



The Role of the Judge in International Trade Regulation

Experience and Lessons for the WTO

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Editors

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JA Banks



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The Role of the Judge in International Trade Regulation Thomas Cottier, Petros Constantinos Mavroidis, Patrick Blatter, 2009-12-22 The WTO is generally seen as a key actor of globalization and as such has been the point of convergence of popular irritation worldwide. Many of the reproaches addressed to the WTO show civil society's concern with what is perceived as a democratic deficit in the way the organization operates. The main fear is to see trade rise as the ultimate value prevailing over concerns such as health and environment. The Role of the Judge offers insight into how disputes are solved at the WTO level into how the judicial branch interacts with the rest of the organization and into the degree of sensitivity of the system to external input. The book sheds light on the judicial system governing the WTO and shows it to be the only truly multilateral system where disputes are solved by third party adjudication. The book develops along three lines: the first a search for cases submitted to the WTO where the judge exceeded its authority; the second a comparison of the WTO with the operations of national judicial systems having different levels of integration, specifically the United States federal level and the EC quasi federal level; and the third an exploration of directions for the future of dispute settlement in the WTO. Reflecting the diversity of its contributors, this book addresses questions of economics, political science and law, bringing an unusual level of multidisciplinary to this topic and context. It is designed for both academic readers and practitioners who will find it full of practical insights as well as rich and detailed analysis. Thomas Cottier is Professor of European and International Economic Law, University of Bern and Managing Director, World Trade Institute, University of Bern. Petros C. Mavroidis is Professor of Law, University of Neuchâtel. He formerly worked in the Legal Affairs Division of the World Trade Organization. Patrick Blatter is Mavroidis's scientific collaborator.

Standards of Review in WTO Dispute Resolution

Matthias Oesch, 2003 This volume is a unique study focussing on the highly controversial issue of standards of review in WTO dispute resolution. Standards of review reflect the extent to which the WTO adjudication bodies can override the decisions taken by national authorities. As such they play a crucial role in shaping the balance of power and responsibility for decisions on factual and legal issues. In this volume the current state of law and practice is analysed and critically assessed in a commentary on the evolution of and inconsistencies amongst the relevant cases.

The Prospects of International Trade Regulation

Thomas Cottier, Panagiotis Delimatsis, 2011-04-14 For a long time the GATT led a life of its own as a self contained regime. The evolution from tariff to non tariff barriers brought about increasing overlaps with other regulatory areas. WTO rules increasingly interface with other areas of law and policy including environmental protection, agricultural policies, labour standards, investment, human rights and regional integration. Against this backdrop this book examines fragmentation in international trade regulation across a wide array of regulatory fields. To this end it uses a conceptually coherent theoretical framework which is based on the effort to bring about greater coherence among different policy goals and fields and thus to embed the multilateral trading system within the broader framework of international economics law.

and relations It will appeal to those interested in a forward looking discussion of the most pressing issues of the international trade agenda

The Oxford Handbook of International Trade Law Daniel L. Bethlehem, 2009 Over the past 10 years the content and application of international trade law has grown dramatically The WTO created a binding dispute settlement process and in resolving disputes the judicial organs of the WTO have built up a substantial amount of new international trade law Emerging from this new WTO process is an international trade law system that is in some respects self contained and in other respects overlapping and linked to other international legal economic and political regimes The boundaries of trade law are now generating enormous interest and controversy which at a broader level is subsumed within the debate over globalization The detailed development of the rules of international trade is being examined with increasing frequency by scholars government officials and trade law practitioners But how does it fit with existing systems How it is modified by them How does the international trade law system affect and modify other regimes This Handbook places international trade law within its broader context providing comment and critique on contemporary thinking on a range of questions both related specifically to the discipline of international trade law itself and to the outside face of international trade law and its intersection with States and other aspects of the international system It examines the economic and institutional context of the world trading system its substantive law including regional trade regimes and the settlement of disputes The final part of the book explores the wider framework of the world trading system considering issues including the relationship of the WTO to civil society the use of economic sanctions state responsibility and the regulation of multinational corporations

The Interaction Between World Trade Organisation (WTO) Law and External International Law Ronnie R. F. Yearwood, 2012 This book examines how international economic law interacts with other bodies of international law Using ideas and theories from other spheres including sociology literature and art the book develops a new way of thinking about how WTO law interacts with external international law through the conceptual framework of constrained openness

The Right to Food and the TRIPS Agreement Hans Morten Haugen, 2007-10-30 A concise analysis of the relationship between patent rights and human rights is given in this book focusing on the right to food The UN Sub Commission on Human Rights identified apparent conflicts or actual or potential conflicts between human rights and intellectual property rights The TRIPS Agreement under the WTO Agreement and the International Covenant on Economic Social and Cultural Rights constitute the central treaties in the analysis The book finds that the right to food and related human rights of the Covenant give important guidance when implementing intellectual property legislation and science policy in general Moreover the book does not find that the two treaties actually conflict There are however concerns regarding the national implementation of the treaties

Climate Change and International Trade Rafael Leal-Arcas, 2013-01-01 Rafael Leal Arcas expertly examines the interface of climate change mitigation and international trade law with a view to addressing the question How can we make best use of the international trading system experience to aim at a global climate change agreement The insightful book contributes to

developing the architecture for a post 2012 global climate agreement and in doing so seeks and proposes new approaches to climate change mitigation by linking it to the international trade system The author suggests the adoption of a bottom up approach to climate change negotiations by using the evolution of multilateral trade agreements as a model for reaching a global climate treaty He discusses the innovative approach of inserting climate goals within regional trade agreements given their proliferation especially bilateral in the international trading system He explains the trade implications of climate change mitigation policies by analyzing a couple of areas where the international regimes for trade and climate change mitigation may potentially clash Climate Change and International Trade will strongly appeal to undergraduate and graduate students of international and European trade law international and European environmental law as well as social science academics NGOs think tanks practitioners researchers and international organizations will also find plenty of valuable information in this timely resource

Local Engagement with International Economic Law and Human Rights Ljiljana Biukovic, Pitman B. Potter, 2017-05-26 Providing an analysis of global regulation and the impact of international organizations on domestic laws this collection grew out of a central objective to explore methods of domestic engagement with international trade and human rights norms and the inherent difficulties in establishing balanced links between these two international law regimes The common thread of the papers in this collection is a focus on the application of socio legal normative paradigms in building knowledge and policy support for coordinating local performance with international trade and human rights standards in ways that are mutually sustaining

International Economic Law in the 21st Century Ernst-Ulrich Petersmann, 2012-07-24 The state centred Westphalian model of international law has failed to protect human rights and other international public goods effectively Most international trade financial and environmental agreements do not even refer to human rights consumer welfare democratic citizen participation and transnational rule of law for the benefit of citizens This book argues that these multilevel governance failures are largely due to inadequate regulation of the collective action problems in the supply of international public goods such as inadequate legal judicial and democratic accountability of governments vis a vis citizens Rather than treating citizens as mere objects of intergovernmental economic and environmental regulation and leaving multilevel governance of international public goods to discretionary foreign policy human rights and constitutional democracy call for civilizing and constitutionalizing international economic and environmental cooperation by stronger legal and judicial protection of citizens and their constitutional rights in international economic law Moreover intergovernmental regulation of transnational cooperation among citizens must be justified by principles of justice and multilevel constitutional restraints protecting rights of citizens and their public reason The reality of constitutional pluralism requires respecting legitimately diverse conceptions of human rights and democratic constitutionalism The obvious failures in the governance of interrelated trading financial and environmental systems must be restrained by cosmopolitan constitutional conceptions of international law protecting the transnational rule of law and

participatory democracy for the benefit of citizens Europe's Functional Constitution Turkuler Isiksel, 2016

Constitutionalism has become a byword for legitimate government but is it fated to lose its relevance as constitutional states relinquish power to international institutions This book evaluates the extent to which constitutionalism as an empirical idea and normative ideal can be adapted to institutions beyond the state by surveying the sophisticated legal and political system of the European Union Having originated in a series of agreements between states the EU has acquired important constitutional features like judicial review protections for individual rights and a hierarchy of norms Nonetheless it confounds traditional models of constitutional rule to the extent that its claim to authority rests on the promise of economic prosperity and technocratic competence rather than on the democratic will of citizens Critically appraising the European Union and its legal system this book proposes the idea of functional constitutionalism to describe this distinctive configuration of public power Although the EU is the most advanced instance of functional constitutionalism to date understanding this pragmatic mode of constitutional authority is essential for assessing contemporary international economic governance

Proportionality, Reasonableness and Standards of Review in International Investment Law and Arbitration

Valentina Vadi, 2018-04-27 International investment law is one of the most dynamic fields of international law and yet it has been criticised for failing to strike a fair balance between private and public interests In this valuable contribution to the current debate Valentina Vadi examines the merits and pitfalls of arbitral tribunals use of the concepts of proportionality and reasonableness to review the compatibility of a state's regulatory actions with its obligations under international investment law **Trade in Goods** Petros Mavroidis, 2012-07-19 This is an analysis of the establishment and operation of international trade agreements focusing on the General Agreement on Tariffs and Trade The book examines the economic rationale behind the framework of international trade and analyses the role of trade agreements in securing the benefits of a global economy

Good Faith in the Jurisprudence of the WTO Marion Panizzon, 2006-10-19 What does the concept of good faith express This book is the first to discuss what good faith means in international trade law As a reference guide for scholars and practitioners it analyses the case law of WTO dispute settlement practice The book describes how why and when the concept of good faith links the WTO Agreements with other public international norms The concept of good faith appears frequently in treaties and customary rules but is most often considered a general principle of law WTO law uses the corollaries of pacta sunt servanda the prohibition of abus de droit and the protection of legitimate expectation alongside the principle of good faith An analysis of GATT 1947 and WTO case law reveals that the function of good faith varies The Panel reports and the Appellate Body decisions make different use of it The Appellate Body is prepared to apply the principle to WTO provisions only while Panels use it more freely and substantively that is they apply good faith to fill lacunae in any of the WTO covered agreements Also adjudicators use the principle differently depending on whether it relates to the agreements covered by the WTO or the procedural law of WTO dispute settlement As it applies to the former good faith is used to strike a

balance between on the one hand the obligation to liberalise trade and on the other hand the right to invoke an exception to trade liberalisation for the protection of the environment culture public morals human life or health In this way good faith safeguards the gains of multilateral trade liberalisation against unlawful interests such as disguised protectionism The book also introduces the novel field of WTO procedural law governing trade dispute litigation In the Dispute Settlement Understanding DSU good faith appears in the standard of review rules of evidence and fact finding standing duty of prior consultation right of establishment of a panel ex officio investigations withdrawal of notices of appeal and the raising of objections In all these areas it ensures that the rules of dispute resolution are not abused The Appellate Body has even gone so far as to derive a new standard from the principle of good faith that demands that disputes are settled fairly promptly and effectively Insights into good faith in WTO law are not only important for trade law professionals Current applications and future operations of the principle are likely to be of strategic value for answering the increasingly pressing question of how WTO law and other international agreements ought to be reconciled

Trade Disputes and the Dispute Settlement Understanding of the WTO James C. Hartigan, 2009-02-01 Addresses the process of dispute resolution and appeal under the DSU of the WTO This book covers politics and disputes between sovereign nations power inequities in access to the DSU specific categories of disputes such as in agriculture and in intellectual property and issues pertaining to compliance enforcement and remedies

China and the WTO Esther Lam, 2009-10-08 Joining the World Trade Organization WTO enables China to reform its legal order and to move towards a system incorporating major principles of the rule of law The WTO also serves as an external impetus that guides contemporary Chinese legal reform and orients it in ways that domestic forces alone could not achieve and sustain Much discussion on the WTO and the Chinese legal system has focused on the issue of compliance whether the Chinese legal system has the capacity to fulfill China's WTO accession commitments The focus of this work is less concerned with compliance issues per se but rather with the extent to which the WTO's requirements vis vis China actually affect the Chinese legal system The fine difference between the two approaches lies in the fact that efforts by the Chinese government to meet its WTO obligations necessarily impact the Chinese legal order and its way of functioning even if their end results may or may not lead to full compliance with what is required of it by the WTO This timely work exposes many behind the scene dealings and relies on valuable information that is not publicly available Not only does it preserve for the historical record important details of the Chinese WTO accession it also sheds light on the travaux préparatoires of China's accession agreement and the negotiation history of important issues some of which remain relevant and highly contentious today As expressed by WTO Director General Pascal Lamy in his foreword to the book through this work Esther Lam succeeds in demonstrating how WTO membership can benefit both the acceding country and the wider WTO family of nations

Legal Principles in WTO Disputes Andrew D. Mitchell, 2008-12-11 Principles play a crucial role in any dispute settlement system and the World Trade Organization WTO is no exception However WTO Panels

and the Appellate Body have been too timid in using principles sometimes avoiding their use when appropriate and at other times using them without fully acknowledging that they are doing so Perhaps more worryingly these bodies often fail to delve deeply enough into principles They tend to overlook key questions such as the legal basis for using a given principle whether the principle is being used in an interpretative manner or as applicable law and the meaning of the principle in public international law This book establishes a framework for addressing these questions The use of such a framework should allay fears and misconceptions about the use of principles and ensure that they are used in a justifiable manner improving the quality of dispute settlement in the WTO

The Law and Economics of Globalisation Linda Y. Yueh, 2009-01-01 The diversity of author backgrounds coupled an assortment of provocative insights makes this book a useful tool for delving into the meat of globalization providing a succinct but authoritative overview of the underpinnings necessary to appreciate the who what where and when of globalization American Society of International Law This is a fascinating and insightful set of essays the relevance of which has only increased with the financial and economic crisis The ideas and basic positions of the authors range wide but that is exactly what we require as we struggle to understand twenty first century globalisation and what to do about it I should like to see it in the hands of all academics and policy makers working on global affairs Alan Winters University of Sussex Chief Economist UK Department for International Development and Former Head of Research the World Bank This inter disciplinary volume focuses on the economic and legal challenges confronting globalisation and the evolution of the global system The Law and Economics of Globalisation discusses the hotly debated topic of globalisation from a wide set of perspectives of law economics and international political economy The authors shed new light on the legal economic and institutional issues raised by globalisation extending into areas previously considered as national issues They discuss how the development of the norms institutions and reach of the global system will be influenced by the domestic and international concerns arising from the increasing integration of countries in the new century With contributions from lawyers economists and other experts in the field this book will be welcomed by academics students researchers and policymakers who are interested in a comprehensive volume on economic globalisation It will also appeal to a wider audience such as executive education courses as well as business and law schools

Risk Regulation and Administrative Constitutionalism Elizabeth Fisher, 2007-07-30 Over the last decade the regulatory evaluation of environmental and public health risks has been one of the most legally controversial areas of contemporary government activity Much of that debate has been understood as a conflict between those promoting scientific approaches to risk evaluation and those promoting democratic approaches This characterization of disputes has ignored the central roles of public administration and law in technological risk evaluation This is problematic because as shown in this book legal disputes over risk evaluation are disputes over administrative constitutionalism in that they are disputes over what role law should play in constituting and limiting the power of administrative risk regulators This is shown by five case studies taken from five different legal cultures

an analysis of the bifurcated role of the Southwood Working Party in the UK BSE crisis the development of doctrines in relation to judicial review of risk evaluation in the US in the 1970s the interpretation of the precautionary principle by environmental courts and generalist tribunals carrying out merits review in Australia the interpretation of the WTO Sanitary and Phytosanitary Agreement as part of the WTO dispute settlement process and the interpretation of the precautionary principle in the EU context A strong argument is thus made for re orienting the focus of scholarship in this area

Judicial Deference in International Adjudication Johannes Hendrik Fahner, 2020-08-06 International courts and tribunals are increasingly asked to pass judgment on matters that are traditionally considered to fall within the domestic jurisdiction of States Especially in the fields of human rights investment and trade law international adjudicators commonly evaluate decisions of national authorities that have been made in the course of democratic procedures and public deliberation A controversial question is whether international adjudicators should review such decisions de novo or show deference to domestic authorities This book investigates how various international courts and tribunals have responded to this question In addition to a comparative analysis the book provides a normative argument discussing whether different forms of deference are justified in international adjudication It proposes a distinction between epistemic deference which is based on the superior capacity of domestic authorities to make factual and technical assessments and constitutional deference which is based on the democratic legitimacy of domestic decision making The book concludes that epistemic deference is a prudent acknowledgement of the limited expertise of international adjudicators whereas the case for constitutional deference depends on the relative power of the reviewing court vis vis the domestic legal order

Free Trade and Cultural Diversity in International Law Jingxia Shi, 2013-04-30 This book attempts to reconcile the concept of free trade with a key non trade social value cultural diversity in an era of economic globalisation It first shows how we can look at culture in many different ways and explains why we should care about cultural diversity The book then examines the challenges that policymakers are faced with in formulating cultural measures in the new media environment and analyses UNESCO s theories and approaches to cultural diversity This is followed by a comprehensive examination of the treatment of culture in global and regional trade agreements including the framework of the GATT WTO system the WTO s judicial practice involving cultural products and the treatment of culture under the EC EU and NAFTA This identifies the challenges trade norms encounter in dealing with cultural products The author seeks to formulate a balanced view of the challenge of protecting and promoting cultural diversity while also recognising the important goal of trade liberalisation To this end Professor Shi proposes a dual method through which the norms found in WTO agreements and in UNESCO cultural instruments may be brought into alignment the first highlighting the compatibility of cultural policy measures with trade obligations on a domestic level the second suggesting potential linkages between the WTO rules and the UNESCO Convention from the perspectives of treaty interpretation

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