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978-1-107-02223-2 - Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members

Edited by Müslüm Yılmaz

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## DOMESTIC JUDICIAL REVIEW OF TRADE REMEDIES

Trade remedies, namely anti-dumping, countervailing measures and safeguards, are one of the most controversial issues in today's global trading environment. When used, such measures effectively close the markets of the importing countries to competition from outside for a certain period of time. Exporters that are faced with such measures can try either to convince their government to bring a case against the government of the importing country in the WTO or to use, themselves, the judicial review mechanism of the importing country. This second path, until now, has been largely unexamined. *Domestic Judicial Review of Trade Remedies* is the first book of its kind to examine in detail how the judicial review process has functioned, and considers the experiences in the domestic courts of the twenty-one WTO members that are the biggest users of trade remedies.

MÜSLÜM YILMAZ works as a Counsellor in the Rules Division of the WTO. He functions as legal officer to WTO panels handling disputes on trade remedies and as Secretary to the WTO Committee on Subsidies and Countervailing Measures. Before joining the WTO in 2001, Mr Yılmaz worked as counsel and investigator at the Turkish Anti-Dumping and Anti-Subsidy Investigating Authority.

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## FOREWORD

The scope of rules that regulate international trade expanded significantly with the emergence of the present international trading system following the conclusion of the Uruguay Round of trade negotiations in 1995 that led to the creation of the World Trade Organization (WTO). The WTO is an organization that seeks to implement a rules-based, open trading system. A rules-based system is one that offers predictability in terms of the regulatory framework within which trade takes place. Maintaining a predictable trading environment in turn requires transparency and rule of law.

Within the WTO system, transparency is achieved mainly through the peer review of the notification obligations contained in the WTO Agreement and the rule of law through the dispute settlement mechanism. Since 1995 WTO dispute settlement has proved most helpful in resolving trade disputes between WTO members and thereby providing the security and predictability needed to ensure a well-functioning international trading system. This mechanism has received extensive attention in academia and in government circles.

However, in today's highly complex world, the WTO alone cannot tackle all the legal issues that arise from the implementation of its many different agreements, each dealing with a different aspect of international trade. There is a great deal that governments which are WTO members can do at the domestic level which may contribute to the common ultimate objective: creating as seamless and as predictable as possible an environment in which commercial entities can conduct their commerce. Thus, the involvement of domestic courts in the resolution of legal disputes affecting international trade is an important element of providing the ideal rules-based trading environment.

This book represents the first major attempt to shed light on judicial review at domestic level, a singularly important issue in connection with trade remedies that, despite its potential importance, has unfortunately

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received little notice so far. The book offers an in-depth analysis of how the domestic courts of 21 WTO members review the determinations of their own investigating authorities in trade remedy proceedings. The fact that roughly half of the disputes raised so far in the WTO concerned trade remedies underlines the importance of this study.

The results obtained in this research project, which are summarized in the overall conclusion, deserve the attention of all stakeholders in trade remedy proceedings. First, in terms of numbers, the book shows that there have been many more judicial review cases before domestic courts compared with the disputes raised at the WTO. Arguably, judicial review of trade remedy determinations by domestic courts could be potentially more significant than WTO dispute settlement. Second, the book identifies a number of common problems faced by many of the countries studied and suggests ways in which such problems may be addressed. The commonality of these problems across countries from different parts of the globe is notable, and underlines the need to take timely and appropriate steps to address these issues. As always, the WTO is ready to play the role that its members deem appropriate in addressing this particular aspect.

I believe that this book will fill an important gap in academic research on international trade law, besides meeting the needs of practitioners, and pave the way for further, more detailed, studies on judicial review at domestic level and its inter-linkages with WTO dispute settlement.

*Pascal Lamy*  
Director-General  
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Finally, I would like to thank my wife, Figen, and the two other crew members, Baran and Alp, who have endured my overexcitement about judicial review for such a long time. It is to them that I dedicate my work on this book.

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