

2009

## The World Trade Organization: A Legal and Institutional Analysis

Anu Bradford  
*Columbia Law School*, [abradf@law.columbia.edu](mailto:abradf@law.columbia.edu)

Follow this and additional works at: [https://scholarship.law.columbia.edu/faculty\\_scholarship](https://scholarship.law.columbia.edu/faculty_scholarship)



Part of the [International Trade Law Commons](#), [Law and Economics Commons](#), and the [Legal Writing and Research Commons](#)

---

### Recommended Citation

Anu Bradford, *The World Trade Organization: A Legal and Institutional Analysis*, JOURNAL OF INTERNATIONAL ECONOMIC LAW, VOL. 12, P. 550, 2009 (2009).

Available at: [https://scholarship.law.columbia.edu/faculty\\_scholarship/1968](https://scholarship.law.columbia.edu/faculty_scholarship/1968)

This Working Paper is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact [scholarshiparchive@law.columbia.edu](mailto:scholarshiparchive@law.columbia.edu).

**The World Trade Organization: A Legal and Institutional Analysis.**

By JAN WOUTERS and BART DE MEESTER, Intersentia, 2007. ISBN 978-90-5095-730-4, 314 pp., £76.50.

The law of the WTO can be complex and the intricacies of the WTO hard to grasp even by someone who has spent years studying this area of law. In providing a clear, well-structured and highly accessible introduction to the legal and institutional aspects of the WTO, Jan Wouters and Bart De Meester offer a refreshingly uncomplicated book that walks the reader through the basic legal doctrine underlying international trade.

The book begins with a brief discussion of the theory of international trade and the history of the GATT and the WTO (Chapter I). The authors then move on to the objectives and basic principles of the WTO (Chapter II). These background chapters are followed by the two core substantive chapters of the book: Chapter III provides an overview of the WTO's legal framework whereas Chapter IV introduces the reader to the WTO's institutional framework. The discussion of the legal framework is organized around the various treaties and the agreements, mirroring the structure of the Marrakesh Agreement that established the WTO. The discussion of the institutional framework examines the WTO's membership, relationship to other international institutions, decision-making bodies and, most importantly, its dispute settlement mechanism.

The first two chapters are promising. Without offering unnecessary detail yet capturing the essential, the authors explain the basic objectives of the WTO law and the most fundamental principles that are embedded in the international trade system. At this point, the reader has a reason to expect that she is set for an easy ride through the law of international trade. The core Chapters III and IV discussing the legal and the institutional framework continue to benefit from the coherent structure and accessible description of the law and the institution. They also contain some helpful and often overlooked insights about the WTO, including a thorough description of the relationship of the WTO with the UN, IMF, World Bank and other international institutions.

In discussing the legal and the institutional framework of the WTO, the authors are motivated by the goal to be inclusive of all topics. They are careful not to omit any agreement that comprises the WTO, giving a reader a comprehensive yet concise overview of the system. This is a clear strength of the book. The downside of the authors' pursuit of completeness, however, is that it inevitably leads to a shallow treatment of some key issues. Important and complicated topics, including general exceptions, remedies or the regional trade agreements' relationship to WTO agreements would have deserved a more in-depth treatment in the book. Some other issues at the center of any timely discussion about the WTO also fall outside of the scope

of the book, including the question of the institutional boundaries of the WTO. The authors pay little attention to the complex linkages between trade and environment, trade and labor standards and trade and competition policy, among many other issues. The reader is also left without a full appreciation of the much debated question of legitimacy of the WTO. Thus, the reader who is particularly interested in these questions will likely need to consult additional material.

A more focused approach distinguishing starkly between important and trivial agreements might be preferred by a reader who is looking for a brief introduction to the most essential rules and principles that govern international trade. For example, the Agreement on Preshipment Inspection is hardly perceived to be as important as the highly contested and complex TRIPs Agreement, yet the authors seem to devote equal attention to both in their discussion. The authors could also have omitted their discussion of the agreements that are already terminated (including the International Dairy Agreement and the Bovine Meat Agreement) and that would normally not make their way even into a footnote of a conventional trade law book. Some readers might find that this level of detail and the inclusion of insignificant agreements make it difficult for them to capture what is essential to know about international trade law.

A reader choosing among introductory trade law books should be aware that this book is clearly a text book and not a case book. The authors' goal is to explain the legal doctrine stemming from the treaties and agreements and, at times, from the dispute settlement body's decisions. When the origin of legal rules can be traced to a particular case, the authors are careful to mention that case in a footnote. The clarity with which the authors explain the relevant doctrine is indeed impressive and makes the WTO law much more accessible than it would be when studied with the help of a case book. American style case books often leave it for the student to extract the legal rules from a complex set of facts and opaque legal analysis conducted by the WTO Panels and the Appellate Body. In this book, the authors have done all the work for the reader, skillfully parsing out the essential findings and converting them into legal rules and principles.

While a thorough understanding of the basic rules can be more valuable than knowing the details of the cases that generated those rules, some readers might find it difficult to understand the analytical processes that inform WTO doctrine without the supporting illustration of legal rules through concrete cases. Introducing the reader to a few landmark cases that define the institution today could have gone a long way in developing the necessary insight. A selective discussion of few key cases would also have extended the book's appeal among American law students, who are accustomed to approaching law through case law. More extensive discussion of case law would also seem warranted given that much of the topical debate

about the WTO is structured around specific cases. A reader who needs to know the specifics of, for instance, disputes about beef hormones or GMOs, cannot easily find an answer in this book due to its lack of a case index or a detailed discussion of these cases.

Finally, the reader should be aware that this is a book about law and not policy. The authors are careful to describe the WTO law as it is—rather than how they would like it to be. The authors rarely exert any voice in describing the WTO rules or provide alternative voices to bring life to the text of the agreements and institutional processes they describe. The law of the WTO is full of controversies yet the authors choose not to engage directly with them. Occasionally they acknowledge these conflicts, including making a reference to ‘fierce reactions’ to the shrimp/turtle case (p. 251) without however elaborating the facts, the legal arguments and the various stakeholder interests that led to these controversies. Consistent with this approach, the book does not engage with academic debates on the WTO. This cautious tone makes the book attractive for a reader who is looking to understand the law yet reserves the questions of policy for another day. Yet exposing the reader to the disagreement and indeterminacy that surround much of the WTO law would arguably have provided the reader with a more realistic picture of the institution and its constantly evolving rules.

Granted, the authors do not at the outset promise the reader an extensive public welfare or public choice analysis. But they explicitly set as their task to provide the reader with the understanding of the ‘impact of the law of the WTO on the daily work and life of everyone’. Political and economic impact of trade rules on various stakeholders, however, remains at the margins of the author’s analysis. The authors deliberately leave out the discussion of the political realities that shape the negotiation and the implementation of international trade agreements and set boundaries for what the WTO can accomplish. A more interdisciplinary, critical and dynamic approach would have provided the reader with a better understanding of the successes and the failures of the organization and given one the analytical tools to evaluate the current and future challenges of the international trading system. Tying the discussion of the legal and institutional aspects of the WTO to pressing political issues and including insights on how WTO rules operate in practice would also have better sustained the interest of non-lawyers studying the WTO.

The institutional analysis, in particular, would have lent itself to a closer examination of the effectiveness of the institution in light of the abundant literature on international organizations and the insights advanced by political scientists studying institutions. For instance, in providing an interesting and helpful discussion on groups and alliances within the WTO, the authors could have deepened the discussion by presenting the

basic theories on the formation and operation of interest groups. Similarly, the examination of the dispute settlement mechanism could have been complemented by analytical insights based on available statistics documenting the actual use of dispute settlement by various states. In this sense, the book remains true to its distinctly legalistic approach.

On the whole, the book provides a helpful framework for a reader who is primarily interested in legal rules that make up the institution. Yet the book is less likely to attract a reader who is more interested in the pressing questions that occupy the scholarly discussions of the WTO today: Are current remedies effective and normatively desirable or should they be revised to better serve the goals of trade liberalization? What are the needs of the developing countries and why are they reluctant to further open their markets? What is the role of the emerging economies in WTO negotiations? Are WTO rules effective? When do they constrain states and when do they fail to do so? Why have the negotiations become increasingly difficult to conclude in the past seven years?

The authors deserve praise for their uncompromising pursuit of precision and simplicity in describing the law of the WTO. The unquestionable virtue of the book lies in its skillful explanation of the legal doctrine. Had the authors included a more thorough discussion of policy, case law and alternative viewpoints in their legal and institutional analysis, it might have been challenging to retain the clarity and ease of reading. Highly analytical, critical and dynamic examinations of the WTO can be found elsewhere. However, these books are often dense, technical and therefore hardly accessible for someone with little previous knowledge of international trade law. Despite its limits and omissions, everything Wouters and De Meester include is thoroughly researched, carefully written and skillfully structured. Throughout the book, they avoid technical terminology and keep even the complicated doctrine accessible. While the brevity of the general index and the absence of a case index limit its use as a reference manual, the book can be useful as a handbook for students who want a brief, descriptive overview of the WTO before exploring the law of international trade in depth through a more analytical book. Readers who want to learn more also benefit from the inclusion of a bibliography that is organized according to the key topics of WTO law, and welcome references to the most helpful websites that contain information on international trade law.

Overall, any suggested weaknesses and omissions of the book are likely to be viewed more gravely by an American reader who is accustomed to learning about cases and policies behind the doctrine. A European seeking for a comprehensive yet concise doctrinal overview is likely to be more content with what the book offers. Still, for a highly curious student of international trade law or those trying to foresee how the WTO will change

in the future, a more spirited and critical approach rooted in political economy would offer a better pathway to understand the legal and institutional aspects of the WTO.

Anu Bradford

doi:10.1093/jiel/jgp017

Advance Access publication 17 April 2009