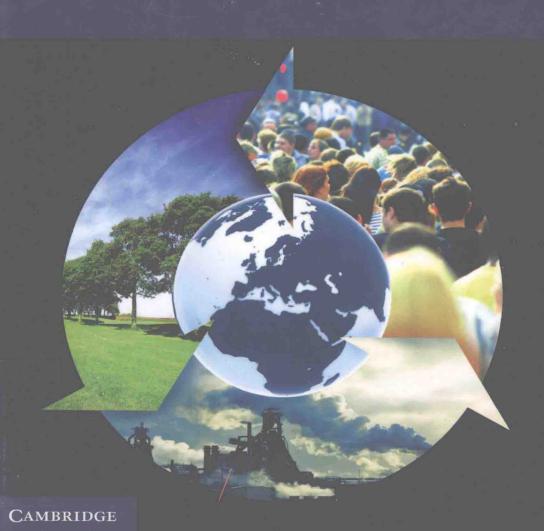
CAMBRIDGE

International Trade and Economic Law PROCESSES AND
PRODUCTION METHODS
(PPMS) IN WTO LAW
Interfacing Trade and Social Goals
Christiane R. Conrad



PROCESSES AND PRODUCTION METHODS (PPMs) IN WTO LAW

Interfacing trade and social goals

CHRISTIANE R. CONRAD



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PROCESSES AND PRODUCTION METHODS (PPMs) IN WTO LAW

Despite a decades-long debate, starting with the *Tuna-Dolphin* disputes of the 1990s, questions on the status of national regulatory measures linked to processes and production methods in WTO law have remained unsolved. Likewise, labelling requirements relating to unincorporated aspects of a product's life cycle remain strongly contested. Ongoing disputes at the WTO, as well as global social and environmental challenges relating to economic activities show how topical and important the search for adequate answers still is. *Processes and Production Methods (PPMs) in WTO Law* identifies and comprehensively analyses the key legal problems concerning such measures, setting them in the context of the current debate and its economic and regulatory background. Christiane R. Conrad develops a new approach to this debate which draws on the objectives and established economic rationales of the WTO Agreements.

CHRISTIANE R. CONRAD is an attorney at law and in-house lawyer with a telecommunications company in Germany. She was a member of the Collaborative Research Centre 'Transformations of the State' at the University of Bremen, and she has also been a Visiting Fellow at Georgetown University Law Center.

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Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals

Christiane R. Conrad

The Parties to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted

with a view to raising standards of living,

ensuring full employment,

and a large and steadily growing volume of real income and effective demand,

and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development,

seeking both to protect and preserve the environment

and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development

> Marrakesh Agreement Establishing the World Trade Organization signed in Marrakesh, Morocco, on 15 April 1994

As of today, 153 countries and other WTO members as well as 29 candidate countries have committed themselves to the above objectives.

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This book is a revised and updated version of my Ph.D. dissertation, which was accepted by the Law Faculty of the University of Berne in 2008. The sub-title of my dissertation, 'A contribution to the debate on the impact of WTO law on national regulation pursuing social goals', shows the broader context of my doctoral research which led to this book. As a member of the project group 'Social regulation and world trade' at the Collaborative Research Centre 'Transformations of the State', I placed a strong focus on the interplay of national social regulation and international trade, and, in particular, on the status of national regulatory measures under the law of the WTO. I found that despite a decades-long debate, the status of such measures - both from a legal and a political perspective - still remains unresolved. Existing regulatory measures show, that despite legal uncertainty, states do not totally refrain from exercising their power to enact such measures. However, there can be no doubt that the existence of the WTO Agreements and the heated legal and political debates on the legality of certain measures of national social regulation, which have been taking place at an international and, above all, at a transnational level, may lead to a chilling effect on the exercise of national powers. These, however, are still necessary to solve certain problems in cases where no capable institutions at other governance levels are in place. This book analyses the problem and offers a new 'regulatory' perspective, which might help to realize the common goals of national regulators and members of the WTO.

Writing this book would not have been possible without the encouragement, advice, help and support of many people, only a few of whom can be mentioned here. First and foremost, I owe particular gratitude to my supervisor, Professor Thomas Cottier, who inspired me to write this thesis in the first place. His advice and encouragement have been much needed major driving forces throughout my work. I am grateful also to Professor Ernst-Ulrich Petersmann for his comments and for reviewing my dissertation in the proceedings at the Law Faculty of the University of Berne. This work benefited greatly from discussions with scholars and

practitioners representing various academic disciplines and international backgrounds at the World Trade Institute (WTI) in Berne - thanks to the staff at the WTI for making this possible, and many thanks to my fellow Ph.D. students for candid comments and exciting discussions. I undertook important parts of my research at the Institute of International Economic Law (IIEL) at Georgetown University Law Center in Washington DC, which likewise offered ample opportunity to engage in academic and political exchange of thoughts in an atmosphere most beneficial for academic research. I enjoyed and gained a lot from discussions with Michelle Grando, Hong-Liu Gong and other fellows at the Institute, and especially with Professor John H. Jackson and Professor A. Jane Bradley, to both of whom I owe particular gratitude. Many thanks also to Professor Steve Charnovitz for thought-provoking comments on an earlier paper, and thanks to Tomer Broude and the Hebrew University of Jerusalem for granting me the opportunity to participate at a roundtable on the EC -Biotech case.

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- US Tuna and Tuna Products: see Tuna-Dolphin III

ABBREVIATIONS

AAA Agricultural Adjustment Administration

AB Appellate Body

General Agreement on Tariffs and Trade 1994 (Anti-

Dumping Agreement)

CAC Codex Alimentarius Commission
CAFE Corporate Average Fuel Economy law

CITES Convention on International Trade in Endangered

Species of Wild Fauna and Flora

CFC Chlorofluorocarbon
DSB Dispute Settlement Body

DSU Understanding on Rules and Procedures Governing

the Settlement of Disputes

EC European Community/European Communities
ECOSOC United Nations Social and Economic Council

EEC European Economic Community

EU European Union

FDA Food and Drug Administration FTC Federal Trade Commission

GATS General Agreement on Trade in Services
GATT 1947 General Agreement on Tariffs and Trade 1947
GATT 1994 General Agreement on Tariffs and Trade 1994

GMO Genetically Modified Organism

GPA Agreement on Government Procurement

GSP Generalized System of Preferences

HS Harmonized System: Harmonized Commodity

Description and Coding System of the World

Customs Organization

ICJ International Court of Justice
ILO International Labour Organization

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