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# WTO Law and Domestic Regulation

Exploring the Determinants for the  
Impact of the WTO on  
Domestic Regulatory Autonomy

by

Wolfgang Weiß

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## Preface

The research leading to this book was provoked by the far-spread perception that WTO rules in particular in their application by WTO dispute settlement practice has a profound impact on domestic regulation in a way which significantly reduces or even diminishes the domestic leeway in drafting domestic rules on goods and services. The constraining effect is particularly challenging against a backdrop of international trade rules that increasingly go beyond disciplines enforced at the border but that relate to the domestic regulation of how goods or services have to be produced or performed (the so-called behind the border issues). The transformation of WTO disciplines on goods and services beyond a border context into rules disciplining also domestic regulation of production processes, and domestic process or qualification requirements is a development that must be challenged from the perspective of domestic regulatory autonomy. For, domestic regulatory autonomy is protected in WTO rules. The respect for domestic regulatory choices must have an impact on the interpretation and application of WTO rules, and it appears that this has not yet been taken into account sufficiently when interpreting and applying WTO rules.

Based on this perception, the research presented in this book explores how WTO law, in particular its core principles, and the institutional dimensions of the functioning of WTO dispute settlement, have been conceived in a way to severely impact domestic regulatory leeway. The analysis identifies the relevant determinants insofar, and proposes interpretive approaches of the existing WTO rules that if applied would allow for enlarging the domestic policy space of the WTO members. The research shows how stipulations for protection of domestic regulatory autonomy of the WTO members, which have a legitimate anchor in existing WTO rules, can be taken more serious and be implemented more comprehensively than done in the currently prevailing conception of WTO law by the WTO dispute settlement practice.

The research leading to this book was funded by the German Research Foundation (Deutsche Forschungsgemeinschaft) under the project title “National Regulatory Autonomy and the WTO: critical analysis of the determinants for a growing impact of WTO law on domestic regulation”, DFG file number WE 2653/2-1.



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## Abbreviations

AB .....	Appellate Body
AJIL .....	American Journal of International Law
ASIL .....	American Society of International Law
BISD .....	(WTO) Basic Instruments and Selected Documents
CAC .....	Codex Alimentarius Commission
CJEU .....	Court of Justice of the European Union
CMLRev .....	Common Market Law Review
Cornell Int'l LJ .....	Cornell International Law Journal
DSU .....	Dispute Settlement Understanding
EC .....	European Community
EEC .....	European Economic Community
E(E)CT .....	Treaty establishing the European (Economic) Community
ECJ .....	European Court of Justice (since the entry into force of the Lisbon Treaty: Court of Justice of the European Union)
EIB .....	European Investment Bank
EJIL .....	European Journal of International Law
ELJ .....	European Law Journal
EU .....	European Union
EUI RSCAS .....	European University Institute, Robert Schuman Centre for Advanced Studies
FSC .....	Foreign Sales Corporations
GARNET .....	Global Applied Research Network
GATT .....	General Agreement on Tariffs and Trade
GATS .....	General Agreement on Trade in Services
Geo. Wash. Int'l L.Rev ...	George Washington International Law Review
GMO Food .....	Genetically Modified Foods
GSP .....	Generalized System of Preferences
I.C.J. ....	International Court of Justice
ICLQ .....	International & Comparative Law Quarterly
I.CON .....	International Journal of Constitutional Law
IEC .....	International Electrotechnical Commission
IFN .....	Research Institute of Industrial Economics
ILC .....	International Law Commission
IPC .....	International Policy Council
IPPC .....	International Plant Protection Convention
ISO .....	International Organization for Standardization
JIEL .....	Journal of International Economic Law
JIL .....	Journal of International Law
JWT .....	Journal of World Trade
LIEI .....	Legal Issues of Economic Integration
MFN .....	Most-Favoured Nation
MMPA .....	Marine Mammal Protection Act
MPYUNLaw .....	Max Planck Yearbook of United Nations' Law
NAFTA .....	North American Free Trade Agreement
NT .....	National Treatment
NYU .....	New York University
OECD .....	Organisation for Economic Co-operation and Development
OIE .....	World Organisation for Animal Health
OJ L .....	Official Journal of the European Union, Legislation
PPM .....	Process and Production Method
REACH .....	Registration, Evaluation, Authorisation and Restriction of Chemicals
RILE .....	Rotterdam Institute of Law and Economics
RSCAS .....	Robert Schuman Centre for Advanced Studies
SIEL .....	Society of International Economic Law

## *Abbreviations*

SPS .....	Sanitary and Phytosanitary Measures
TBT .....	Agreement on Technical Barriers to Trade
TEU .....	Treaty on European Union
TFEU .....	Treaty on the Functioning of the European Union
TILJ .....	Texas International Law Journal
TranState .....	Transformations of the State
TRIPS .....	Trade-Related Aspects of Intellectual Property Rights
UCIAS .....	University of California International and Area Studies
UNCITRAL .....	United Nations Commission on International Trade Law
U Pennsylvania J Int'l L.	University of Pennsylvania Journal of International Law
VCLT .....	Vienna Convention on the Law of Treaties
WPPS .....	Working Party on Professional Services
WTO .....	World Trade Organisation
WTRev .....	World Trade Review

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