

Equality between Exports & Imports

By Noboru HATAKEYAMA

The second paragraph of the GATT Article XI allows export prohibitions or restrictions to be temporarily applied to prevent critical shortages of products essential to the exporting countries. All products are badly needed in times of critical shortages. During such periods, the WTO stipulates it will stand by exporters. But there is a problem with the above-mentioned paragraph, as follows. Let's assume that a country exporting a product essential to it was usually producing 100 every year, with domestic sales being 60 and exports 40. In a case where production declines to 70 from 100, the country can reduce exports to 10 from 40 while keeping domestic sales unchanged (60). This is an example of how an exporting country can impose a sacrifice on importing countries only. This is outright discrimination against importing countries.

In this regard, Article 315 of the NAFTA is impressive. Although it allows temporary export restrictions on essential products based on the second paragraph of the GATT Article XI, it is only on condition that the restriction does not reduce the proportion of the exported products compared to that prevailing over the previous 36-month period. Therefore, to use the example above, even when critical shortages of essential products have occurred, the exporting country cannot reduce its exports to such a low level as 10, but can do so up to the three-year average proportionate export level. Specifically, in this case, since the export proportion ratio was 40% and the declined production level was 70, the exporting country can reduce its exports to the level of 28 ($70 \times 40\%$) instead of 10.

The policy embodied in the NAFTA Article 315 shows that deep thought must have been given to respecting as much as possible the position of users or consumers of essential products in importing countries. Even when critical shortages of products essential to an exporting country occur, those products must also be essential to an importing country. In spite of this fact, if users or consumers in importing countries are treated in such a critical period as if they are second-class citizens while those in exporting countries are treated like first-class citizens, this would simply mean there is discrimination between the citizens of exporting and importing countries. Discrimination is precisely what is prohibited by the WTO. Therefore, it would have been desirable to amend

the GATT Article XI to make it equal or close to the NAFTA Article 315 in WTO negotiations that continued for almost 10 years up until April 2011 but which are currently halted. Such an amendment should therefore be made in FTA negotiations, and especially with regard to the TPP currently being negotiated by nine countries. The NAFTA Article 315 was introduced at the strong request of the US taking into consideration Canadian and Mexican energy exports. Ultimately Mexico did not accept this request, and so the NAFTA Article 315 applies only to the US and Canada. The US is said to be one of the fairest countries in trade policies. It would not reject what it requested of Canada 20 years ago when it negotiated the NAFTA. Japan should take advantage of the opportunity to propose this amendment when it joins the TPP negotiations. Such an amendment will be in the interest not only of Japan but also of the US, because among the nine negotiating countries there are many resource-rich nations such as Australia, Chile, Malaysia and Peru. If the amendment is achieved, outright discrimination against users or consumers will disappear at least in the Asia-Pacific area where the TPP will apply.

There is a view that even if such an amendment is realized, politicians in exporting countries, especially those exporting petroleum, natural gas, coal and mineral resources, will just ignore the amendment in the event of critical shortages of such resources and try to protect the interests of their own people. There are populist politicians all over the world, and there might be some who ignore international rules. However, the serious problem as of now is not that politicians do not comply with international rules but that no such international rules exist. Even if politicians stop exports entirely to regular importers for short periods of time due to a critical shortage of a product, it is legal not illegal in an international context. It is quite different for politicians to do something legally and to do the same thing knowing it to be illegal. By incorporating a similar rule to NAFTA Article 315 into FTAs, including the TPP, let us at least make such discrimination illegal. **JS**

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