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The World Trade Organization: Law, Practice, and Policy

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Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis
The World Trade Organization: Law, Practice, and Policy (2nd edn).
Oxford: Oxford University Press, 2006.
Pp. 989. £125. ISBN 0199284563.

This book bears all the trappings of a one-stop shop for WTO law: its very title, its distinguished authors representative of the top scholarship of three continents, and its comprehensive substantive coverage. It ambitiously tackles the history and organization of the WTO, its dispute settlement system, legal sources, enforcement and remedies, the relationship of WTO law to domestic law and every important aspect of substantive WTO law. Its sweep includes the basic principles of tariff reduction, the Most-Favored Nation and National Treatment principles and regional trade agreements, trade in services, trade remedies and developing countries, intellectual property, environmental protection, competition, investment, technical barriers and standards, trade in agriculture and government procurement.

I prepared a detailed comparative review of the first edition of this book¹, and it is convenient in the present short review to revisit the weaknesses I identified then in order to

¹ 17(2) *Leiden Journal of International Law* (2004) 430.

research resource; the inevitable shortcoming is that in many cases the answers will be of a cursory, almost perfunctory nature that under-represents the extent to which broad agreement is absent on many trade issues. In this respect, the second edition constitutes a significant improvement over the first. Most obviously, it is almost 50 per cent longer. Many chapters have been rewritten, not merely updated, and new chapters have been added (on trade in agricultural products and government procurement). The improvement is in substance as well. For example, where the question of the status and role of non-WTO legal sources in WTO law was dealt with somewhat flatly in the first edition, matter of factly mapping relevant WTO case law, the second edition includes a significantly expanded and rewritten chapter that explains not only the case law as it has evolved over the last few years but also the scholarly debate on the WTO as a 'self-contained regime', indeed taking a normative stance:

The Appellate Body has time and again warned against constructing the WTO Agreements in clinical isolation from the rest of public international law; it is high time it starts to apply this view in practice, instead of having recourse to unclear statements concerning the status of public international law in the WTO legal order which only provoke further uncertainty and delay inevitable decisions (at 88).

Whilst of the first edition I wrote that 'the authors seem to steer clear of controversy, and

at many points one feels as if reading an "official" account of affairs, of the kind one finds on the WTO website, giving no more than a nod to whatever contentions exist', in some of the rewritten chapters of the second edition the authors take a much bolder approach (but not in those that have simply been updated, such as the chapters on tariffs, safeguards and antidumping), without disrupting the convenience and didactic tenor of the volume as a reference book.

preferential trade agreements, which provides not only a description of the legal conditions of Article XXIV GATT (and a new section on Article V GATS), but a full-fledged commentary on the regionalism vs. multilateralism debate.

The chapter on trade in services is another notable example of the improved second edition. Not only is it almost three times the original chapter in length, but it has been substantially rewritten. The original chapter was essentially a rehearsal of black-letter law (which ultimately means very little in the area of services!), whilst the revised chapter includes much more reference to both practice and debate, taking a more engaging approach to areas of WTO law whose significance is still far from settled. Thus, the section on Article VI GATS commitments on 'domestic regulation' in the first edition provided little for the inquisitive reader, simply reciting the text of Article VI and parts of the Accountancy sector guidelines. In contrast, the second edition, within the same space, is much more helpful, offering useful distinctions between the procedural and substantive obligations of Article VI and making an explicit pointer for future interpreters of this provision to seek inspiration in the case law on Article X:3 of the GATT (at 627). No less importantly, the authors devote a separate sub-section to Mutual Recognition Agreements (MRAs), with reference to the problems of discrimination that may arise in their context and to the European experience in this regard (at 630). The revised chapter also provides an 'empirical

view' of the liberalization of trade in services (at 674) that reflects some of the general pessimism on the effectiveness of the GATS as an instrument of economic liberalization, and at the very least might entice the reader to look beyond the law to query its true effect on market-driven dynamics and political economy.

This approach makes for more interesting reading and places WTO law in context; but unfortunately it is inconsistently and unevenly

to avoid political and social controversy. Despite the expansion of the Services chapter, the potentially far-reaching social regulation effects of the GATS in general and Article VI on domestic regulation are not mentioned. I found no discussion of the 'governmental authority' carve-out in Articles I:3(b)-(c) GATS, an important provision in any case, as part of the definition of services, but even more so when one considers the reluctance of most WTO Members to liberalize 'social' services. In another GATS-related area, the authors make some interesting (though technical) observations on the scope of 'Mode 4' of the GATS (the mode of services supply that entails the presence of a natural person in the territory of a Member, and hence may have implications for labour migration), but give the uninformed reader little indication of the potential importance of this mode of service supply and the interaction between trade in services and migration law. While clearly it is impossible to cover all bases of WTO law in a single volume, and a classical *Kommentar* or traditional textbook would not have tackled

these aspects at all, it seems that a book that aims at a policy-relevant discussion, not only a legal one, should bring them to the reader's attention. This can be achieved while maintaining a schoolteacher's impartiality (if so desired), as the authors have done in some of the rewritten chapters.

The chapter on developing countries remains, as I noted with respect to the first edition, 'particularly non-critical, belying the sensitivity and importance of the relationship that is so important for the future of the multilateral trading system'. In the concluding chapter there is a section on the Doha Development Agenda, which has not been rewritten to reflect the changes that have occurred in the Doha Round's ambition as a result of the difficulties it has run into; these are simply mentioned in an additional paragraph (at 931), implying either that the authors' perspective on the Round has not changed over the past few years or that they did not devote

contextual approach will be applied to every chapter in the next edition of this book.

The market for textbooks and commentaries on WTO law has become increasingly crowded since the first edition of *The World Trade Organization: Law, Practice and Policy* was published. Nevertheless, the book remains an excellent stand-alone resource; perhaps not a one-stop shop, for there can be no such thing, but a portal, a point of departure to more detailed literature. Indeed, it is significantly improved and those who use the first edition regularly for teaching and reference will have no choice but to replace their old copy with the new. This is not always true with respect to new editions of books in this genre, which tend to be outdated even before they reach the shelves (e.g., in the present case the book was clearly prepared for print before the official release of the *EC-Biotech* panel report, so this important ruling is not reflected in the chapter on Sanitary and Phytosanitary measures (SPS)), but otherwise the diligent and thoughtful revisions of the improved segments of the book mean that it does generally seem to be the case here.

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