

GLOBAL TRADE LAW SERIES

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# **ECONOMIC RELATIONS BETWEEN AUSTRALIA AND THE EUROPEAN UNION**

## **LAW AND POLICY**

Gonzalo Villalta Puig

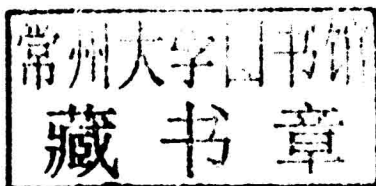


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# Economic Relations between Australia and the European Union

## Global Trade Law Series

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## About the Author

Gonzalo Villalta Puig is Professor of Law and Associate Dean (Development and External Affairs) of the Faculty of Law at The Chinese University of Hong Kong. He last was Reader in Law at the University of Hull and, earlier, Senior Lecturer in Law at La Trobe University. Prof. Villalta Puig is a Doctor of Juridical Science. He is a Barrister and Solicitor of the High Court of Australia and a Solicitor of the Senior Courts of England and Wales. Prof. Villalta Puig is a Fellow of The Higher Education Academy. He is a Knight of the Equestrian Order of the Holy Sepulchre of Jerusalem.

Prof. Villalta Puig teaches and supervises in the areas of International Economic Law (Preferential Trade Agreements and Economic Integration Agreements: Free Trade Areas and Customs Unions), Economic Law of the European Union (the Economic Freedoms of the Internal Market and the Common Commercial Policy of the External Market), and Australian and Comparative Constitutional Law as well as Commercial Law at large. These areas correspond with his specialization in Economic Constitutional Law and, through it, the Law of International and Regional Economic Integration.

Within that specialization, Prof. Villalta Puig researches the role of constitutional courts in the constitutionalization of free trade in federations and other non-unitary jurisdictions, mostly from a comparative approach. He has a particular research interest in the economic constitutions of the European Union and the Commonwealth of Australia and the law and policy of economic relations between them. His other research interests include constitutional aspects of the Cooperation Council for the Arab States of the Gulf as an economic union and the free trade area under the Closer Economic Partnership Arrangement between the customs territories of the People's Republic of China and its Special Administrative Region of Hong Kong.

Prof. Villalta Puig has authored close to eighty publications, mainly on matters of constitutional economics and legal issues of economic integration. He has published five other books all with prestigious law presses, including *The High Court of Australia and Section 92 of the Australian Constitution* (Sydney: Lawbook Co., 2008), with a foreword by The Hon. Michael Kirby AC CMG then a Justice of the High Court of Australia, and *Boundaries of Commercial and Trade Law* (Munich: Sellier European Law Publishers, 2011) with Prof. Christian Twigg-Flesner. Praise for these books is

notable. Dr David Bennett AC QC, a former Solicitor-General of the Commonwealth of Australia, described his monograph on the freedom of interstate trade in Australia as 'clear and incisive ... thoughtful and provocative'. The former Chief Justice of Western Australia, The Hon. David Malcolm AC QC, also had words of praise as did Mr Stephen McLeish SC, Solicitor-General of the State of Victoria, and other prominent jurists. Beyond Australia, his titles have had a positive reception in Europe, with favourable reviews in Germany and The Netherlands, and elsewhere. Prof. Villalta Puig has also published numerous book chapters and as many as fifty articles in journals with a high impact in his area of specialization, such as the *European Law Journal*, *European Law Review*, *Australian Law Journal*, *Public Law Review*, or the *Journal of World Trade*, and in periodicals as diverse as the *Journal of Corporate Law Studies*, *Company and Securities Law Journal*, *Lloyd's Maritime and Commercial Law Quarterly*, *Chinese Journal of International Law*, *Hong Kong Law Journal*, *Arab Law Quarterly*, *European Foreign Affairs Review*, *Australian Quarterly*, *Law Society Journal*, the Parliament of Australia's *Papers on Parliament*, Spain's parliamentary *Revista de las Cortes Generales* and *Anuario Español de Derecho Internacional*, the American Bar Association's *Public Contract Law Journal*, or *Law in Context*. The Federal Circuit Court of Australia and counsel before the High Court of Australia, including the Attorney-General for the State of South Australia, have cited his work. The World Trade Organization has also cited his work. In recognition of his 'remarkable accomplishment in research', The Chinese University of Hong Kong presented Prof. Villalta Puig with its Research Excellence Award and a further award for high-impact scholarship. Outside of his area of specialization, Prof. Villalta Puig has a commitment to pedagogical research and writes for periodicals such as *The Law Teacher: The International Journal of Legal Education* and the *Journal of Commonwealth Law and Legal Education*.

Prof. Villalta Puig has presented papers at national and international conferences, including the World Congress of the International Association of Constitutional Law, the Biennial Global Conference of the Society of International Economic Law, the Annual Conference of the University Association for Contemporary European Studies, the Annual Conference of The Society of Legal Scholars, and the Annual Conference of The Australasian Law Teachers Association. He has also presented at multiple seminars and colloquia, such as at the Europa Institute (Leiden University), the Menzies Centre for Australian Studies (King's College London), the Centre for Political and Constitutional Studies (Government of Spain), or with The Hon. Susan Kiefel AC, a Justice of the High Court of Australia. Prof. Villalta Puig has a notable profile in the media and he has contributed to such major newspapers as the *South China Morning Post* (Hong Kong), *The Age* (Melbourne), and *Okaz* (Riyadh) together with research institutes like the Chinese Academy of Social Sciences (Institute of European Studies).

Prof. Villalta Puig is Convenor of the Research Group for Constitutional Studies of Free Trade and Political Economy of the International Association of Constitutional Law and a member of the Committee on International Trade Law of the International Law Association. He is also Secretary of the Hong Kong Branch of the International Law Association and a member of the Full Council of the International Law Association. Prof. Villalta Puig is the former Deputy Convenor of the Public Law Subject Section of

The Society of Legal Scholars in the United Kingdom and Ireland. He is Associate Editor of the *Global Journal of Comparative Law* (Martinus Nijhoff Publishers), which he co-founded. He is a Director of the Centre for Financial Regulation and Economic Development, Faculty of Law, The Chinese University of Hong Kong. Prof. Villalta Puig is on the Advisory Committee of the Master of Laws Programme in Law and Economics of Utrecht University, at which he is a Visiting Professor. He holds visiting appointments elsewhere in Europe. Outside of Europe, Prof. Villalta Puig is a Visiting Professor at Waseda University and he has been a Visiting Fellow at the Centre for European Studies (Australian National University). He acts as a Peer Reviewer for The Higher Education Academy, the Austrian Science Fund, the Government of Portugal's Foundation for Science and Technology (Ministry of Education and Science), and the Government of South Africa's National Research Foundation.

Prof. Villalta Puig is admitted to practise law in Australia, New Zealand, England and Wales, and several other jurisdictions. His first admission was moved by Mr Bernard Collaery, a former Attorney-General for the Australian Capital Territory. Upon admission, Prof Villalta Puig obtained appointment as Tipstaff to the Chief Justice of the Australian Capital Territory, then The Hon. Jeffrey Miles AO. He practised Commercial Law with Clayton Utz, a top tier law firm in Australia and one of the largest in the world. While in legal practice, he was a member of the Legal Profession Act and Ethics Committee of the Law Society of the Australian Capital Territory as well as a member of various committees of the International Bar Association. Also in that time, Prof. Villalta Puig served as a Justice of the Peace of the Australian Capital Territory and was a Scholar of the International Bar Association. He later was an External Examiner at the College of Law of England and Wales for the Solicitors Regulation Authority (The Law Society) and a member of the Court of the University of Liverpool.

Prof. Villalta Puig is a graduate of the Australian National University, where he read Law and Politics.



## List of Abbreviations

ACP	African–Caribbean–Pacific
ACTA	Anti-Counterfeiting Trade Agreement
AEO	Authorized Economic Operator
ALOP	Appropriate Level of Protection
Anti-Dumping Agreement	Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
APRA	Australian Prudential Regulation Authority
AQIS	Australian Quarantine and Inspection Service
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
ATMEG	Agricultural Trade and Marketing Experts' Group
AUD	Australian Dollar
Australian Customs	Australian Customs and Border Protection Service
AVE	<i>Ad Valorem</i> Equivalent
BCA	Business Council of Australia
BIP	Border Inspection Post
BIT	Bilateral Investment Treaty
BSE	Bovine Spongiform Encephalopathy
BTI	Binding Tariff Information
CAESIE	Connecting Australian-European Science and Innovation Excellence
CAP	Common Agricultural Policy

## List of Abbreviations

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CCP	Common Commercial Policy
CCS	Carbon Capture and Storage
CCT	Common Customs Tariff
CIF	Cost Insurance Freight
CMO	Common Market Organization
CN	Combined Nomenclature
COAG	Council of Australian Governments
CTC	Change in Tariff Classification
DAFF	Department of Agriculture, Fisheries and Forestry
DFAT	Department of Foreign Affairs and Trade
Doha Round	Doha Development Agenda
EABC	European Australian Business Council
EBO	European Business Organisations
ECJ	Court of Justice of the European Union (European Court of Justice)
EEAS	European External Action Service
EFTA	European Free Trade Area
EIA	Economic Integration Agreement
ENS	Entry Summary Declaration
EORI	Economic Operator Registration and Identification
ETM	Elaborately Transformed Manufacture
ETS	Emissions Trading Scheme / Emissions Trading System
EU	European Union
EUR	Euro
FDI	Foreign Direct Investment
FEAST	Forum on European-Australian Science and Technology Cooperation
FIRB	Foreign Investment Review Board
FTA	Free Trade Agreement
FVO	Food and Veterinary Office

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GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indication
GPA	Agreement on Government Procurement
GSP	Generalized System of Preferences
GST	Goods and Services Tax
G20	Group of Twenty Finance Ministers and Central Bank Governors (Group of Twenty)
HCA	High Court of Australia
HS	Harmonized Commodity Description and Coding System (Harmonized System)
IBD	Infectious Bursal Disease
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information and Communications Technologies
IPR	Intellectual Property Right
Kyoto Convention	International Convention on the Simplification and Harmonization of Customs Procedures
LCT	Luxury Car Tax
MCC	Modernised Customs Code
MEQRs	Measures Having Equivalent Effect to a Quantitative Restriction
MFN	Most-Favoured-Nation
MRA	Mutual Recognition Agreement
OECD	Organisation for Economic Co-operation and Development
OHIM	Office for Harmonization in the Internal Market
PCA	Partnership and Cooperation Agreement
PET	Poly-Ethylene Terephthalate
PMV	Passenger Motor Vehicle
PTA	Preferential Trade Agreement
RASFF	Rapid Alert System for Food and Feed

## List of Abbreviations

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REX	Registered Exporter System
SAPS	Single Area Payment Scheme
SCM	Agreement on Subsidies and Countervailing Measures
SKA	Square Kilometre Array
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SPS	Sanitary and Phytosanitary / Single Payment Scheme
STM	Simply Transformed Manufacture
TBT	Agreement on Technical Barriers to Trade
TCF	Textile, Clothing, Footwear
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TISA	Plurilateral Agreement on Trade in Services (Trade in Services Agreement)
TPP	Trans-Pacific Partnership
TRACES	Trade Control and Expert System
TRIMS	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UCC	Union Customs Code
UCPD	Unfair Commercial Practices Directive
UK	United Kingdom
UN	United Nations
US	United States of America (United States)
US Supreme Court	Supreme Court of the United States
VAT	Value Added Tax
WET	Wine Equalization Tax
WIPO	World Intellectual Property Organization

WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization
WTO	World Trade Organization
WTO+	WTO plus
WTO-X	WTO extra

# Forewords

**The Rt. Hon. Mike Moore ONZ**  
Former Prime Minister of New Zealand  
Former Director-General of the World Trade Organization

The European Union (EU) has been a great force for good. By utilizing the splendid vision of statesmen after the war, this project is growing, moving eastwards, and bringing with it advances in democracy, human rights, and more wealth creation. The recent crisis was manageable because the core principles that now unite most of Europe are durable.

Australia has been a leader in free trade both in Asia, the Pacific, and elsewhere. From the World Trade Organization to the new Trans-Pacific Partnership, Australia has been at the forefront.

New Zealand and Australia's relationship with Europe has gone from a colony that supplied raw materials and food to a more balanced and sophisticated trade and political relationship with the EU.

All this is not without its complications. That is why publications such as this monograph, *Economic Relations between Australia and the European Union: Law and Policy*, by Prof. Gonzalo Villalta Puig are important to students, academics, legal practitioners, and policy makers.

Mike Moore

*Embassy of New Zealand to the United States of America  
Washington DC*

**HE Mr Duncan Lewis AO DSC CSC**  
Ambassador of Australia to the European Union

Australia and the European Union (EU) enjoy a substantial and constructive bilateral relationship built on a shared commitment to freedom and democratic values and a like-minded approach to a broad range of international issues. In 2012, Australia and the EU celebrated fifty years of formal diplomatic relations.

The Australia–EU Partnership Framework of October 2008 currently sets out the direction of bilateral cooperation between Australia and the EU. Formal negotiations on a treaty-level bilateral Framework Agreement between Australia and the EU began in October 2011 and are continuing. This agreement, once concluded, will further underpin the strong and comprehensive relationship between Australia and the EU.

In the economic sphere, Australia and the EU work together, including in the G20, to promote international prosperity. The trade and investment relationship between Australia and the EU is broad-based and underpinned by deep and long-standing people-to-people links. On many trade issues, Australia and the EU are like-minded. We share a common commitment to the rules-based international trading system, centred on the World Trade Organization.

The twenty-eight Member States of the EU, as a bloc, constitute one of Australia's largest trade and investment partners. Access to the EU market is generally open, although Australia continues to encourage the EU to improve market access in the important area of agriculture. The EU was, in 2012, Australia's second largest two-way trading partner for goods and services, while Australia was the EU's 12th largest merchandise export destination. The Member States of the EU continue to constitute Australia's largest source of Foreign Direct Investment (FDI) and the EU is, in turn, the second largest destination for Australian FDI.

Prof. Gonzalo Villalta Puig is to be commended for his work in examining the many legal and other considerations that inform the regulation of economic relations between Australia and the EU. While the findings and conclusions of the book are rightfully those of the author, the preceding paragraphs should demonstrate clearly the importance of the Australia–EU relationship, and serve as encouragement to those who might contemplate further contributions to analysis and inquiry in this area.

Duncan Lewis

*Embassy of Australia to Belgium and Luxembourg  
Mission of Australia to the European Union and North Atlantic Treaty Organization  
Brussels*



**HE Mr Sem Fabrizi**

Ambassador and Head of Delegation of the European Union to Australia

Relations between Australia and the European Union (EU) are strong and forward looking. Looking at the numbers, we see that two-way goods and services trade between us valued at over AUD 80 billion representing about 14 per cent of Australia's total trade. The EU is also Australia's largest source of foreign investment, with stocks worth nearly AUD 650 billion at the end of 2012. We estimate that this investment creates around 500,000 jobs directly and 1.4 million, directly and indirectly.

This is a mutually beneficial relationship. As Australia's second largest source of goods imports, the EU supplies the capital goods that Australia needs for its infrastructures. And the EU is Australia's largest partner for trade in services. Services – professional, technical and other business services – are the key sector in a knowledge economy.

The recent revisions to the Mutual Recognition Agreement over conformity assessment procedures and the Wine Agreement (Australia is the EU's largest source of wine imports and the EU is Australia's largest destination of wine exports) are proof of a joint commitment to promote trade as an engine for economic growth. Bilateral relations are complemented by an increasing common multilateral agenda in the World Trade Organization and, at a plurilateral level, with the prospect of a Trade in Services Agreement and in the G20.

But our relationship is about more than trade and investment because Australia and the EU, as like-minded partners, share an increasing political and practical partnership across the board, on foreign and security policy, environment, and sustainable development, just to name a few. The current negotiations on a Framework Agreement will make our partnership stronger, more comprehensive and effective.

While it is not the scope of this foreword to comment or take sides on the conclusions of the book, I commend Prof. Gonzalo Villalta Puig for providing a critique of the legal systems that regulate economic relations between Australia and the EU, contributing to the current policy debate on how to improve the trade and investment relationship.

Sem Fabrizi

*Delegation of the European Union to Australia  
Canberra*