State Responsibility Attribution for Local Governments' Abuse of Trade Remedy Measures: A Perspective from the WTO Framework

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ABSTRACT

Against the dual backdrop of the transformation of global trade patterns and the rise of trade protectionism, local governments of WTO members have abused trade remedy measures through concealed and differentiated means, which has become a core crux eroding the foundation of the multilateral trading system. Since the WTO dispute settlement mechanism designates the state as the sole subject of international legal liability, the attribution of state responsibility for local governments' actions faces three major dilemmas: difficulty in proving the "public body" attribute, weak connection in the liability attribution chain, and insufficient adaptation of rules to new scenarios. Based on typical cases such as DS379 and DS510, this paper takes the definition of the boundary of "substantive protection" as the logical starting point, systematically deconstructs the liability attribution element system including subject attribution, illegal act, and establishment of causation, refutes three core defenses, and proposes a three-dimensional solution path of "reconstruction of substantive control burden of proof - two-tier identification of new scenarios - supplementary coordination of international rules". The research reveals that clarifying the liability attribution logic of local governments' "public body" attribute not only fills the theoretical gap in regulating trade actions of non-central-level subjects but also provides compliance guidance for addressing hidden barriers in the era of digital and green trade. It holds crucial practical value for strengthening the binding force of WTO rules and curbing fragmented trade protectionism.

Keywords: WTO; Abuse of Trade Remedy Measures; Local Governments; Public Body; State Responsibility Attribution; Hidden Trade Barriers

1. INTRODUCTION

1.1 Research Background and Practical Value

Amid the deep integration of cross-border trade, the abuse of trade remedy measures has shown a new "localization" trend. As disclosed in the White Paper on China's Position on China-US Economic and Trade Relations issued by China's Ministry of Commerce, local US authorities have illegally continued to use the "zeroing method", and local EU authorities have frequently initiated targeted investigations against China. Such acts not only violate core WTO agreements but also undermine the predictability of trade policies and disrupt the fair competitive environment for cross-border trade.

Given that the WTO dispute settlement mechanism takes the state as the sole subject of liability, the attribution of state responsibility for the abuse of trade remedy measures by local governments has become a key pain point in theory and practice. Exploring this mechanism can not only fill the gap in regulating trade actions of non-sovereign subjects, improve the WTO liability system, but also provide a clear basis for restoring cross-border trade order, promote members to strengthen central-local regulatory coordination, and consolidate the foundation for the implementation of rules in the multilateral trading system.

1.2 Literature Review and Research Gaps

Against the dual background of the rise of trade protectionism and the profound transformation of global trade patterns, regulating the abuse of trade remedy measures and addressing new types of hidden trade barriers have become two core issues in safeguarding the WTO multilateral trading order.

Among them, the core crux of the abuse of trade remedy measures lies in the ambiguous definition of the boundary of "substantive protection", and clarifying this standard is crucial for restricting protectionist tendencies. Existing studies have explored from the perspectives of institutional framework, rule application, and practical response: Shakhnazarov (2024)[1] focused on international trade compliance procedures to provide institutional support for regulating the abuse of remedy measures; Chen Lihu (2011)[2] constructed a coordinated governance framework of "international law - domestic law" to clarify the cross-border regulatory path; Kang Na (2016)[3] and Zhu Guangdong (2017)[4] delved into the benchmark for determining subsidy benefits and the rules for identifying upstream subsidies respectively; He Yan (2015)[5], Liu Aidong, and Yang Xuanyu (2012)[6] analyzed the implementation of WTO rulings and response strategies for trade remedy cases against China from a practical perspective. However, existing studies still have significant shortcomings: they have not formed a unified "substantive protection" determination standard across multiple tools such as anti-dumping and countervailing measures, lack legal connection for cross-cutting issues such as the qualitative analysis of state-owned enterprises concerned by Xu Chengjin and Gu Bin (2016)[7] and double taxation discussed by Zhang Shulin and Yu Minyou (2015)[8], and fail to cover emerging scenarios of digital and green trade.

At the same time, due to the lag in international regulation, digital and green hidden trade barriers have become new carriers of trade protectionism, forming a superimposed effect with the abuse of traditional remedy measures. Mitchell & Mishra (2019) [9] pointed out the regulatory gap of WTO rules on cross-border data flows; Shafiee et al. (2025) [10] took Malaysia's environmental protection measures as an example to reveal the application dilemma of the Agreement on Technical Barriers to Trade (TBT Agreement) in addressing green barriers. However, relevant studies have not deeply explored the coordination between regional rules and WTO rules, failed to complete the accurate legal characterization of new types of green barriers, and ignored the development differences among economies, making it difficult to form a universal solution that balances fairness and efficiency.

1.3 Research Ideas and Methods

This study conducts systematic research using normative analysis and case study methods. From the perspective of normative analysis, it sorts out the legal basis for incorporating local government conduct into the scope of state responsibility attribution and deconstructs the logical framework and constituent element system of responsibility determination, based on core WTO agreements such as the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), the ASCM, and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). From the perspective of case study, it selects typical WTO dispute cases such as WTO/DS379 (United States – Countervailing Measures Against Certain Products from China) to sort out the focal points of disputes, judicial logic, and key ruling points, extract practical standards for responsibility attribution, and ultimately construct a complete analytical framework.

1.4 Innovations

Innovation in research perspective: Breaking through the traditional research paradigm of "central government centrism", focusing on local governments, an overlooked subject of liability attribution, and reconstructing the state responsibility attribution logic system for non-sovereign-level actions under the WTO framework.

Innovation in problem targeting: Accurately identifying the liability attribution pain points in new scenarios of digital and green trade, incorporating practical difficulties such as "concealed intervention" and "lagging rule adaptation" into the analysis, and breaking the coverage blind spot of traditional liability attribution research on new types of trade barriers.

2. DEFINING THE STANDARD FOR ABUSE OF TRADE REMEDY MEASURES: THE BOUNDARY OF "SUBSTANTIVE PROTECTION"

2.1 Core Principle of Legitimate Trade Remedies: Connotation of the Substantive Protection Principle

According to the relevant provisions of the WTO Anti-Dumping Agreement, Agreement on Safeguards, and SCM Agreement, the implementation of legitimate trade remedies must meet three core elements: existence of material injury, establishment of causation, and proportionality of remedy intensity. Its institutional purpose is to compensate domestic industries for injuries caused by unfair trade or surge in imports, rather than implementing trade protection. The intensity of remedies, investigation procedures, and implementation principles together constitute the legal boundary of legitimate remedies.

2.2 Criteria for Determining Abusive Conduct by Local Governments and Their Practical Manifestations

The core criterion for defining local governments' abuse of trade remedy measures is the deviation from the "substantive protection" purpose stipulated in WTO trade remedy agreements (Anti-Dumping Agreement, SCM Agreement, Agreement on Safeguards) or the violation of their substantive provisions. Legitimate trade remedies are confined to compensating domestic industries for legitimate injuries from unfair trade or import surges, while abusive conduct essentially exploits such mechanisms to pursue local protectionist interests beyond this institutional boundary.

Legally, this definition is corroborated by WTO dispute settlement practice: the illegal application of the "zeroing method" by local U.S. authorities in anti-dumping investigations, which artificially inflates dumping margins, constitutes a substantive violation of the Anti-Dumping Agreement; in WTO/DS510, preferential policies for local renewable energy products by eight U.S. states violated GATT 1994 Article III:4, as they exceeded the scope of legitimate trade regulation and pursued local protectionism. Additionally, disguised restrictive measures such as mandatory local content requirements, though not formally invoking trade remedies, fall under this definition by achieving equivalent protectionist effects and violating WTO non-discrimination principles.

3. THE "PUBLIC BODY" ATTRIBUTE OF LOCAL GOVERNMENTS - CORE PREMISE OF STATE RESPONSIBILITY ATTRIBUTION

3.1 Standards for Identifying "Public Bodies" under WTO Rules

Although WTO dispute settlement practice has established a function-oriented core identification paradigm, whose legal basis can be traced back to the essential regulatory objective of government intervention in the SCM Agreement, the scope of application of this paradigm remains unclear. The Appellate Body ruling in the US Countervailing Duty Investigation on China (DS379) pointed out that the determination of a "public body" does not need to adhere to the organizational form, but the core lies in whether it essentially bears government will and exercises public management functions. This judicial stance breaks through the cognitive limitation of traditional international law that "state actions are limited to the central government", providing a legal basis for the attribution of state responsibility for local governments' actions. However, it does not refine the identification standards for local governments as a special subject, nor does it respond to the rule adaptation needs in new scenarios of digital and green trade, which is the core entry point of this research.

3.2 Dilemmas in Proving the "Public Body" Attribute of Local Governments

The power of local governments to impose trade remedies is derived from the authorization of domestic laws of members, which is a regional extension of national trade management functions, and the consequences of their actions should naturally be borne by the members. However, in WTO dispute settlement practice, proving the "public body" attribute still faces three prominent dilemmas. The division of central-local trade powers and responsibilities in federal or decentralized countries is vague, and respondents often raise defenses on the grounds of "local autonomy", making it difficult for complainants to prove the source of public power for local governments' actions; local governments often intervene in the market indirectly by entrusting industry associations or issuing guiding documents, making it difficult to directly identify the "government control" attribute behind their actions, which is inconsistent with the application of the SCM Agreement's identification standards; in digital and green trade scenarios, local governments set trade barriers under the guise of public governance objectives such as data security and carbon emission standards, concealing the essence of trade protection, and traditional function-oriented standards are difficult to apply directly.

3.3 Approaches to Breaking Through the Identification of Local Governments' "Public Body" Attribute

To address the above dilemmas, breakthroughs need to be sought from two dimensions: interpretation of international law rules and reconstruction of practical burden of proof rules. Reconstruct the burden of proof logic for "substantive control", break away from the limitation of formal authorization, focus on indirect evidence such as financial support, personnel appointment and removal, and decision-making intervention, and shift the focus of "public body" identification from subject qualification to the essence of the act; establish an identification mechanism of "legitimacy of public governance objectives + necessity of trade restrictions", introduce the principle of proportionality, and comprehensively determine whether relevant measures exceed the necessary limits to achieve public objectives; refine the identification rules for local governments' "public bodies" through the negotiation process of regional trade agreements, establish a dual determination standard of function orientation and effect orientation, and feedback the experience of regional practice to the optimization of multilateral rules.

3.4 Application of the Principle of Consistency in Liability Attribution

The core difference between local governments and central public bodies lies only in the regional scope of exercising power, and there is no essential difference between them in terms of "exercising government power and bearing national will". According to the principle of uniform application of WTO rules, local governments and central public bodies should have equal status in the attribution of state responsibility for trade remedy measures and apply the same liability attribution standards. Adhering to this principle is not only a key measure to address the fragmented regulation of digital and green trade but also can effectively curb improper acts of some members evading WTO non-discrimination obligations through local differentiated standards, safeguarding the unity and authority of the multilateral trading system.

4. CONSTITUENT ELEMENTS OF STATE RESPONSIBILITY ATTRIBUTION FOR LOCAL GOVERNMENTS' ABUSE

4.1 Subject Element

Under the WTO framework, member states are the sole subjects of international liability, a principle firmly enshrined in Article 4 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts. As "state organs" defined by domestic law, local governments exercise state-delegated trade remedy powers, and their relevant acts constitute "acts of the state" under international law, which shall be unconditionally and directly attributable to member states, unaffected by domestic constitutional division of powers or local autonomy arrangements. The division of powers and responsibilities within a state is merely a domestic legal matter and cannot serve as a defense against international liability.

The central government’s "supervisory obligation" is not a constituent element of attribution but a supplementary dimension to strengthen liability determination and refute improper defenses. Deficiencies in supervision can prove systemic flaws in national trade governance, undermine the credibility of the defense of "having fulfilled supervisory obligations," and provide a legal basis for dispute settlement bodies to require member states to establish central-local coordinated supervision mechanisms for long-term compliance. Together with the principle of direct attribution, it forms a comprehensive subject attribution framework for state liability arising from local governments’ trade remedy acts.

4.2 Act Element

The determination of the abuse of trade remedies by local governments follows a dual benchmark of "formal illegality and substantive deviation", rooted in the WTO principle of proportionality and the principle of good faith performance of obligations. Formally, it must violate specific provisions such as the Anti-Dumping Agreement and the SCM Agreement; substantially, it must deviate from the legislative purpose of "maintaining a fair-trade order" and evolve into a tool for local protection.

With the vigorous development of digital trade and the acceleration of green transformation, local governments often set restrictive measures in the name of data sovereignty and carbon neutrality. Such measures often cover up hidden trade barriers under the guise of legitimate objectives, leading to blurred standards for determining abusive acts. In this regard, it is necessary to establish a quantitative indicator system for necessity review, constructing objective standards from three dimensions: the degree of trade restriction, the feasibility of alternative solutions, and the effect of achieving public objectives. If there is a less restrictive alternative or the effect of the measure far exceeds the public objective, it can be determined as substantially illegal.

4.3 Causation Element

The core of the causation element is that there must be a direct and unbroken connection between the abusive act and the cross-border injury consequence. The complainant must prove the temporal and logical relevance between the two, and exclude the dominant role of non-governmental factors such as market fluctuations and technological iteration in accordance with the theory of causation interruption.

In regulatory scenarios related to digital and green trade, local governments' trade remedy measures are often intertwined with industrial support policies and technical standard specifications, forming a complex situation of multiple causes leading to one effect, which significantly increases the difficulty of determining causation. The key to solving this problem lies in two points: first, introducing the "main cause" standard - if the local government's measure is the dominant factor of the injury consequence, the causation can be determined as established; second, establishing an independent third-party evaluation mechanism to clarify the causes of injury and the weight of each factor through quantitative analysis, reducing the complainant's burden of proof and improving the scientificity and credibility of the determination result.

5. SORTING OUT AND REFUTING TYPICAL DEFENSES

5.1 Defense 1: "The conduct of local governments is independent of state will"

This defense is contrary to the core spirit of WTO rules. Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization establishes the principle of unified responsibility of Members for the conduct of governments at all levels within their territories. Local governments' trade-related authority is derived from the authorization of national law, and their conduct constitutes the hierarchical implementation of state will. In the case India v. United States – Subsidies on Renewable Energy Sector (WTO/DS510), 8 U.S. states provided preferential treatment for local renewable energy products through measures such as tax relief and special subsidies. In the litigation, the United States argued that the relevant conduct had nothing to do with the federal government's will on the ground that "state governments independently formulated industrial policies". In 2019, the WTO Panel ruled that the state measures in the case violated the national treatment obligation under Article III:4 of the GATT 1994, and that the responsibility for local governments' trade intervention conduct shall be borne by the U.S. federal government, directly rejecting this defense.

5.2 Defense 2: "Central governments have no supervisory obligation"

This defense runs counter to the umbrella principle of state responsibility. In WTO dispute settlement practice, central governments' supervision over local trade measures is an implied statutory obligation. In the case United States v. Turkey – Restrictions on Rice Imports (WTO/DS334), Turkey adopted a system linking tariff quotas with import licenses to force importers to give priority to purchasing domestic rice. Faced with the allegation of violation, Turkey claimed that the central government could not interfere with local import supervision rules to evade supervisory responsibility. The WTO Dispute Settlement Body (DSB) ruled that the Turkish central government's failure to establish a compliance review mechanism for local trade measures constituted supervisory default, and it shall bear the responsibility for rectification and state responsibility.

5.3 Defense 3: "Special and differential treatment for developing countries exempts them from responsibility"

This claim is a legal misinterpretation of the special and differential treatment provisions. Such provisions only provide flexible arrangements for developing countries to fulfill their obligations in compliance with rules, rather than exemption from responsibility. For example, in the case United States v. India – Solar Cells (WTO/DS456), the local content requirements under India's Jawaharlal Nehru National Solar Mission were ruled to be inconsistent with WTO rules, despite India being a developing country. India claimed exemption from rectification responsibility on the ground of its status as a developing country. The Appellate Body ultimately ruled that special and differential treatment could only be used to apply for a reasonable rectification period, while India shall bear corresponding responsibility for the trade injury caused by the illegal measures, rejecting its claim for exemption.

6. CONCLUSIONS, PRACTICAL PATHS, AND FUTURE RESEARCH

6.1 Research Conclusions

The core of state responsibility attribution for local governments’ abuse of trade remedy measures under the WTO framework is verifying their "public body" attribute via function orientation and substantive control, with liability established upon satisfying subject attribution, unlawful conduct, and unbroken causation. Defenses like claiming local acts are independent of state will are legally unsustainable, violating WTO rules and state responsibility principles. The three-dimensional solution path constructed herein effectively addresses practical dilemmas including fragmented evidence chains and inadequate rule adaptation to new scenarios.

6.2 Practical Implementation Paths

First, reconstruct the burden of proof for substantive control: break away from the limitation of formal authorization, shift the focus to indirect evidence reflecting substantive state control—such as central financial support for local trade remedy investigations, central oversight of key personnel appointments in local regulatory bodies, and binding policy guidelines from central authorities. Establish a tiered burden-shifting mechanism where complainants adduce prima facie evidence of local public function exercise, with the burden then shifting to respondent states to disprove substantive control; failure to provide sufficient countervailing evidence results in the presumption of a "public body" attribute. WTO dispute settlement bodies should adopt a flexible evidence admissibility standard, embracing diverse proof forms and applying the "balance of probabilities" principle to alleviate the complainant’s evidentiary burden.

Second, establish a two-tier identification mechanism for new scenarios: conduct legitimacy reviews of stated public governance objectives against WTO-consistent checklists to exclude pretextual protectionism. Implement proportionality assessments using quantifiable indicators, including the intensity of trade restriction, feasibility of less trade-restrictive alternatives, and congruence between measure effects and public policy goals. The WTO should issue scenario-specific guidelines to clarify that local restrictive measures in digital and green trade fall within the purview of relevant WTO agreements and must comply with non-discrimination and proportionality requirements.

Third, strengthen international rule coordination and domestic supervision: the WTO should refine evidentiary rules for "public body" identification through dispute practice and establish a fast-track review mechanism for new scenario disputes. Members should build full-chain domestic supervision systems, clarifying central-local power divisions, implementing mandatory pre-review of local trade remedy proposals for WTO consistency, and instituting post-implementation oversight with public disclosure of non-compliance and targeted accountability. Promote multilateral-regional rule synergy to form a governance loop of "multilateral positioning - regional refinement - domestic implementation".

6.3 Research Limitations and Future Prospects

Limitations include insufficient coverage of differentiated attribution rules in regional trade agreements and reliance on public dispute rulings without empirical investigation of domestic regulatory effectiveness. Future research will conduct comparative analyses of liability clauses in regional agreements and WTO rules, and optimize scenario-specific standards via field investigations to enhance practical operability. The effective implementation of these paths is crucial for safeguarding the multilateral trading system and curbing fragmented trade protectionism.

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