

中文摘要

關於 WTO 協定間條文與條文間之適用關係，依據小組所建立的原則，即基於 WTO 協定係屬一體承諾之性質，WTO 協定下之義務應屬累積的義務，會員在任何時點均應遵守所有的義務，除非有形式上的衝突存在。然而，整個 WTO 協定包括了馬爾喀什建立 WTO 協定、商品貿易多邊協定、服務貿易總協定、智財權等不同部門的協定，到決議文、瞭解書等，有多達六十多種不同的法律文件。這些法律文件是在不同時期及不同背景下，經由不同的談判者所協商而成，而談判者在談判當時，對於各項法律文件間之關係未必有所認知並進一步地為適當的安排，因此未預見的重複、漏洞或衝突，即有可能產生。對於 WTO 協定條文間錯綜複雜的關係，WTO 實務在若干案件中雖有所著墨，但對於何時應屬累積適用及何時構成法律衝突而具有排除適用之效果，並無一致性的判斷標準存在，因此本文即希望透過將 WTO 協定間法律適用關係之類型化，進而歸納出應屬累積適用關係及排除適用關係的條文，並尋求體系化及一致性的判斷標準。

Abstract

Because of the Uruguay Round negotiations brought about a 'single WTO package' at a very late stage of the negotiations, the WTO system itself has not clearly regulated the issue of the possible relationships between provisions in GATT 1994 and other Annex 1A Agreements or provisions in different Agreements. The only linkages set out in WTO law are one general rule of prevalence, in case of conflict (the General Interpretative Note to Annex 1A) and several cross-references in individual Agreements. The authors submit that panels and the Appellate Body have so far identified four relationships between provisions of the WTO Agreements, which can be characterized as conflict, express derogation, confirming, and complementarity. These relationships have different legal effects on the application of the provisions concerned. Although it is not excluded that over time more types of relationships will be identified and developed, it is useful to take stock of the case law setting out the possible linkages. While not purporting to be exhaustive, the present work is an attempt to analyze the cases that appear to be the most significant for clarifying the different relationships.

關鍵詞：法律衝突、衝突條款、衝突定義、WTO 協定、累積適用

Keywords: conflict of norms, conflict clause, definition of conflict, WTO Agreements, accumulation