

## Book Reviews

The Book Reviews section will introduce you to the latest and most interesting books on a wide range of topics pertaining to the law and policy of risk regulation. EJRR Book Reviews will strive to be present in every edition and will accept reviews from all disciplines. For further information on the submission of reviews please contact the Book Reviews Editor at david.hornsby@wits.ac.za.

### *Trade and Public Health – The WTO, Tobacco, Alcohol and Diet*

by Benn McGrady  
New York: Cambridge University Press, 2011,  
340 pp.,  
€ 87,37; Hardback

Asmita Parshotam\*

In deconstructing the interplay between the World Trade Organization (WTO) and national regulations governing alcohol, tobacco and diet, McGrady identifies difficult issues and discrepancies prevalent in the international trade law regime that continue to hamper the effective functioning and regulation of these particular issues. A pervasive critique levelled at the WTO is whether a trade body is properly suited to govern health disputes over alcohol, tobacco and dietary concerns, and if its prescriptions relating to taxes, tariffs and the marketing of tobacco, alcohol and food products are the most appropriate manner of regulating these particular industries. In discussing six main themes, the book examining the intersection between trade and non-communicable diseases, the use of health instruments in WTO agreements, and the use of taxes and marketing restrictions as a method to address health concerns. In addition, the author also discusses the impact of WTO rules on national regulatory measures, as well as the structure of decision-making and delegation within the international law framework.

McGrady's book attempts to highlight the discrepancies present within the international trade law arena and its incoherence in terms of (i) providing effective guiding policies to countries regulating tobacco use, alcohol intake, and unhealthy diets and (ii) regulating the trade of such products as well as measures taken to curb their usage, through the various

forms of taxation and outright bans. Nuances are detected in the interplay between marketing/advertising and the use of tariffs (as the preferred method) for deterring the consumption of tobacco and alcohol. Such matters are two-prong: firstly, domestic advertising requirements that stipulate manufacturers label alcohol and tobacco products with their negative side effects goes to the heart of concerns expressed regarding Technical Barriers to Trade and potentially violate the General Agreement on Trade in Services (GATS); secondly, what may constitute Technical Barriers to Trade can arguably impinge a country's sovereign ability to regulate these sectors as it deems appropriate. It is these difficulties that McGrady tackles and dissects in his book: the negative impact that trade laws, in the absence of an obligation to take into consideration pertinent World Health Organization (WHO) regulations, may have on public health.

A further cause for concern, as the author identifies, is that no treaties governing alcohol and diet exist under international law, thereby highlighting the inconsistency in the approaches that may be taken within a forum such as the WTO, where case law will be decided simply on the merits of each dispute. Furthermore, where an extraneous instrument is referred to it is (i) done in the absence of any overarching rules of interpretation, (ii) thereby facilitating potential arbitrary or grossly differing outcomes in judgments and (iii) without taking cognisance if, in fact, all WTO members would also be parties as members or signatories to the cited conventions. A similar problem lies with the plethora of differing agreements and their applicability to the regulation of public health issues, as well as the inadequacy of the SPS and TBT Agreements in covering the entire range of measures a member state may make use of when addressing health, tobacco and dietary concerns. Ultimately, the author comprehensively tackles the issues surrounding the fragmentation of public international law, and its impact on the WTO's ability to regulate these industries from a trade perspective.

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Through an analysis of existing WTO dispute outcomes, McGrady highlights the unequal power relations between the global South and North, where countries such as Canada and the United States of America are able to effect complete bans of certain cheaper products (particularly tobacco and alcohol related products), but where developing nations are unable to implement the same measures against their North American and European counterparts. A case in point is the comparison between America's successful banning of Indonesia's clover flavoured cigarettes, but difficulties that developing countries face in adopting a similar approach towards unhealthy and refined junk foods (in particular, corn syrup or highly processed meat products) exported by American manufacturers, the said products which, eventually, negatively impact the health and dietary *status quo* of a country's citizens.

In examining the challenges facing tobacco, alcohol and diet regulations, McGrady points to the difficulties that dietary requirements, in particular, pose for WTO member states. McGrady discusses how, as a result of their composition, alcohol beverages and tobacco products are easier to regulate on an international platform, but the same is not easily applied to the regulation of food products, as a result of each country's individual dietary requirements and preferences, as well as the local/ethnic foods consumed by their citizens. Using the consistent case study of Samoa's attempted ban of American imported mutton flaps and turkey tails (both exceptionally fatty and unhealthy off-cuts of meat traditionally used in pet food), Samoa's government's efforts marked an attempt by the government to intervene in the rising healthy concerns amongst its citizens, in a country facing one of the highest obesity rates amongst the Pacific nations. Samoa's domestic regulation reflected a violation of the WTO's rules: the outright ban of one or two products is impermissible, and reflects discriminatory practises on behalf of the Samoan government, despite a genuine attempt by the government to address the health concerns of its citizens. It also brings to the forefront the manner in which free trade appears to be of overriding concern, where the private interests of multinational corporations are protected (here too, the TBT Agreement faces criticisms of deference towards private interests), at the expense of health and food security for many impoverished and developing countries.

A juxtaposition is thus apparent, between a country's sovereign right to regulate its own procedures, and that of the WTO's most favoured nation and non-differentiation principles, requiring domestic and imported products to be treated alike, thereby reducing the need for national/domestic regulation thereof. Of course, should a dispute arise between over a particular good that may negatively impact public health, it is trite that the onus of proof lies with the complainant, who must prove that the measures taken are proportionate and necessary and, where not, justify reasons for doing so. Although these are standard legal requirements, it highlights the restraints a country may face in adopting measures and regulations it feels are to the health benefit of its citizens, and having to account for an infringement of trade laws which laws do not always encompass a balancing exercise between market access and health concerns, and do not account for a degree of flexibility within trade agreements that provide for flexibility in addressing public health concerns as and when they may arise.

The author's analysis faces a number of challenges, including a lack of international trade jurisprudence on these issues, inconsistency in dispute outcomes, and differing interpretations of the various treaties and articles within the GATT. In addition, McGrady questions whether the WTO's Dispute Settlement Body (DSB) is, in fact, the body best suited to governing disputes relating to public health. A cause for concern is the broad application of legal principles and its *ad hoc* interpretation by the DSB, which can constrict the development of a comprehensive body of law suitable for providing guidance in mediating the relationship between trade and public health concerns. Furthermore, a lack of a coherent body of case law is of primary concern within this analysis, as the author's ability to provide detailed and meaningful analysis is somewhat lessened through the repetitive use of sparse case law in order to draw the necessary conclusions. Of course, this cannot be attributed to the author; rather, it is simply a by-product of the minimal cases brought forward before the DSB. Similarly, the book discusses the intersection of trade and public health from a legal background and, in the absence of such background, makes the book a challenging read. It would also have been useful for the author to consider, in further detail, the broader political underpinnings and political frameworks in accounting for the chal-

lenges facing the WTO in its attempts to regulate the varied and complex field of public health. Nevertheless, *“Trade and Public Health – The WTO, Tobacco, Alcohol and Diet”* is an unbiased and comprehensive endeavour to explain and criticise the interaction between the WTO and public health issues.

*Risk Regulation in Europe: Assessing the Application of the Precautionary Principle*

by Jale Tosun

New York: Springer, 2012, 102 pp.,

€ 41,64; Softcover

*Vessela Hristova\**

Jale Tosun’s *“Risk Regulation in Europe: Assessing the Application of the Precautionary Principle”* (Springer Briefs in Political Science) is a focused, tightly written and clearly structured study that applies conceptual tools from public policy analysis to the field of risk regulation in the European Union (EU). In specific, the book analyses the variation in the use of the precautionary principle across three case studies, all within the area of food safety. The cases concern, respectively, the regulation of growth hormones in meat, the genetically modified corn MON810, and stevia-based sweeteners. It is argued that all of these cases represent instances of policy-making under scientific uncertainty and therefore they can provide useful and systematic insights into how the precautionary principle has been applied in the EU. As the author notes, even though the first two cases have received ample attention in the literature, the book offers a novel analytical perspective on these cases which generates new findings. In addition, the case of stevia-based sweeteners is a recent one and thus also contributes new empirical data.

The two main research objectives of the book are to explain policy launch and policy change. In specific, the study is interested in what factors influence the initial setting of a regulatory standard and what explains subsequent policy change (or lack thereof). In the context of the empirical cases, these questions translate into inquiring about what led to the initial approval or ban of a particular substance or organism (growth hormones, GM corn, stevia-based sweet-

eners) and what determines whether these initial decisions were subsequently retained, modified or reversed.

The theoretical framework, elaborated in Chapter 2, is firmly grounded in public policy analysis. One of the outcomes of interest, policy change, is disaggregated into three components: likelihood of occurrence, direction of change (more or less restrictive), and scope (major, moderate, or minor).

The study brings together two theoretical frameworks to generate expectations about the above mentioned dimensions of policy change. The first framework is the subsystem adjustment model, developed by Howlett and Ramesh (2002). It stipulates several mechanisms which drive policy change. The first two, endogenous to the policy subsystem, are policy learning and venue change. The other two – systemic perturbations (e.g. food crises and scandals) and subsystem spillovers, which introduce new actors, institutions or ideas – are exogenous. According to the model, the presence of the endogenous conditions is sufficient to effectuate policy change but they are made more effective by the other two.

A central contention of the book is that conditions surrounding the agenda-setting stage of the initial policy-making cycle have a strong influence both on how the precautionary principle is first applied and on whether subsequent policy change occurs. Therefore, the subsystem adjustment model is complemented to take into account not only of the mechanisms of policy change but also the starting point. For this purpose, the study draws on the agenda-setting models developed by Cobb et al. (1976). According to them, agenda setting can take place in the context of ‘outside initiation’, ‘mobilization’, and ‘inside access’ and that carries different implication for the final policy outcome.

In the first model (outside mobilization), policy is initiated because of external popular demand for regulation. As a result the precautionary principle will be applied strictly and subsequent policy change is unlikely or will go in the direction of minor to moderately more restrictive policy. In the second model (mobilization), the issue is initially contained to policy-makers but spills into the public domain at a later stage. As a result, policy change is likely to occur due to popular pressure but the direction and scope of change is indeterminate. Finally, in the third model (inside access), policy is defined by an inner circle of policy-makers. Under this condition policy change,

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