

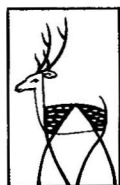
THE POWER TO PROTECT
TRADE, HEALTH AND
UNCERTAINTY IN THE WTO

CATHERINE BUTTON

STUDIES IN INTERNATIONAL TRADE LAW

The Power to Protect
*Trade, Health and
Uncertainty in the WTO*

Catherine Button



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2004

Hart Publishing
Oxford and Portland, Oregon

Published in North America (US and Canada) by
Hart Publishing c/o
International Specialized Book Services
5804 NE Hassalo Street
Portland, Oregon
97213-3644
USA

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WEBSITE: <http://www.hartpub.co.uk>

British Library Cataloguing in Publication Data
Data Available
ISBN 1-84113-482-1 (hardback)

Typeset by Hope Services (Abingdon) Ltd
Printed and bound in Great Britain on acid-free paper by
MPG Books, Bodmin, Cornwall

THE POWER TO PROTECT

This book examines the intersection of WTO trade liberalisation rules and domestic health protection, a subject that is of considerable interest to those concerned that the WTO impinges on national regulatory autonomy. In analysing the tension between health protection and trade liberalisation, the book focuses on the way in which this tension is (or is not) resolved through the dispute resolution process. It offers a detailed analysis of the relevant WTO rules and case law, identifying particular concerns relating to the ability of WTO Members to take protective action in circumstances of scientific uncertainty and the role of social and cultural factors in the making of health-related regulations. The nature of scientific evidence and the extent to which the scientific process internalises uncertainty is further explored, drawing on documentation relating to the theory and conduct of scientific risk assessment. Despite the popularity of the precautionary principle in some quarters, it is suggested that it may not be advisable for the WTO to adopt that principle. Rather, further attention should be paid to the role that the standard of review might play in easing the tensions that arise when a sovereign state's health regulations are reviewed by the WTO. The origins of the WTO's 'objective assessment' standard of review are explained, but the standard itself is criticised. Options for developing the standard of review are considered, with a 'reasonable regulator' standard based on the *Asbestos* case proposed. The book takes a comparative approach, drawing on ECJ cases reviewing Member State and Community health measures as well as US judicial review and commerce clause cases.

Volume 2 in the series Studies in International Trade Law

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Acknowledgements

This book is a modified version of a doctoral thesis defended in May 2003. Thanks are due to the following people for helpful discussions and comments: my supervisors, Vaughan Lowe and Derrick Wyatt, my examiners, Stephen Weatherill and Joanne Scott, as well as Elizabeth Fisher, Joost Pauwelyn, Gretchen Stanton, Doaa Abdel Motaal, Gabrielle Marceau, Nicolas Lockhart, Matthew Stilwell, Ulrich Hoffmann, Richard Blackhurst and David Morgan. Thanks are also due to the Rhodes Trust, Magdalen College, and the Europaeum for financial support and research grants.

Abbreviations

AB	Appellate Body
ADI	Acceptable daily intake
AdminLRev	Administrative Law Review
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AJIL	American Journal of International Law
APA	Administrative Procedure Act
ArizJIntlCompL	Arizona Journal of International and Comparative Law
ArizStLJ	Arizona State Law Journal
AUIntlLRev	American University International Law Review
Berkeley JIntlL	Berkeley Journal of International Law
BSE	bovine spongiform encephalopathy
CAC	Codex Alimentarius Commission
CCGP	Codex Committee on General Principles
CFI	Court of First Instance
ChiJIntlL	Chicago Journal of International Law
CLC	Central Labor Councils
Codex	Codex Alimentarius Commission
ColumJTransL	Columbia Journal of Transnational Law
ColumLRev	Columbia Law Review
Cornell ILJ	Cornell International Law Journal
DC	District of Columbia
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
DukeJComp&IntlL	Duke Journal of Comparative and International Law
EBusLRev	European Business Law Review
EC	European Communities
ECJ	European Court of Justice
EHRLR	European Human Rights Law Review
EHRR	European Human Rights Reports
EJIL	European Journal of International Law
EPA	Environmental Protection Agency
EU	European Union
ff	and following
Fordham IntlLJ	Fordham International Law Journal
GATT	General Agreement on Tariffs and Trade

GMO	Genetically modified organism
HarvLRev	Harvard Law Review
HarvInt'lLJ	Harvard International Law Journal
HRLJ	Human Rights Law Journal
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
Int'lTradeL&Reg	International Trade Law and Regulation
ITR	International Trade Reporter
JECFA	Joint FAO/WHO Expert Committee on Food Additives
JEnv'tlL	Journal of Environmental Law
JIEL	Journal of International Economic Law
JInt'lLBus	Journal of International Law and Business
JMPR	Joint FAO/WHO Meeting on Pesticide Residues
JWT	Journal of World Trade
Law&Pol'yInt'lBus	Law and Policy in International Business
MichLRev	Michigan Law Review
MLR	Modern Law Review
NILR	Netherlands International Law Review
NLRB	National Labor Relations Board
NorthwesternJILBus	Northwestern Journal of International Law and Business
NRC	National Research Council (US)
NRDC	Natural Resources Defense Council
NYU Env'tlLJ	New York University Environmental Law Journal
OECD	Organisation for Economic Co-operation and Development
OIE	International Office of Epizootics
OJLS	Oxford Journal of Legal Studies
OSHA	Occupational Safety and Health Administration
ppm	part (or parts) per million
RECIEL	Review of European Community and International Environmental Law
SC	US Supreme Court
SciTechRev	Scientific and Technical Review
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
Tulane Env'tlLJ	Tulane Environmental Law Journal
UChiLRev	University of Chicago Law Review
US	United States
VaLRev	Virginia Law Review
VandJTransL	Vanderbilt Journal of Transnational Law
VandLRev	Vanderbilt Law Review
WashLeeLRev	Washington and Lee Law Review

WTO	World Trade Organization
YaleJReg	Yale Journal on Regulation
YEL	Yearbook of European Law

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