

中國文化大學 111 年度教育部高等教育深耕計畫  
計畫成果紀錄表

子計畫	子計畫 B
具體作法	B4-1 法學院「企業法務人才跨域培育計畫」
主題	B4-1 法學院「企業法務人才跨域培育計畫」
內容 (活動內容簡述/執行成效)	<p>主辦單位：法律學系            活動日期：111 年 11 月 8 日 (二) 10:00-12:00            活動地點：大新館 301 教室            授課課程：雙邊貿易協議法律問題研究專題            主講者：林映均            業師今日分享[WTO 與貿易協定之適用關係_以爭端解決機制為例]</p> <div style="display: flex; justify-content: space-around;"> <div data-bbox="191 840 766 1142"> <p>從比差到和平解決... (BUT...)</p> <p>WORLD WAR II</p> <p>最後通牒 (Ultimatum)</p> <p>1945 年 9 月 2 日</p> </div> <div data-bbox="798 840 1356 1142"> <p>國際法爭端解決機制的發展：可能和平解決的方式</p> <p>核心目的：和平解決(peaceful settlement of disputes)</p> <ul style="list-style-type: none"> <li>Article 2(3) of 1948 Charter: All members shall settle their international disputes in such a manner that international peace and security and justice are not endangered.</li> <li>1978 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States: States shall settle their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.</li> </ul> <ul style="list-style-type: none"> <li>自己來=外交方式：談判、斡旋(good offices)、調停(mediation)、諮察(inquiry and conciliation)</li> <li>第三方=規則為基礎的方式：國際法院(International Court of Justice)、類司法機制(quasi-dispute settlements)</li> </ul> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="191 1209 766 1478"> <p>國際法爭端解決機制的發展：誰可以使用?</p> <p>傳統國際法的規範主體：國家(States)</p> <ul style="list-style-type: none"> <li>國際法對私人爭端之解決，原則上推定國家與國家間之爭端(國家與非國家間所生之爭端)</li> </ul> <p>規範主體的擴大：私人(individuals and private sectors)</p> <ul style="list-style-type: none"> <li>雙邊投資協定允許外國投資者與地主國間之投資爭端，由投資與地主國間之投資爭端(Investor-State Dispute Settlements, ISDS)</li> <li>關於 ISDS 的國際投資協定：Germany-Pakistan BIT in 1959</li> </ul> </div> <div data-bbox="798 1176 1356 1478"> <p>Permanent Court of Arbitration</p> <p>ICSID</p> </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="191 1545 766 1814"> <p>WTO 爭端解決機制(類司法機制)</p> <ul style="list-style-type: none"> <li>解決程序：諮詢(consultation) → 專家小組(panel) → 上訴機構(appellate body)</li> <li>諮詢階段特色：             <ul style="list-style-type: none"> <li>由專家小組成員，根據專家小組的諮詢程序，提供諮詢，專家小組的諮詢報告無拘束力</li> <li>上訴程序：根據 WTO 的爭端解決程序的一項性</li> <li>類司法審判(trial executed on a trial basis)：WTO 爭端解決程序(The Understanding Rules and Procedures Governing the Settlement of Disputes, DSU)，規定專家小組的諮詢報告，在國際法上具有諮詢性，但僅具類司法的地位，而非具有拘束力。</li> </ul> </li> <li>WTO 爭端解決的類司法性質與專家小組保護雙邊三方的設計             <ul style="list-style-type: none"> <li>類司法審判的類司法：類司法並非司法(judicial resolution)，專家小組→專家小組在爭端解決中</li> <li>保護雙方的權力：                 <ul style="list-style-type: none"> <li>類司法審判的類司法(Quasi-Judicial Body, QJB)：以國際法為基礎的類司法，由專家小組成員組成，由國際法為基礎的類司法，專家小組成員由爭端雙方自選的專家小組成員</li> <li>上訴機構成員由專家小組成員自選</li> </ul> </li> </ul> </li> </ul> </div> <div data-bbox="798 1523 1356 1814"> <p>WTO 爭端解決流程(包含執行)</p> <ol style="list-style-type: none"> <li>1. Consultation (DSU Article 17)</li> <li>2. Establishment of a Panel (DSU Article 17.1)</li> <li>3. Composition of a Panel (DSU Article 17.2)</li> <li>4. Panel examination of the case (2 meetings with parties)</li> <li>5. Panel Reports (and Appellate Reports) (DSU Article 17.5, DSU Article 17.6)</li> <li>6. Appellate Review (optional) (DSU Article 17.5)</li> <li>7. Implementation</li> <li>8. Dispute over Implementation (optional) (DSU Article 17.5)</li> <li>9. In case of non-implementation, suspension of concessions or other obligations (optional)</li> </ol> </div> </div>

如何成立一個WTO案件？

對於每個會員提出諮詢請求，都會考慮，但通常會由專家小組(可能雙方建議和或一方推薦，或DSB指定)的，則要成立專家小組，也可能因為一方的要求而自動成立。

Belgium - Certain Income Tax Measures Consulting Studies		Peru - Taxes on Cigarettes	
Case No.	DSB Ref.	Case No.	DSB Ref.
1	WT/DS310	1	WT/DS46
2	WT/DS311	2	WT/DS47
3	WT/DS312	3	WT/DS48
4	WT/DS313	4	WT/DS49
5	WT/DS314	5	WT/DS50
6	WT/DS315	6	WT/DS51
7	WT/DS316	7	WT/DS52
8	WT/DS317	8	WT/DS53
9	WT/DS318	9	WT/DS54
10	WT/DS319	10	WT/DS55

WTO專家小組的功能與責任

- 專家小組的功能：協助DSB處理爭端解決功能
  - 1. 解釋會員在WTO協定解釋後適用上在世的爭議(Article 17)
  - 2. 提供報告，向DSB提供建議(Article 6.1)
  - 3. 若必要時向DSB提供諮詢意見(Article 6.2)
- 專家小組的責任與義務
  - 1. 諮詢報告(consultative assessment)：提供事實、相關法律的意見，並對如何解決爭端提供建議
  - 2. 對有爭議性的建議(qualifying recommendations)提供建議(Article 17.4)
  - 3. 諮詢專家小組的諮詢，並對爭端解決雙方提供諮詢的意見

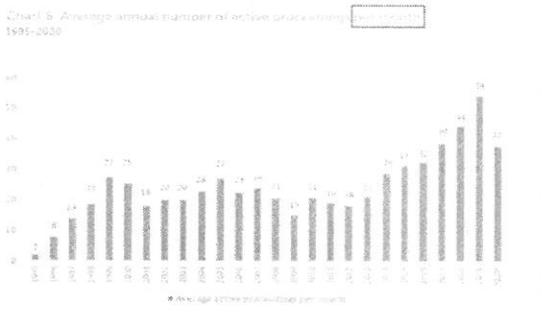
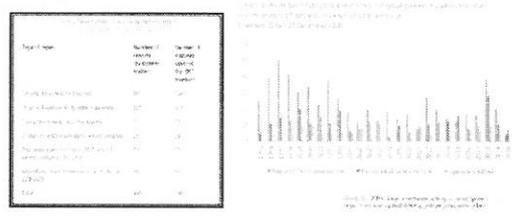
WTO上訴機構的功能與責任

- 上訴機構的功能：提供專家小組的再審議(Article 17)
  - 1. 專家小組的再審議：由專家小組的再審議小組
  - 2. 上訴機構的再審議(Article 17.1)
  - 3. 專家小組的再審議：由專家小組的再審議小組
- 上訴機構的責任與義務
  - 1. 專家小組的再審議：由專家小組的再審議小組
  - 2. 上訴機構的再審議：由專家小組的再審議小組

WTO爭議解決機制的基本規範

- 專家小組的再審議：由專家小組的再審議小組(Article 17.1)

WTO爭端解決機制運作概況



WTO與貿易協定之爭議解決機制整合

- 關鍵的問題：雙邊或區域貿易協定(RTA)與WTO的關係是上下從屬？還是平行關係？
  - 1. GATT article 24.3: The provisions of this Agreement shall not be construed to prevent:
    - (i) Advantages accorded by any contracting party to adjacent territories in order to facilitate frontier traffic;
    - (ii) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.
  - 2. GATS, article 6:
    - 1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement provided that such an agreement:
      - (a) has substantial sectoral coverage; and
      - (b) provides for the absence or elimination of substantially all discrimination...

爭議解決機制整合 FORUM SHOPPING/CHOICE OF FORUM



關於管轄衝突的可能解法？

- 貿易協定的管轄選擇條款
  - 1. ANZTEC, Chapter 21, article 4 (choice of forum)
    - 1. Where a dispute regarding any matter arises under this Agreement and under another agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.
    - 2. Once the complaining Party has selected a particular forum, the forum selected shall be used to the exclusion of other available forums in respect of the dispute.
    - 3. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of or referred a matter to a dispute settlement panel or arbitral tribunal.
  - 2. CPTPP, Chapter 28, article 28.4
    - 1. In a dispute regarding any matter arising under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
    - 2. Once a complaining Party has requested the establishment of or referred a matter to a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

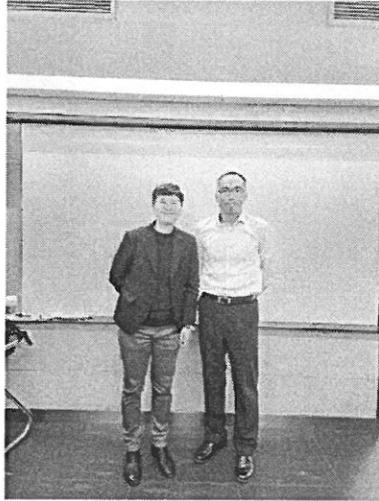
衝突個案 I

- Argentina - Definitive Anti-Dumping Duties on Poultry from Brazil (WT/DS241)
  - 1. 爭端解決的具體措施？
  - 2. 成員的具體措施或裁決？
  - 3. 專家小組是否上訴機構的決定？
  - 4. 專家小組是否上訴機構的決定？
  - 5. 專家小組是否上訴機構的決定？
  - 6. 專家小組是否上訴機構的決定？
  - 7. 專家小組是否上訴機構的決定？
  - 8. 專家小組是否上訴機構的決定？
  - 9. 專家小組是否上訴機構的決定？
  - 10. 專家小組是否上訴機構的決定？

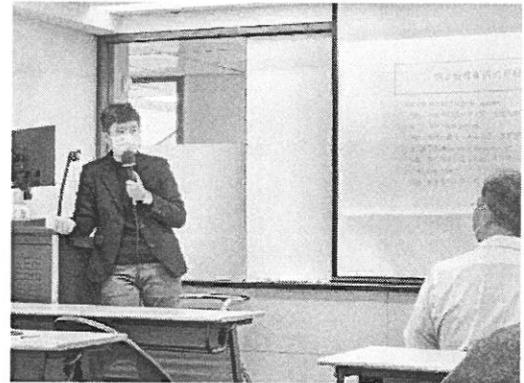
執行成效：

藉由業師分享 WTO 與貿易協定之適用關係爭端解決機制為何，如以國際法爭端解決機制的發展，有外交方式、第三方規則為基礎的國際仲裁、國際法院和類司法機制，業師並進一步介紹 WTO 爭端解決機制的流程說明(包括執行層面)，還有各機制競合之問題，最後帶入管轄衝突的可能解法例如貿易協定的選擇條款等，學生透過業師簡報中的現況及介紹案例分享，師生討論熱烈，也讓學生可以從不同角度切入思考，易使學生容易理解且感趣，加上授課教師補充說明互動，讓學生受益匪淺。

相關圖片



介紹業師



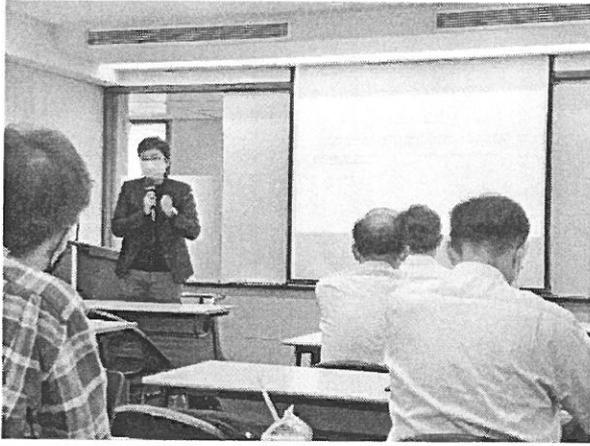
業師授課



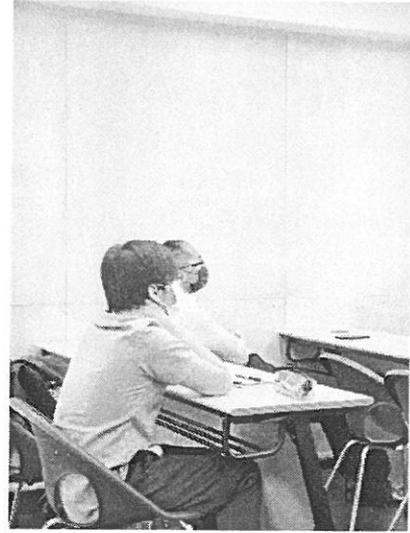
業師授課



業師授課



業師授課



學生聽講