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***World Trade Law: Text, Materials and Commentary* by Simon Lester, Bryan Mercurio, Arwel Davies, and Kara Leitner**

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The World Trade Organization (WTO) has attracted considerable interest. Since its creation in 1994, the WTO brought with it legalization of world trade politics after its predecessor, the General Agreement of Tariffs and Trade (GATT), was considered a geopolitical document to contain the spread of non-market ideology to other countries. Not only does the WTO cover traditional subjects such as tariffs and non-tariff barriers but also it covers intellectual property, services, and trade-related investment measures. The WTO established the dispute settlement system, a system that efficiently administers justice. Its combination of short deadlines, quasi-automatic procedures, and authority to issue binding decisions are qualities that are relatively unique among international forums for settling disputes. The WTO's dispute settlement system has much to be admired for its proceedings.

World Trade Law by Simon Lester and Bryan Mercurio with Arwel Davies and Kara Leitner sets out to provide a working tool for students as well as practitioners who are interested in the work of WTO. The book is "first" in two aspects. The book is first to use both casebook and legal analysis approaches in an easy-to-follow manner to help understand the issue at hand. The book is also first in referring appropriately to different regions in the world. Thus, the book is not U.S.-centric or European-Centric but rather global in perspective (chapters 5 & 19). The book consists of eight parts and twenty chapters.

The book includes no appendices or documents supplement which could have contained extracts from the agreements relevant to the book. These agreements are all readily available on the WTO website,¹ but it would have nevertheless been convenient from a student's point of view to have some of the agreements in hard copy and as a document supplement.

The authors begin Part I by showcasing the importance of trade, economically and politically, and discussing the theory of comparative advantage. The authors discuss the factors that give countries a comparative advantage for trading in certain products or services.

The authors in Part II provide an overview of the history of the GATT and WTO. They explain how the failure of the Havana Charter (which was supposed to establish an international trade organization after World War II) set the stage for the incremental development of the GATT, which evolved, in turn, into the current WTO system. The authors discuss the WTO basic structure, decision-making process, and accession. They analyze the interaction between WTO law and international law by stating two divergent views on the subject and adopt the view that international law is likely to play a significant role in WTO law. The authors also analyze the interaction between WTO law and domestic law. In particular, they consider whether WTO law should have direct effect on domestic law. The authors, in answering this question, survey the approaches adopted by select countries.

The authors dedicate Part III to an analysis of the WTO dispute settlement system. The chapter offers valuable insights into the nature of the dispute settlement system--insights that enable the reader to understand the differences between the current procedures and practices from those under the GATT panels. The authors guide the reader through the procedure followed by the panels and the Appellate Body. Each stage of the panel process is described; consultations that form the first step in the dispute settlement process; the rules on form, content, timing, confidentiality, adequacy; participation of third parties; adoption and implementation of reports, remedies; and the possibility of good offices. Moreover, the relevant rules on evidence, experts, the burden of proof, and the standard of review are examined. The two special bases of complaints are also explained: the so-called non-violation complaints and the complaints involving 'other' situations. Non-violation complaints allow for the possibility of employing the dispute settlement procedure where, though no rule of WTO law is violated, the complaining party considers itself to have been deprived of legitimately expected benefits because of actions taken by the party complained against. As the authors explain, complaints about "other" situations are few. The matter of *amicus curiae* briefs is touched upon. The authors note that in one case, *United States--Import Prohibition of Certain Shrimp and Shrimp Products*, the panel declined to take them into consideration; accepting that non-requested information from non-governmental sources would be incompatible with provisions of the Dispute Settlement Understanding. A subsequent Appellate Body report reached a different conclusion about non-requested information and interpreted the Appellate Body's right to seek information as a discretionary authority to request information or expert advice, and to consider both requested and non-requested information. In sum, the discussion of the dispute settlement mechanism is concise and deals with all the main issues. Dispute settlement procedures are addressed in depth, with careful attention both to potential pitfalls along the way and to important developments. However, more careful attention could have been paid to discuss the role of the WTO Secretariat in its assistance to panels and especially in relation to its assistance to developing countries--where the Secretariat is hampered in its role by its obligatory neutrality.

Praise should be given to Part IV on border measures (tariffs and quotas) and non-discrimination (national treatment and Most Favoured Nation (MFN) principle). The authors provide explanation for

¹ See WTO Legal Texts, available at < http://www.wto.org/english/docs_e/legal_e/legal_e.htm>.

the different types of tariffs, WTO rules on bound tariffs, and tariff classification. They did a good job by including tariff schedules of different countries as case studies. The authors analyzed quotas, whether on imports or exports and relevant GATT rules that govern their administration. In Part IV, the authors detail the overriding principle of non-discrimination which is evidenced by the much sought-after national treatment and Most Favoured Nation principle (MFN). According to the authors, the application of the MFN principle requires contracting parties who extend a benefit to one country to extend it to all contracting parties. For example, the goal of universal MFN treatment is to assure that, with respect to any given member of the WTO (here, Country A), and with respect to any given product or service (here, Product X or Service Y), every other member of the WTO receives the benefit of the most advantageous terms of trade accorded by Country A to any other WTO member with respect to Product X or Service Y. The unconditional MFN acts as a trade accelerator, lowering tariffs in the world generally. The national treatment principle of GATT, like the MFN principle, is a rule of non-discrimination. In the case of MFN, the principle prohibits discrimination as between like products from different exporting countries (p. 322). The national treatment principle, in contrast, accords equal treatment to domestically produced goods and the same imported goods once the imported goods have crossed the border. The goal of the national treatment principle is to limit the circumstances in which it is permissible for a country to provide treatment for domestic goods more favourable than that for imported goods. Any claims arising under the MFN and national treatment principles are handled through the WTO dispute settlement process. The authors provide many examples from GATT/WTO case law in order to illustrate and explain crucial terms such as "like products", "not similarly taxed", "directly competitive or substitutable products".

The authors, in Part V, deal with such topical issues as the influence of bilateral and regional trade agreements on the WTO regime. The current era is characterized by the proliferation of regional trade agreements around the world. As the authors correctly point out slow progress in the Doha Round means an avalanche of bilateral and regional free trade agreements will fill in the vacuum. GATT article XXIV condoned the establishment of free trade areas subject to several stringent conditions. For example, any agreement must include a plan and schedule for the formation of a free trade area and the formation should be achieved within a "reasonable length of time." Article XXIV of GATT requires any contracting party deciding to enter into a free trade area, or an interim agreement leading to the formation of such an area, to promptly notify the GATT/WTO. This procedural requirement is intended to ensure the transparency of the proposed agreements to other WTO members and provide any necessary information for the examination of the agreements under article XXIV by the Committee on Regional Trade Agreements (p. 353). The practice in terms of the timing of notification has varied.² GATT article XXIV requires the free trade area to eliminate trade barriers on "substantially all" trade among members. The WTO Committee on Regional Trade Agreements scrutinizes bilateral and regional trade agreements to ensure that they do not adversely affect the interests of non-members and to determine how much trade diversion they create, if any. The authors present a proposal for the review of the current regulatory framework for regional trade agreements.

Part V of the book also examines one of the most controversial issues in WTO law, namely article XX general exceptions. Article XX general exceptions allow countries to impose what would otherwise be WTO-inconsistent measures if they fulfill enumerated public policy measures. Article XX is divided into a general introductory clause (chapeau) and subsequent provisions that constitute the circumstances under which exceptions to GATT obligations are justified. These circumstances include public morals; protecting human, animal, or plant life or health; and conservation of exhaustible natural resources. The Article XX chapeau provides that a trade measure must not be "applied" in an arbitrary

² See WTO Secretariat, *Regionalism and the World Trading System* 12-13 (1995).

and discriminatory manner with respect to countries where the same conditions prevail and that it does not constitute a disguised restriction on international trade.³ In several cases, as mentioned in chapter 10 of the book, the Appellate Body adopted an analytical procedure under article XX that first examines whether a measure can be provisionally justified under paragraph XX(g) or XX(h) and then considers whether it satisfies the article XX introductory proviso, known as the chapeau. Some of the sub-paragraphs of article XX such as (a), (b), and (d) state that the measure must be "necessary" or "essential" to the achievement of the policy purpose set out in the provision while subparagraph (g) refers only to measures "relating to" the conservation of exhaustible natural resources. Chapter 10 of the book is a particularly well-researched chapter. The authors provide valuable insights through their discussion of how, in the process of adjudicating disputes, panels and the Appellate Body interpreted the different terms used in article XX.

In general, Part VI which includes three chapters on remedies for fair and unfair trade will be of great value to anyone with an interest in the WTO. They are well-written and easy to comprehend. The authors also highlight some of the shortcomings of the current remedy regime such as the lack of elaboration on the meaning of the term conditional. To keep the text updated, the authors refer to concepts, such as parallelism, that were developed through WTO case law rather than through WTO agreements. At the outset, instead of leaving this point for clarification in the introduction of each chapter, it would have been better if the authors explained, in the introduction to Chapter 11, that antidumping and countervailing duty measures are instituted against alleged unfair trade (unfair low prices and unfair subsidies) while safeguard measures are instituted against fair trade (increased imports). In between the chapters on trade remedies specific sections on U.S. and EC antidumping and countervailing laws and practices are useful since they are frequent users of these measures. In addition, references to proposals submitted by some WTO members, as part of the ongoing Doha Round, for reforming the WTO remedy regime would have also been useful.

Part VII address the rules and practices concerning the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures (chapter 14), trade in services (chapter 15), trade and investment (chapter 16), government procurement (chapter 17), and TRIPS Agreement (chapter 18). As in the rest of the book, the authors' discussion here is clear, objective, and fully attentive to the complexities of the issues they are analysing. The authors characterize the reaction to GATS, as well as the view that it is a threat to government-owned sectors, as "exaggeration" in terms of effects due to its unclear or uncertain rules (p. 630) and in the judgement of the reviewer, they are correct. In chapter 18, the authors emphasize the contentious history linking intellectual property and international trade. The inclusion of intellectual property protection in bilateral/regional trade agreements should not be underestimated. As the authors point out, these trade agreements tend to include TRIPS-Plus provisions that go beyond what is mandated by TRIPS rules. The book comes amid a growing trend of securing intellectual property rights in a manner that moves towards greater protection.

The last chapters of the book shed light on specific social policy issues (Part VIII). The authors discuss the special rules for developing and least-developed countries (chapter 19). Several WTO rules that were intended to address the special circumstances of developing countries are examined. Additionally, the authors discuss other social policy issues (environment, labour, culture, human rights, and health

³ Article XX chapeau is concerned with the manner of application of the specific measure, as opposed to the measure itself which vary depending on the facts of the case. Article XX chapeau is also more general standard since the basis for determining whether discrimination exists under article XX is the same "conditions" prevailing in the countries involved, a term that can cover not only products, but potentially any other factor that can affect the production of products.

and safety). The WTO is on its way to better accommodate non-trade concerns. The WTO system has come a long way from the narrow scope of GATT and has, in just a few years, reached a high level of maturity. The maturity of the system is apparent in various areas, but especially in its inherent drive toward the environment and health and safety issues. The Appellate Body takes great care in developing a consistent body of jurisprudence and in gradually refining the rules. Moreover, these rules are themselves being carefully studied by practitioners and academics alike. In addition to the Appellate Body's determination, there are two other important factors--one relating to NGOs, the other relating to member states--that are supporting the trend towards accommodating non-trade concerns. Even a number of WTO members have given their blessing to this movement for restructuring the WTO system. Although proposals of some WTO members are unlikely to find wide support in the short term, support is likely to grow as member states come to recognize the advantages of incorporating these non-trade concerns within the WTO.

As the WTO takes on an increasingly important and visible role, we are fortunate to have *World Trade Law* as a resource. The book is executed with intelligence and the research and discussion are rich and detailed, and it will no doubt prove to be an invaluable tool for students and practitioners who have an interest in the WTO. Since it is written specifically for students, the book's straightforward style and manner of presentation would make it an excellent book for teaching purposes. The book's one apparent shortcoming--which cannot be blamed on the authors--is that it may all too quickly become outdated because of the fast evolution of WTO law, especially as a result of panel and Appellate Body decisions. Preferably, subsequent editions should be published on a regular basis to keep track of the changes. Furthermore, the reviewer would urge the authors, in any subsequent edition, to include a documents supplement which would contain relevant WTO agreements.