

DIRECT EFFECT, THE WTO COMPLIANCE MECHANISM AND PROTECTION FOR INDIVIDUALS: LESSONS FROM THE EC

*Ching-wen Hsueh**

ABSTRACT

The arguments for or against the direct effect are based on different aspects of it. It is preferable to consider its significance in relation to the compliance with WTO agreements and its meaning for individuals. While some provisions in the WTO agreements have touched upon the rights or the benefits of individuals, the compliance regime maintains a form based on a package of bilateral balances of concession. Although the WTO compliance mechanism seems to be functional, to some extent it is not efficient and neglects the individual's need to protect his rights and interests. The key issue is how the individuals should be represented, where the international norms substantially regulate the actions thereof. As families of international legal order, and considering the resemblances between the EC law and WTO law, the practices of direct effect in the former may inspire development within WTO law. The EC Treaty did not explicitly address this issue. The ECJ established the doctrine of direct effect, which enabled the individuals to represent themselves in the context of the EC Treaty. This successful experience of the direct effect could not be transplanted to the WTO context. Under the institutional framework of the WTO, it is inapposite and impossible to introduce the direct effect. Nonetheless, substantial factors, like rule of law and the need for protecting the rights of individuals, are also applicable in the WTO context.

* The author can be reached at chingwenh@gmail.com.

KEYWORDS: *compliance mechanism, preliminary ruling, EEC treaty, direct effect, van Gend Loos case, national courts, community law, protection, rights of individuals, sovereignty*