

论文

WTO法治和中国法治的砥砺与互动

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摘要:

在中国加入 WTO“满九晋十”之际,以法治的视角认真回顾与反思中国的得失具有重要的意义。随着国家之间的高度依赖与合作以及“全球治理”概念的提出,国际法治成为应对全球化挑战的理性抉择。作为国际法治的重要组成部分, WTO法治是国际法治的典例。和普遍意义上的法治一样, WTO法治也具有价值性与工具性之间的矛盾以及形式法治和实质法治之间的差异。WTO法治具备普遍意义上法治的共性,但又与国内法治存在差异。WTO争端解决机制是 WTO法治体系的主要支柱,其视野中的一系列“归零法”案件的来龙去脉折射出 WTO法治的面相。然而 WTO法治亦有限度, WTO法治的完善在带来机遇的同时也对传统主权理论提出了挑战,故而有必要重塑主权概念。WTO法治在立法、司法、执法等方面对中国法治进程产生了有益的影响,同时中国法治与 WTO法治之间相互砥砺并产生良性互动亦非常重要:须积极利用 WTO争端解决机制,参与国际规则的制定,把握契机对中国法治推力进行整合。

关键词: WTO法治 中国法治 国际法治 砥砺与互动 工具性 价值性

Mutual Encouragement and Interactions between WTO Rule of Law and China's Rule of Law

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Abstract:

China has become a WTO member for about nine years. Evaluating and reflecting on China's gain and loss is imperative. With significant interdependence and cooperation among countries and the notion of "global governance", the international rule of law constitutes a reasonable reaction toward globalization. As a crucial component of international rule of law, the WTO rule of law is a typical example of international rule of law. Similar to the garden-variety rule of law, the tension between value and instrumentality as well as the divergence between formal rule of law and substantial rule of law both exist in the WTO rule of law. The WTO rule of law shares certain commonality with the domestic rule of law, while showing some differences when compared with the domestic rule of law. Particularly, the WTO dispute settlement mechanism constitutes one of the significant pillars of the WTO rule of law. The series of "zeroing" cases in the perspective of WTO dispute settlement mechanism has illustrated the status quo of the WTO rule of law. However, the WTO rule of law also has its own limitations. While bringing opportunities, improving the WTO rule of law also imposes challenges, and thus it becomes necessary to re-define sovereignty. The WTO rule of law has significantly influenced China's rule of law in the areas of legislation, adjudication as well as legal implementation. At the same time, the mutual encouragement and positive interactions between China's rule of law and the WTO rule of law is also crucial: we should make the good use of the WTO dispute settlement mechanism, participate in the international rulemaking, and integrate various forces to push China's rule of law by seizing appropriate opportunities.

Keywords: WTO rule of law China's rule of law international rule of law mutual encouragement and interaction instrumentality value

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