WTO 資訊科技協定(ITA)之研究：

科技發展下 ITA 產品範圍的爭議與解決

摘要

WTO「資訊科技協定」(ITA)於 1996 年底通過後成效彰顯，為多邊貿易體系部門別自由化方案之典範。然而當前快速的科技發展帶動新興資訊科技產品持續問世，以致該等產品究否屬於 ITA 通過當時所規範零關稅之產品範圍產生爭議，問題殊值深究。ITA 生效以來首宗爭端解決個案即屬適例。按該案係我國、美國與日本於 2008 年間共同指控歐盟在機上盒、多功能事務機與液晶顯示器等三項資訊科技產品之課稅措施，違反 WTO 關稅減讓之規範。WTO 爭端解決機制如何就科技發展實況解讀 ITA 產品範圍，對於 ITA 未來的執行成效具關鍵地位。

有關前揭個案之 WTO 適法性研究，本文認為 WCO/HS 公約稅則歸列見解可為參據，另可依據維也納條約法公約(VCLT)第 31 條與 32 條之解釋規則，考量全部或是多數會員對於系爭產品關稅待遇的「共同意願」。具體而言，基於 VCLT 第 31 條揭示的「本文內容」、「目的與宗旨」、「上下文脈絡」、「後續實務措施」與「相關國際法規範」等，通盤考量解讀歐盟關稅減讓表意涵，倘據此解讀後仍舊模糊難定，則依據 VCLT 第 32 條揭示的「條約協定的相關準備工作」與「完成當時的情境」等為輔助判斷。

鑑於此類爭議將演變為體制性問題，本文提出二項建議方案。第一，採行 ITA 委員會通知處理機制尋求通案解決，討論過程納入貨品貿易規範在其他領域敘及之「同類產品」的認定要素，基於創新產品變動並參照當前科技發展等市場實務進行考量，合理擴張 ITA 產品範圍。第二，爭取在當前杜哈回合談判通過相關部門別自由化方案擴大 ITA 產品範圍，建構零或低關稅的資訊科技產品貿易環境，其落實將有助於全球資訊科技產業之發展，亦可強化多邊貿易體系之整體運作。

關鍵字

資訊科技協定、爭端解決、關稅減讓、關稅承諾、維也納條約法公約、同類產品、產品範圍、杜哈回合、部門別自由化

Information Technology Agreement (ITA) of the WTO: Product Coverage, Dispute Settlement and Technological Development

Abstract

The Information Technology Agreement (hereinafter ITA) has made significant contributions to free trade in IT products since its conclusion at the end of 1996. It has been recognized as a successful model of sectorial trade liberalization in the WTO multilateral trading system. However, the rapid advent of new technology has led to challenges arising from the determination of tariff treatment on newly innovated IT products. Indeed, whether those new products are entitled to the duty-free treatment of the ITA merits intensive consideration. As demonstrated in the first dispute specifically on product coverage of the ITA, which Taiwan, the United States and Japan filed against the European Community in 2008 for three IT products (*i.e.* set-top boxes, multi-functional office machines and LCD monitors), how dispute settlement institutions respond to the applicability of the ITA in the context of technological development is critical to the future effectiveness of the ITA.

In this study, the author argues that relevant factors to be taken into account by the panel adjudicating the ITA dispute include the tariff classification principle embodied in the Harmonized System Convention of the WCO, as well as the "common intention" of all (or a great majority of) ITA participants, pursuant to Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT). Specifically, an examination of the EC's commitments under schedules of tariff concession by virtue of text (ordinary meaning), object and purpose, context, subsequent practice and relevant rules of international law as stipulated in Article 31 of the VCLT are of importance. Furthermore, factors such as the preparatory work and circumstances of the conclusion of the EC's schedule in accordance with Article 32 of the VCLT are also relevant.

On systemic issues, the author proposes two solutions. First, the inclusion of a new notification mechanism into the ITA Committee could be feasible. By adopting the concept of "like products" applicable to other fields of trade in goods, the ITA's product coverage can be reasonably expanded on the basis of the modification of innovated products and the advent of modern technology in the market. Second, achieving a consensus on the sectorial liberalization of expanded IT products under the on-going Doha Round would contribute to the establishment of a zero (or low) tariff environment for IT products. This would benefit not only the global IT industry, but also the multilateral trading system as a whole.