

## 臺灣入會 20 年參與 WTO 爭端解決制度運作之回顧與展望

楊培侃\*

### 摘要

世界貿易組織 (World Trade Organization, WTO) 之爭端解決制度被譽為該組織之「皇冠之珠」，雖然目前正面臨上訴機構運作之危機，但不可諱言地，該組織之爭端解決機制乃自其於 1995 年成立以來，足以為國際間稱道的制度。截至 2021 年底，經 WTO 會員通知爭端解決機構而立案的案件共有 607 件，唯並非所有案件均作成裁決，該制度鼓勵會員透過諮商尋求相互和解的方案。截至 2021 年底，前開請求諮商的 607 個案件中，已有 365 件爭議成立爭端解決小組（約占有所有案件的 60%），並作成 277 個爭端解決小組之裁決報告。其中，對 189 件小組裁決之爭議提出上訴（約占有所有小組裁決報告之 68%）。此外，自 2019 年 12 月以來，上訴機構因成員不足 3 名，無法正常運作，導致截至 2021 年 12 月，上訴機構尚有 21 個案件之上訴程序懸而未決。雖然如此，WTO 爭端解決制度之執行力與實效性，仍有目共睹，對國際貿易規範的發展產生深遠的影響。值此臺灣入會 20 年之際，本文擬回顧臺灣參與 WTO 爭端解決制度運作之紀錄與實績，探討臺灣在爭端解決制度中扮演的角色及獲得的經驗與成果，並展望未來可能作出的貢獻與強化改善之處。

我國自 2002 年入會至 2021 年底，曾以控訴方參與 7 件爭端解決案件，分別為「美國—特定進口鋼鐵防衛措施案」(DS274)、「印度—特定進口產品反傾銷措施案」(DS318)、「歐盟—資訊科技產品關稅待遇案」(DS377)、「加拿大—焊接碳鋼管反傾銷稅案」(DS482)、「印尼—特定鋼鐵防衛措施案」(DS490)、「印度—特定進口隨身碟反傾銷案」(DS498) 及「印度—資通訊產品案」(DS588)。其中「美國鋼鐵防衛措施案」、「印度進口產品反傾銷案」及「印度隨身碟反傾銷案」停留於諮商階段，未進入小組審議；「歐盟資訊科技產品案」及「加拿大焊接碳鋼管反傾銷案」業經爭端解決小組裁決，並經爭端解決機構採認小組報告，而「印尼鋼鐵防衛措施案」更經上訴機構作成裁決報告。至於「印度資通訊產品案」則處於小組階段。前開有經採認裁決報告之案件，雖有若干控訴主張未被採納，但大抵皆獲得正面的勝訴裁決。本文擬檢視此等控訴經驗，從案件提起之考量、案件程序之進行及案件結果之影響等層面，分析我國作為控訴方案件之意義。

---

\* 國立政治大學國際經營與貿易學系教授。

此外，除作為控訴方（我國尚無作為被控訴方之案件）外，我國積極以第三方的身份參與相關爭端解決案件，自 2002 年入會迄今，已參與 134 件爭端案件擔任第三方，包括美國鋼鐵防衛措施案、日本蘋果案、韓國造船補貼案、歐盟基因食品案、美國反傾銷措施落日審查程序案、中國稀土案、澳洲菸品素面包裝案、阿根廷影響貨品進口之措施案、歐盟大西洋鯪魚措施案等，透過第三方之參與，累積爭端解決實務的經驗。本文亦擬檢視此等以第三方身分參與之案件，分就是否成為第三方之考量因素、我國所出具第三方意見對最終裁決的影響或對雙方達成相互和解方案的影響等角度，探討我國以第三方身分參與爭端解決制度之貢獻與習得經驗。最後，本文擬附帶探討我國對爭端解決制度改革之建議，及透過專家參與之具體事例，從諮商談判與專家參與的角度探討我國對爭端解決機制之貢獻，並提出若干展望與建議。期能藉由此等回顧與展望，有助於我國未來能更妥適運用 WTO 爭端解決制度，以確保我國業者之貿易利益。

關鍵詞：WTO 入會、爭端解決制度、控訴方、第三方、諮商談判、貿易爭端

## Abstract

The dispute settlement system has been described as the “crown jewel” of the World Trade Organization. While the crisis of Appellate Body rendered the appellate proceeding inoperative, it cannot be denied that the WTO’s dispute settlement mechanism has been praised for its effectiveness in solving members’ trade disputes since 1995. As of the end of 2021, a total of 607 cases have been filed with the Dispute Settlement Body notified by WTO members, but not all cases have been adjudicated. The system encourages members to seek mutually agreed solutions through consultation. As of the end of 2021, of the 607 cases that have been requested for consultation, 365 disputes have established panels (about 60% of all cases), and in which 277 panels have delivered the reports. Of these, 189 panel reports were appealed (approximately 68% of all panel-decision reports). In addition, since December 2019, the Appellate Body has not been able to function properly because it has fewer than 3 members, resulting in 21 pending appeal proceedings in the Appellate Body as of December 2021. Even so, the WTO dispute settlement system is of significance in terms of the efficacy and effectiveness, and has a profound impact on the development of international trade norms. With Taiwan’s accession to the WTO for 20 years, this article aims to examine Taiwan's role in the dispute settlement system, and the experience and achievements obtained through the participation in the proceedings with a view to explore ways to contribute in the future.

Ever since the accession to the WTO in 2002 till the end of 2021, Taiwan has participated in seven dispute settlement cases as the complainant. Among them, three were in the consultation stage and not yet entered into the Panel’s proceeding. Two were adjudicated by the Panel and one was appealed to the Appellate Body, both of which were adopted by the DSB. While some of the claims were not accepted in the adopted reports, the results were ruled in favor of Taiwan. Based on these experiences, this article aims to examine the significance of Taiwan as the complaint in the proceedings from various policy perspectives such as considerations of filing a complaint, litigation strategies and implications of the rulings. Moreover, Taiwan has actively participated in many dispute settlement cases (134 in totals) as a third party whereas there is no case in which Taiwan was accused. As being a third party is a way to accumulate experiences in the dispute resolution, this article also examines these cases that Taiwan participated as the third party, and accesses the achievement made through the third-party participation from the policy perspectives such as the consideration of being a third party, the impact of Taiwan’s third party submissions on the final ruling or the impact on the mutually agreed solutions. Finally, this article will also discuss Taiwan’s proposals for the negotiation agenda of the DSU reform and the participation of experts

in the dispute settlement proceedings. Hopefully, such a thorough review of Taiwan's participation will assist Taiwan's government to make a better use of the WTO dispute settlement system in the future in order to protect the trade interests of Taiwan's companies.

Keywords: Accession to the WTO, dispute settlement system, complainant, third party, consultation and negotiation, trade dispute

