

Free Movement of Goods and Limits of Regulatory Autonomy in the EU and WTO. By T. Perišin. The Hague: TMC Asser Press, 2008. xiii + 238pp. £50.00.

This book is a comparative study of the rules of the EU and the World Trade Organization (WTO) on the free movement of goods. The book is well structured. Chapter 1 serves as the introduction to the subject and explains the main concepts used throughout the book. Chapter 2 on non-pecuniary restrictions on the free movement of goods in the EU presents a thorough analysis of Art 34 TFEU (ex Art 28 EC) as well as the interfaces between free movement and fundamental rights—with a legal analysis of relevant case-law. Chapter 3 analyses the important concepts of conferred competences, subsidiarity, and proportionality. Chapter 4 deals with the non-fiscal restrictions on the free movement of goods in the WTO, analysing the main rules of the

General Agreement on Tariffs and Trade in this respect and the interaction among them. Chapter 4 also analyses other WTO Agreements such as the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures in the context of non-fiscal restrictions on the free movement of goods. The book concludes in Chapter 5 with two key questions: a) How should EU and WTO rules on the free movement of goods be interpreted?; and b) What are the effects of EU decision-making within the WTO? Both questions are already presented in the introductory chapter.

The author argues that ‘trade liberalization is a highly positive development since it contributes to the better allocation of resources, to economic prosperity, and to raising the standard of living and the quality of life’ (p 1). Supporters of trade liberalisation—the reduction of tariffs and removal or relaxation of non-tariff barriers—argue that it is sensible to liberalise trade globally because: a) freer trade allows countries to specialise in what they do best (theory of comparative advantage), creating thereby greater economic efficiency, and allowing more goods and services to be produced and consumed; b) if a market is open to imports, domestic producers are exposed to competition from overseas. Being successfully competitive at home *vis-à-vis* imports implies greater chances to be competitive overseas; and c) competitive imports are beneficial for the consumer from choice, price, and quality viewpoints. *A sensu contrario*, a policy of maintaining trade obstacles to imports tends to raise the cost of living and reduce consumer choice. That said, not everyone is convinced that trade liberalisation is beneficial for every WTO member, especially the poor, based on the following grounds: first, government transfers can shrink as liberalisation cuts the government’s receipts of trade-related taxes; second, terms of trade can deteriorate as liberalisation affects world prices; third, liberalisation can impose adjustment costs and raise short-run risk owing to competition from imports and reallocation of productive factors.

Perišin is concerned about the fact that free-trade agreements today have a broad implications on our daily life. In an era where international trade has a great incidence in domestic politics (whether it concerns food safety, human rights, etc), trade policy still suffers from a democratic deficit. This is quite ironic in the case of the EU since the main purpose of the Convention on the Future of Europe was to make policies more democratic and closer to European citizens. With the Lisbon Treaty, co-decision between the European Parliament and the EU Council of Ministers will apply to international trade agreements. That will bring more democratic legitimacy to the process of decision-making. This is an important step forward in combating the democratic deficit in trade policy-making. The EU had to wait over 50 years to make this happen. However, co-decision only partially solves the democratic deficit problem, since the Lisbon Treaty, in my opinion, excluded national parliaments. Because the Lisbon Treaty gives exclusive competence to the EU in the common commercial policy, a solution to combat the democratic deficit in trade policy would be the empowerment of national parliaments.

Ideally, trade policy should become more democratic, by not only involving parliaments but also through citizens' participation. People should be able to participate in trade policy-making by voting on the agreements. Citizens should be informed before voting so that they will vote with an understanding of the issues (deliberative democracy). This is not an entirely unrealistic goal because today people are more informed than ever, and are starting to realise that trade affects their daily lives.

Those members of civil society who benefit the most from trade liberalisation are diffuse and have small gains, whereas those who lose from trade are concentrated and

organised. Since the trade policy-making can be easily captured by protectionist interests (ie farmers or unions), the authority to make trade policy is often in the hands of the executive power to bypass protectionist pressures. Nonetheless, the next question is inevitable: accountable to whom? It should be noted that national governments do not always consider the interest of all their citizens, but rather leave out those citizens who do not live in the country and, thus, are not represented.

In Chapters 2 and 3, the author demonstrates very avidly that the EU internal market rules have strong external effects that can be felt within the WTO. In this sense, Perišin concludes that 'the common market is nowadays at a much higher level of integration than when mandatory requirements were first introduced' (p 46). Moreover, the author concludes that because changes in the standard of review bear important consequences for the division of powers between the European Community (EC) and its Member States, as well as between the judiciary and the legislative/executive, 'the principle of proportionality affects the core of the constitutional systems of the Member States and the Community' (p 56). Furthermore, it is concluded that, in the context of EC rules on non-pecuniary restrictions on the free movement of goods, it is difficult to strike a 'balance between trade liberalization and the states' regulatory autonomy in protecting other values' (p 78). In addition, the book shows that there have been an increasing number of cases dealing with conferred competences, subsidiarity, and proportionality. These cases are 'witness to the very dynamic dialogue occurring in Europe on the need for better observance of these principles' (p 124).

Chapter 4 illustrates that the problem with interpreting WTO rules on non-fiscal trade restrictions is how to ensure Member States' regulatory autonomy while at the same time enhancing trade liberalisation (pp 192–193). It is argued that 'the level of regulatory autonomy which should be left to the states must correspond to the WTO's objectives and its relatively heterogeneous structure (and thus this level of national regulatory autonomy must be higher than is the case in the EU)' (p 193). The book concludes in its final chapter that 'trade rules inevitably exert a strong impact on the protection of values, national regulatory autonomy, division of power between levels of branches of government, and on sovereignty (p 197). This is particularly true in the case of EU and WTO rules on the free movement of goods, which can force states to remove measures which might have been adopted to achieve a valuable goal, but which present obstacles to trade.

*Rafael Leal-Arcas,
Queen Mary University of London*