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Standards of Review in WTO Dispute Resolution

Matthias Oesch

Standards Of Review In Wto Dispute Resolution

Ross Becroft



Standards Of Review In Wto Dispute Resolution:

Standards of Review in WTO Dispute Resolution Matthias Oesch, 2003 This volume is a unique study focussing on the highly controversial issue of standards of review in WTO dispute resolution Standards of review reflect the extent to which the WTO adjudication bodies can override the decisions taken by national authorities As such they play a crucial role in shaping the balance of power and responsibility for decisions on factual and legal issues In this volume the current state of law and practice is analysed and critically assessed in a commentary on the evolution of and inconsistencies amongst the relevant cases

The Standard of Review in WTO Dispute Settlement Ross Becroft, 2012-01-01 Applying the proper standard of review has been a vexing issue for WTO panels and Members alike As in national systems the degree to which the reviewing body here the panel defers to the investigating authority is frequently controversial Dr Becroft has provided a thorough analysis of the WTO jurisprudence to date identified the shortcomings of the present approach and offered a thoughtful series of recommendations for formulating a new and better standard of review David A Gantz The University of Arizona US Ross Becroft has produced a solid monograph which adds to the existing literature on the correct standard of review to be applied by a WTO panel Becroft's work is well researched and written and his analysis is straight forward and comprehensive His call for a new standard of review is well thought out creative and feasible Becroft's book is recommended reading for those interested in the workings and decision making in WTO dispute settlement Bryan Mercurio The Chinese University of Hong Kong This is an important book and should be considered to be on the required reading list of anyone professionally involved in dispute settlement at the WTO The standard of review is at the core of the dispute settlement process and Ross Becroft has made a major contribution with his comprehensive and insightful analysis and suggestions for a new standard of review for the future Andrew Stoler Executive Director Institute for International Trade and former WTO Deputy Director General This detailed book critiques how the World Trade Organization scrutinizes domestic measures to determine compliance with the WTO Agreements This scrutiny known as the standard of review is particularly relevant when WTO panels are examining measures involving controversial domestic policy issues The author argues that the current WTO standard of review is inadequate and a flexible standard based on the responsibilities that WTO members have retained for themselves under the WTO Agreements is preferable This new standard of review would better reflect the autonomy contemplated for members under the WTO rules and reduce scope for the contention that the WTO overreaching its mandate This work provides a foundation for mediating relations between states and the WTO and similar international organisations It will be of great interest to scholars and practitioners in the fields of law and international relations with an interest in international economic law the WTO or international organisations in general

Interpreting WTO Agreements Asif H. Qureshi, 2006-12-07 This book was first published in 2006 The case law of the World Trade Organization is now extensive running into over one hundred cases and thousands of pages The interpretative process involved in this jurisprudence

constitutes a form of legislative activity and is therefore of great significance not only to the parties to disputes but to the membership of the WTO Qureshi sets out here to identify some of the underlying problems of interpreting WTO agreements within the context of different issues problems objectives and disciplines and to comprehensively examine the underlying conditions for the interpretation of WTO agreements He focuses on the apparatus of interpretation in the WTO the manner of interpreting institutional norms national measures and exceptions the manner of facilitating the development objective the manner of reconciling conflicting norms through interpretation and finally the manner of interpreting the trade remedies agreements Various perspectives on interpretation are proffered particularly that of justice and development *World Trade Organization (WTO) Dispute Settlement Review Commission Act* United States. Congress. Senate. Committee on Finance, 1995

The Oxford Handbook of International Trade Law Daniel Bethlehem, Donald McRae, Rodney Neufeld, Isabelle Van Damme, 2009-01-08 Over the past 10 years the content and application of international trade law has grown dramatically The WTO created a binding dispute settlement process and in resolving disputes the judicial organs of the WTO have built up a substantial amount of new international trade law Emerging from this new WTO process is an international trade law system that is in some respects self contained and in other respects overlapping and linked to other international legal economic and political regimes The boundaries of trade law are now generating enormous interest and controversy which at a broader level is subsumed within the debate over globalisation The detailed development of the rules of international trade is being examined with increasing frequency by scholars government officials and trade law practitioners But how does it fit with existing systems How it is modified by them How does the international trade law system affect and modify other regimes This Handbook places international trade law within its broader context providing comment and critique on contemporary thinking on a range of questions both related specifically to the discipline of international trade law itself and to the outside face of international trade law and its intersection with States and other aspects of the international system It examines the economic and institutional context of the world trading system its substantive law including regional trade regimes and the settlement of disputes The final part of the book explores the wider framework of the world trading system considering issues including the relationship of the WTO to civil society the use of economic sanctions state responsibility and the regulation of multinational corporations Oxford Handbooks offer authoritative and up to date surveys of original research in a particular subject area Specially commissioned essays from leading figures in the discipline give critical examinations of the progress and direction of debates Oxford Handbooks provide scholars and graduate students with compelling new perspectives upon a wide range of subjects in the humanities and social sciences

A Handbook on the WTO Dispute Settlement System World Trade Organization, 2004-06-17 The WTO dispute settlement system plays an important role in clarifying and enforcing the legal obligations contained in the WTO Agreement It has gained a strong practical relevance as more than 300 disputes have been brought from 1 January 1995 through

October 2003 While dispute settlement is certainly not the only activity taking place within the WTO it has become an important part of the practical reality of the Organization WTO dispute settlement has also become an important tool in the management by WTO Members of their international economic relations at large The objective of this handbook is to give the reader a good understanding of the practical operation of this system Working through this guide the reader will be introduced to all elements of the dispute settlement process from the initiation of a case through to the implementation of the decision

Judicial Deference in International Adjudication Johannes Hendrik Fahner, 2020-08-06 International courts and tribunals are increasingly asked to pass judgment on matters that are traditionally considered to fall within the domestic jurisdiction of States Especially in the fields of human rights investment and trade law international adjudicators commonly evaluate decisions of national authorities that have been made in the course of democratic procedures and public deliberation A controversial question is whether international adjudicators should review such decisions de novo or show deference to domestic authorities This book investigates how various international courts and tribunals have responded to this question In addition to a comparative analysis the book provides a normative argument discussing whether different forms of deference are justified in international adjudication It proposes a distinction between epistemic deference which is based on the superior capacity of domestic authorities to make factual and technical assessments and constitutional deference which is based on the democratic legitimacy of domestic decision making The book concludes that epistemic deference is a prudent acknowledgement of the limited expertise of international adjudicators whereas the case for constitutional deference depends on the relative power of the reviewing court vis vis the domestic legal order

WTO - Technical Barriers and SPS Measures Rüdiger Wolfrum, Peter-Tobias Stoll, Anja Seibert-Fohr, 2007-05-30 Technical standards are increasingly determining the development production trade in and marketing of goods and services In order to ensure that technical regulations and product standards which vary from country to country do not create unnecessary obstacles to trade the Agreement on Technical Barriers to Trade was adopted during the Uruguay Round It is paralleled by the Agreement on Sanitary and Phytosanitary Measures which sets out the basic rules on how governments can apply food safety as well as animal and plant health measures without however using them as an excuse for protecting domestic producers Prominent decisions under the WTO Dispute Settlement have interpreted those provisions This volume gives a detailed account of the necessary parameters for technical standards and measures seeking to protect health and environment Included are commentaries on Articles III XI and XX of GATT 1994 which are equally relevant in this context The article by article commentaries draw from a considerable body of case law the work by the TBT and SPS Committee and the relevant legal literature Attention is given to substantive requirements as well as the necessary standard setting procedures Apart from a thorough analysis of the relevant and most recent jurisprudence including the Biotech Panel Report the commentary seeks to give answers to newly emerging issues such as special needs of developing countries It is an

indispensable tool for practitioners and academics working in this field of WTO law

Proportionality and Deference in Investor-State Arbitration Caroline Henckels, 2015-10-15 Caroline Henckels examines how investment tribunals should balance competing state and investor interests in determining state liability in regulatory disputes

Evidence, Proof, and Fact-Finding in WTO Dispute Settlement Michelle T. Grando, 2009-12-24 This book examines how a World Trade Organization WTO dispute settlement panel formulates its conclusions with respect to the facts of a dispute brought before it. It does so by discussing the legal concepts which shape the process of fact finding, analysing the approach taken by panels thus far and offering suggestions for improvement.

World Trade Organization Agreement on Anti-dumping K. D. Raju, 2008-01-01 The WTO Secretariat reports that during the period from 1995 to June 30 2007 WTO members initiated 3097 anti dumping investigations. Of these 474 were put forward by India which made it the largest user of this measure among WTO Members. The traditional argument of developing countries was that loopholes or absence of clear definitions in the anti dumping rules have increased the possibility of abuses and discretionary practices against them. Now many developing countries like India have become frequent users of this measure. For a better understanding of the various provisions of the WTO's Anti dumping Agreement (ADA) a critical investigation of the resulting jurisprudence is a necessity. To that end this timely work has a fivefold aim and To explore the jurisprudence that has emerged around the anti dumping regime and how it affected developing countries and To assess how effectively and to what extent the WTO's Dispute Settlement Body (DSB) is able to analyze the violations of ADA provisions and To examine domestic compliance with DSB decisions and To study the Indian cases which come before the nation's Customs Excise and Sales Tax Appellate Tribunal, various High Courts and the Supreme Court of India and To offer recommendations for the improvement of the anti dumping regime from a developing country perspective.

Science and Judicial Reasoning Katalin Sulyok, 2020-10-29 This pioneering study on environmental case law examines how courts engage with science and reviews legitimate styles of judicial reasoning.

The Standard of Review before the International Court of Justice Felix Fouchard, 2024-05-02 This book examines how the International Court of Justice (ICJ) reviews State behaviour through the prism of the standard of review. It develops a novel rationale to support the ICJ's application of deferential standards of review as a judicial avoidance technique based on strategic considerations. It then goes on to empirically assess all 31 decisions of the Court in which the standard of review was at issue, showing how the Court determines that standard and answering the question of whether it varies its review intensity strategically. As a result, the book's original contribution is two-fold: establishing a new rationale for judicial deference that can be applied to all international courts and tribunals and providing the first comprehensive empirical analysis of the ICJ's standards of review. It will be beneficial to all scholars of the Court and those interested in judicial strategy.

Secondary Rules of Primary Importance in International Law Gábor Kajtár, Basak Çali, Marko Milanovic, 2022 This volume emphasizes the consequential nature of secondary rules of international law such as attribution, causality and the

standard and burden of proof and argues that the outcome of litigation is fundamentally shaped by the exact standard of proof standard of review or attribution basis that is chosen by adjudicators

Dispute Settlement Reports 2000: Volume 6, Pages 2621-3040 World Trade Organization, 2002-12-12 The authorized paginated WTO Dispute Settlement Reports in English cases for 2000

Global Regulatory Standards in Environmental and Health Disputes Caroline E. Foster, 2021 This book explores the role played by international courts and tribunals in the development of global regulatory standards Focusing on regulatory coherence due regard for the rights of others and due diligence in the prevention of harm the book considers how such standards represent a new relationship between domestic and international law

Whaling in the Antarctic Malgosia Fitzmaurice, Dai Tamada, 2016-05-23 This publication gives an in depth analysis of a very important but complex case before the International Court of Justice It deals with substantive and procedural aspects of the case analysed extensively by eminent international lawyers and practitioners The Whaling in Antarctic case is a landmark case in international law Contributors Malgosia Fitzmaurice and Dai Tamada eds Caroline E Foster Shotaro Hamamoto Theodore Christakis Christian Tams Mika Hayashi Joji Morishita Donald R Rothwell Hironobu Sakai Anthony Press Akiho Shibata Yuri Takaya

Cooperation Between Antitrust Agencies at the International Level Bruno Zanettin, 2002-10-22 The issue of international antitrust enforcement is high on the agenda for both developed and developing countries Bilateral cooperation between antitrust agencies in particular the European Commission and US agencies is the focus of this new work It first shows how bilateral cooperation was developed as a response to the limits of the unilateral and extraterritorial application of national competition laws and how it has evolved from an instrument initially designed to avoid conflicts into a tool aimed at coordinating joint investigations of international competition cases It then considers how bilateral cooperation could be used optimally by analysing two forms of advanced cooperation the exchange of confidential information and positive comity which is the only satisfactory answer competition law can provide to market access cases It shows that the use of such instruments is limited by significant legal and political obstacles even in the context of the exemplary EC US relationship The book therefore argues that the efficient use of bilateral cooperation will be limited to a small number of well established competition agencies If international anticompetitive practices are to be efficiently addressed by an increasingly large and heterogeneous group of competition agencies horizontal cooperation between antitrust agencies must be complemented by a multilateral and supranational solution going beyond proposals currently put forward The book concludes that only the WTO and its dispute settlement system could provide the basis for such a system

Sovereign Choices and Sovereign Constraints Gus Van Harten, 2013-10-03 Investment arbitrators rely on sovereignty for their legal status just as investor state disputes usually stem from disagreements about the role of the state in society As a result investment arbitration is a vehicle for the exercise of sovereign authority and a site for contesting sovereign choices This book investigates and evaluates the decision making record and policy trajectory of international investment arbitration from theoretical doctrinal

and empirical perspectives It analyses the extent to which the system used to resolve disputes impacts on the role of government affecting diverse constituencies as opposed to limiting itself to case specific disputes between a single business enterprise and state entity The book provides a comprehensive review of known awards in order to determine the types of government measures that have triggered disputes It investigates how investment arbitrators have exercised their authority in recent case law It provides a review of the approaches adopted in the reasoning of investment treaty tribunals on questions of judicial deference and respect for sovereign decision makers In doing so it determines whether investment tribunals have taken a predominantly assertive approach to investor protection without regard to their relative lack of accountability capacity or proximity in some cases This approach does not sit comfortably with the relative restraint seen by domestic and international courts in similar contexts The book argues that the unique characteristics of investment treaty arbitration make the experience of domestic judicial review more pertinent to international investment arbitration than to any other contexts for international adjudication However it argues that mediating devices in some form should be incorporated into the process in order to solve the tension between the extensive scope and potency of international investment arbitration as an important site of global governance and the challenges of the review function in reviewing decisions which have strong claims to having comprehensive regulatory expertise inclusive decision making electoral or other public accountability or greater proximity to the underlying facts and context Online Appendices *The Jurisprudence of GATT and the WTO* John H. Jackson, 2007-03-05 This book contains a selection of essays and articles by John H Jackson previously published over four decades and now collected together into one volume Each article has been selected for its continued timeliness and relevance to contemporary issues in international trade Particular attention has been given to making available articles that have previously been less accessible For the most part articles are republished in their original form but where appropriate the author has clearly marked some omissions and added updating material An indispensable addition to every international trade library

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