

Chapter 7

WTO Dispute Settlement as a Model for International Governance



對外經濟貿易大學

I. 教学目的

1. 本文是一篇关于世界贸易组织争端解决机制的文章，具有很强的专业性。通过本文的学习，学生可对世界贸易组织争端解决体系、以及对WTO判决和补救措施的批评言论有所了解。
2. 在拓展了知识面的同时，学生通过本文可接触一下正式经济法律辞文的英语语言特点。
3. 通过补充新的文章进一步巩固、完善和扩展所学的知识内容以及学习更多的语言表达方法



II. 教学计划

拟使用六课时完成本课内容。主要分三个步骤：

1. 背景讲解
2. 课文讲解和难点讨论
3. 学生演示课后所搜集和整理的相关案例或针对某一观点阐述自己的看法。



III. 教学方法

将从课文理解入手，逐步引导学生消化知识和语言点并加以运用。采用以学生为中心的互动式教学法。



IV. 教学重点与要点

1. 专业知识内容

通过学习本文，学生可掌握简要的WTO争端解决程序、该程序的优缺点以及有关WTO补救措施的批评。作者认为WTO争端解决机制对于国际法的发展是极其重要的，具有强制性、决策程序快、并在国际公法范畴内解释WTO协议等优点。但也存在一些缺陷，如判决程序仍不公开、上诉受理机构在处理专家小组调查结果时偶尔表现出傲慢态度。但作者最担心的是WTO的制裁可能性这一点。作者强烈反对WTO授权的贸易制裁导致对WTO决定的高遵约率这一观点。WTO有责任最终消除制裁的可能性。



2. 语言内容

术语: DSM (Dispute Settlement Mechanism), DSB, DSU, WTO Secretariat, TPRM, ILO, panel, Appellate Body, amicus curiae, ITLOS, MEAs, TRIPS, trade sanction, trade reciprocity, trade retaliation, trade compensation, complaining government, defendant government

短语: be seized of, accrue to, at the behest of, draw in, in good faith, slip into, be committed to, for that matter, rule out, lodge a complaint, arise out of, as to, as opposed to, in contrast to, take no account of, in comparison to, predicate on



句子:

1. What lessons does the World Trade Organization dispute settlement mechanism hold ...? This is an important question to consider ... (141页第1-4行)
2. The reason why the WTO slips so easily into apparent self-mockery is that The WTO takes some account of the rights of private individuals, ...(147页第3段第1-3行)
3. The ability of the WTO to impose sanctions against a non-complying party has led to ... It is said that the WTO is powerful and effective because of ... This has led some politicians to want to ... (147页倒数第1段第1行至148页第2行)



V. 背景知识

1. The author - Steve Charnovitz

- Steve Charnovitz currently practices law at the firm of Wilmer, Cutler & Pickering.
- From 1995 to 1999, he was Director of the (GETS), which he helped to establish in 1994. GETS is centered at Yale University.
- He was a legislative assistant for trade and tax issues to House Speakers Jim Wright and Thomas Foley, and was an International Relations Officer at the U.S. Department of Labor.
- While there, his responsibilities included worker rights in trade negotiations and conducting an evaluation of a human resource development project in Saudi Arabia. Mr. Charnovitz has written extensively on trade, human rights, and environment in economic, legal, and environmental journals. His areas of expertise include trade law, environmental law, labor law.



2. WTO Dispute Settlement Mechanism

- The dispute settlement mechanism, which came into being with the World Trade Organization (WTO) in 1995, is one of the cornerstones of the Organization.
- It gives all 146 Members of the WTO confidence that the agreements negotiated and agreed will be respected. It does not impose new obligations, but it does enforce those already agreed.
- The rationale behind the Dispute Settlement Understanding (DSU) of the WTO is to provide Members with a clear legal framework for solving disputes which may arise in the course of implementing WTO agreements.



VI. 课文讲解

概念讲解

dispute settlement mechanism

complaining government

defendant government

trade compensation

trade retaliation

international tribunal

trade sanction

trade reciprocity

international law

争端解决机制

原告政府

被告政府

贸易赔偿

贸易报复

国际法庭

贸易制裁

贸易互惠

国际法



课文注释

1. What lessons does the World Trade Organization dispute settlement mechanism hold for the compliance systems of international environmental treaties? This is an important question to consider as analysts and policymakers make efforts to rationalize the architecture of global governance. (p.141)

参考译文:

世贸组织争端解决机制对国际环保条约的履约制度起什么样的借鉴作用呢？这是分析学家和决策者在努力使全球管理体系合理化时所要考虑的一个重要问题。



2. In recent years, the comparative institutional perspective has increasingly been applied on the international plane. (p. 141)

参考译文:

近年来, 在国际问题方面越来越趋向于运用比较研究分析方法。

3. The Dispute Settlement Body (DSB) is only seized of matters when a WTO Member government lodges a complaint about a dispute where the complaining government believes that benefits accruing to it are being impaired by the actions of another Member government.(p.141)

参考译文:

当一个WTO成员国政府就某一争端提出投诉而且该投诉政府认为其利益正受到另一个成员政府行为的伤害时, 争端解决机构才了解到事件。



4. The ability to settle disputes notwithstanding a continuing violation of WTO norms should be the first yellow flag to analysts considering the WTO system as a model for environmental governance. (p. 142)

参考译文：

在持续违反WTO规则的情况下解决争端应引起那些将WTO体系视为环境管理典范的分析家们的警觉和重视。



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5. Although the Appellate Body has created some space for the filing of amicus curiae briefs, in no instance so far has a panel or the Appellate Body acknowledged taking a brief into account that was submitted independently of a government's submission. (p.144)

参考译文：

尽管上诉受理机构对法庭之友的陈述留有归档余地，但迄今为止专家小组或上诉受理机构还从未承认他们曾考虑过政府以外提交的任何陈辞。



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6. The reason why the WTO slips so easily into apparent self-mockery is that the WTO has little commitment to free trade as a human right. The WTO takes some account of the rights of private individuals, but only their procedural rights. (p.147)

参考译文：

WTO如此容易陷入明显自相矛盾境地的原因在于WTO并没有把自由贸易当作一项人权那样去投入对待。WTO对个人的权利也做了些考虑，但只是考虑他们在程序上的权利。



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7. The ability of the WTO to impose sanctions against a non-complying party has led to “sanction-envy” by other regimes and various activists. It is said that the WTO is powerful and effective because of the sanctions, whereas other international organizations, like the ILO, are weak and toothless. This has led some politicians to want to move more issues into the WTO, such as labor standards. (p.148)

参考译文：

WTO可对未履约方实施制裁引起了其他体系和各派激进分子的妒忌。人们说WTO的强大和有效是因为制裁的缘故，而其他如国际劳工组织那样的国际性组织软弱而又无影响力。这就使得某些政治家想把更多的问题纳入WTO范围，例如劳工标准。



VII. 作业

1. 阅读补充时文
2. 课本159页-163页的练习题

