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National Health and WTO Rules – Focusing on the Study of the Blood Self-sufficiency Policy Promoted by Our Country

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Abstract

Blood-related products derive from living organisms. They refer to the human blood based bio-active biotechnology products, which are manufactured by purification steps. In 1975, the World Health Organization (WHO) of the United Nations (U.N.) adopted a decision, recommending the alleged “blood self-sufficiency” policy. Since then, some countries have endorsed such a policy and incorporated it into their legislations. Taiwan is neither a member of the U.N., nor of the WHO. Nevertheless, the government has been promoting the policy for several years with a view to the preservation of public health and the conformity with the global trend. Given the certain degree of the exclusion of foreign products caused by the implementation of the policy, there seems to be a possible conflict between the measure and the object of trade liberalization honored by the World Trade Organization (WTO).

As a member of the WTO, we are, no doubt, bound by non-discrimination principles, including, *inter alia*, national treatment, embodied in the institution. There might be a concern regarding the potential breach of Taiwan’s obligation under WTO rules if the blood self-sufficiency policy is in effect. But, the case law

of the WTO has indicated its increasing tendency to recognize the legitimacy of applying measures for pursuing public interests and policy, including the issue of national health. As a result, WTO inclines to apply its rule in a more balanced and flexible manner. The article will look into the practices of countries exercising the policy. Then, by studying relevant WTO jurisprudence, especially on the analysis of its precedence, it aims at clarifying whether our legislation and policy may be compatible with WTO rules. Finally, some suggestions on the current policy and legislation will be offered.

Keywords: WHO, blood self-sufficiency policy, WTO, GATT, national treatment principle, like product, asbestos case, necessity, doctrine of non-discrimination