

隱藏版皇冠之珠：WTO 透明化機制之功能與改革願景

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摘要

依據 WTO 網站上的名詞解釋，「透明化」係指「貿易政策與實務、以及其建立的過程公開與具可預測性的程度」，有學者認為透明化與課責機制方為 WTO 皇冠上的真正珠寶，蓋透明化是 WTO 行政功能中至為關鍵的要素。當 WTO 的立法功能啟動並完成，產出 WTO 協定後，會員需加以執行方得實踐各相關協定的目標，此時，WTO 的行政功能即是透過要求會員遵守協定下之透明化義務來展現，經由 WTO 各相關機構提供一多邊的場域，供會員針對各類通知文件進行討論與檢討，搭配貿易政策審查機制的運作，使得 WTO 有足夠的資訊以及途徑來監督會員履行條約義務。若透明化義務的履行狀況良好，使得 WTO 的行政功能得以有效的發揮，或可降低會員訴諸爭端解決機制的機率，降低對 WTO 司法功能的依賴，此點在 WTO 司法功能現正面臨重大危機的狀況下，或可提高外界對於 WTO 此一國際組織存續的期待。總之，透明化實為 WTO 行政功能的重要基石，也於某種程度內影響了 WTO 的立法功能與司法功能，於近年來討論 WTO 改革的聲浪中，佔有相當重要的地位。本文首先將針對透明化機制於 WTO 下的展現，包括透明化規範所扮演的功能、定義與分類作一介紹，接著就會員於 WTO 各機構下，針對改善透明化規範的提案進行介紹與比較，最後簡要評析此波透明化改革提案的內容以及改革的願景。

關鍵字：透明化、WTO 改革、通知義務

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Abstract

Transparency is defined as: “Degree to which trade policies and practices, and the process by which they are established, are open and predictable”. Transparency and accountability are being regarded by some commentators as the “real crown jewels” under the WTO. Transparency is a crucial institutional underpinning in the administrative function of the WTO. When treaties are being negotiated and concluded as a result of the legislative function of the WTO, the administrative function kicks in to ensure Members’ subsequent implementation. Transparency provisions play an important role in this respect by providing a multilateral forum for Members to discuss and review notifications submitted by Members. Trade Policy Review Mechanism is a complementary tool to ensure that sufficient information is available for the organization to review Members’ compliance. Disputes might be avoided if WTO’s administrative function works well through Members’ full compliance with transparency obligations. In sum, transparency is the foundation of WTO’s administrative function, and indirectly impact the legislative and judicial function of the institution. No wonder the recent call for WTO reform has one important focus on how to improve the transparency mechanism. This article will first give an overview on the origin, function, definition and categorization of the transparency provisions under the WTO. Various proposals on transparency reform, including how to improve the compliance of notification obligation and the function of WTO bodies to deal with specific trade concerns, will then be introduced and reviewed. A preliminary analysis on the prospect of these reform proposals will be conducted in the end.

Keywords: transparency, WTO reform, notification obligations