

# WTO「國家安全例外」規範下構成要件「實質審理」與 「自主判斷」的可能互動：以「司法謙抑原則」為基礎的 對話

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## 摘 要

WTO 的「國家安全例外」相關規範，是充滿爭議的條文。自 *Russia – Traffic in Transit* 一案小組報告第一次處理相關爭議，即可觀察到當前實務見解與以美國為代表的特定會員見解之間的明顯歧異，而且雙方見解差異目前看不出和緩可能。本文希望援引「司法謙抑原則」這個國際爭端解決程序法上原則，探討此原則在 WTO 架構下的適用可能性及因此所引進的不同觀察角度，為目前位處兩端且無交集的見解提供一個不一樣的思考方向，幫當前立場差異的調和做出貢獻。為此，本文會整理重點實務見解與美國主張，並基於司法謙抑原則探討其適用之可能性及條件，並同時對美國為代表的主張進行評析。

關鍵字：DSU、GATT、TRIPS、WTO、司法謙抑原則、爭端解決、國家安全例外

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## Abstract

The National Security Exception rules under the WTO is wrought with controversies. Since the first formal review of this rule in the Russia – Traffic in Transit Panel Report, a clear divergence can be observed between the legal view of panels and the position of certain WTO members in which the United States is its leading advocate. This Article will refer to the legal principle of “Judicial Deference” in international dispute settlement, review the possibility of its application in National Security Exception-related disputes and how it provides a different point of observation regarding the current legal divergence. It is the hope of this Article that some form of convergence of views can be facilitated through this review approach. To this end, this Article will provide a summary of key legal positions reflected in panel reports and US legal documents and presentation, review the possibility of relying on Judicial Deference in WTO dispute settlement and conditions for its application, and provide an alternative evaluation of US legal positions concerning the National Security Exception rules.

Keyword: Dispute Settlement, DSU, GATT, Judicial Deference, National Security Exception, TRIPS, WTO