

欧美世贸组织法研究英文文献概览

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[摘 要] 世界贸易组织 WTO 研究是 1995 年以来世界社会科学界关注的一个新兴领域。就英文文献资料来看, 研究 WTO 的文献主要来自欧美等西方国家。其中法学方面的出版物最多, 并已初步形成了由基本文件、工具书、教科书、系列著作等组成的 WTO 法学研究文献体系。就研究热点和重点而言, WTO 争端解决机制是欧美 WTO 研究中的热点, 而 WTO 及其多边贸易体制的基础理论问题是欧美 WTO 研究中的重点。

[关键词] 世界贸易组织; 世贸组织法; 欧美 WTO 研究

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世界贸易组织(the World Trade Organization), 简称 WTO, 1995 年 1 月 1 日根据《马拉喀什建立世界贸易组织协定》创立, 总部设在瑞士日内瓦, 现有 149 个成员, 设有部长级会议、总理事会、部门性理事会、争端解决机构、贸易政策审查机构和秘书处等主要机关。它是处理国家间贸易规则的唯一全球性政府间国际组织, 也是《多边贸易谈判乌拉圭回合结果法律文本》建立的多边贸易体系的法定组织基础, 还是 WTO 成员讨论贸易关系、谈判新的贸易规则、解决贸易争端的世界舞台。

仅就英文文献资料来看, 研究 WTO 的文献主要来自欧美等西方国家。英美和欧洲大陆的学者对欧美国家处理 WTO 事务的政策与实践作了较为广泛、深入、全面的分析与总结。欧美国家有关 WTO 的理论与学说, 实际上主导和支配着 WTO 研究。相比较而言, 不论在广度、深度和力度方面还是在数量和规模方面, 欧美各国对 WTO 的参与都远远超过其他国家而居于世界前列。

欧美 WTO 研究在文献资料方面具有下述特点: 第一, 涉及面广。从具体研究 WTO 的某一特定问题(如争端解决)到综合系统比较研究 WTO; 从法律文件汇编、案例报告、分析索引、使用手册等工具书到大部头的教科书和系列学术著作; 出版物形式既有图书、会议录, 又有期刊杂志和不定期出版物; 不仅有传统形式的出版物, 而且还有现代电子多媒体产品; 在所涉学科领域方面, 从国际法学、国际贸易、国际政治学扩展到社会科学其他学科甚至多学科交叉领域; 在研究人员与组织机构方面, 既有学者个人的自发研究, 又有各种不同形式与层次的有计划的协同合作; 既有专家学者、民间团体的研究, 也有高校、科研机构, 甚至还有政府部门和政府间组织进行的研究。第二, 有关研究 WTO 的出版物, 主要集中在国际法学和国际贸易学方面。其中法学方面的出版物最多, 有关研究文献几乎是汗牛充栋。第三, WTO 的法学研究已形成了初具规模的核心文献体系。下列文献构成了 WTO 法学出版物的主干:

1. 基本文件(包括组织章程、规章条例)汇编: 代表性文献主要有: (1) The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations, Leatherbound edition with

Bookmarks (Cambridge, UK; New York, NY: Cambridge University Press, 1999); (2) WTO Basic Instruments and Selected Documents: Protocols, Decisions and Reports (BISD) (Cambridge, UK; New York, NY: Cambridge University Press, 1995-); (3) WTO Status of Legal Instruments: Supplements, April 1998-; (4) Legal Instruments embodying the Results of the Uruguay Round - 1-34, Complete set 1994; (5) GATT Basic Instruments and Selected Documents-Vol. 1-42, complete set from 1953 up to 1994.

2. 工具书(分析索引、指南、辞典、案例汇编等): 代表性文献主要有: (1) WTO Analytical Index-Guide to WTO Law and Practice, 1st ed., Geneva: WTO and Bernan Press, 2003; (2) GATT Analytical Index: Guide to GATT Law and Practice, 6th ed., Geneva: WTO and Bernan Press, 1995, Two vols.; (3) WTO Trilingual Glossary, Geneva: WTO, September 2005; (4) WTO Appellate Body Repertory of Reports and Awards 1995-2005, Geneva: WTO and Cambridge University Press, 2006; (5) Dispute Settlement Reports Complete Set, Volumes 1996-2003, Geneva: WTO and Cambridge University Press, 2004; (6) A Handbook on the WTO Dispute Settlement System, Geneva: WTO and Cambridge University Press, 2004; (7) A Handbook on the GATS Agreement, Geneva: WTO and Cambridge University Press, 2005; (8) Resource Book on TRIPS and Development, by UNCTAD-ICTSD, Cambridge University Press, 2005; (9) A Handbook on Anti-Dumping Investigations, by Judith Czako, Johann Human & Jorge Miranda, Cambridge University Press, 2003.

3. 教科书: 具有一定国际影响的教科书主要有: (1) The World Trading System: Law and Policy of International Economic Relations, by Jackson, John H. Cambridge: MIT Press, 2nd ed., 1997; (2) The Regulation of International Trade, by Michael J. Trebilcock & Robert Howse, Routledge (UK), 3rd ed., 2005; (3) The Political Economy of the World Trading System: WTO and Beyond, by Bernard Hoekman, Michel Kostecki, Oxford University Press, 2nd ed., 2001; (4) The World Trade Organization, Law, Practice, and Policy, by Mitsuo Matsushita, Thomas J. Schoenbaum, & Petros C. Mavroidis, Oxford University Press, 2nd ed., 2006; (5) International Trade Regulation - Law and Policy in the WTO, the European Union and Switzerland, Cases, Materials and Comments, by Thomas Cottier, Matthias Oesch & Thomas M. Fischer, Cameron May, London, 2005; (6) The Law and Policy of the World Trade Organization, Text, Cases and Materials, by Peter Van den Bossche, Cambridge University Press, 2005.

4. 系列著作: 较有代表性的文献主要有: (1) Kluwer Law International 出版的 WTO 法律指南方面系列, 如: Guide to Dispute Settlement by Peter Gallagher; Guide to GATS, An Overview of Issues for Further Liberalization by WTO Secretariat; Guide to the Uruguay Round Agreements by WTO Secretariat; Guide to the WTO and Developing Countries by Peter Gallagher; Guide to the WTO and GATT: Economics, Law and Politics by A. K. Koul; WTO Antidumping And Subsidy Agreements: A Practitioner's Guide by Terence P. Stewart, Amy S. Dwyer; WTO Dispute Settlement Understanding: A Detailed Interpretation by Bryan Mercurio, Yang Guohua and Li Yongjie. (2) 牛津 GATT/WTO 协定评述系列(Oxford Commentaries on the GATT/WTO Agreements), 目前已经和即将出版的有: Agreement on Agriculture: A Commentary by Joe McMahon; Agreement on Subsidies and Countervailing Measures: A Commentary by Deborah Steger; Agreement on Technical Barriers to Trade: A Commentary by Robert Howse and Donald Regan; General Agreement on Trade in Services: A Commentary by Elizabeth Tuerk and Robert Howse; Understanding on the Rules and Procedures Governing the Settlement of Disputes: A Commentary by J. H. H. Weiler; Agreement on the

Application of Sanitary and Phytosanitary Measures by Joanne Scott; the WTO Anti-Dumping Agreement: A Commentary by Edwin Vermulst; The General Agreement on Tariffs and Trade: A Commentary by Petros C. Mavroidis; Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement by Carlos Correa; The WTO Agreement on Safeguards: A Commentary by Alan O. Sykes. (3) Brill 学术出版商出版的马普世界贸易法评述系列(The Max Planck Commentaries on World Trade Law, set volumes 1-7, edited by Rüdiger Wolfrum and Peter-Tobias Stoll)包括: WTO- Trade-Related Aspects of Intellectual Property Rights edited by Jan Busche and Peter-Tobias Stoll, WTO-Trade in Services edited by Rüdiger Wolfrum and Peter-Tobias Stoll, WTO-Trade in Goods edited by Rüdiger Wolfrum and Peter-Tobias Stoll, WTO-Trade Remedies edited by Rüdiger Wolfrum, Peter-Tobias Stoll and Michael K. Beale, WTO-Technical Barriers and SPS Measures edited by Rüdiger Wolfrum, Peter-Tobias Stoll and Anja Seibert-Fohr, WTO-Institutions and Dispute Settlement edited by Rüdiger Wolfrum, Peter-Tobias Stoll and Karen Kaiser, WTO-World Economic Order, World Trade Law by Peter-Tobias Stoll and Frank Schorkopf. (4) 剑桥大学出版社出版的美国法学会报告员研究系列(The American Law Institute Reporters' Studies Series): The WTO Case Law of 2001 edited by Henrik Horn & Petros C. Mavroidis, Cambridge University Press, 2004; The WTO Case Law of 2002 edited by Henrik Horn, Petros C. Mavroidis, Cambridge University Press, 2005; The WTO Case Law of 2003 edited by Henrik Horn, Petros C. Mavroidis, Cambridge University Press, 2006. (5) Brill 学术出版商出版的 WTO 案例法系列, 目前已出版了三卷: La jurisprudence de l'OMC/ The Case-Law of the WTO, 1996-1997 edited by Brigitte Stern and Hélène Ruiz Fabri, 2004; La jurisprudence de l'OMC/ The Case-Law of the WTO, 1998-1 edited by Brigitte Stern and Hélène Ruiz Fabri, 2005; La jurisprudence de l'OMC/ The Case-Law of the WTO, 1998-2 edited by Brigitte Stern and Hélène Ruiz Fabri, 2006. (6) 美国密西根大学出版社出版的《世界贸易论坛系列》: World Trade Forum: State Trading in the Twenty-First Century by Thomas Cottier, Petros C. Mavroidis, Krista Nadakavukaren Schefer, P. C. Mavroidis (Editor), University of Michigan Press (1999); Regulatory Barriers and the Principle of Non-discrimination in World Trade Law, Past, Present, and Future by Thomas Cottier and Petros C. Mavroidis (Editors), University of Michigan Press (2000); Intellectual Property, Trade, Competition, and Sustainable Development by Thomas Cottier and Petros C. Mavroidis (Editors), University of Michigan Press (2003); The Role of the Judge in International Trade Regulation, Experience and Lessons for the WTO by Thomas Cottier and Petros C. Mavroidis (Editors), University of Michigan Press (2003); International Trade and Human Rights, Foundations and Conceptual Issues by Frederick M. Abbott, Christine Breining-Kaufmann and Thomas Cottier (Editors), University of Michigan Press (2005).

WTO 争端解决机制是欧美 WTO 研究中的热点。WTO 争端解决机制不仅被 WTO 法定为向多边贸易体制提供安全及预见性的一种核心要素(《WTO 争端解决程序与规则谅解》第 3 条第 2 款), 而且被视为“WTO 的最独特贡献”, 还被普遍视为迄今为止多边贸易谈判史上的一项最大成就和实施与执行 WTO 协议的一种最有力的法律保障手段。因此, WTO 争端解决机制被形象地称为“WTO 皇冠上的明珠”。1995 年以来, 瑞士的《世界贸易杂志》(英文)、英国的《国际经济法杂志》(英文, 1998 年创刊)和美国的《国际律师》(英文)与《国际商业的法律与政策》(英文)等世界性权威刊物均出版过“WTO 争端解决机制”专刊; 国际法协会国际贸易法分会出版了“WTO 争端解决机制”长篇研究报告和系列专著; 1997 年 4 月成立的“世界贸易法协会”(总部在伦敦)自成立以来每年均以“WTO 争端解决机制”为年会主题; 日内瓦“全球仲裁论坛”每年也以“WTO 争端解决机制”为中心议题; “WTO 争端解决机制”的案例已成为西方出版商竞相出版的畅销书; 美国著名 WTO 专家杰克逊教授、胡德克教授, 欧洲著名

WTO 专家、前 GATT/WTO 法律顾问、国际法协会国际贸易法分会主席彼特斯曼教授等,发表了大量有关“WTO 争端解决机制”的论文和出版了权威性的专著。美国纽约大学法学院韦勒(Weiler)教授曾指出:“WTO 的其他任何领域都没有得到比争端解决程序——正如可提出证据加以证明的那样,乌拉圭回合最重要的体制性成果——更多的关注。从 WTO 的角度来看,这不奇怪。‘争端解决谅解’(DSU)被称为马拉喀什‘历史性协定’(historical deal)的组成部分——对乌拉圭回合全部成果都具有根本性影响。而且,多边争端解决机制的各项规定,在性质上是横向的,它们扩展到各适用协定的全部空间。从学术界的角度来看,这也不奇怪。虽然要成为精通全部 WTO 实体法的真正专家日益困难(尽管仍有人主张),但是对 WTO 感兴趣的每个人都是一个假设的争端解决专家——并且这包括那些终于认识到 WTO 的深远重大意义的少数政治学家和那些长期以来关注 WTO 的很多经济学家和政治经济学家以及急剧上升的贸易法专家(其中很多人被金钱的魅力所吸引)……。”

WTO 及其多边贸易体制的基础理论问题是研究重点之一。围绕 WTO 面临的合法性与正当性危机,欧美学者不仅关注“国际经济法革命”、“国际人权法革命”、“国际环境法革命”、“国际法的全球化”等对 WTO 的冲击,而且试图提出加强和改革 WTO 多边贸易体制的理论和学说,例如:通过贸易保护环境、保障基本人权、强制实施劳工标准;正视社会公正、消除贫困和发展中国家的发展;国际贸易法治,良治,全球治理;纠正民主的缺陷,全球市民社会自治,国际民主宪政;自由贸易与政府管制竞争。

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Brief Survey of European-American English Publications on WTO Law

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Biography: HU Jun (1960-), female, Librarian, Wuhan University Law School, majoring in United Nations & other international organization publications and foreign language version law publications.

Abstract: The WTO Studies have been an emerging field of research by social scientists globally since 1995. Main English Publications on the WTO Studies come from European-American countries, their lion's share are English Publications on the WTO Law, which are initially formed a legal resource system including basic documents and primary materials, reference books, textbooks and the series of the WTO law. The WTO dispute settlement mechanism is hot spots of the WTO studies, while an increasing significant topic is constitutional and other fundamental issues of the WTO multilateral trade system.

Key words: World Trade Organization; WTO Law; European-American WTO studies