the legal tests in Article III require 'more economics'. Third, the legislative process of the WTO (e.g., through the Doha Round) is certainly not close to accepting the use of economics. Hence, it is very much up to academia to provide the laboratory to test the possible evolution of economics in WTO dispute settlement, and Dr Melischek's work is a step in that direction. Perhaps a useful further exercise could be to measure, in practice, the competitive relationship between real world products (e.g., local and imported spirits) in various WTO Members (e.g., the US, India and Ecuador) with a view to shedding further light on sound approaches to the question of likeness in WTO adjudication.

If reading a book is like conversing with the author, I have enjoyed and learned a lot from the conversation with Dr Melischek.

JORGE A. HUERTA-GOLDMAN, *TILPA – Trade and Investment Law*

doi:10.1017/S1474745613000360

Legal and Economic Principles of World Trade Law

edited by Henrik Horn and Petros C. Mavroidis
Cambridge, UK: Cambridge University Press, 2013

Legal and Economic Principles of World Trade Law brings together some of the most prominent scholars in the fields of international trade theory and international trade law to provide an interdisciplinary analysis of WTO law. This volume is part of a project to improve the interpretation of WTO law that is sponsored by the American Law Institute (ALI). The volume begins with two preparatory chapters, one summarizing a previous ALI volume on the history of the GATT and the other providing a non-technical analysis of the economic approach to trade agreements. The remainder of the book is split into two sections that analyze how the economic approach can be applied to understand the WTO rules and to critique the case law. The topics covered in these studies are border instruments (trade taxes and quantitative restrictions) and domestic instruments (through national treatment), respectively.

In the preparatory chapter 'Why the WTO', Gene Grossman and Henrik Horn provide a clear exposition of the international externalities approach to trade agreements. This approach argues that countries will ignore the negative effect of their trade policies on their trading partners when setting trade policy, so that all countries can gain from a trade agreement that results in mutual reduction of protectionist policies. In a broad class of trade models, including many where political considerations play a role, the negative externality from tariffs operates through the terms of trade and will be larger the greater the market power of the tariff-setting country. Grossman and Horn also discuss the commitment approach to trade agreements, which emphasizes the potential for trade agreements to be used by governments to alleviate domestic protectionist pressure. They argue that the commitment approach is primarily a complement to the market power model, since it requires partner countries to use their market power to enforce commitments.

A main theme addressed in this chapter and the study on border instruments by Kyle Bagwell, Robert Staiger, and Alan Sykes is the ability of the terms-of-trade theory to explain the features of the WTO agreement. The terms-of-trade model has produced

https://doi.org/10.1017/S1474745613000360 Published online by Cambridge University Press

a number of successes in explaining trade agreements. The notion of reciprocity follows naturally from the terms-of-trade theory, since unilateral tariff reductions can be welfare reducing for countries that have market power. Models based on the terms-of-trade approach have also been useful in providing insights about the role of the most favored nation clause, the incompleteness of trade agreements, and the gradual nature of tariff reduction. The empirical predictions of the terms-of-trade model have also been born out in several recent studies.

On the other hand, critics of the terms-of-trade approach have noted that the model does not do as well in explaining the treatment of export policies in the WTO. Export taxes have a favorable effect on the terms of trade for countries with market power, so the theory would predict that governments with market power would impose export taxes and eschew export subsidies. The one WTO complaint involving export taxes arose in the case of China's mineral exports, which were limited as part of China's Accession Protocol. The case suggested that export taxes are limited by the WTO when they provide an international externality, so the puzzle is why they are so rarely used. One explanation is that the presence of politically powerful interests in the export sector, which will mitigate the terms-of-trade incentive for exports. In addition, much of the market power effect may be exercised by the use of tariffs.

As Bagwell *et al.* note, the ban on export subsidies is harder to explain. Although the introduction of political economy concerns and imperfect competition in export markets can create an incentive for governments to use export subsidies, the ban on export subsidies does not seem to be an efficient response. They do note that recent work focusing on the impact of trade policy on the exit/entry decisions of imperfectly competitive firms may provide an explanation.

Bagwell *et al.* also provide a careful analysis of the case law involving border instruments, including the analysis of preferential trading agreements, special and differential treatment, and the MFN clause. They generally find the case law to be consistent with the economic approach to trade agreements, with the caveats noted above.

In contrast to the generally favorable conclusions about the case law on border instruments, Gene Grossman, Henrik Horn, and Petros Mavroidis find the case law concerning national treatment under Article III of the GATT agreement to be seriously lacking. The negotiating history indicates that Article III was intended to prevent countries from using domestic instruments to offset the effects of trade liberalization, and to outlaw practices that were intended to favor domestically produced goods. However, Grossman *et al.* question whether the case law interpretations support the intended purpose of the national treatment provision. Somewhat surprisingly, the decisions rarely consider either the motives of the legislation or the magnitude of the trade impact, which would seem to be important in satisfying the intent of Article III.

Part of the difficulty with evaluating complaints is that the language in Article III is vague. For example, Article III distinguishes between 'like' products and 'directly competing or substitute' (DCS) products, and provides a stricter standard for establishing violations of national treatment in the latter case. However, panels have not been consistent in their rulings on the relative importance of statistical evidence (e.g. cross price elasticities of demand) as opposed to product characteristics (end uses or HS classifications) in establishing the extent to which products are competitive.

https://doi.org/10.1017/S1474745613000360 Published online by Cambridge University Press

Similar difficulties arise in the interpretation of what amounts to 'less favorable treatment' of imported goods.

The authors also make the important distinction between goods that are 'policy-like' and those that are 'market-like.' The prototypical example here would be the case of a 'clean' domestic good and a 'dirty' imported good. If the external effect of the imported good is being ignored by consumers, economic efficiency would call for a tax on the 'dirty' good equal to the value of its negative externality. Such products are market-like from the point of view of consumers but not policy-like because of the externality. Whether the fact this policy results falls more heavily on imported goods than domestic goods would be interpreted by panels as a violation of Article III due to a higher tax on imports is less clear. In a case involving construction materials, a panel ruled that imported products containing asbestos, a known carcinogen, were 'like' domestic products that did not contain asbestos because their end uses were similar. This conclusion was overturned by the Appellate Body on the reasoning that consumers would not view the products as competing because of the presence of carcinogens. The conclusion in this case is the right one from the view of economic efficiency if consumers are really ignoring the externality, but not necessarily if the buyers are builders who are aware of the possibility of being sued for damages for external effects.

In light of these inconsistencies in the interpretation of Article III, Grossman *et al.* propose two methodologies for dealing with complaints related to Article III. Both methodologies use the economic approach by focusing on whether a domestic fiscal or regulatory policy creates an international externality, and thus should be constrained under a trade agreement. In particular, establishing that imports that receive less favorable treatment would require that they be both market-like and policy-like to the domestic products. The main difference between the two approaches they propose is whether domestic authorities are limited to the exceptions listed in Article XX for determining the acceptable reasons for putting a higher burden on imported products than domestic products. For example, is it compatible with Article III to tax imported luxury goods at a higher rate than non-luxury domestic goods? Such a policy would not follow an Article XX exception, but might be considered to fall within the domain of domestic policy choices. The authors prefer the interpretation that allows the government a broader scope in setting domestic policy objectives, as that will add to the legitimacy of the WTO and is likely to facilitate trade liberalization. Whether or not one agrees with this ranking, the authors have clearly identified an approach for dealing with Article III complaints that is consistent with the economic approach to trade agreements.

The chapter concludes with an illustration of how this methodology can be applied to some of the most significant national treatment cases, and how the two approaches might differ in their evaluations. These cases all involve alcohol taxation, which has the potential to reflect both externality and income distribution motives for taxation. It may serve as some comfort that the authors conclude that the eventual decisions were generally correct, although not necessarily for the preferred reasons.

I found this book to be an important contribution to the interdisciplinary analysis of the WTO. For non-economists, it provides a clear explanation to the economic approach to trade agreements and how it can be used to provide a basis for evaluating trade disputes. For the economist, the detailed analysis of the cases provides an

https://doi.org/10.1017/S1474745613000360 Published online by Cambridge University Press

appreciation of the importance of issues such as the choice of contractual language and the allocation of the burden of proof that are typically abstracted from in economic models. The structure of the book is such that each of the chapters can be read independently. This is useful if the reader is interested primarily in one topic, although it does result in some repetition of topics across chapters when read as a whole. This, however, is a minor concern. Overall, the book is a valuable contribution to the legal and economic literatures on the WTO, and its critique of case law provides a number of important insights about the role of national treatment.

ERIC W. BOND, *Vanderbilt University*

doi:10.1017/S1474745613000359

The Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement

edited by C.L. Lim, Deborah Kay Elms, and Patrick Low
Cambridge, UK: Cambridge University Press, 2013

The global trading system is in a state of fluidity with the proliferation of preferential trade agreements (PTAs) and difficulties in concluding the Doha Round which have impeded the WTO from being able to renew its rules for commerce in the twenty-first century. In an attempt to forge new rules to promote trade and commerce where the WTO has so far been unable, countries in the Asia Pacific region are negotiating an ambitious plurilateral agreement called the Trans-Pacific Partnership (TPP).

The Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement is a 20 chapter collection of analyses from specialists on various aspects of the TPP, including politics, economics, and international trade law. The book covers almost all aspects of importance to the TPP and is the most comprehensive and authoritative book on TPP to date.

The book was published after the Honolulu APEC meeting in November 2011 where the TPP was originally targeted for conclusion after a year and a half of negotiations. Negotiations are still underway as of Bali's hosting of APEC in October 2013. The risk with a book such as this is that it becomes outdated quickly. Yet, despite some of the details having changed, the main issues and analyses in this book are as relevant today as when it was written.

Unlike many other edited volumes, this one is comprehensive and well designed, with few if any gaps in coverage – an impressive achievement given the 29 TPP chapters supposedly under negotiation but also given the vastly differing aspects of the agreement from services trade, traditional market access issues, development issues, the TPP's relationship to APEC, and importantly how the TPP fits into, relates to, and potentially pushes the multilateral trading system. With an agreement of potential significance to Asia-Pacific and global trade, there are important geopolitical implications as well, which are touched upon throughout the volume. Yet the book sensibly focuses on the trade and economic issues, with the US rebalance towards Asia very much part of the context.

https://doi.org/10.1017/S1474745613000360 Published online by Cambridge University Press