

CONFLICTING LAWS AND JURISDICTIONS IN THE DISPUTE SETTLEMENT PROCESS OF REGIONAL TRADE AGREEMENTS AND THE WTO

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ABSTRACT

With emerging new Regional Trade Agreements (RTAs) and the stagnating of the Doha Round negotiations, the conflict of overlapping laws and jurisdictions between WTO tribunals and those of RTAs has become an important issue. That conflict should be addressed multilaterally and regionally. The examination of the DSU shows that the WTO treaty negotiators did not perceive potential conflicts of jurisdictions with RTAs. Since there is no general rule of primacy between WTO norms and those of RTAs, it has been suggested that the DSU (Dispute Settlement Understanding) should be amended and that under certain conditions choice of forum and/or exclusive forum clauses of RTAs could lead a panel to suspend jurisdiction until the issue has been cleared. This article points out that conflicts of laws and jurisdictions should constantly be borne in mind while setting up RTAs. Moreover, a forum selection rule might not always be sufficient to prevent conflicts of jurisdictions. If there are norms in an RTA that address matters differently from the WTO-covered agreements, an effective remedy under the RTA is especially crucial for those rights to be enforceable. If those norms are not contrary to Article XXIV of the GATT, Article V of the GATS and

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the enabling clause, there should be a possibility for parties to opt for exclusive RTA jurisdiction in those matters.

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