

A Methodological Study of the Law Applicable to the Restriction of Competition — Reflection on the Methodology to Apply the Foreign Public Law (summary)

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The Supreme Court ruling on the international CRT cartel is the first case in which, based on the theory of effect, the Japanese courts have applied the antitrust law of Japan extraterritorially. It was assumed that the companies in Asian countries formed the component (CRT) cartel, and the parent companies in Japan purchased the finished products in which the overseas subsidiaries of them incorporated the target components of cartel. And the Supreme court said the effect of the competition restriction of that cartel occurred in Japan, though it was an administrative sanction the Supreme court judgment of Japan imposed. Under the same fact situation, the notable ruling of C.A. of the U.S. denied the application of the antitrust law, which was a civil case.

In many manufacturing industries, there is growing supply chain in Asian countries. If in developing countries the competition law is inadequate or they are reluctant to apply it, it is possible that the manufacturing subsidiaries of Japanese companies that have suffered damage by the component cartel will sue the companies participating the cartel for damages in Japan.

The applicability of the foreign competition law to the civil responsibility might be a problem from the 'public law' nature of that law. In the United States the antitrust law has only unilaterally applied, and the application of the foreign competition law has been denied. From the traditional doctrine of continental law, however, the governing law is forced to be chosen multilaterally because of the civil nature. Then, if there is a possibility to apply the foreign law for the civil responsibility, it is necessary to apply the competition law of the country to which the applicable law belongs, at least to assume the illegality of a certain act. Therefore, it is a central theme of this article whether the foreign competition law is applied under what condition and what theoretical framework. When the local competition law wants the application to the same fact situation as to which the foreign competition law is also applicable, the conflict of the policies and interests will arise between nations, and the solution is also necessary.