

WTO 實體規範有關內國訴訟權保障之分析 ——兼評最高法院 109 年台上字第 1639 號刑事判決

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摘要

最高法院 109 年台上字第 1639 號刑事判決為今 (2021) 年我國刑事訴訟程序保障之重要判決，蓋其就營業秘密侵害案件，為外國法人創設現行法律並未賦予之刑事告訴權。但本案之所以值得國際貿易法學界關注，乃是本判決援引 TRIPS 協定之實體規定做為其得出前述結論之主要基礎之一。本文將分析我國援引 WTO 規範的實務運作並針對第 1639 號刑事判決進行評論，首先，本文將分析我國法院在個案適用 WTO 規範的情形，並探討第 1639 號刑事判決與過去實務運作不同之處；其次，本文將探究與第 1639 號刑事判決相關之 WTO 規範的內涵，及 WTO 規範之內國法直接效力相關討論；而基於前述分析成果，本文將針對第 1639 號刑事判決進行評論。最後，本文就現行法院對於 WTO 規範的實務運作，建議應該要重視 WTO 小組與上訴機構報告的指引、依照目前國際法上普遍接受的方法進行 WTO 規範的解釋、確保我國法官有正確適用 WTO 規範的能力，且相關判決必須顧及到我國在 WTO 爭端解決機制下享有的決策權限。

關鍵字：最高法院 109 年台上字第 1639 號刑事判決、WTO、WTO 規範之直接效力、DSU、TRIPS 協定、國民待遇、告訴權、智慧財產權、營業秘密

Abstract

In this year (2021), the Supreme Court of the Republic of China has issued a landmark ruling – Supreme Court Criminal Judgement Tai-Shan-Zi No. 1639 (2020) (Ruling No. 1639) – that granted foreign legal person the right to file a complaint in a Trade Secret dispute despite the fact that such a right does not exist in relevant

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contemporary rules. But this ruling is significant for the study of international trade law because the rules of the TRIPS Agreement is one of the key bases for which the Court relied upon. This Article will focus on the analysis of domestic court practice on applying WTO rules to disputes and the review of Ruling No. 1639. First, this Article will conduct an analysis on how ROC courts apply WTO rules in its rulings and identify why Ruling No. 1639 is different from past practices; then this Article will examine the relevant WTO rules and their direct effect, which will serve as the foundation for the review of Ruling No. 1639. Finally, regarding how to improve current court practice on the application of WTO rules, this Article suggests that the courts should seriously consult guidance provided by panel and Appellate Body reports, interpret WTO rules in accordance with generally accepted approaches in international law, ensure that the judges have the capacity to correctly apply WTO rules and that the courts must respect the policy space that our government enjoys under the WTO dispute settlement system.

Keywords: Supreme Court Criminal Judgement Tai-Shan-Zi No. 1639 (2020), WTO, Direct Effect of WTO Rules, DSU, TRIPS, National Treatment, Ordinary Criminal Complaint, Intellectual Property Rights, Trade Secret