

多邊架構下之爭端解決：論 WTO 爭端解決機制 及其對台灣之影響

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關鍵詞：

世界貿易組織、爭端解決制度、博奕理論、囚徒困境、規則導向、實力導向、美國貿易法 301 條款、片面措施、交叉報復、補償與暫停實施減讓

摘要：

本研究之目的在於建構一個理論分析架構，使 WTO 之爭端解決機制對於台灣之影響，能清楚呈現。國內外已有不少相關學術論著。本研究之重點乃在於引用博奕理論之囚徒困境原理、統計分析、與案例研究法，試圖由執行面分析 WTO 爭端解決制度。本文第一部份回顧評析過去 GATT 之爭端解決機制及執行狀況。第二部份討論 GATT/WTO 爭端解決機制之基本導向與定位問題。第三部份旨在解構爭端解決瞭解書第 3, 21, 22 及 23 條之規定，以及 WTO 就美國貿易法中之 301 條款所作之裁判報告，進而討論此爭端解決制度之效能。未來台灣與其他 WTO 會員在解決貿易爭端時，DSB 針對爭議事項所作成之建議或裁決是否能被有效地執行，是本部份討論之主軸。最後，本文探討國家主權觀念與以規則為導向的多邊國際組織所存在之潛在衝突，並質疑 WTO 對於如美國 301 條款等片面措施之實質上抑制效果。在評論爭端解決制度下交叉報復設計的問題之後，本文嘗試就我入會後，如何最有效地利用 WTO 爭端解決制度，提出建議。

Settling Disputes in a Multilateral Framework: The WTO Dispute Resolution Mechanism and Its Effect on Taiwan

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Key words:

WTO, Dispute Settlement System, Game Theory, Prisoner's dilemma, rule-oriented, power-oriented, the Section 301 of the U.S. Trade Act, Unilateralism, cross-retaliation, compensation and suspension of concession

Abstract:

The goal of this study is to construct an analytical framework to better understand the implications of the WTO dispute settlement regime for Taiwan. There have been a considerable number of scholarly examinations of the new WTO

dispute settlement system. This study, however, employs game theory/prisoner's dilemma, statistical analysis, and case study to analyze the system from the implementation perspective. The first part of this study reviews the weakness of the old GATT regime. The second part discusses the "metaphysics" of the GATT/WTO. The third part deconstructs articles 3, 21, 22, and 23 of the DSU, and discusses the DSU's constraint on the use of the Section 301 of the U.S. Trade Act, as well as the DSU's capability to implement a panel or Appellate Body decision. The final part explores the battle between national sovereignty and an effective multilateral trading system. This study concludes that cross-retaliation under the DSU is ineffective because it can only be the weapon of a country with sufficient market size and strength to harm the weak. In addition, the WTO panel ruling on the Section 301 is problematic. Based on the conclusions obtained, some strategic suggestions for Taiwan are presented at the end of this study.