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PROTECTION THROUGH TRADE***

Reviewed by : Ipshita Chaturvedi, C&C Law & Policy Advisors, Indiabulls Finance Center

BOOK REVIEW



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Barbara Cooreman, *Global Environmental Protection Through Trade*

Through the years, international trade law has been increasingly grappling with the issue of environmental protection whilst ensuring that there aren't any barriers to free trade. There have emerged through these deliberations, certain principles that have now assumed a quantifiable legal nature. Some of these principles are that measures (trade restrictive) must be necessary and justifiable, must not be unilateral and must be equal i.e. the measure must apply to all in a similar way.

Trade restrictive measures targeting environmental protection are usually aimed at Process and Production Methods (PPMs) i.e. how a certain product is made rather than the product itself, and they may or may not be related to the final product. This book looks at non-product related (npr)-PPMs from the lens of the WTO framework to determine what kind of measures would be allowable in the current regime of trade laws. The author focuses on those measures that are extra-territorial in nature i.e. measures taken to protect the environment beyond a country's sovereign jurisdiction.

The book is divided into three parts. The first part introduces the topic by making distinctions between concepts like sovereignty and unilateralism, products and PPMs, and domestic regulations and extraterritorial concerns. The second part of the book focuses on extraterritoriality, its treatment by other branches of international law, and draws out a "WTO extraterritoriality decision tree" which essentially combines all principles of applicable WTO laws in a situation where a WTO member might impose extraterritorial trade restrictions on npr-PPMs. Part three analyses cases that have measures targeting npr-PPM extraterritorial concerns and puts them in context of the decision tree.

The author successfully argues that even though it has been thought that WTO law could be a roadblock to achieving environmental protection in other jurisdictions, if certain criteria are adhered to, trade laws do not necessarily impede a country's attempts to regulate environmentally unfriendly npr-PPMs. The decision tree explains this by placing a measure in the purview of the location of the concern that the measure seeks to redress, and the nature of the concern. The author contends that by analysing a measure under the

various elements of the decision tree, it can be said that the more an environmental norm is supported by international law, the more acceptable the measure (even though trade restrictive) protecting that norm through an npr-PPM regulation will be (pg 139). This the author proves by systematically unpacking a multitudinous legal issue over the three parts of the book.

However, when talking about npr-PPMs, the author does not tackle the problem of complex supply chain issues and where, how and in what circumstances a WTO member could attempt to regulate those. In that way, the distinction and treatment of the subject becomes simplistic. Procurement is a complex process and has multiple stakeholders in the npr production process. As an example, country A may be manufacturing an essential product through a process that is highly polluting. This product then gets exported to country B, which re-sells the same product via marketing rights to country C. Country C is concerned with the pollution in the first country but also needs to ensure that the cost of the essential product does not go up (if the pollution is regulated, costs will increase). Applying the elements of the decision tree to a situation like this doesn't provide satisfactory answers. Even though there might be an established environmental norm, making a direct and substantial link between a measure by country C and the npr-PPM in country A will be difficult without the support of country B, which may be relying on the export income and status quo. The author has not acknowledged such complexities that are a regular part of trade operations and in that regard, remains restrictively academic.

While the focus of the book is on the success rate of unilateral, extraterritorial measures for environmental protection, an interesting question could be whether a measure, even though ineffective, could help further global environmental protection by drawing attention to a polluting npr-PPM, thereby furthering an existing norm or bolstering the creation of a new one. While in her conclusion, the author acknowledges that in the absence of global environmental agreements, unilateral trade measures could be powerful tools for environmental protection (pg 280), it would have been more helpful if the ways in which the relevance of unsuccessful unilateral measures were fleshed out.

As a compendium for WTO law related to npr-PPMs, the book does an excellent job of stretching out the

regime of international trade law to its maximum – i.e. ascertaining how far and in what circumstances a WTO member can regulate processes beyond their own territory. In that regard, the book is a great framework for referring to what kind of extraterritorial measure would be allowable under WTO law, particularly part III which very coherently analyses all case law in the context of extraterritorial trade regulation for environmental protection. The author also successfully argues that WTO law cannot be used as an excuse for environmental inaction, as can be demonstrated by the relevant case laws. The book is highly recommended for students, academics and practitioners of both international trade law and environmental law to better understand the very important, yet underexplored issue of the validity of extraterritorial regulations of environmentally harmful npr-PPMs under the WTO regime.

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