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**Book Review**

## Book Review: Trade and Environment in the EC and the WTO - A Legal Analysis

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**Jochem Wiers (2002):**

**Trade and Environment in the EC and the WTO – A Legal Analysis**

Europa Law Publishing, xii + 502 pages, ISBN 90-76871-08-6, EUR 79.–

The general debate on “Trade and Environment” is by now older than a decade. While very early publications on the issue date back to the late 1980s, the main contributions were published in the mid-1990s. Especially the first tuna/dolphin decision by a GATT panel in 1991 (although it was never officially adopted) and the creation of a GATT Committee on Trade and Environment in 1994 established the field as a topic of legal research. Since then, the respective WTO Committee and academia have published a great number of documents relating not only to the limitations on the WTO principles of Most-Favored-Nation (MFN) treatment, to national treatment (NT) and to the use of Article XX GATT (General Exceptions) relating to goods but also on other issues such as eco-labeling, subsidies, and the relationship of the WTO to multilateral environmental agreements (MEA).

In the European Community (EC) it was especially the European Court of Justice’s ruling in the so-called “Danish Bottles Case” in 1988 that “kicked off” a detailed analysis of the relationship between the free movement of goods as one of the main pillars of the single market and the protection of the environment. This and related decisions led to a detailed analysis of the relationship of the free movement of goods (Art. 28 of the Treaty establishing the European Community (ECT), originally Art. 30 of the Treaty) and the respective limitations (especially Art. 30 ECT, originally Art. 36 of the Treaty). Very soon, however, the fact that the European Union declared the protection of the environment a horizontal issue and received the competence to harmonize Member States’ legislation in this field led to a much more comprehensive debate on the relationship of economic integration and protection of the environment in general.

The fact that the economic, political and legal implications of market integration and the protection of the environment remain similar in most contexts led early on to an abundance of comparative work. In 1997, DAMIEN GERADIN focused on the EC and US experience (Trade and Environment – A Comparative Study of EC and US Law, Cambridge University Press). The comparison between EC and GATT case law was, among others, drawn by ERNST-ULRICH PETERSMANN (International and European Trade and Environmental Law after the Uruguay Round, Kluwer International, 1995) and very recently by NICOLA NOTARO (Judicial Approaches to Trade and Environment: The EC and the WTO, Cameron May International Law Publishers, 2003). Already in 1996, my own contribution tried to provide some references to GATT/WTO law despite the fact that it covered also other areas of EC law outside the free movement of goods, such as state aid, competition, or the common commercial policy of the EC (ANDREAS R. ZIEGLER, Trade and Environment in the European Community, Oxford University Press).

The book by JOCHEM WIERS consists of ten chapters organised in four parts. *Part I* contains only an *introductory chapter* on the trade and environment debate and the current issue of the growing relevance of international trade law to other areas. *Chapters 2* and *3* of *Part II* look at the relevant provisions and discussions in the context of the European Community, while *Chapters 4* and *5* of *Part III* do the same for the WTO. *Part IV* consists of three theme-oriented chapters comparing the two regimes and a concluding chapter. *Chapter 6* focuses on the more or less identical approach in the EC and the WTO to prohibit quantitative restrictions to trade (Article 28 EC Treaty and Article XI

GATT) and, at the same time, providing for a limited number of exceptions (Article 30 EC Treaty and XX GATT). *Chapter 7* is dedicated to areas of particular importance to the debate in both organisations: the harmonization of environmental regulations in EC and the questions relating to production and processing methods (PPMs) in the GATT/WTO. *Chapter 8* looks at the EC common commercial policy and the resulting linkages between the WTO and the EC, while *Chapter 9* analyses the question of the transferability of the European model to the WTO.

The contribution by JOCHEM WIERS is especially welcomed by all those who have lost track of the trade and environment debate and who would like to update their knowledge with regard to the case law in the WTO (Dolphin/Tuna II, Shrimps/Turtle, etc.). With regard to the European Community this need is certainly less crucial as the increasing harmonization of EC environmental law leads to a situation where the pure application of the principles governing the single market to domestic measures is irrelevant in view of the pre-emptive effect of the more specific EC harmonization measures. This has also an influence on the comparison between the EC and the WTO. The similarities regarding discriminatory and non-discriminatory measures and the reasons to justify trade-restrictive measures remain striking (WIERS, p. 341): this has mostly to do with the comparable constructions that were used to avoid protectionism in the GATT and in the EC Treaty alike. Once this basic concept was confirmed for environmental measures, however, the elimination of technical barriers to trade through harmonized standards as well as the growing harmonization of other policy areas (including the protection of the environment) have changed the “trade and environment debates” in the two organisations. While, as of today, in the European Community harmonization measures and their enforcement are the most discussed areas, the lack of this option in the WTO has led to a broader discussion of the questions mostly relating to process and production measures (PPM) and the relevance of multilateral environmental agreements. While WIERS leaves out the question of MEA, he dedicates an important part of the comparative part of his study to the question of extraterritoriality and PPM. This is certainly interesting, as these measures remain among the most controversial issues with regard to the trade and environment debate in the WTO, despite the view expressed by some authors that it is a misleading and rather unhelpful concept.

At the same time, these specific developments of both EC and WTO law in this area threaten to make the comparative approach less useful and could easily lead to a simple juxtaposition of the two politically different situations in the EC and in the WTO. Still, the author manages to emphasize some interesting implications of the more recent European Court of Justice’s rulings in C-67/97 Bluhme and C-379/98 Preussen Elektra on comparable situations in the EC where the question of production and processing methods and the respective debate in the WTO are relevant. *Chapter 7.2* turns out to be one of the most innovative and stimulating sections of the book as it focuses on the question of how the PPM concept – normally only referred to in the WTO context – applies in the case law of the European Court of Justice. Here again, it becomes clear that the different institutional set-up of the EC and the integration achieved as of today limit the comparability to the WTO.

In *Chapter 9* WIERS focuses on questions that seem unavoidable if one starts out from the finding that the basic concepts regarding restrictions of the free movement of goods in the EC and the WTO are similar and then compares the development of the case law of both the WTO and the EC. Is the constitutionalization and integration within the EC

(including its environmental policy) a possible model and desirable for the WTO? Here the influence of European lawyers such as MEINHARD HILF (A principle-oriented Approach to WTO Law, Colloque Jean Monnet, 1999), ERNST-ULRICH PETERSMANN and PAOLO MENGOZZI (Les valeurs de l'intégration européenne face à la globalisation des marchés, Revue du Marché Unique Européen, 1998) is strongly felt and maybe slightly overstated in view of recent criticism from non-European lawyers.

On the whole, this book certainly is a very useful comprehensive and up-to-date analysis of the case law in both the EC and the WTO regarding the balancing of environmental and trade concerns. It is the most recent addition to a series of contributions that have described the existing treaty provisions and the respective case law. It will be very helpful as a basis for a more comprehensive analysis of the field. The table of cases with an index to quotations of the case law in the text proves to be a particularly useful tool in this respect. In the future, however, it should be hoped that more authors will try to add to this debate by either proposing new approaches or focusing on the collateral aspects outside the trade-restrictive character of import restrictions such as public procurement policies, competition issues and areas such as services and investment.

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