

seek to craft public health-enhancing policies that are consistent with central principles of openness such as most-favoured-nation and national treatment.

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The Prospects of International Trade Regulation: From Fragmentation to Coherence

edited by Thomas Cottier and Panagiotis Delimatsis
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This volume is the result of the first stage of a National Centre for Competence in Research (NCCR) project, 'Trade Regulation – International Trade: From Fragmentation to Coherence', operating at the University of Bern's World Trade Institute (WTI). One of the book's editors, Thomas Cottier, is the Managing Director of the WTI and the Director of the NCCR – Trade Regulation project. The NCCR – Trade Regulation is a project of grand scale: the Swiss National Science Foundation (SNF) provided an initial four-year phase of funding of 10,400,000 CHF, as well as 9,400,000 CHF for a second four-year phase, which is ongoing and will conclude in 2013. The funding is being used to support research across 12 individual projects (IPs), with experienced and more junior researchers contributing to each project, and input from political scientists as well as lawyers. This edited collection aims to synthesize the results of the initial phase of research. The IPs address trade regulation across a wide range of subject matters and perspectives, but share the common goal of exploring themes of fragmentation and coherence in their various international trade contexts. In particular, the book strives to identify the regulatory debates that lie ahead and to make policy recommendations in light of those dilemmas.¹ A chapter is devoted to each project, with several project participants co-authoring each contribution. With 48 different contributing authors and over 450 pages of text devoted to summarizing four years of effort spent engaging in 12 separate projects, it is an understatement to describe this book as a highly ambitious undertaking. Perhaps inevitably, some aspects of the volume are more successful than others.

The editors have utilized two useful techniques that add significant value to the individual contributions and to the volume as a whole. First, every chapter begins with a box of bullet-point 'Key Messages'. Given that each project is attempting to summarize several years' worth of work in a condensed space, these summary items are a particularly helpful method of highlighting the authors' key takeaway messages. Second, the editors (together with colleagues Katja Gehne and Tetyana Payosova), have written an extensive and very useful Introduction. With many if not most edited collections, it is possible to begin and end one's perusal by reading only the specific chapters of interest. While introductory chapters generally signal unifying elements of collections in greater or lesser detail, they are not always essential reading in and of

¹ Preface at xviii.

themselves. For this book, however, the Introduction is not only a must-read to understand the chapters that follow; it is also the most substantively rich contribution to the volume. At 56 pages of text, the Introduction is more than merely a summary of what follows in the 12 project-specific chapters; it is a detailed, nuanced, and sophisticated discussion of the analytical and conceptual considerations underpinning the entire NCCR – Trade Regulation project. The Introduction first identifies specific examples of fragmentation in international law generally and in the WTO context. It then identifies existing theoretical approaches to fragmentation, explaining the hermeneutical approach associated with Martti Koskenniemi's International Law Commission study group on fragmentation in international law as well as the constitutionalist approach associated with a number of scholars including Ernst-Ulrich Petersmann, Anne Peters, and Deborah Cass.² Cottier *et al.* go on to introduce their own approach to fragmentation, representing a middle ground of sorts between the hermeneutic and constitutionalist approaches. Termed 'multilayered governance', the proposed approach sees multiple layers of governance (such as local, state, regional, international) being imbedded in an overall international system, with the state assuming a managerial, if not an absolute sovereign, role.³ Cottier has previously written about the multilayered governance concept, but this Introduction further develops the idea and positions it within the broader theoretical scholarship relating to WTO governance and legitimacy. The ten-page bibliography accompanying the Introduction further illustrates the comprehensiveness and thoughtfulness of this contribution.

The IP-specific chapters are divided into three parts: Part I: Constitutional issues in international trade regulation (featuring chapters entitled 'The constitutionalisation of international trade law'; 'Reflections on modes of decision-making in the World Trade Organization'; and 'Regionalism: moving from fragmentation towards coherence'); Part II: Reforming Specific areas of trade regulation (comprising the chapters 'Reframing sustainable agriculture'; 'Energy in WTO law and policy'; 'Developing trade rules for services: a case of fragmented coherence?'; and 'Challenges of biotechnology in international trade regulation'); and Part III: 'Trade and...' linkages (with chapters entitled 'A call for a WTO ministerial decision on trade and human rights'; 'The protection and promotion of cultural diversity in a digital networked environment: mapping possible advances towards coherence'; 'Development and stability in the nexus between trade and finance'; 'The regulatory framework of international investment: the challenge of fragmentation in a changing world economy'; and 'Low-income countries and price volatility').

The chapters in Part I build the most directly on the Introduction, and as such flow nicely from the introductory chapter. However, because these chapters engage the most significantly with the concepts set forth in the Introduction, they (particularly Chapters 1 and 2) in particular require first reading the Introduction. Indeed, reading Chapter 1 without first reading the Introduction would likely lead to confusion for many readers,

2 Martti Koskenniemi, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission, United Nations, International Law Commission, A/CN.4/L.862.

3 At 33–34.

because the introductory themes are internalized into this chapter without any separate explanation. The chapters on biotechnology and human rights also incorporate concepts from the Introduction that will best be understood if the Introduction is read first. This is not intended as a criticism; it is a reflection of coherence that later chapters engage with the overarching themes of the project. It is merely a statement of fact that certain chapters will be better appreciated – and indeed may not be fully understood – without the guidance of the Introduction.

The most successful chapters manage to frame their research in the context of the fragmentation/coherence dialogue while also discussing the challenges within their subject and area and proposing potential solutions that, while ambitious, reflect pragmatism and an understanding that the international trade regime is unlikely to undertake rapid or sweeping changes. Most of the chapters in Part II succeed in this regard, with Cottier *et al.*'s chapter 'Energy in WTO law and policy' and Delimatsis *et al.*'s contribution 'Developing trade rules for services: a case of fragmented coherence?' offering particularly useful insights. While a new WTO agreement is in many ways hard to fathom in the current state of negotiation deadlock, the energy chapter makes detailed use of EU and WTO provisions and legal decisions to craft a persuasive argument for a sectoral WTO agreement on trade in energy. In the services chapter, the authors also use specifics to convincingly argue that, in the services context, fragmentation is a positive rather than a negative. The human rights chapter also exhibits a degree of pragmatism in suggesting a WTO Ministerial Declaration on human rights rather than an amendment or addition to the covered agreements. While it is likely overly optimistic to think that the WTO membership, particularly developing country members, would agree to the draft Declaration, the authors have provided useful food for thought regarding how the trade and human rights regimes could interact more harmoniously.

Less compelling was the investment chapter, which highlights the authors' work products, such as having hosted a major conference (said conference is mentioned twice in five pages), but is less successful at placing the research within the broader international investment law scholarship. Over half of the entries in the relatively brief bibliography are sources co-authored, authored, or edited by one or more of the chapter authors, without reference to many major authors and sources in the field.

In the volume's final chapter, 'Low-income countries and commodity price volatility', the authors simply tried to cover too much ground – three different Ph. D. researchers' commodity case studies on coffee, cotton and copper, with reference to their individual field work in Tanzania, Uganda, and Zambia – as well as a distillation of three of project leader Benno Ferrarini's publications relating to the project. Unsurprisingly, none of the issues is covered in as much depth as a reader would want. Further, the chapter does not mention the themes of fragmentation and coherence, and only makes cursory mention of the WTO and relevant GATT provisions in its introduction and conclusion. The conclusion for the first time mentions the 'aid for trade' initiative, but does not discuss it in detail. In light of the book's focus on international trade regulation, this chapter might have fit better into the collection had it devoted more attention to aid for trade and other WTO issues instead of trying to summarize three distinct research projects in the limited space available.

It is exceedingly difficult to imagine condensing four years' worth of research amongst a several-person team into a single book chapter; and it is therefore understandable that not all of the contributions were able to do so in a compelling fashion. Nonetheless, the project as a whole is an admirable one. The reader is left wanting to learn more. Perhaps the lesson to be learned is that for the second phase of the NCCR – Trade Regulation project, multiple books will be needed to do justice to the rich and varied research outcomes.

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Understanding Trade Law

by Michael Trebilcock

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Michael Trebilcock's *Understanding Trade Law* provides an outstanding summary of GATT/WTO policy and the myriad set of issues confronting the expansion of global trade. Trebilcock somehow manages not only to summarize the key areas of GATT/WTO law, but he also incorporates pertinent case law as well as academic and public debate, all in less than 200 pages. Thus, while the preface indicates that the book is an introduction to international trade law, it nevertheless provides a fairly nuanced look at a wide range of topics in international trade.

The book begins with a summary of classical and modern trade theory (Adam Smith, Ricardo, Heckscher–Ohlin, product cycle theory) which provides a theoretical basis for why trade may serve as a benign force in the world. From here, the author discusses the longstanding rationales behind trade protection (infant industries, raising tariff revenue, national security, etc.) as well more recent popular objections to trade liberalization (i.e. that it may increase inequality and undermine environmental and labor standards, etc.) Thus, from the start, the book weaves together trade theory, economic arguments justifying limits on free trade, and more popular arguments against free trade.

The opening chapter also provides a very nice summary of international trade policy history, from the repeal of the Corn Laws in Great Britain of the mid-nineteenth century to the present. In fact, each chapter includes a history of whichever subject is under consideration, often creating an intellectually satisfying context for that particular topic. For example, in the introduction to Chapter 5, the author mentions that the principle of National Treatment (which dictates that countries can't favor domestic goods over imports from WTO member countries), was seen 'in agreements among German city-states constituting the Hanseatic League from the twelfth century onwards'. Such details are not likely to be found in an international economics textbook, and they provide flavor to the subject matter. Moreover, besides presenting historical and other background information, each chapter usually contains a summary of the applicable GATT and/or WTO text for each topic. In cases when the wording seems a bit legalistic (especially to an economist), a brief synopsis is provided. A discussion of pertinent case law then follows, first from the GATT (pre-WTO) era, and then the post-1995 WTO period.