

貿易障礙調查程序之研究—以美歐中台之調查程序為例

黃珏*、張南薰**

摘要

貿易障礙調查制度係為協助本國企業在面對出口市場的貿易干擾及障礙時，為確認貿易障礙之內容及處理方式而設置之機制。若干國家設有法律明文規定之機制，提供企業或私部門得透過申訴及調查程序，掌握政府處理貿易障礙之進度，並透過資訊交流協助政府發現貿易障礙及做成決定，例如美國、歐盟及中國大陸等。亦有國家並未設有此類明文之制度，但仍會透過非正式之機制協助私部門處理貿易障礙，例如我國等。正式機制雖提供私部門啟動調查程序之申訴權利，並給予不同程度的程序參與機會，但其程序曠日費時且負擔過重等缺點，均顯示出此類制度在運用上之缺陷。然而由於貿易障礙種類之多樣化及新貿易協定之締結，均使得私部門之協力及其資訊之提供成為公部門在處理貿易障礙時不可或缺之一部分。本文內容即在探討如何從公私合作的角度促進貿易障礙之發現及處理。首先就目前已有法律明文規定之貿易障礙調查制度，例如美國的 301 條款、歐盟的貿易障礙規則及中國的貿易壁壘調查規則等三國之制度加以介紹並進行比較分析，藉此瞭解正式機制在運作上之問題及困境。其次探討我國非正式機制之運作方式並討論是否有必要以正式的貿易障礙調查程序協助企業解決貿易障礙。本研究之目的著重於貿易障礙調查機制之優缺點分析，並對本國的運作方式提供建議。

關鍵字：貿易障礙調查、公私合作、301 條款、歐盟貿易障礙規則、台灣貿易政策

* 英國牛津布魯克斯大學法學院副教授。

** 東吳大學國際經營與貿易學系副教授。

Abstract

This study focuses on the mechanisms through which businesses collaborate with governments to identify trade barriers. The comparative analysis examines the formal and informal mechanisms employed by the United States, the European Union, China, and Taiwan. The research aims to shed light on the strengths and weaknesses of these mechanisms and provide recommendations for Taiwan based on the findings.

The investigation begins by exploring the formal mechanisms in place in each jurisdiction. Formal mechanisms generally operate under clear legal foundations and procedures, offering a path that ensures procedural justice and predictability in investigating trade barriers. However, their establishment and operation require substantial resources, including manpower, finances, and time, which may burden administrative authorities. Conversely, the study also examines the informal mechanisms that rely on negotiation and cooperation between public and private sectors. These mechanisms emphasize communication and collaboration, allowing for flexibility in addressing various situations and providing faster and more convenient solutions. Nevertheless, the informal mechanisms may face challenges related to information asymmetry, inequality, and limited participation of affected parties.

Based on the analysis, it is recommended that Taiwan considers adopting a platform similar to the European Union's Market Access Database (MADB). This platform should facilitate convenient trade barrier investigation procedures, offer user-friendly formats such as drop-down menus and concise problem descriptions to expedite the process. These measures would enhance transparency, strengthen the legitimacy of trade policies, and foster social stability and trust between public and private sectors.

Keywords: trade barrier investigation, private-public partnership, Section 301, EU Trade Barrier Regulations, Taiwan trade policy