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厦 门 大 学

硕 士 学 位 论 文

论《维也纳条约法公约》第32条在WTO争端  
解决中的适用  
——以上诉机构的司法实践为例

On the Application of VCLT 32 in WTO Dispute Settlement  
—Exemplify Appellate Body's Judicial Practices

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指导教师姓名： 房 东 助理教授

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## 内容摘要

作为确定成员方之间具体的权利和义务，定纷止争的工具，条约解释在 WTO 体系中的重要性不容忽视。本文以 VCLT 第 32 条在 WTO 争端解决中的适用为重点，采取实证研究的方法，通过对上诉机构的司法实践的分析，指出“文本主义”是上诉机构主要依赖的条约解释方法。但是，这种方法在解释本身并不完美的条约文本或者是具有特殊法律属性的具体承诺表时会产生负面影响，此时，赋予 VCLT 第 32 条以相当的权重不仅是必要的，而且是合理的。

除引言和结语外，本文共分为三章。

第一章从条约含义出发，结合当代条约解释学派的基本观点，概述了条约解释的基本理论，并特别述及 VCLT 第 32 条的范围，其与 VCLT 第 31 条之间的关系及主要的理论争议，为后文的详细论述奠定了基础。

第二章主要采用了实证研究的方法，根据上诉机构的司法实践来分析解释之补充资料在 WTO 中的范围，并将上诉机构对 VCLT 第 32 条的适用情形进行分类。

第三章首先论述了 WTO 争端解决中与适用 VCLT 第 32 条相关的四个问题，接下来主要针对文本本身不完美和具体承诺表的特殊属性两个方面，对上诉机构是否赋予了 VCLT 第 32 条以必要权重进行反思。

**关键词：**第 32 条；WTO 争端解决；上诉机构；共同意愿

## ABSTRACT

As a means to define the concrete rights and duties between members in order to settle the disputes, the importance of treaty interpretation should not be ignored. This thesis focuses on the application of VCLT32 in WTO dispute settlement, analyzes through Appellate Body's judicial practices, realizes that "Textualism" is a method of treaty interpretation mainly relied on by Appellate Body. However, this method will lead to negative impacts when the text in itself is imperfect or when it tries to interpret the Specific Commitments which have special characteristics. In these circumstances, endowing VCLT32 considerable weight is not only necessary, but also reasonable as well.

Besides the introduction and conclusion, this thesis contains three chapters.

Chapter 1 starts with the meaning of the treaty interpretation, refers to contemporary treaty interpretation schools' principle views, generally discusses the basic theory of the treaty interpretation, and especially analyzes the scope of VCLT32, the relationship between VCLT32 and VCLT31, the main theoretical arguments, which lays down a framework of the ongoing discussion.

Chapter 2 mainly uses the practical approach, relies on Appellate Body's judicial practices to analyze the scope of the supplementary means of interpretation in WTO, at the same time, classifies the circumstances of Appellate Body's applications of VCLT32.

Chapter 3 firstly discusses four issues involving the application of VCLT32 in WTO dispute settlement, then, mainly focuses on the imperfection of the text itself and the special characteristic of Specific Commitments in order to reflect on whether Appellate Body has given the necessary weight to VCLT32.

**Key Words:** Article 32; WTO Dispute Settlement; Appellate Body; Common Intention.



## 缩略语表 Abbreviations

- DSU: Dispute Settlement Understanding  
争端解决谅解
- GATS: The General Agreement on Trade in Services  
《服务贸易总协定》
- GATT: General Agreement on Tariffs and Trade  
关税及贸易总协定
- ILC: International Law Commission  
联合国国际法委员会
- ITO: International Trade Organization  
国际贸易组织
- TRIPS: The Agreement on Trade-Related Aspects of Intellectual Property Rights  
与贸易有关的知识产权协定
- VCLT: Vienna Convention on the Law of Treaties  
维也纳条约法公约
- WTO: World Trade Organization  
世界贸易组织





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