

stake are broadly similar irrespective of the particular sector. Thus, the notion of expropriation that an arbitrator or scholar will adopt (the contours of which are accurately recounted in the book) will be relevant no matter if one is dealing with the violation of a patent right or with issues relating to environmental spillovers, and there is therefore little benefit in repeating their treatment several times. Similarly, with regard to the interpretive techniques centered around systemic integration and Art. 31(3)(c) of the Vienna Convention, which are taken up several times in the book, one may wonder whether a single discussion would not have been more incisive.

Also the juxtaposition of the subjects discussed is sometimes not entirely convincing. For example, in Part III, issues such as systemic integration, the role of precedent in investment arbitration, or the analysis of the contours of the fair and equitable treatment standard are all discussed under the umbrella heading of reconciling conflicting interest. Yet, these issues raise conceptually very different problems (and the same could be said for “negotiation and mediation” which follows “interpretation” and precedes the analysis of exception clauses in Part II), and setting them side by side would have warranted further justification than is currently provided. Finally, certain issues discussed in the book could have benefited from more lengthy treatment. This is the case for the possible role for “mutual supportiveness”, only briefly hinted at, or for the impact of exception clauses in investment treaties, to the complexity of which the few pages of the book do not entirely do justice.

Despite these problematic aspects, Valentina Vadi’s book provides a comprehensive analysis of the interplay between international investment law and public health and will thus become a valuable reference in the investment law literature, enriching the now growing scholarship which explores the “investment-and” problematics. It will also provide a most useful tool for practitioners and arbitrators involved in investment disputes having a public health dimension. In an area where the risk of falling in excessive specialism and of drowning in technicalities is high, Vadi achieves to always discuss the issues at stake against their wider international law background, with a solid mastery of the wealth of topics discussed and a firm vision of the broader picture.

*International Organizations in WTO Dispute Settlement – How Much Institutional Sensitivity?*

by Marina Foltea

Cambridge: Cambridge University Press, 2012,

352 p.,

£ 70.00, Paperback

*Carlo Maria Cantore\**

The book under review is one of the latest publications in the “International Trade and Economic Law” series published by Cambridge University Press. The aim of the volume is to understand the degree of sensitivity WTO adjudicators have with regards to the law of other international organizations. The author (currently researcher at Bocconi University in Milan and Senior Research Fellow at the WTI in Bern) looks at the issue against the background of the literature on the so-called “fragmentation of international law” and provides an overview of the way WTO Panels and Appellate Body (AB) have dealt so far with the rules set up in other international organizations. The subject of the analysis, hence, is the case law related to the interplay between the WTO and, respectively, IMF, WIPO, WCO, WHO and the Codex Alimentarius.

The structure of the book is as follows: Part I (“The Institutional Sensitivity of the WTO”) clarifies the terms of the debate and analyses the different linking techniques WTO Agreements provide towards other international organizations (deference, incorporation, co-operation and observership, right to seek information). The last chapter of the section reads these phenomena under the rules on interpretation set up in the VCLT and advances some criticism regarding the lack of a coherent approach by WTO judges *vis-à-vis* the laws of other international organizations and their interplay with WTO Agreements. Part II (“The constraints on Institutional Sensitivity”) highlights the internal and external constraints for the interplay with other international organizations and the issue of legitimacy in light of the different techniques adopted by WTO treaties in relation with other forums. Part III (“International Organizations in the WTO disputes settlement procedures”) overviews the case law of the WTO Panels and AB that has dealt so far with the law of the internation-

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al organizations mentioned above. In the concluding summary, the author advances some policy recommendations in order to enhance coherence of the international legal order and certainty of the rules applicable to certain cases.

The author points to the most interesting cases of interaction between the WTO and other international agreements. A peculiar one is that of the World Health Organization and the Codex Alimentarius Commission, analyzed in Chapter nine. The SPS Agreement of the WTO makes direct reference to the Codex Alimentarius Commission. The settlement of food safety-related disputes is not an easy task for panelists and AB judges, hence they need advice from scientific experts. The author warns –after a rather extensive overview of the case law- that there is a tendency to confine the role of scientific experts to consultation. According to Foltea, this poses a threat to a coherent settlement of the disputes, since panelists and AB judges might not take in due account the evidence provided by experts and decide without a clear assessment of the facts. In the conclusions of Chapter nine, the author points at some sort of specialty of the Codex Alimentarius Commission and the WHO when compared to the other international organizations analyzed in the book. As a policy recommendation, she suggests the appointment of “expert review groups”, in order to avoid the appointment of individual experts and enhance the ‘legitimacy’ of the involvement of scientists.

Overall, the structure of the volume is coherent and defined. In particular, the categorization of the different linking techniques between WTO Agreements and other international organizations sounds convincing, but perhaps a deeper analysis of the causes would have made the book more complete. In fact, the book is based on the assumption that a fragmentation of the international legal order has occurred and that it is somehow desirable to reach a higher level of coherence and integration among the different forums. According to the author, institutional sensitivity towards the law of other international organizations can serve as a tool to enhance legitimacy of the WTO judiciary. Irrespective of the position one might have on this, it would have been interesting for the sake of the completeness of the volume to give more attention to the different rationales *behind* each of the WTO Agreements and, therefore, behind the interplay with the laws of other organizations. GATT, TBT, SPS and so on serve different

functions (they aim at reducing either tariff or non-tariff barriers to trade), hence their interaction with other international organizations should follow different patterns. Moreover, the international organizations taken into account are different from each other, so that not only it is hard to advocate for more coherence, but also difficult to think of it happening in the near future. The author is of course well aware of this, but maybe some clarification on the different natures and functions performed by WTO Agreements could have helped the reader understand the issues in a better way.

In conclusion, Dr. Foltea’s book gives a good account of the state of the art in the interaction of the WTO and the rules of other international agreements. The picture of the main actors on the stage is sharp, but probably further reflection on the different aims pursued by the WTO agreements would have been useful. Overall, the book is certainly worth the reading.

*The Tangled Complexity of the EU Constitutional Process: The Frustrating Knot of Europe*

by Giuseppe Martinico

Abingdon: Routledge, 2012, 208 pp.,  
£80.00, Hardback

*Giacomo Delledonne\**

Giuseppe Martinico’s latest monograph is part of a longstanding inquiry into the nature and internal balance of European constitutional law. This research interest has already resulted in two books (written in Italian) and a number of articles published in leading European and international journals. How does *The Tangled Complexity of the EU Constitutional Process* advance its author’s reflection? As it will be laid down more in detail in this review, its strength lies in its internal barycentre, halfway between theoretical discussion and case-by-case analysis of the role of European judicial actors in coping with constitutional conflicts. Another remarkable aspect of the book is that its theoretical assumptions are not limited to strictly legal arguments but also consider the philosophical debate, especially the Hayekian notion of order and Chantal Mouffe’s agonistic pluralism.

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