张学森　G·D·派特森　编著

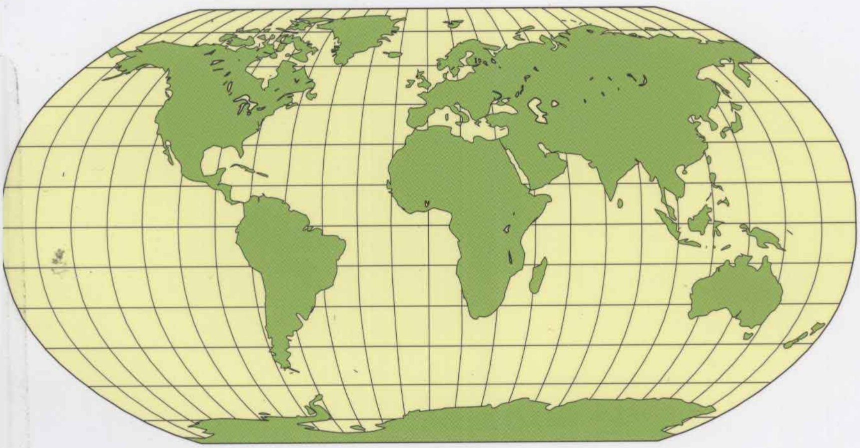
Xuesen Zhang, Gary D. Patterson

WTO法律规则

（英文版）

Legal Rules of the World Trade Organization

(English Version)



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前　　言

(Foreword)

世界贸易组织(World Trade Organization, WTO)是当今世界最重要的政府间国际经济组织之一,与国际货币基金组织(IMF)和世界银行集团(World Bank Group)一起,构成了当代协调世界经济的三大支柱。相比而言,由于WTO在国际经济关系上协调的范围更广、影响力更大,而且具有不断向新领域拓展的职能,因而被誉为“世界经济领域的联合国”。中国作为WTO的正式成员,既要享受应有权利,充分利用半个多世纪以来以GATT/WTO为核心形成的多边贸易体制和贸易自由化的优秀成果,参与世界市场经济全球化的发展进程;又要承担相应义务,切实履行我国政府在入世谈判中的对外承诺,恪守WTO的基本规则和各项协定。因此,研究WTO有关规则、学习WTO专业知识、掌握WTO基本理念、培养WTO专业人才,成为摆在我们面前的一个长期的重要任务。

正是在这样的背景下,近年来,世界贸易组织(WTO)及其法律规则成为我国高等院校若干专业竞相开设的课程,而且,在国际法学、国际经济与贸易、商务英语等专业中,WTO及其法律规则的课程往往作为双语课程开设,纷纷进行双语课程建设。这就迫切需要一本有关WTO及其法律规则的双语教材,但要编写出一本好的教材是一项艰巨的任务。几年之前,在我国刚刚入世之际,笔者曾主编出版过作为国内第一部WTO英文读物的《WTO英文选读》(与刘光溪博士合作),一度被不少院校选作教材,而事实上该书并不是一本教材,也难以满足各方对教材的需要。曾拟改版为教材,但始终未能动笔。上海作为我国的经济中心城市,正在根据国家战略致力于国际经济、金融、贸易、航运等四个中心建设;上海市非常重视国际经济贸易专业高级人才的培养,把外贸经济本科教育列为上海市十大教育高地之一进行建设,而《WTO规则与运作》即是这一高地建设中的标志性教材之一,遂有今日之本书,名《WTO法律规则(英文版)》(Legal Rules of the World Trade Organization)。

笔者领受《WTO法律规则》双语教材的编撰任务之后,经过一定的准备工

作,即展开了具体的编写工作。而且,在 2007 年 9 月至 12 月期间,作为国家留学基金委和上海金融学院联合资助的访问学者,笔者赴美学习考察了美国高校的金融法、国际商法以及 WTO 法律规则的教学研究情况,在位于洛杉矶地区的美国圣伯纳迪诺加州州立大学(California State University at San Bernardino,CSUSB)等高校进行了近四个月的学习交流。特别是,CSUSB 及 UC Riverside 的法律博士 Gary D. Patterson① 教授是本领域的知名专家,经过多次交流、研讨,我邀请他参加了本书体系的研讨和部分内容的编撰。于是,在本人原来已有工作的基础上,我与 Gary D. Patterson 博士合作完成了这本《WTO 法律规则(英文版)》(Legal Rules of the World Trade Organization)双语教材的编著工作。

本教材主要是根据高等院校国际经济与贸易专业《WTO 法律规则》双语课程教学的要求而编写,兼顾了法学专业、商务英语、国际金融等专业相关课程教学的需要,同时也可以作为社会各界,特别是与 WTO 业务相关或对 WTO 业务感兴趣的专业人士,训练使用英语研究 WTO 有关法律文件,阅读 WTO 英文原著文章,用英文处理 WTO 实际问题的精读材料;可以作为 WTO 各类专业人才系列培训、研讨活动的教材或参考资料,以及 WTO 法律英语爱好者的自学教材。本书在内容体系上,既考虑了世界贸易组织(WTO)概论课程的特点,又努力满足 WTO 法律规则与实务课程的需要,试图找到介绍 WTO 概况与探讨其法律制度的某种平衡,因此是一个探讨和尝试。本书的编写得到了华东政法大学、复旦大学、上海外国语大学、上海财经大学、上海外贸学院、上海金融学院等高校、研究机构的专家学者的大力支持,在此表示衷心感谢。

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① Gary D. Patterson, Professor, California State University at San Bernardino; Adjunct Professor at University of California at Riverside. Prof. Patterson got his J. D. from Western State University College of Law, Fullerton; M. A., California State University at Fresno, Economics; B. A., California State University at Fresno, Economics and Political Science. Dr. Patterson teaches classes in law and economics, has a number of publications in law, primarily international law and international economics. Prof. Patterson has developed classes in international law, discrimination law, intellectual property, environmental law and sports law at both California State University at San Bernardino and the University of California at Riverside. Dr. Patterson has also provided professional consultation to a number of firms importing goods into the United States and also has been hired as an expert witness on the matter of importation.

同时，在本书编写过程中，我们参考了大量的国内外中英文的论著、教材等学术文献，以及 WTO 官方网站的公开资讯，鉴于本书教材性质，引注或者挂一漏万，在此向广大专家学者表示衷心感谢。

由于水平有限，时间仓促，不足甚至错讹之处在所难免，真诚欢迎批评指正，不吝赐教。电子邮箱：zhangxs@shfc.edu.cn 或 drzxs@yahoo.cn 或 cnzxs@xinhuanet.com。

张学森
Dr. Xuesen ZHANG
2008 年 5 月于上海浦东花木

Contents

Chapter One

Theoretical Basis of the WTO

*Nobel laureate Paul Samuelson (1969) was once challenged by the mathematician Stanislaw Ulam to "name me one proposition in all of the social sciences which is both true and non-trivial". It was several years later than he thought of the correct response: comparative advantage. "That it is logically true need not be argued before a mathematician; that it is not trivial is attested by the thousands of important and intelligent men who have never been able to grasp the doctrine for themselves or to believe it after it was explained to them"*①.

1.1 The Theory of Comparative Advantage

1.1.1 Basics of the Theory

Comparative advantage is said to be the single most powerful insight into economics. "What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country, being always in proportion to the capital which employs it, will not thereby be diminished ... but only left to find out the way in which it can be employed with the greatest

① P. A. Samuelson (1969), "The Way of an Economist" in P. A. Samuelson, ed., *International Economic Relations: Proceedings of the Third Congress of the International Economic Association*, Macmillan: London, pp. 1-11.

advantage."①

What did David Ricardo mean when he coined the term comparative advantage? According to the principle of comparative advantage, the gains from trade follow from allowing an economy to specialize. If a country is relatively better at making wine than wool, it makes sense to put more resources into wine, and to export some of the wine to pay for imports of wool. This is even true if that country is the world's best wool producer, since the country will have more of both wool and wine than it would have without trade. A country does not have to be best at anything to gain from trade. The gains follow from specializing in those activities which, at world prices, the country is relatively better at, even though it may not have an absolute advantage in them. Because it is relative advantage that matters, it is meaningless to say a country has a comparative advantage in nothing. The term is one of the most misunderstood ideas in economics, and is often wrongly assumed to mean an absolute advantage compared with other countries②.

Suppose country A is better than country B at making automobiles, and country B is better than country A at making bread. It is obvious (the academics would say "trivial") that both would benefit if A specialized in automobiles, B specialized in bread and they traded their products. That is a case of absolute advantage.

But what if a country is bad at making everything? Will trade drive all producers out of business? The answer, according to Ricardo, is no. The reason is the principle of comparative advantage. It says, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country

① Adam Smith, *The Wealth of Nations*, Book Ⅳ:2, Modern Library edition. p. 12.

② Refer to http://www.wto.org/english/res_e/reser_e/cadv_e.html. Last visited on May 8, 2008.

does not have to be best at anything to gain from trade. That is comparative advantage.

The theory dates back to classical economist David Ricardo. It is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage. It is often claimed, for example, that some countries have no comparative advantage in anything. That is virtually impossible. Comparative advantage exists when a country has a margin of superiority in the production of a good or service i.e. where the opportunity cost of production is lower.

The basic theory of comparative advantage was developed by David Ricardo. Ricardo's theory of comparative advantage was further developed by Heckscher, Ohlin and Samuelson who argued that countries have different factor endowments of labour, land and capital inputs. Countries will specialize in and export those products which use intensively the factors of production which they are most endowed. If each country specializes in those goods and services where they have an advantage, then total output and economic welfare can be increased (under certain assumptions). This is true even if one nation has an absolute advantage over another country.

1.1.2 Historical Overview

The theory of comparative advantage is perhaps the most important concept in international trade theory. It is also one of the most commonly misunderstood principles. There is a popular story told amongst economists that once when an economics skeptic asked Paul Samuelson (a Nobel laureate in economics) to provide a meaningful and non-trivial result from the economics discipline, Samuelson quickly responded with, "comparative advantage".

The early logic that free trade could be advantageous for countries was based on the concept of absolute advantages in production. Adam Smith wrote in *The Wealth of Nations*, "If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage."

The idea here is simple and intuitive. If our country can produce some set of goods at a lower cost than a foreign country, and if the foreign country can produce