

摘要

貿易與環境的相互關係在過去十年裡一直是個高度爭論的問題。從法律的角度觀察，大部份的爭議在於使用貿易措施以促使別國遵行特定環境標準的合法性。在實踐上，在關稅暨貿易總協定時代處理過的兩個鮪魚與海豚案例是所謂的「過程與生產」措施，亦即禁止生產過程將導致環境損害的產品進口；而美國不滿台灣在野生動物的保育成效，而對台灣所實施的培利貿易制裁則代表以單邊的貿易禁運達到環保目的，換言之，即以環境本身並不相關的產品為禁運對象。由於我國當時並非關稅暨貿易總協定之締約國，該制裁並未違反此協定義務。惟二者潛在的衝突，仍是個重要的議題。在台灣加入世貿組織即將實現之際，更有必要預估此組織對類似培利貿易手段可能持守的立場。因此，本文將針對上該培利制裁作一假設性的案例研究，並特別以最近世貿組織蝦與海龜案的判決為本，因為該案與前述的鮪魚與海豚判例相較，已顯示對特定「過程與生產」措施的容忍態度。經過評估後，發覺儘管世貿組織已大體意識到保護環境的重要，培利式的貿易措施仍須通過相當的考驗才能被認係合法。

Abstract

Trade and the Environment: *the hypothetical study on the legality of the Pelly environmental sanctions against Taiwan in the light of the WTO/GATT jurisprudence over environmental measures*

The interrelationship between trade and the environment has been arousing a high degree of heated debate during the last decade. In the recent WTO meeting in Seattle, USA in late 1999, the tension between the two sides has been further highlighted by the huge protest of anti-trade environmental groups. In the legal sense, much of the controversy focuses on the legality of using trade measure in forcing compliance with certain environmental standards, irrespective of national or international ones. Also, the GATT and its successor, the WTO, has become a central international regime to deal with the dispute resulted from the imposition of such trade-related environmental measures. The two *Tuna/Dolphin* cases in GATT/WTO is a typical model of a Process and Production Measures (PPMs)—the imports ban on the products whose production and process may injury the environment. Similarly, the 1994-1996 US Pelly sanctions against Taiwan's insufficient effort in protecting endangered species represented an unprecedented unilateral use of trade embargo to achieve environmental purpose, which normally targeted on unrelated products. Indeed, the trade sanctions did not violate the GATT because of the non-GATT contracting party of Taiwan then. Nevertheless, the potential conflict between the WTO norms and the

measure remains an important issue. As Taiwan's accession to the WTO will become a reality in the near future, it is essential for the country to anticipate the possible position of the trade regime towards the use of environmental trade ban, such as the practice of the Pelly sanctions. Thus, the article will conduct a hypothetic analysis of the Pelly sanctions against Taiwan, especially by referring to the recent WTO *Shrimp/Turtle* decision, which substantially demonstrated, in contrast to previous non-binding *Tuna* cases, the regime's tolerance to certain PPMs. It is found that the Pelly sanctions may have met some hurdles to be justified, although the WTO has sensed the significance of protecting environment.

Keywords: The Pelly amendment, trade sanctions, CITES, endangered species, GATT, WTO, general exceptions, sufficient nexus, unjustifiable discrimination, arbitrary discrimination.

關鍵字： 培利修正案、貿易制裁、華盛頓公約、瀕臨滅絕物種、關稅暨貿易總協定、世界貿易組織、一般例外條款、足夠之聯結、不公正歧視、獨斷歧視。