

Tamara Perišin *Free Movement of Goods and Limits of Regulatory Autonomy in the EU and WTO* (The Hague: T.M.C. Asser Press, 2009) xii+233pp., ISBN 9789067042901, GBP 53 (hb).

As the title suggests, the aim of this book is to assess and compare the free movement goods in both the EU and WTO and how it is balanced against values inherent in national regulatory regimes, such as health, the environment and consumer protection. Specifically, the book seeks to explore this in the context of non-pecuniary, or non-fiscal, restrictions on trade.

In Chapter One, from a viewpoint that trade liberalization is ‘a highly positive development’ (p. 1), the stage is clearly set and key points and definitions are explained as well as the two aims of the book stated: that of addressing how the EU and WTO should interpret their rules on free movement of goods and the effects of the [EU] decision making process on the WTO. The author explains that while the two polities have similar hurdles to overcome in ‘striking an appropriate balance between the protection of values, sovereignty and regulatory autonomy . . . and free trade’ (p. 3), there are a number of significant variations in the methods used by each, largely due to the differences in their overarching aims, objectives and membership.

Chapter Two discusses the negative integration of the non-pecuniary restrictions on the free movement of goods within the EU and encompasses a thorough analysis of Article 34 TFEU (ex Article 28 EC) and the relevant case law from *Dassonville* through to post-*Keck* and the conflict with fundamental human rights and fundamental freedoms, examining the changes in interpretation of the rules on the free movement of goods. It is acknowledged that there are significant ‘[d]ifficulties in striking a balance between trade liberalization and the states’ regulatory autonomy in protecting other values’ (p. 78) and that a suitable balance of these, at times, competing interests depends largely on the ‘interpretation of free movement rules . . . alter[ing] with changes in the system’. (p. 78). Furthermore, it is highlighted that how the interpretation of the rules on free movement of goods

can have an effect on not just the internal trade of the EU, but also its external trade.

Chapter Three assesses positive integration in the EU through the concepts of conferred competences, subsidiarity and proportionality and between this chapter and Chapter Two, the author demonstrates the effect that the EU's internal market rules have had on its external relations, specifically with the WTO. The chapter also highlights the increasing number of cases being litigated concerning conferred competences, subsidiarity and proportionality and Perišin comments that compliance with these principles 'limit the possibility of total harmonisation and leave more space for partial harmonisation and especially for negative integration'. In turn, a greater reliance on these methods of harmonization and integration allow Member States more autonomy in protecting their own national values.

Chapters Four and Five move to the WTO and how the non-fiscal rules relating to free movement of goods are dealt with in the context of the General Agreement on Tariffs and Trade (GATT), notably Article III, before moving on to a similar analysis in relation to the Agreement on the Application of Sanitary and Phyto-Sanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). At the outset of Chapter Four, it is noted that the EU and WTO are two very different bodies, with the EU a much more homogenous system than the WTO. The approach of the WTO in relation to trade liberalization is very different, for the most part, to that of the EU. Perišin explains, through a detailed analysis of relevant disputes, that the WTO, in its interpretation of the GATT provisions, operates on an anti-protectionism basis and that early moves beyond this were due to misinterpretations that were subsequently reined in. In contrast, more recently negotiated agreements, the SPS and TBT, have moved beyond mere anti-protectionism and impinge much further on national regulatory autonomy, albeit in fairly narrow, scientific fields (p. 194).

Chapter Five offers a conclusion to the two questions posed in Chapter One: how the EU and WTO should interpret their free movement rules and the effect that the [EU] decision making process has on the WTO. It is reiterated that 'there is no universal and clear-cut rule capable of reconciling trade liberalization with the protection of other legitimate interests' (p. 197) and that interpretation of rules depends very much on a system's membership, aims and background. As these are constantly evolving so too must the interpretation of legal rules, as Perišin's book demonstrates. In relation to the first question, it is concluded that 'the approach of the ECJ towards Article 34 TFEU (ex Article 28 EC) has been dramatically changing over the years' (p. 197) and is now one based on a measure's effect on market access. Such an approach is a manifestation of the EU's aims of a single internal market as opposed to mere trade liberalization. In contrast, the approach

of the WTO through the GATT agreement is merely to ascertain whether a measure's 'purpose is protectionism' (pp 200–201).

Finally, it is demonstrated that the EU internal market has important external effects. This is largely due to the change in approach taken by the Court in interpreting Article 34 TFEU (ex Article 28 EC) and the gradual shift towards mutual recognition and partial harmonization, as once products from outside the EU have been marketed in one Member State they must generally be permitted in all Member States (p. 204). However, while Perišin points to a number of examples of when the EU has analysed proposed measures for their compatibility with WTO rules, there are equally as many times when the EU's rules have been challenged before the WTO's dispute-settlement system.

In summary, Perišin offers a detailed, insightful approach to the approach to free movement by both the EU and WTO. Each chapter is logically reviewed and concluded in turn, reiterating the arguments contained in the chapter. In addition, the conclusions, rather than providing decisive answers to the questions posed, often point to numerous possibilities or avenues for further discussion. As a result, the book is an ideal addition to any library seeking to expand its EU or WTO titles.

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