

## REVIEW

### INTERPRETING WTO AGREEMENT: PROBLEMS AND PERSPECTIVES

by Asif H. Qureshi  
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Lin Zhang\*

It has been conventional wisdom that legal interpretation falls into the realm of scholastic jurisprudence. Thus, when the book was laid on my desk, my initial reaction would be both curiosity and doubt – as to whether a scholar of international economic law is likely to be professionally competent to contribute a monograph aiming at creating a theoretical framework, to address thoroughly and systematically current problems of interpreting WTO agreements, and substantially refining interpretations in this regard in the future? With this question in mind, I set out on my intellectual journey to critically analyze the book.

In the preface of the book, the author, Professor Asif H. Qureshi in the School of Law at Korea University, states: “... [and] interpretation is very much a part of implementation.”<sup>1</sup> This simple statement, without any rhetoric, embodies much of the significance of the research throughout the book. A Nobel laureate Professor Douglass North maintains: “Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.”<sup>2</sup> Obviously, WTO agreements are part of the institutions concerned by the North, entered into by sovereign states in the hopes of promoting free trade among themselves. Further, the life of this set of rules regulating trade games among the sovereign States lies in their implementation in practice. Otherwise, they are just black letters on paper.

Now that the implementation of WTO agreements is of great importance, we

\* Non-residence postdoctoral fellow in the School of Law at Shandong University and a full-time assistant professor in the Korea University School of Law. He may be contacted at [linzhang@korea.ac.kr](mailto:linzhang@korea.ac.kr)

<sup>1</sup> A. QURESHI, *INTERPRETING WTO AGREEMENTS: PROBLEMS AND PERSPECTIVES* xi (2d ed. 2015).

<sup>2</sup> D. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* 3 (1990).

must put emphasis on bounded rationality of human beings as it acts as a barrier against the implementation of any humanly devised rules. In this regard, another Nobel laureate Professor Herbert Simon precisely defines that “human behavior [that] is intendedly rational but only limitedly so.”<sup>3</sup> Bounded rationality in turn determines that WTO agreements, as the artifacts of sovereign States, are bound to be incomplete and consequently disturbed on a frequent basis by unanticipated contingencies which are more often referred to as being uncertain by economists. Uncertainty gives rise to the necessity for the parties of WTO agreements to cope up with these disturbances. Despite of cooperation making everyone concerned, better off in process of adaptation, each party as a rational ‘person’ still has the strong incentive to ‘hold up’ as many incremental gains as possible to his own part through opportunistic strategies.<sup>4</sup> As a result, bounded rationality, incompleteness of WTO agreements and opportunism as a whole, substantially increase transaction costs with regard to free trade among sovereign States by weakening implementation of WTO agreements. Meanwhile, it does also jeopardize the welfare of human beings, generated from trade liberalization in the global perspective. Under such circumstances, working out complementary mechanisms to efficiently redress the incompleteness of WTO agreements and enhance their implementation and adaptive efficiency finds its legitimacy. In this vein, it is beyond doubt that a well-conceived theoretical framework of interpretation for WTO agreements indeed takes up an important position in the portfolio of aforementioned complementary mechanisms. After recognizing this link, it is also fair to say that the research ensued in this book is academically and technically substantial.

As a scholar specializing in commercial law, I may not be the best person to judge the accuracy and sophistication of the detailed textual analysis of WTO agreements presented in the book. However, examining structural completeness of the theoretical framework of the interpretation of WTO agreements, which is proposed and constructed by this book, is indeed my area of interest and competence. As far as I am concerned, a structurally seamless framework in regard to interpretation of WTO agreements ought to be genetically composed of four requisite parts: parties of carrying out interpretation, targets subject to interpretation, guiding principles of interpretation, and ultimate pursuit of interpretation.

Reflected in the mirror of the normative template of quadruple parts, the structure of the theoretical framework created by this book is well-conceived and

<sup>3</sup> H. SIMON, *ADMINISTRATIVE BEHAVIOR* xxiv (2d ed. 1961).

<sup>4</sup> O. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 *J. L. & ECON.* 241-2 (1979).

therefore, complete, on the basis of the following compatibilities. Chapter 1 focuses on the guiding principles of treaty interpretation relied upon in the WTO. Chapters 2 and 3 discuss the institutional set-up of carrying out interpretation within the WTO dimension and the national dimension, respectively. Excluding Chapter 5, the aggregation ranging from Chapter 4 to Chapter 8 considers the interpretative issues that arise from exceptions of the WTO agreements, trade remedies agreements, regional trade agreements and attempts to take in account external concerns. Chapter 5 responds to the ultimate pursuit of interpretation through the constitutional dimension of equitable development between the North and the South.

Indeed, the promotion of globally equitable development relies on international law. On May 1, 1974, the UN General Assembly adopted Resolution 3201 (S-VI) titled, "Declaration on the Establishment of a New International Economic Order" which articulates the core tenets of achieving equitable growth between the North and the South. By scrutinizing these inspiring tenets, it is understood that the concept of the New International Economic Order could basically be divided into two tiers for developing countries: establishment of economic sovereignty; and achievement of distributive justice in world trade. In regard to the first tier on economic sovereignty or economic self-determination, it has been accomplished by the developing countries thus far to a very large degree by resorting to the adoption of a favorable binding international law, such as the UN General Assembly Resolution 1803 (XVII) on the "Permanent Sovereignty over Natural Resources" of December 14, 1962. Conversely, the second tier on distributive justice in world trade between the South and the North still lingers in rhetoric and political value rather than being fulfilled by viable mechanisms supplied by international law with binding force. As a result of the stagnation, developing countries have long been miserable by standing at the bottom of the value chain in the world trade while developed countries make tremendous fortunes by controlling the tip of the same value chain. The distributive injustice in the world trade between the North and the South has been exacerbated in the recent past, by so-called free trade mechanisms, such as the WTO, under the auspices of the neo-liberal international law. Realizing the inequitable situation in the order of the world trade, the efforts made by the author of the book in Chapter 5, to forge the concept of equitable development into the interpretative process of WTO agreements have earned my sincere admiration.

Finally, from my point of view, informed and curious readers may be interested in the cause of interpretation of WTO agreements when they see the title of this book. In this case, when preparing the third edition of the book in the future,

the author might wish to consider adding a new chapter explaining behavioral assumptions of human beings that have been identified by the discourse of law and economics as the cause of incompleteness of WTO agreements and thus the need to interpret them. This suggestion does not intent to propagate “imperialism of economics” in the legal research, but to reflect the scientific character of law.