

我國參與 WTO 爭端解決程序之實證研究

—以第三方參與為檢驗核心

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摘要

世界貿易組織 (World Trade Organization, WTO) 的爭端解決機制，被譽為皇冠上的珠寶。WTO 爭端解決機制不論是利用對案件之強制管轄權而節制會員以單方措施處理爭端，以至於層層爭端解決機制和所累積的眾多裁決先例，都是 WTO 能成為以規則為本 (rule based) 而穩定發展的重要因素。然而，爭端解決除了能消弭並促成會員間爭端的和平解決外，由於 WTO 會員能在爭端解決程序中就其權利義務進行論辯，甚至能對 WTO 法律之解釋適用表達立場，此除了可能影響個案裁決及法律適用，對 WTO 之政策或立場之形成亦具有重要意義。此外，程序中促進會員對 WTO 法律的認識及瞭解所帶來的助益，以及透過參與而培養實務經驗及國際貿易法律人才，均讓參與爭端解決被認為是 WTO 會員建構其法律能力之重要途徑。

為探討我國過去 20 年參與 WTO 爭端解決之狀況，並了解我國透過參與爭端解決程序的實質意義和收穫，以及對我國經貿法律及爭端解決人才培育之影響，本文將以實證之方式蒐集並分析我國過往 20 年參與爭端解決程序之紀錄。考量我國參與爭端解決之數據統計以及對我國立場文件的量化和質性分析，僅能反映我國參與爭端解決程序之現狀，而無法充分回答我國是否實現原先推動參與爭端解決程序欲達成之目標，因此在以質性分析充實對我國以第三方身分參與爭端解決程序之內涵前，本文就量化之敘述統計之結果將採取較保守之解釋，並將對我國未來之 WTO 爭端解決參與做出展望和建議。

關鍵字：第三方參與、爭端解決、實證研究、法律能力建構、世界貿易組織

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Abstract

WTO's dispute settlement mechanism (DSM) was hailed as the jewel of the Crown. With its compulsory jurisdiction, the WTO DSM could restrain members from settling trade disputes via unilateral measures. The rich jurisprudences accumulated over the years have also assisted the WTO in establishing and maintaining a rule-based DSM multilateral trade regime. WTO members other than the litigants are also allowed to participate in the proceeding by joining as third parties. Via third-party participation, the WTO enhanced the transparency of the dispute settlement procedures and broadened the debates over the interpretation and implementation of WTO law. More importantly, the third party status provides members with limited international litigation experience and capacity the opportunity to learn through actual participation.

With the objective to assess what Taiwan has gained through the past 20 years of WTO DSM participation as a third party, this article empirically examines Taiwan's third-party participation record since 2002. Through descriptive statistic data and assessment of opinions Taiwan submitted when participating as a third party, this paper evaluates the effect of Taiwan's participation, particularly on the legal capacity and experiences gained.

Keywords: Third party participation, dispute settlement, empirical study, legal capacity building, WTO