. Yogyakarta, 53 – 60.

¹¹ Section four of the GATT (articles XXXVI to XVIII) under the title of Trade and Development and the 1979 Enabling Clause. The Enabling Clause is used as the legal basic of the “generalized system of preference” status in trade realtion between developing country and developed country.

¹² Peter Van den Bossche. *Op.cit.* 43.

¹³ Preamble of the WTO Agreement point 2.

countries is article XV, which stated that in the negotiation of trade in services, there shall be a flexibility and different treatment for the benefit of developing countries concerning with subsidies in the sector of services in relation to their development programs.

In relation to the trade of IPR, TRIPs Agreement provides some provisions concerning with special and differential treatments for developing country and LDC members of the WTO. Developing countries and LDCs members of the WTO has a right to delay the application of the provisions of the TRIPs Agreement in certain period of time after the WTO Agreement come into force.¹⁴ Under paragraph 2 of the TRIPs Agreement it stated that developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. Concerning with the implementation of Article 66 of the TRIPs Agreement, the Doha WTO Ministerial 2001: Ministerial Declarations And Decisions Implementation-related issues and concerns, stated that: "Reaffirming that the provisions of Article 66.2 of the TRIPs Agreement are mandatory, it is agreed that the TRIPs Council shall put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question." Other provision of special and differential treatment for developing countries and LDCs is Article 67 of the TRIPs which stated that in order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members.

It can be said that, most of the agreements under the WTO framework provide some special and differential treatments for developing country and LDC members of the WTO. WD. Verwey classified the special and differential treatment for developing country and LDC members of the WTO into some categories. The first, the full subjective special and differential treatment for developing countries, is the strongest right. The second and the next are the weaker rights, such as subjective special and differential treatment for developing countries whose implement ability depend on the occurrence of a specific current event and subjective special and differential treatment for developing countries whose implement ability depend on the subsequent identification of secondary terms or conditions. The last, preferential entitlements whose implement ability entirely depends on the interpretation by the developed country members of the stipulation that, in the course of specific action, they merely shall take the interests of developing country into account, is the weakest rights.¹⁵

C. Special and Differential Treatment for Developing Countries and LDCs in Relation to the WTO Trade Liberalization and MFN Principle

As has been said, the main purpose of the WTO Law is to enhance the economic welfare through the implementation of international trade liberalization, and trade liberalization becomes a predominant objective of the WTO Law.¹⁶ Consequently, the WTO apply the principles and theory of free trade (liberalism economic), which had been introduced by Adam Smith through his famous book entitled "the Wealth of Nations" in the year of 1776.¹⁷ Adam Smith liberalism economic theory was developed by David Ricardo, JS Mill, Heckscher, Ohlman dan Samuelson.¹⁸

According to the liberalism economic theory, every person has a freedom in doing bussiness and other economic activities, and there should be free competition in economic and trade. Consequently, in the free global competition, there will be the looser and the winner. The developing countries and LDCs, which have lesser power than the developed countries will potentially become the looser and will suffer of economic losses.

Realizing the less economic power of developing countries and LDCs, in the GATT Uruguay Round Negotiation, the protection of the developing countries and LDCs had been discussed. The developing countries and LDCs need some special and differential treatment as means of protection in the World free economic competition, especially in competition against developed countries.

Some special and differential treatment for developing countries and LDCs shall be given for the purpose of enhancing the economic power of the developing countries and LDCs, and to prevent the countries suffer of economic losses in the free competition under the WTO Law. Liberalization of the world trade under the WTO Law shall give economic advantages to all of the WTO members, especially to the developing countries and LDCs. By giving economic advantages to all members of the WTO, there will be a fair international free trade under the WTO Law. Furthermore, there will be a justice in international trade relations under the WTO Law. So, the special and differential treatment for developing countries and LDCs are needed in the international trade relations under the WTO law for implementing the justice (fairness) principle. Geoffrey Garrett and James McCall Smith stated: "However, the WTO also includes rules designed to ensure that competition is "fair" and grants several explicit exceptions to the principle of progressive trade liberalization."¹⁹

¹⁴ See article 65 and 66 of the TRIPs Agreement.

¹⁵ Verwey W.D. The Preferential Status of Developing Countries in International Trade Law after the Uruquay Round. In the Erik Denters and Nico Schrijver (eds). (1988). *Reflections on International Law from the Low Countries*. Martinus Nijhoff Publishers, The Hague/Boston/London, 5.

¹⁶ Feichtner, Isabel. Loc. Cit.

¹⁷ H.S. Kartadjoemena. (1996). *GATT dan WTO*. UI Press, Jakarta, 22 – 28.

¹⁸ Hata. (2006). *Perdagangan Internasional Dalam Sistem GATT dan WTO*. PT Refika Aditama, Bandung, 17-18.

¹⁹ Garrett, Geoffrey and Smith, James McCall. (2002). The Politics of WTO Dispute Settlement. *Series : Occasional Paper Series, Permalink: <https://escholarship.org/uc/item/4t4952d7>*, 5.

Some supporters of the free trade theory generally believe that the realization of free trade can be a mean to achieve justice in the global economic.²⁰ Justice (fairness) should become the most important principle of the WTO Law. Basically, all of the WTO members agree that the implementation of the WTO Law shall create a fair and open international trade system, which will enhance the prosperity of all peoples.²¹

On the other side, the WTO provisions on special and differential treatment for developing countries and LDCs members of the WTO is not in accordance with the non-discrimination principle, especially the MFN principle. The MFN principle is regulated under on Article I of the GATT 1994, Article 4 of the TRIPs Agreement dan Article II of the GATS. Based on the MFN principle all of WTO members have obligation to give the same treatment to the other WTO members relating to their international trade policy. Every favorable treatment is given by a WTO member to another WTO member, immediately and unconditionally shall be enjoyed by all of WTO members.

Even though become a basic principle of the WTO Law, the implementation of the WTO MFN principle should not violate the justice (fairness) principle. Plato, Gustav Radburg and W.A.M. Luypen said that law has to create and guarantee justice. According to Aristoteles and his teacher, Plato, justice is regarded as the main wisdom (in the justice, there are all of wisdoms).²² According to W.A.M. Luypen, a follower of modern law-naturalism, justice has become a critical norm of law. Justice raised the obliged legal norms. Justice is the ultimate goal of the law.²³ As norm of law, the WTO Law has to implement justice as the most important principle in regulating international trade.

The implementation of the WTO non-discrimination (MFN) principle shall guarantee the fulfillment of justice to all WTO members. The same treatment to all of WTO members as the implementation of non-discrimination principle, will be able to full file justice to all of WTO members if there is the same economical (and also political) powers among the WTO members. In fact, the WTO members consist of developed countries, developing countries and LDCs, with different economic and political powers. Consequently, the same treatment to all of WTO members in trade relations will not fulfill justice to all members of the WTO. For fulfillment of justice principle to all members of the WTO, there shall be a special and differential treatment for the benefit of developing country and LDC members of the WTO. Even though the different treatments is not in accordance with the non-discrimination principle, but it is needed to protect the weak and to fulfill justice to all members of the WTO.

Based on the John Rawls theory of justice and the Pancasila²⁴ theory of justice, fulfillment of justice doesn't mean that there shall be the same treatment to all peoples. In certain and specific conditions, in the fulfillment of justice there shall be some different treatments to a certain people in the society. Pancasila is the Republic of Indonesia's state ideology and philosophy, but contains some universal values of humanity, including the value of justice, that can be implemented throughout the World.

Justice theory of John Rawls²⁵ should be implemented in the implementation of the WTO Law, because John Rawls who focused on equality and freedom principles, but it is possible to differentiate in justice concept being offered. John Rawls open opportunities for the limits above freedom and equality, since those can give benefits to all people. The limitation towards freedom and equality concept of John Rawls, can be interpreted as well as distinguish economic treatment based on economic power which is owned by every member of the WTO. According Rawls those differences can be done as long as it gives benefits to all people.²⁶ Rawls also focused on the importance of giving special treatment and protection to those who have low ability, so there is a place and respect the right of each people, including poor people, to enjoy prosperous life.

According to the writer, John Rawls justice concept is in line with the justice concept of "Pancasila", the five basic principles of State Philosophy of the Republic of Indonesia. According to President Soeharto, based on second principle of Pancasila, all of humans being shall be treated in accordance to their dignity as God creation, by respecting each other, including respecting other country. Indonesian courtesy do not want the existance of rudeness for human from other human, including rudeness in all forms by other country.²⁷ Then, based on the fifth principle, "social justice for all Indonesian people", it was wanted the existance of wider spread prosperity among the citizens; not static but dynamic and increase. Social justice also is meant protecting the weak people, but the weak must work in accordance to their field and their ability. The given protection for the weak people is aimed to prevent the strong people to do exploitation over the weak people and to guarantee justice to all.

The John Rawls' justice theory and the Pancasila justice concept require togetherness in prosperity, equality and respect to all people and there is no exploitation by one people over another people in any form, including economic exploitation. Even

²⁰Fernando R. Teson and Jonathan Klick stated : "Free trade is required by, any, plausible theory of international justice", See CHIOS CARMODY, FRANK J. GARCIA, and JOHN LINARELLI, (2012), (ed). *Global Justice and International Economic Law, Opportunities and Prospects*. Cambridge University Press, New York, 259.

²¹ Oentung Soeropati. (1999). *Hukum Dagang Internasional*. Universitas Kristen Satyawacana, Salatiga, 66 – 67.

²² Andre Ata Ujan. (2001). *Keadilan Dan Demokrasi, Telaah Filsafat Politik John Raws*. Kanisius, Yogyakarta, Indonesia, 23.

²³ HM Agus Santoso. (2012). *Hukum, Moral Dan Keadilan, Sebuah Kajian Filsafat Hukum*. Predanamedia Group, Jakarta, 5.

²⁴ Pancasila is the Republic Indonesia State's Basic Principle and Philosophy. The principles of Pancasila is used to analyze the justice principle under the WTO Law, because Indonesia is a developing country member of the WTO since in the beginning of the establishment of the WTO, 1 Januari 1995. Republic Indonesia ratification to the WTO Agreement is based on the Republic Indonesia Act Number 7, 1994.

²⁵ The first statement of the two principles of justice reads as follows. First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. See Rawls, John. (2005). *A Theory of Justice*. The Belknap Press of Harvard, Massachusetts, London, England, University press Cambridge, 60.

²⁶ John Rawls, anddalam in Andre Ata Ujan, *op.cit.*, pp. 63 - 64

²⁷ Krissantono. Editor. (1976). *Pandangan Presiden Soeharto Tentang Pancasila*. Jakarta, Indonesia, CSIS Publishers, 39-40.

focusing on equality principle, but there is also different treatment which is profitable for the weak people. Those justice principles actually constitute an aspiration that want to be realized by international society through WTO agreement.²⁸

Based on the writer's analysis the John Rawls theory of justice and the Pancasila justice concept are the proper justice theories for the implementation of justice (fairness) principle of the WTO Law. And broadly the two theories of justice should be implemented in the regulation of international relations after the second World War and in the future, because the international society after the second World War was built under the principle of solidarity and cooperation among nations. Those theories of justice can be applied in the effort to make improvement of the international economic system toward the creation of fair and more legitimate international order. According to Frank J. Garcia and Lindita Ciko theories of justice can suggest alternative models and specific reforms to make international economic law more fair (and therefore more legitimate), and it is become a part of the mandate of international institutions such as the WTO to pursue goals of global justice.²⁹

The problems of poverty, gap in prosperity between the rich and the poor, imbalances in the international economic and trade relations, problem of development, are examples of the relation between international trade and fairness (justice). As Frank J. Garcia dan Lindita stated: "The relationship between poverty, inequality, development and trade is a paradigmatic example of the link between trade and justice. The distribution of social goods has always been a central concern in justice theory."³⁰

The WTO has obligation to overcome the problem of poverty, economic and development problems in the developing countries and LDCs members of the WTO. By applying proper theory of justice, the WTO will be able to overcome the problem of injustice and imbalances in international trade relations. The John Rawls theory of justice and the Pancasila justice concept should be applied by the WTO in the implementation of the provisions on special and differential treatments for developing countries and LDCs.

It can be said that the special and differential treatment for developing countries and LDCs members of the WTO is intended to make the international trade is conducted fairly. By giving the special and different treatments to the developing countries and LDCs, the justice principle will be able to be implemented in the international trade relations based on the WTO Law. By giving the special and differential treatment for developing countries and LDCs under the WTO Law, the gap in the economic prosperity between people of the developed countries and people of developing countries will be able to be reduced. This conditions is needed in the achievement of the WTO goals, especially to enhance the economic welfare through liberalization of the World trade.

In reality, the implementation of the WTO provisions on special and differential treatment for developing countries and LDCs, sometimes face some obstacles. Some developed countries are reluctant to implement the provisions on special and differential treatment for developing countries and LDCs, because the provisions are not binding in character. For instance, the GSP status of developing countries is given by the developed countries based on the voluntary obligation.

In the Doha Round of Negotiation, which was started in the year of 2000, the problems in implementing of the WTO provisions on the special and differential treatment for developing countries and LDCs had become topic of negotiation. One of the the results of the negotiation is "Doha Ministerial Declarations And Decisions on Implementation-related Issues and Concerns". Based on the Ministerial Declaration and Decision, the implementation of the WTO provisions on the special and differential treatment for developing countries and LDCs will be realized and some obstacles will be overcome.³¹ Considering the importance in the fulfillment of justice in the international and economic relations, the WTO provisions on special and differential treatment for developing countries and LDCs should be strengthened. The provisions have to be made binding in character, and completed with effective sanctions against any violation. In some cases, if there is a contradiction between the WTO provisions on special and differential treatment for developing countries and LDCs and onther provision of the WTO, the provisions on the special and differential treatment for developing countries and LDCs shall prevailed.

III. CONCLUSION

The Special and differential treatments for developing countries and LDCs members of the WTO are needed for protecting developing countries and LDCs in the free economic competition based on the free trade principle under the WTO Law. By giving some special and differential treatments, the liberalization of international trade under the WTO Law will not cause the developing countries and LDCs suffer of economic losses, but on the contrary, they will get some economic advantages.

Even though violate the WTO MFN (non-discrimination) principle, the provisions on special and differential treatment for developing country and LDC members of the WTO should be strengthened for achieving justice in the international trade relations under the WTO Law. Justice is the most important principle of law, including the WTO Law. Consequently, the implementation of the WTO non-discrimination principle cannot cause injustice in the international trade relations. Based on the John Rawls' and the Pancasila's theory of justice, the implementation of justice does not mean that every person shall be treated in the same ways. Different treatments is allowed to specific or certain person in a certain condition for the purpose of

²⁸ *Ibid.*

²⁹ See Garcia, Frank J. and Ciko, Lindita. (2011). *Theory of Justice and International Economic Law. Boston College Law School Paper*, 6.

³⁰ *Ibid.*, 7.

³¹ See [Http://www.wto.org](http://www.wto.org), DOHA WTO MINISTERIAL 2001: MINISTERIAL DECLARATIONS AND DECISIONS, WT/MIN(01)/17, 20 November 2001, Implementation-related issues and concerns, Decision of 14 November 2001, Akksesed 4 October 2018.

maintaining public interests and to protect the weak against the exploitation done by the stronger. For this reason, the obstacles in the implementation of the special and differential treatment for developing countries and LDCs members of the WTO shall be abolished. The provisions on special and differential treatment for developing countries and LDCs members of the WTO should be made binding in character, implementable and strengthened.

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