

A LEGALIZATION THEORY BASED RESPONSE TO TIMOTHY WEBSTER’S “PAPER COMPLIANCE” OF CHINA IN WTO DISPUTE SETTLEMENT

Guang Ma & Jiang Li***

ABSTRACT

According to Legalization theory, specific legalization can be deconstructed as three sine qua non: precision, obligation and delegation. From the vantage point of legalization, WTO Dispute Settlement Mechanism (DSM) is more legalized than its predecessor under General Agreement on Tariff and Trade (GATT). Timothy Webster, an American professor, attempts to apply “paper compliance” theory (or concept) to generalize China’s compliance with WTO decisions. Basing on legalization theory, the paper tries to evidence the untenability of “paper compliance”. The panorama of Chinese compliance is so complex that any single theory seems to be unable to capture the whole story. Besides, the paper holds that compliance assessment should target at the behaviors of compliance rather than the subjects themselves. Theoretically, to maintain compulsion, legitimacy and efficacy of WTO, compliance assessment shall not deviate from WTO legalization framework. Empirically, China has a relatively good, if not perfect, record of compliance with WTO decisions on the whole. The paper demonstrates that “paper compliance” is wrongly constructed theoretically and poorly grounded. In conclusion, “paper compliance” is illogical and

* The author, Guang Ma, associate professor of law, Guanghua law school, Zhejiang University, China; Ph. D., Korea University. Email: hobright@163.com.

** The co-author, Jiang Li, Ph. D candidate of international law, China Renmin University. Email: lijiangjiang1999@163.com.

untenable.

KEYWORDS: *WTO DSM, legalization, precision, obligation, delegation, compliance theory, paper compliance, compliance assessment*