

学校编码: 10384

分类号 _____ 密级 _____

学号: 12920071154159

UDC _____

厦 门 大 学

硕 士 学 位 论 文

中国影响汽车零部件进口措施案评析
A Case Analysis on China-Measures Affects Imports
of Automobile Parts

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论文提交日期: 2010年4月

论文答辩时间: 2010年 月

学位授予日期: 2010年 月

答辩委员会主席: _____

评 阅 人: _____

2010年4月

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内容摘要

为规制国外汽车生产企业利用进口汽车零部件规避我国整车关税的行为，中国政府出台了以《汽车产业政策》、《构成整车特征的汽车零部件进口管理办法》和《进口汽车零部件构成整车特征核定规则》为主的一系列约束措施，规定对构成整车特征的进口汽车零部件应按整车税率征收关税，保护中国的关税利益。措施的出台造成了欧盟、美国和加拿大等发达汽车生产国和地区的强烈反弹，并以中国违反《1994 年关税与贸易总协定》、《与贸易有关的投资措施协定》和中国入世承诺等国际法律为由将争端提交世界贸易组织争端解决机构。

本案于 2006 年 3 月 30 日启动第一次磋商程序，2008 年 12 月 15 日上诉机构作出了不利于中国的裁决。中国影响汽车零部件进口措施案，作为中国入世之后第一个以单独被诉方身份应诉的案件，本案经历了 WTO 争端解决机制全部程序，涉及众多复杂的国际法律问题，对中国乃至全球汽车零部件贸易都造成了一定影响。

本文由四部分组成。第一章首先简要介绍了中国影响汽车零部件进口措施案的背景和进程，并总结归纳了当事各方的诉讼请求和中国的抗辩理由，在此基础上，第二章对专家组和上诉机构的裁决进行了分析和概括。本案的重要意义之一在于使我国对 WTO 规则形成更全面的理解，因此本文专设一章，采用案例分析法，通过介绍争端解决机构对争议税收性质的认定、国民待遇原则的适用以及专门术语的解释等焦点法律问题，在具体案件中的认定和裁决，对 WTO 的相关规则的适用形成更全面的理解，并有助于掌握 WTO 争端解决机制运作程序和工作方法。在本文的最后，总结了此次应诉对中国的启示，并对今后相关的国内立法和理论研究提出了建议。

关键词：国内税；国民待遇；WTO 争端解决

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ABSTRACT

Foreign automobile manufactures imported auto parts and assembled them together into a motor vehicle in China to avoid the higher tariff of imported complete vehicle. In order to prohibit this kind of conduct and protect the rights and interests of the state, China formulated a series of disciplinary measures, including the Policy on Development of the Automotive Industry, the Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles and the Rules on Verification of Imported Automobile Parts Characterized as Complete Vehicles. These measures provided that when imported auto parts meet the features of complete vehicles they should be imposed at the same tax rate as imported cars. The formulation of those measures roused strong protest from the European Union, the United States, Canada and other advanced automobile producing countries or areas. They alleged that China's measures are inconsistent with the provision of the GATT 1994, the TRIMs Agreement, the SCM Agreement and China's commitment under its Access Protocol, based on which they brought China to the dispute settlement body of the WTO.

The first consultation procedure started on 30 March 2006, ended on 15 December 2008 when the Appellate Body made the final findings against China. The present case known as China-Measures Affects Imports of Automobile parts, marks the first time for China to be involved into the dispute settlement system as a defendant by itself. It went through all the procedures, involved many complicated international law issues, and to some extent cause certain influence on China and even the global trade of auto parts.

The thesis consists of four parts. Chapter One introduces the background and following process of China-Measures Affects Imports of Automobile Parts, and summarizes claims of all parties and China's defenses. Based on that, Chapter Two make an analysis on the findings issued by the Panel and the Appellate Body, which clearly presents the rationale and consideration of Panel and the Appellate Body in this case. In order to understand WTO rules better, which also is one of the major significance of this case for China, the thesis dedicated Chapter Three on the case

analysis specifically. In this chapter, it concludes the characterization of charges under the measures at issue, the application of National Treatment Principle, interpretations of the terminology and other legal issues, which have been accepted and confirmed by Dispute Settlement Body in the precedents, which obviously help to provide a more comprehensive understanding of the application of WTO relevant rules and to master the operational procedures and working methods of WTO Dispute Settlement Mechanism. Chapter Four make a conclusion on the lessons China need to learn from the case, and then put forward feasible suggestions on the future domestic legislation and theoretical research from China's deficiencies so as to improve China's performance in international trade.

Key Words: Internal Charge; National Treatment; Dispute Settlement in WTO

缩略语表 Abbreviations

WTO	World Trade Organization 世界贸易组织
GATT	General Agreement on Tariffs and Trade 《关税与贸易总协定》
CKD	Completely Knocked Down 全散件
SKD	Semi Knocked Down 半散件
DSU	Dispute Settlement Understanding 《关于争端解决规则与程序的谅解》
DSB	Dispute Settlement Body 争端解决机构
TRIMs	Trade-related Investment Measures 与贸易有关的投资措施
SCM	Subsidies and Countervailing Measures 补贴与反补贴措施
HS 公约	Harmonized Commodity Description and Coding System Harmonized System 商品名称及编码协调制度
GIR	General Rules for the Interpretation of the Harmonized System 协调制度解释准则

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案例表 Table of Cases

Belgium - Family Allowances (allocations familiales)	GATT Panel Report, Belgian Family Allowances, G/32, adopted 7 November 1952, BISD 1S/59
Canada – Gold Coins	GATT Panel Report, <i>Canada</i> – Measures Affecting the Sale of Gold Coins, L/5863, 17 September 1985, unadopted
Argentina – Hides and Leather	Panel Report, Argentina – Measures Affecting the Export of Bovine Hides and Import of Finished Leather, WT/DS155/R and Corr.1, adopted 16 February 2001, DSR 2001:V, 1779
Korea – Various Measures on Beef	Appellate Body Report, Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
Korea – Various Measures on Beef	Panel Report, Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report, WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I, 59
India-Additional Import Duties	Appellate Body Report, India – Additional and Extra-Additional Duties on Imports from the United States, WT/DS360/AB/R, adopted 17 November 2008
EEC – Regulation on Imports of Parts and Components	GATT Panel Report, European Economic Community – Regulation on Imports of Parts and Components, L/6657, adopted 16 May 1990, BISD 37S/132
Japan-Taxes on Alcoholic Beverages	Appellate Body Report, Japan – Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, 97
<i>EC</i> – Asbestos	Appellate Body Report, European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243
India – Measures Affecting the Automotive Sector	Panel Report, India – Measures Affecting the Automotive Sector, WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002, DSR 2002:V, 1827
United States – Measures Affecting Alcoholic and Malt Beverages	GATT Panel Report, United States – Measures Affecting Alcoholic and Malt Beverages, DS23/R, adopted 19 June 1992, BISD 39S/206
United States – Standards for Reformulated and Conventional Gasoline	Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, 3

案例表

US-Copyright Act	Panel Report, US-Copyright Act, WT/DS160/R, adopted on 27 July, 2000, para 6.45.
EC – Computer Equipment	Appellate Body Report, European Communities – Customs Classification of Certain Computer Equipment, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, 1851
EC-Chicken Cuts	Appellate Body Report, European Communities – Customs Classification of Frozen Boneless Chicken Cuts, WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, 9157

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