

重振世貿組織立法功能之捷徑：多邊架構內之複邊選項

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摘要

世貿組織 (The World Trade Organization, WTO) 近年來的改革動能雖是緣自於上訴機構之危機，但其積疴卻是非司法功能，特別是立法 (談判) 功能。不過在WTO第12屆部長會議即將到來的此刻，多邊架構內之複邊談判似乎正在重振WTO的立法功能。為說明WTO多邊架構內之談判為何漸遠離全員參與之多邊談判模式，本文先回顧杜哈回合談判的「單一認諾」模式如何埋葬杜哈回合，以致對WTO立法功能仍有所期待的會員不得不暫時揮別「單一認諾」之歷史。接下來比較兩種改革路線，一種是具體指出WTO現制中不利談判推動之癥結，並設法從制度面根除這些不利因素；另一種路線則是在擺脫「單一認諾」後，對迫切需要立法之課題，於部分會員間逕行展開談判，再設法將談判成果多邊化以納入WTO架構內。前者以歐美之改革倡議為代表，後者則是目前在WTO進行之「聯合聲明倡議」複邊談判。由於前者必須透過修改規則才能達成，勢將面臨難以克服之共識決問題；相反的，後者基於WTO過往有關複邊協定納入WTO框架內之實例，成功的可能性高。是以後者雖未直接對WTO談判功能進行改革，而是迂迴地繞過WTO體制中不利談判之障礙，但不失為重振WTO立法功能之捷徑。儘管這樣的取徑本身有其侷限，但在WTO杜哈回合多邊談判難以推動近20年後的今天，或許是目前重振WTO立法功能的唯一法門。

關鍵字：世貿組織改革、彈性的多邊主義、單一認諾、聯合聲明倡議、開放性複邊協定、關鍵多數

Abstract

The recent growing momentum towards the WTO reform is generated by the crisis of the Appellate Body. The chronic problems however lied with the malfunctions of the non-judicial bodies, especially the legislative (negotiating)

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function. At this juncture, faced with the upcoming 12th Ministerial Conference (MC12), the legislative function of the WTO seems to be reinvigorated through plurilateral negotiations within its multilateral framework. In order to explain why the negotiations within the WTO multilateral framework have gradually moved away from the model of full participation by all Members, this paper looks back on the history of how the “single undertaking” mandate of the Doha Round buried the Round itself. Thereafter, it compares two reform approaches taken by Members, one is to identify the defects existed in the current system which hamper the negotiations and try to fix them by amending the rules that lead to the defects. The other approach is that like-minded Members parting ways with the single-undertaking principle, take up the issues in desperate need of new rules to negotiate ahead among themselves, with the aim of multilateralizing the negotiation outcome in the future. The reform proposals of the U.S. and the E.U. represent the former approach while the latter is demonstrated by the plurilateral Joint Statement Initiatives (JSIs) negotiation currently taking place in the WTO. Given that the former approach cannot be achieved without amending the rules, it has to overcome the hurdle of consensus. To the contrary, the latter approach looks to have a great chance based on several precedents for incorporating plurilateral outcomes into the multilateral framework. Therefore, despite the fact that the latter approach does not pursue any function reform plan, but rather avoids the obstacles that block the multilateral negotiation, it does provide a shortcut to reinvigorating the legislative function of the WTO. The plurilateral approach within the WTO may have its limits, it is still worth of trying, after all, the multilateral negotiation has not moved at all for more than 20 years.

Keywords: WTO reform, flexible multilateralism, single undertaking, Joint Statement Initiatives, open plurilateral agreement, critical mass