

韌性貿易與 WTO 例外規範——以我國離岸風電案為例

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摘 要

歐盟於 2024 年 7 月對我國離岸風電國產化措施提起 WTO 諮商，主張我國相關國產化要求違反我國於 WTO 下之國民待遇義務，該爭議固然於 2024 年 11 月暫告落幕，但就事後論的角度仍有檢討我國上開措施的 WTO 規範合致性的空間。特別是在近期地緣政治動盪與兩岸關係敏感的背景，我國正開始推動全社會防衛韌性政策，如何在符合 WTO 相關規範等國際經貿法之餘，平衡兼顧我國維持經貿韌性與經濟安全的需求，有必要更深入研究 WTO 相關規範與爭端解決實務如何回應國際近期興起的韌性貿易 (resilient trade) 主張。

本文將回顧 WTO 爭端解決中與經貿韌性有關的爭端實務，包括印度太陽能板案、歐盟能源套案以及土耳其藥品案，研究韌性貿易政策可能涉及的 WTO 協定義務與正當化空間。本文將著重針對 WTO 相關協定中的一般例外條款，包括公共秩序例外、公共衛生例外、內國法令遵循例外以及供給短缺例外，此外也將涵蓋安全例外條款，分析目前 WTO 爭端解決實務的解釋發展情形。經過歸納，本文指出公共秩序例外與內國法令遵循例外或許可在一定條件下作為正當化我國經貿韌性與經濟安全相關貿易措施的基礎，值得我國持續重視。

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本研究獲得世界貿易組織 (World Trade Organization, WTO) 的第三階段 WTO 講座計畫 (WTO Chair Programme, WCP (Phase III)) 支持，特此表示感謝。此外作者特別感謝國立臺灣大學法律學院沈忻儒與張挺華研究生提供的研究協助。作者的聯絡電子郵件為 alexypyang@ntu.edu.tw。政大商學院國際經貿組織暨法律研究中心

Resilient Trade and WTO's Exceptions: Taiwan's Offshore Wind Power Case as an Example

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Abstract

The European Union requested consultations under the World Trade Organization (“WTO”) regarding Taiwan’s local content requirement measures related to the offshore wind power industry, alleging that these measures were inconsistent with Taiwan’s national treatment obligations under the WTO. Although the consultation ended in November 2024, it reminded Taiwan to revisit the consistency of its measures with WTO rules. Especially in light of the recent geopolitical confrontation, cross-strait relations, and Taiwan’s recent initiation of the Societal Defensive Resilience Policy, the question of how to comply with Taiwan’s WTO obligations while balancing the need to maintain economic resilience and security has become a crucial topic. Therefore, more in-depth research is needed on how the WTO’s rules and dispute settlement respond to the emerging resilient trade practices.

In this paper, I review WTO dispute settlement cases related to economic resilience, including India-Solar Panels, EU-Energy Packages, and Turkey-Pharmaceutical Products, to examine the WTO obligations and justifications underlying resilient trade practices. I focus on the general exceptions under WTO agreements, including the public order exception, the public health exception, the domestic law or regulation compliance exception, and the shortage exception, as well as the security exception, and analyze the development of WTO jurisprudence and interpretation. Following the summary, I identify the public order exception and domestic law or regulation compliance as potential foundations to justify Taiwan’s resilient trade measures, pursuing economic resilience and security, and they deserve continued attention.

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