世界貿易組織與歐洲聯盟

李貴英 著

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風起雲湧的國際經貿局勢

數年前，有一次到政大與恩師黃立教授閒聊，承蒙恩師教誨，指點我可朝向世貿組織與歐盟方面的政策與法律問題進行研究，並將兩者結合。之後我就一直把這個研究方向放在心上，閱讀一些相關的專書、專文，靜靜的思考一些特定議題，也陸續發表過幾篇不成熟的文章。一段時間之後，想想不如就循此一脈絡出版一本專書。

WTO與歐盟兩者間的互動關係，錯綜複雜。全球貿易自由化的目標，與區域整合的目標，常被視為扞格不入，如何進行調和，並非易事。多邊經貿規則的制定與遵守，爭端解決機制的運作，尤其凸顯兩者之間的矛盾與衝突。在WTO架構下，歐盟與其他會員，包括已開發國家與開發中國家，如何折衝樽俎，也是十分有趣的現象。風起雲湧的國際經貿局勢，提供給學者不少絕佳的研究題材，而在深入思考與寫作的同時，也是學者持續學習與成長的契機。撰寫本書期間，因有學校行政工作在身，故延宕不少時日，但終能完成，還是十分欣悅。作者深知個人資質駑鈍，學力有限，面對許多原始資料素材與專家先進之精闢論述，個人所譯、所解、所悟與所論，難免有所謬誤與舛錯之處，尚祈賢達先進與讀者惠予斧正。

撰寫期間，承蒙家母之鼓勵，方得完成，感恩之情實非文字所能形容。同時也謹此感謝黃立教授，承蒙恩師的指導，本書方得問世。此外，東吳大學提供極佳的研究環境，東吳法律研究所研究生世璋、孟君投入本書校對工作，為作者分憂解勞，亦在此一併致謝。最後本書之出版承蒙元照出版公司的大力協助，使本書順利付梓，亦謹此表達由衷謝忱。

李貴英

2008年春季於東吳法學院研究室

目　錄

風起雲湧的國際經貿局勢

第一章

緒　論

世界貿易組織（World Trade Organization, WTO）於1995年1月1日成立迄今十年有餘，無論在政治上或法律上均引起熱烈討論。尤其是杜哈回合（Doha Round）展開後，格外凸顯已開發國家與開發中國家間之利益衝突。WTO號稱「經貿聯合國」，位居規範全球經貿問題之樞紐地位，建立商品貿易、服務業貿易，以及與貿易有關之智慧財產權等層面之多邊架構，且其爭端解決機制之運作，更爲各國矚目之焦點。

對於WTO的觀察，可由時間與空間兩個層面切入。在時間上，WTO承繼了第二次世界大戰後誕生之1947年關稅暨貿易總協定（General Agreement on Tariffs and Trade, GATT）所形成之多邊架構與制度運作，並進一步擴大貿易規範與議題之範疇。在空間上，WTO與其他眾多的國際組織並存，包括全球性及區域性組織，其中之一即爲歐洲聯盟（European Union, EU）。而回顧歐盟的歷史，亦可溯及第二次世界大戰後50年代歐洲共同體（European Communities）之成立，爲現今歐盟之發展奠定初始之基石。

本書內容探討WTO與歐盟之互動，以及兩者間錯綜複雜的關係。GATT/WTO體系植基於自由貿易、不歧視，以及互惠等原則上，而歐盟之目標則首重歐洲區域整合，是以未必提供非會員國同等待遇。調和全球貿易自由化與區域整合之目標並非易事，縱使GATT第XXIV條訂定區域貿易協定之例外，亦未必能完全解決

相關問題，例如歐盟所採取之貿易優惠措施即引起WTO關切。除了WTO與歐盟兩者所秉持之原則與規範是否相符一致的問題以外，兩者間之制度性關係亦爲重點，例如歐盟在持續擴張其貿易方面權限的過程中，如何參與WTO事務之運作及其影響，亦爲值得研究之議題。

GATT/WTO體系下之多邊貿易規則，在歐盟內部法律體系中所占有之地位，反映出全球化與區域主義之衝突。原則上，不僅GATT/WTO多邊貿易規則在歐盟內部欠缺直接效力，WTO爭端解決報告亦復如此。分析歐盟所秉持之立場時，若僅就法律層面予以評估有欠周延，尚應一併考量政策層面之意涵。質言之，歐盟若承認GATT/WTO規則及爭端解決報告具有直接效力，可能導致許多歐盟內部規則遭受質疑，造成其內部機構處理貿易事務之困難。本於尋求內部凝聚與團結之目標，並進一步促成歐洲整合，故其否定GATT/WTO協定及爭端解決報告具有直接效力。然而歐盟之立場，似乎不無可議之處。根據建立WTO之協定第XVI條第4項規定，各會員應確保其法律、規則與行政程序符合其於協定下所應負之義務。基此，歐盟雖以區域整合爲目標，但仍應確實履行其於國際協定下之義務，包括WTO協定在內。而確實履行WTO爭端解決報告之裁決與建議，亦應不在話下。除本章緒論外，本書擬於第二章與第三章分別就該等問題予以探討。

在GATT/WTO體系之下，歐盟與開發中國家以及已開發國家間之互動，亦倍受關注。如何鼓勵開發中國家參與並融入GATT/WTO體系，乃是WTO與許多WTO會員關切之焦點。隨著WTO會員數目日益增加，開發中國家所扮演之角色逐漸受到重視，如何處理該等國家之特殊需求及問題，亦應予以考量。GATT/WTO對於促進開發中國家經濟發展及其權益之貢獻一向不遺餘力，不僅確立已開發國家對開發中國家提供關稅優惠待遇之法律基礎，同時針對開發中國家訂定許多彈性規定，以協助該等

國家執行WTO相關協定及其所爲之承諾。一如許多已開發國家，歐盟對於來自開發中國家之產品，實施若干特殊之貿易方案。該等方案藉由降低開發中國家輸歐產品之關稅降低或免稅待遇，以促進開發中國家之經濟發展。在這些特殊貿易方案當中，最重要者首推普遍化優惠制度。此外，根據歐洲共同體條約之相關規定，歐洲共同體並與若干開發中國家締結公約及協定，作爲對開發中國家實施特殊優惠措施之基礎。其中最完備者即爲歐洲共同體與非洲、加勒比海，與太平洋國家所簽定之各項公約及夥伴協定。由於歐盟對開發中國家實施貿易優惠措施之經驗，頗多值得研究與借鏡之處，故本書擬於第四章就此一主題進行分析。而歐體所實施之普遍化優惠方案，曾在WTO架構下進行爭端解決。關於該案之分析，本書第五章將予詳細論述。

至於在已開發國家當中，美歐可謂WTO兩大政經實力雄厚之會員，兩者在全球雙邊貿易關係上首屈一指，動靜倍受觀瞻。然而近年來多起美歐相互報復案例出現，被喻爲一場「跨大西洋貿易戰爭」（Transatlantic trade war）。在若干案例中，藉由貿易報復來達成執行WTO爭端解決報告之作法，事實證明並不有效。乍看之下，美歐雙方勢均力敵，在執行問題上相互角力，凸顯出貿易自由化的利益，似乎被更爲強而有力的保護主義利益所邊緣化。然而該等爭端背後所隱藏的其他政策考量，亦不應輕忽。若干爭端並不僅侷限於貿易問題，同時涉及WTO會員爲了追求公共健康、公共福祉與執行對外政策所採取之措施，故此使得執行問題更爲複雜。本書擬於第六章就相關問題予以析述。

近年來歐盟推動整合之努力有目共睹，歐洲憲法條約（Treaty Establishing a Constitution for Europe）之問世尤具代表性。該條約針對共同商業政策（Common Commercial Policy）予以革新，重新界定共同商業政策之概念與範圍，以盡可能順應國際貿易體系之轉變。觀諸歐盟對外行動之相關規定，將所有層面之行動整編

於單一篇章之中，共同商業政策即爲其中之一環。根據歐洲憲法條約第Ⅲ-315條之新規定，歐洲聯盟未來對外簽署有關服務貿易、與貿易相關之智慧財產權，以及外人直接投資方面之協定，將擁有專屬權限。此一變革對其參與WTO事務之運作影響甚鉅，本書擬於第七章就此一新發展予以介紹。本書卷尾則就上述各章之研究內容作一總結。

由於WTO與歐盟之互動層面包羅萬象，因此本書僅選擇若干重要議題進行探討。事實上相關之專書論著、期刊論文、電子資料庫、網路資訊，以及案件彙編之各種文檔，均屬繁篇浩帙。在研究素材之資料蒐集方面，作者盡可能滿足完整性、時效性，以及客觀性之要求。在研究方法上，則主要採取實證分析研究法以及案例分析研究法。藉由這兩種研究方法，可進一步瞭解目前GATT/WTO多邊貿易規則，以及歐盟相關條約與內部法規、案例所揭示之原則，同時觀察實際執行與實踐狀況，以及有關爭端解決相關問題之發展趨勢。

學海浩瀚，而WTO與歐盟之相關問題錯綜複雜，不易一窺究竟。作者深知個人資質駑鈍，學力有限，面對許多原始資料素材與專家先進之精闢論述，個人所譯、所解、所悟與所論，難免有所謬誤與舛錯之處，尚祈賢達先進與讀者惠予斧正。

第二章

The Direct Effect of the GATT/WTO Agreements in the European Community Legal System

—The Position of the Court of Justice of the European Communities and the Court of First Instance

I. INTRODUCTION

The legal effect and implementation of international agreements in domestic legal systems give rise to many observations about the basic concepts of monism and dualism. The debate on those concepts is often conducted in terms of the force of international law, depending on constitutional and other municipal rules. In fact, the questions of the direct effect of international agreements on domestic legal systems and the hierarchical status of the norms so applied are extraordinarily complex and vary from country to country. The various answers to these questions can have enormous impact on domestic courts' decisions as to whether and to what extent an international agreement has direct applicability or a self-executing effect, so that a particular individual can invoke its provisions.

The situation in the European Union is more difficult to sketch than that of many other countries. The EC has long struggled with these problems in two tiers: application of Community law (the basic treaties, secondary law, etc.) within the Member States, and the application of external treaties concluded between the Community and third countries within the Community legal order. While the term "direct effect" is not found in any of the EC Treaties, the Court of Justice of the European Communities (hereinafter the European Court of Justice, ECJ or the Court) has ruled on a number of cases and developed the principle of direct effectiveness of Community law. The Court has also held that international agreements form part of the EC legal system and that, in some cases, they may be invoked by individuals in Member State courts, just as provisions of the EC Treaties may be invoked by their nationals before national courts and tribunals. However, the "GATT case-law" of the Court contrasts sharply with its position regarding other international agreements. In a number of cases, the Court adhered to the position that GATT 1947 did not have direct effect. In spite of the transformation brought about into the GATT/WTO system by the Uruguay Round Agreements, the Court continues to stick to its position opposing the direct effect to the WTO Agreements.

This article tries to make a small contribution to the debate on the direct effect of GATT/WTO rules within the Community legal order. It examines the approach of the Court with regard to the direct effect of Community law, the direct effect of international agreements, and the direct effect of GATT/WTO rules. For this purpose, Section II provides a brief review of the development of the concept of direct effect in EC law, and the arguments traditionally put forward by the Court in granting the direct effect to international

agreements. In Section III, it analyzes the Court's previous GATT case-law and methodology, as well as recent judgments relating to GATT/WTO rules, in which the Court concluded that direct effect should not be granted. Section IV explores some of the policy considerations relating to the judicial doctrine of the Court. The final section of this article provides the concluding remarks.

II. The Rationale of the Court for Developing the Notion of Direct Effect

In order to reply to the question on the direct effect of international agreements under EC law, it is necessary to analyze the concept of direct effect in EC Law. This section begins with an examination of the status of the EC treaties within the Member States. It then looks at the jurisprudence of the Court on the direct effect of international agreements generally. In this regard, the Court takes an approach towards the direct effect of international agreements which is different from that taken towards the direct effect of Community law.

1. The Notion of Direct Effect in EC Law

One of the most interesting questions presented by the European Union is the force of EC law in the Member States. The direct application of the basic treaties is only one of a series of legal/constitutional issues relating to EC law and national legal systems. This sub-section confines itself to an examination of the direct effect of the basic treaties, and does not deal with the status of other EC acts within the Member States.

The question of the direct effect of the EC treaty was first considered by the Court in *Van Gend & Loos v. Nederlandse Administratie der Belastingen*[1]. In this particular case, the issue was whether *ex* Article 12 of the EEC Treaty had direct effects within the territory of a Member State. With regard to treaty interpretation, the Court stated that[2]:

"To ascertain whether the provisions of an international treaty extend so far in their effects it is necessary to consider the spirit, the general scheme and the wording of those provisions.

The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but also to peoples. It is also confirmed more specially by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens."

The Court held that the Member States have acknowledged that Community law could be invoked by their nationals before national courts and tribunals, and stated that[3]:

"The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within

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1 Case 26/62, *Van Gend & Loos v. Nederlandse Administratie der Belastingen*, [1963] ECR 1.

2 *Ibid.*, at 3.

3 *Ibid.*

limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community."

It set forth the Court's classic formulation of the nature of the EC and gave the Court great power and discretion since a new legal order may require the Court to formulate new legal principles and rules. According to the spirit, the general scheme and the wording of the Treaty, the Court concluded that *ex* Article 12, which contained a clear and unconditional prohibition of tariff increases of any kind, must be interpreted as producing direct effects and creating individual rights which national courts must protect.

The reasoning was applied in subsequent case-law on the direct effect of the EC Treaties. However, the granting of direct effect to a particular provision is subject to some conditions. First, the provision in question must be clear, precise and complete. Second, the provision in question cannot contain any reservation subject its application to a provision of national law. Third, the provision in question must be legally perfect and creates rights and obligations on individuals without depending on measures subsequently taken by Community institutions or Member States. Fourth, the provision in