

BOOK REVIEW

The World Trade Organization: Legal, Economic and Political Analysis. Patrick F.J. Macrory, Arthur E. Appleton and Michael G. Plummer (eds.). Springer 2005. Volumes I–III.

Writing a book review is one thing. Writing a review of a library is quite another. For this is what the present author was effectively faced with when asked to review the three-volume, 3,000-odd page juggernaut on the World Trade Organization (WTO) edited by Patrick F.J. Macrory, Arthur E. Appleton and Michael G. Plummer. To make things worse—for a lawyer at least—the book covers not only legal but also economic and political aspects of the organization. The list of contributors is as impressive as the size of the book itself. It practically reads like the “Who is Who” of WTO expertise and lists among its contributors three former Directors-General, one former Deputy Director-General, two former members of the Appellate Body, and 42 other authors; one of the former Director-Generals has written the Foreword.

Consistent with its physical dimensions, the book covers practically all aspects of the WTO and its activities, including the “interlinkages” between trade and “non-trade” issues. The book consists of three volumes, divided in five parts. Volume I sets out the background of the institution in historical, trade policy and functional terms (Part I). It also elaborates on the legal framework, from an institutional, regulatory and functional perspective (Part II). Volume II deals with economic, political and regional issues, as well as a range of “new” issues, including e-commerce, competition policy, the environment, labor, human rights, gender issues and culture (Part III). Volume III contains “country reports” for selected countries covering 16 economies, including the United States, the European Union, Japan, China and other large and some developing economies (Part IV), as well as two essays with “concluding thoughts” (Part V).

The only substantive topic that is arguably missing is consumer protection, which could have been included among the “new issues” in Volume II. Similarly, public health as one of the important interface issues could have been discussed under a separate heading. However, both of these issues are covered, from a regulatory perspective at least, by comprehensive articles on the Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”) by Denise Prévost and Peter Van den Bossche, and on the Agreement on Technical Barriers to Trade (the “TBT Agreement”) by Arthur E. Appleton. Investment could also have been addressed more comprehensively and not only in the relatively limited terms of the Agreement on Trade-Related Investment Measures. Conversely, there is some overlap, which perhaps could have been avoided—for example, labor issues are discussed in three different articles, although the perspective and the approach differ.

If the book has a structural problem, it is one that all books following this format tend to have: there is no shared intellectual or philosophical framework or *problématique* within which the subject is being approached. While the editors have contributed a

short Introduction, this is more of a description of the book's contents and a list of acknowledgements than a bird's eye view of the world of international trade and its place in the wider context of international economic policy-making. This is entirely understandable, given that the book is not produced as a result of a research project; each of the papers, while fitting within the overall structure, follow their own preferred intellectual approach. The advantage of the chosen approach is, of course, that it tends to better reflect the plurality of views among its contributors. This is probably just as well.

Supachai Panitchpakdi, former Director-General of the WTO, states in the Foreword that the purpose of the book is "to help[] people around the world to understand what the WTO is, where it has been, and where it is headed". This is an apt description, since it is both the global ambition—in both substantive and geographic terms—and the snapshot philosophy of where the institution is coming from, what it is, where it is heading, that indeed animates the book, its structure and many of the contributions. While one might ask whether in the present era of the Internet and electronic communications and databases such a snapshot philosophy still makes sense, or whether the ambition of legal literature should be directed differently, the answer still appears to be positive: while some of the papers are likely to become outdated in a few years, there are still concrete—almost literally in this case, given the three bricks that the book consists in—benefits flowing from the chosen format. First, many of the contributions do aim higher in their ambition than simply executing the snapshot philosophy. And second, precisely because of its comprehensiveness, the book tends to provide some comfort to its owners that a source book covering the WTO as a whole lies within the reach of one's fingertips. Electronic tools are not, at least as yet, as efficient in providing such comfort.

The editors rightly state that, since the creation of the WTO, the field of international trade law has become so complex that no one person can any longer produce a work of the detail that is required if the intention is to do more than just an introductory work. This is in particular true if one approaches international trade at the professional or trade expert (as opposed to academic) level. Nonetheless, the book might have benefited from a more philosophical reflection on the conceptual linkages between trade and non-trade issues, as well as those between trade in goods and services and the broader concept of the international market. What is the eventual goal of the liberalization of international trade? Should the liberalization process be limited to trade in goods and services, or should it be expanded to cover not only the free movement of goods and services but also of capital and labor—the four famous freedoms that lie at the core, for instance, of the European Communities. Should this—a vehicle standing on all four wheels (goods, services, capital and labor), as opposed to the current bicycle (goods and services)—be the eventual goal of international economic policy-making, or are there particular reasons that counsel limiting the ambition of international economic policy to the liberalization of trade in goods and services, at least within the context of the WTO? If so, what are those reasons, precisely?

It is not possible, within the confines of the present review, to discuss in detail the many carefully crafted and conscientiously researched contributions included in the book. I highlight only some of them, recognizing that any such selection is bound to be somewhat arbitrary.

Some of the papers deserve to be mentioned simply because they are excellent. Among these is the opening chapter by Gilbert R. Winham, Professor Emeritus of Government and Political Science in Dalhousie University. Winham tracks the history and developments of the Uruguay Round negotiations, which he puts in a wider politico-economic context. Winham argues that, despite the relatively modest goals with which the Uruguay Round was launched, its results amounted to a “system change” in the world economy. Tracing the economic and policy context within which the WTO Agreement was negotiated, including an assessment of the impact of globalization and the collapse of communism, he accounts for the change in the rationale for the Round that occurred during the negotiations. Winham points out that one of the underlying motivations for governments to reach an agreement was to show that they were still in charge—in this sense the acceleration of the globalization process, to the extent that this was in fact the result of the WTO Agreement, was also a consequence of a reaction of governments to it. Winham also addresses the links between finance, foreign investment and international trade, and their role in the process of globalization, noting that economic globalization—the globalization of operations of large corporations—was at the time of the negotiations led by the strong growth of foreign investment rather than trade.

Peter Sutherland’s contribution is written more from the trade diplomacy point of view. Expectedly, he tries to explain why, in the end, all stand to gain from trade liberalization. Sutherland, former Director-General, deserves to be quoted on one particular point he makes about NGOs: “It is not appropriate to see them, in the manner they often promote themselves, as representing the views of ‘civil society’. In democracies, governments have the obligation to adequately reflect the needs of the society as a whole.” One might add: and unlike NGOs, governments are also accountable to the people for what they are doing. This is not to say NGOs have no useful role to play in identifying social and economic problems and doing something about them; indeed, they may have an important role in performing precisely this function. But it is to say that NGOs are well advised to refrain from policy-making—or, rather, policy recommendations—so long as they lack the required professional skills and scientific expertise and—even if they possessed those skills and expertise—so long as they lack any accountability for the policies they choose to advocate. Identifying a problem and advocating its solution is an important function even if one does not pretend to know the answer. Indeed, not pretending to know the answer may be even more effective advocacy.

Mike Moore, another former Director-General, seeks to confront those WTO critics who view the system as inherently undemocratic. Moore insists that the WTO is “the most democratic international body in existence today”. In Moore’s view, many of

the things that the opponents of the WTO do not like about the institution “stem from too much democracy, not too little”. The WTO is slow moving precisely because it is so democratic, so consensus-driven; if there is no consensus, there will be no agreement. Indeed, too much is expected from the WTO—since trade tends to have an interface with many important regulatory fields, including the environment, investment, public health, intellectual property, competition and labor standards, among others, the WTO is often seen as the forum for addressing regulatory issues in all of these areas. This is an optical illusion. Managing these linkages is a much more limited exercise in policy terms than it appears to be from the outside—the WTO is not a site for environmental policy-making, for instance. According to Moore, the problem with the WTO is not that it does not take sufficiently into account the world’s public opinion. This is because there is no such thing as world public opinion in the first place. While Moore suggests that it is for this reason that democracy remains rooted in the nation-state, he does not interrogate the alternative view—the problem may well be with our concept of democracy. Perhaps it should not be rooted in public opinion in the first place.

Many of the 82 articles included in the book are equally thought-provoking as those mentioned above. Among the many, one may mention Ivan Bernier’s paper on “Trade and Culture”, which raises a host of intriguing questions relating to trade in cultural products. One of these is whether these products should be classified as goods or services in the first place—a critical question in terms of the applicable WTO agreement (GATT vs. GATS). Bernier notes that no clear criteria for making this distinction have been established in any of the WTO agreements, and that the Appellate Body itself has struggled with the distinction, concluding that “[w]hether a certain measure affecting the supply of a service related to a particular good is scrutinized under the GATT 1994 or the GATS, or both, is a matter that can only be determined on a case-by-case basis”.¹ While such a case-by-case approach allows the Appellate Body to exercise its function and settle the dispute at hand, it is not particularly helpful for Members as it fails to provide any guidance to them, when contemplating a regulatory measure that may affect trade in cultural products, as to whether the measure in question is governed by GATT or GATS. In other words, the case-by-case approach fails to establish even minimum predictability—and thus undermines the very purpose of trade regulation.

In these circumstances one might ask whether it would not be more appropriate to classify all cultural products as services rather than goods. Is it not in fact a service that a work of art such as a film or a recording, or a literary product, effectively provides? Is it not in fact the case that the physical object in which the service is captured is no more essential than the paper on which a lawyer’s legal opinion or argument is recorded—and clearly the latter must be classified as a service rather than as a good? Is it not

¹ *European Communities—Regime for the Importation, Distribution and Sale of Bananas*, AB-1997-3. WT/DS27/AB/R (1997), para. 222.

arguable that in both cases it is primarily the intellectual content that is being traded rather than the physical object, and that it is this difference in the principal object of the transaction that distinguishes the sale of a service from the sale of a mere physical recording device. Given the differences in the applicable legal regime, Bernier rightly points out that the classification issue may be critically important in practice: "In the field of culture, where many products have both goods and services components, the temptation to rely on the difference in the treatment of goods and services to solve immediate problems could be great. If such a development was to happen, it could . . . complicate singularly the search for a long-term solution to the trade and culture debate."

From a lawyer's perspective at least, one must also highlight the excellent and detailed analyses of the legal framework of the institution, including the multilateral and plurilateral agreements and the dispute settlement proceedings, in section II of the book. Two of these—on the SPS Agreement and the GATS (by Mary E. Footer)—are in fact book-length studies on the subject. All are written in a manner that avoids the jargon that often tends to plague texts dealing with GATT/WTO law. The editors must be commended for the discipline they must have imposed on the contributors in order to achieve this.

One particular issue that is addressed, more or less directly, in many of the articles and that is also reflected in the structure of the book, deserves a broader comment. This is the expectation that the WTO is, or at least could become, the primary tool and forum for international economic development efforts. This thinking is also reflected in the name of the present negotiation round, which is informally called the Doha Development Round. I believe this expectation is misplaced, if not wishful thinking. The WTO is a forum for trade liberalization and, increasingly, for selective harmonization of international trade regulation. This mission implies and in practice requires a certain minimum level of economic development from its Members. Those Members that have established an adequate regulatory and technical infrastructure for a functioning market are likely to be able to reap the benefits resulting from the liberalization of international trade much more effectively than those Members whose regulatory and technical infrastructure fails to meet the minimum international standards. These countries have neither sufficient domestic capital, nor are able to attract sufficient volumes of foreign investment, to develop the infrastructure that is required to support economic development, leaving the economy in a state where it is simply unable to take off. The extension of WTO disciplines to trade in agricultural goods will provide some relief to some of the countries, but not to all of them, in particular not the LDCs.

International economic development is clearly a field in need of major intellectual and practical reorientation. Both those who seek to convert the WTO from a rich man's club into an economic development shop and those who long for the lost world of the new International Economic Order, are equally mistaken. International trade, by itself, is not sufficient to resolve the international economic development problem.

Something else is needed—an international organization or program that is devoted to the task of dealing with the international development challenge, and one that is not only equipped with sufficient economic but also intellectual resources. This includes the task of defining the economic baseline indicators which allow one to distinguish, for policy purposes, between economies that must be considered “developed” and therefore must be left on their own devices and those that fail to meet the baseline criteria and thus qualify for targeted development assistance. The purpose of such assistance should not be to provide economic development aid of the traditional type, which is too often provided without any strategic vision of the targeted country’s development needs and therefore deals only with the symptoms rather than the cause—and thus, ironically, tends to only perpetuate the prevailing low level of economic development. Such aid may calm the conscience in the West, but it does not help the patient. International economic development efforts must be targeted at the regulatory and technical infrastructure of the countries concerned—including education, transportation, energy and telecommunications—in areas where such infrastructure falls below the international baseline. Once the economic baseline has been reached, there is no need, nor justification, to continue pouring in further subsidies. Sovereign States should be assumed to be able to take care of themselves, once the baseline is reached. The goal should be equality of opportunity, not of actual result—which is also part of the underlying philosophy of the WTO, as noted by Moore.

The World Trade Organization: Legal, Economic and Political Analysis testifies to the increasing maturity of the WTO as a field of study and research. Given its breadth and depth, and the quality of the contributions, the book is likely to become a standard reference tool for trade experts and professionals. It will likely also have use as a textbook, although the level of detail and the level of background knowledge required will limit its use for teaching purposes, except for those who are specializing in the field.

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