

Book Reviews

Trade Agreements at the Crossroads

Susy Frankel and Meredith Lewis (eds)

Routledge, 2014, pp 280, eISBN 9781317964551, \$160

Trade Agreements at the Crossroads is a collection of essays analysing the current challenges in international trade and investment. Edited by Susy Frankel and Meredith Lewis, the text has a particular focus on the role of Free Trade Agreements ('FTAs') in a climate of economic uncertainty. Throughout the text, the authors recognise concerns stemming from the proliferation of FTAs since the establishment of the World Trade Organisation ('WTO') and have made attempts to address these issues with innovative suggestions.

The structure of the text first allows the reader to appreciate the current uncertainty surrounding the international economy before proceeding to look at the practical aspects and established assumptions underlying international trade law. The text skillfully illustrates theoretical issues with practical case studies from international dispute settlement bodies such as the WTO Panel and Appellate Body reports, and the European Court of Justice.

The first section assumes the reader has no previous knowledge and sets the scene by providing an overview on the types of trade agreements. It vividly explains the accompanying dispute settlement mechanisms in different trade agreements and their relationship with the current WTO Dispute Settlement system. In the second section, the text proceeds to look at trade agreements in the contemporary context by examining the practical situation in the Asia-Pacific. It particularly focuses on China's commitment to open up market access to its economy, the second largest economy in the world. The third section examines established concepts in international trade law such as the interpretation of the Most Favoured Nation clauses and questions the underlying assumptions in these concepts.

Two consistent themes permeate the text. First, the trend of overlapping dispute settlement mechanisms arising from the proliferation of FTAs. Second, the power imbalance between smaller developing countries, larger developing countries and large developed countries.

First, many FTAs have established dispute settlement mechanisms of their own. Lewis and Van den Bossche acknowledge this trend in the first chapter and expertly categorise these mechanisms from diplomatic to highly legalistic. The authors correctly highlight concerns over the possible overlap of jurisdiction between dispute resolution mechanisms

under the FTA and the WTO Dispute Settlement Body. They draw upon relevant case studies such as *Mexico – Tax Measures on Soft Drinks and Other Beverages*¹ and *Brazil – Measures Affecting Imports of Retreaded Tyres*.² Particularly interesting is how the authors consider the application of common law concepts such as *res judicata*³ to resolve jurisdictional issues. This theme is further built upon by Sandford in the subsequent chapter where he applies jurisdictional considerations in the context of the Pacific Agreement on Closer Economic Relations, an agreement negotiated by Australia, New Zealand and the 14 Pacific Islands Forum countries which will include a dispute resolution system.

Second, the text recognises the different bargaining positions of WTO member countries and the disparate views of academics in regard to these positions. The editors successfully draw the reader's attention to the contrasting views on China's involvement with the WTO. Zhang in chapter five acknowledges China's status as a developing country and agrees with the country's gradual approach of greater participation in the WTO. By contrast, in chapter 6, Leal-Arcas disagrees by emphasising China should 'hide less' behind the status of a developing country and instead step up as a leader in the WTO.

The concluding chapter by Frankel perfectly sums up the reality of power imbalances between developing countries and large developed countries. Frankel demonstrates this by comparing the United States' reaction towards separate cross-retaliation measures by Antigua, a small and powerless developing economy, and Brazil, a developing country with relatively large economic power. Whilst the US was quick in resolving the issue with Brazil, no resolution was forthcoming with Antigua.

There are two drawbacks to the text. First, chapters one and two are repetitive in their discussion on overlapping jurisdictions. Both chapters examine *Mexico – Tax Measures on Soft Drinks and Other Beverages*,⁴ with the first chapter analysing the Appellate Body's decision on the availability of a dispute resolution option under the North American Free Trade Agreement. The second chapter's analysis of the case adds nothing further to the overall text and is an unnecessary addition.

Second, the text failed to address contentions surrounding Art XXIV of the General Agreement on Tariffs and Trade 1994, a key provision

¹ Appellate Body Report, *Mexico - Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R (6 March 2006).

² Appellate Body Report, *Brazil - Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (17 December 2007).

³ *Res judicata* refers to a principle that once a dispute has been heard and a court has given final judgment, the parties are barred from re-litigating the same dispute in the same forum.

⁴ Appellate Body Report, *Mexico - Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R (6 March 2006).

allowing the existence of trade agreements in the WTO. As the overarching theme of the text focuses on trade agreements, the inclusion of a discussion on Art XXIV would have complemented the text. The interpretation of Art XXIV is currently a subject of great academic debate.⁵ Readers keenly following this debate will be disappointed by this omission.

Nonetheless, Frankel and Lewis have successfully compiled a comprehensive study of the contemporary trade law environment by pulling together articles from distinguished academics and practitioners including Peter Van den Bossche and Kevin Gray. Key to the success of this text is its concise case summaries, providing readers with a snapshot of the facts and contentious issues of each case. The text excels in its ability to explain technical jargon in simple terms, making it accessible to students and informed readers. Overall, the text provides a timely perspective on the dynamics between trade agreements and the WTO. It also presents a crucial reality check on the power imbalances between WTO member countries.

*Cathryn Neo**

⁵ Sherzod Shadikhodjaev, 'Checking RTA Compatibility with Global Trade Rules: WTO Litigation Practice and Implications from the Transparency Mechanism for RTAs' (2011) *Journal of World Trade* 529, 531.

*Final year LLB (Hons I) student at the University of Tasmania and Co-editor of the *University of Tasmania Law Review* 2014.