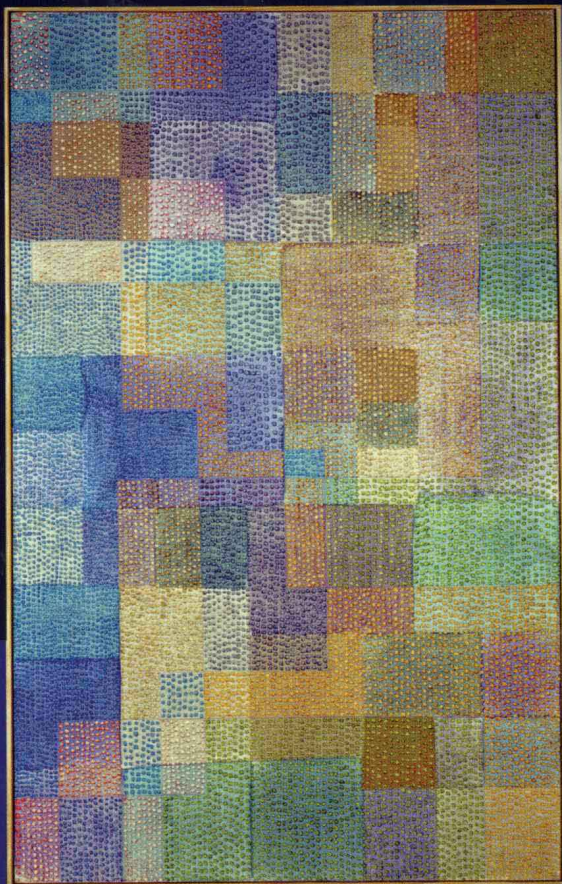


# The Prospects of International Trade Regulation

FROM FRAGMENTATION TO COHERENCE



*Edited by*  
Thomas Cottier and  
Panagiotis Delimatsis

CAMBRIDGE

# THE PROSPECTS OF INTERNATIONAL TRADE REGULATION

From fragmentation to coherence

Edited by  
THOMAS COTTIER  
and  
PANAGIOTIS DELIMATIS



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# THE PROSPECTS OF INTERNATIONAL TRADE REGULATION

From fragmentation to coherence

For a long time, the GATT led a life of its own as a self-contained regime. The evolution from tariff to non-tariff barriers brought about increasing overlaps with other regulatory areas. WTO rules increasingly interface with other areas of law and policy, including environmental protection, agricultural policies, labour standards, investment, human rights and regional integration.

Against this backdrop, this book examines fragmentation in international trade regulation across a wide array of regulatory fields. To this end, it uses a conceptually coherent theoretical framework which is based on the effort to bring about greater coherence among different policy goals and fields, and thus to embed the multilateral trading system within the broader framework of international economics, law and relations. It will appeal to those interested in a forward-looking discussion of the most pressing issues of the international trade agenda. This book is the result of a four-year project run at the Swiss National Centre for Competence in Research – Trade Regulation (NCCR), which is financed by the Swiss National Science Foundation.

THOMAS COTTIER is Managing Director of the World Trade Institute and Professor of Law at the University of Bern.

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## TABLES

6.1	Main disciplines: bilateral investment treaties versus the GATS	<i>page</i> 268
6.2	Model schedule of a horizontal GATS Mode 4 commitment including development-friendly recruitment and guarantees of return	276
11.1	Top sovereign wealth fund merger and acquisition transactions 2007–2009	437

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## PREFACE AND ACKNOWLEDGEMENTS

Fragmentation and coherence in international trade regulation are the core theme of this volume. For a long time, the General Agreement on Tariffs and Trade (GATT) led a life of its own in a self-contained regime. The evolution from tariff to non-tariff barriers brought about increasing overlaps with other regulatory areas, partly pertaining to core areas of domestic regulation. World Trade Organization (WTO) rules increasingly have an impact on other areas of law and policy, including environmental protection, agricultural and regional policies, labour standards, investment, human rights, culture and regional integration. Vice versa, other regulatory areas have an impact on trade rules. The process has resulted in tensions and challenges to the multilateral trading system with which the WTO has been confronted since its inception in 1995. Against this backdrop, this book offers an attempt to examine fragmentation in international trade regulation across a wide array of regulatory fields through the lens of a conceptually coherent theoretical framework. The effort to bring about greater coherence among different policy goals and fields, and thus to embed the multilateral trading system within the larger framework of international economics, law and international relations is the common thread connecting all chapters of this book and the proposals for reform which they submit.

The Swiss National Centre for Competence in Research on 'International Trade Regulation – From Fragmentation to Coherence' (NCCR Trade Regulation), financed by the Swiss National Science Foundation (SNF), is an international research network that was set up at the World Trade Institute (WTI) of the University of Bern, Switzerland, in 2005. It completed the first phase of its research in 2009 based on twelve individual projects dealing with a broad array of topics, ranging from the constitutionalisation of international law and decision-making in the WTO, regional integration, agriculture and commodities, human rights, services, finance, and intellectual property, to energy, biotechnology and

information technology. The twelve projects comprise law, economics and international relations and put a clear accent on those issues that do not form part of the current trade agenda. The underlying rationale has been that academia has a key role to play in identifying, analysing and offering innovative policy and rule-making solutions to pressing challenges in modern trade diplomacy. This volume presents the research questions and synthesises the most significant achievements and innovative elements of our research output in the first four years of the NCCR Trade Regulation.

During its first four years, the NCCR Trade Regulation research team, comprising more than 60 researchers, tested its methodology and research outcomes at workshops, conferences and seminars organised in Switzerland and abroad. Several formal and informal rounds of discussions on the twelve chapters of this book were organised at the WTI, the most recent of which consisted of a peer-review process during the NCCR Annual Conference in 2009. Several contributions include suggestions for specific amendments to various provisions or parts of the relevant WTO agreements. This was possible because of the open approach that we adopted, encouraging work in research groups rather than individualist scholarship. The overwhelming majority of the contributions were drafted in a manner that reflects joint thinking and effort by both experienced, renowned trade experts and junior-level researchers, reflecting the knowledge-transfer philosophy of the NCCR Trade Regulation research network. In addition, all contributions resulted from interdisciplinary work, especially between lawyers and political scientists, and, to a lesser extent, economists.

This book is the contribution of the NCCR Trade Regulation as an academic institution to conceptualising the regulatory debates of the future, and, in particular, elucidating the value-related choices at stake. Taking into account theoretical insights from law, economics and political science and without any pre-existing bias against fragmentation per se, the NCCR Trade Regulation has aimed to develop innovative, concrete policy recommendations that reflect a better balance between economic and other regulatory objectives in fields where international trade rules interact with other types of rules. This book will become indispensable reading for regulators, trade negotiators, practitioners and academics. This is not only because of the handy structure that it adopts, but also because this book is forward-looking, as it also proposes a post-Doha agenda, suggesting the most pressing avenues that the international trade agenda should pursue beyond the current Doha Development Agenda.

We are indebted to the research teams and authors of this book who graciously agreed to revise their contributions several times to ensure optimum results by accommodating the suggestions of the editors and their colleagues. We are indebted to the external participants at conferences and workshops who were willing to share their knowledge. In particular, we would like to thank the NCCR Review Panel members for their insightful comments and suggestions throughout the duration of the project. We are grateful to Claudia Opitz-Belakhal and Dominique Foray for chairing the Panel, and to Keith Maskus, Geertrui van Overwalle, Debra Steger and Christian Tietje, as well as Patrick Low, Anthony McGrew, John Odell and Hélène Ruiz Fabri for their valuable contributions in assessing the work and offering guidance. We thank Thomas Griessen for servicing the Panel and the process on behalf of the SNF. We are grateful to the NCCR Research Council members and, notably, Professor John Jackson and Gary Hufbauer for guidance and advice. The editors wish to express their gratitude to Susan Brown for thoughtful and careful coordination and management of this ambitious project. The work of Susan Kaplan assisted by Jane Müller is acknowledged. They had to meet short deadlines and cope with manifold requests from the editors. The organisation of the conferences and workshops during which the chapters included in this book were discussed would not have been feasible without the active involvement of Margrit Vetter, Gaby Hofer, Piia Pappinen, Christian Steiger and François Rossé. Finally, we would like to thank the Swiss National Science Foundation and the Ecoscientia Foundation for their financial support and their trust throughout the project. Without their support, this book would not have seen the light of day.

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PANAGIOTIS DELIMATSI

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 DSR 1999:IV, 1443 (*Canada – Aircraft*)

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