

Book Review

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International Trade Disputes and EU Liability

by Anne Thies

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When it comes to the European Union (EU) and the United States, the biggest trading partners, implications are rather grave. Not only for those that are directly involved in trade disputes (companies that produce products, such as bananas and hormone-treated meat), but also for those who have little to do with the trade dispute itself (producers of paper boxes, wallets or coffee among others).

When the EU violates international trade agreements, retaliation measures of its trading partners hurt many businesses. The question is who is liable for damages triggered by the EU's conduct? What are legal implications for such damages for natural and legal persons? And what are the consequences of the EU's domestic system of rights and judicial protection rules (a so-called 'pure' EU law)?

These are the issues that Anne Thies considers in her book. Thies takes a closer look at two main sets of questions in her work: (1) the legality of the EU's conduct into a particular trade agreement and (2) the scope of the EU's liability in cases when the EU's own general principles are violated, or when the EU has no unlawful conduct when severe consequences of the international trade agreements follow.

The author provides important background context of the EU and its liability in the context of international trade law (Chapter 1). She then discusses the EU liability for unlawful conduct within the EU legal order (Chapter 2), after which she analyses the EU courts' current approach in cases when applicants tried to enforce the EU's World Trade Organization (WTO) law obligations (Chapter 3). In Chapters 4 and 5, Thies evaluates each of the general principles of EU law in cases of compensation for infringements of such law. In Chapter 6, she provides some general approaches to policy suggestions, for example how the gap in judicial protection for the victims of retaliation should be filled in a context of international legal order and individual rights enforced by the EU law.

What is important is that Thies first takes a look at the effect and enforceability of EU liability as defined in Article 340(2) of the Treaty on the Functioning of the European Union (TFEU) in international trade law within the EU legal order. As the EU is a part of the WTO and has an exclusive competence in most trade matters (Article 207 TFEU), it represents all member states at the WTO and Dispute Settlement Body. This is a rather forceful enactment with significant consequences for the EU's legal order.

To make matters even more complicated, Article 340(2) of the TFEU makes the EU, which has a legal personality (Article 47 Treaty on European Union), liable for its conduct in the matters concerning international trade law. This means that – according to the Article 340(2) TFEU – any party that has experienced financial damages during a trade dispute is entitled to compensation from the EU. A number of such cases have been brought to the European Court of Justice (ECJ) in the recent years, and Thies reviews them in detail (for example, the Hormone and Bananas cases among others).

In reality, liability claims have been dismissed by the ECJ. According to Thies, the ECJ's unwillingness to apply EU general principles to the cases that have been brought up to the court, has 'probably been motivated by the courts' general objective not to interfere with the scope for manoeuvre of other institutions at the international level in the context of international trade disputes' (p. 188). In other words, the ECJ has refused to pry with the international trade law out of concern of political interference and potential financial costs for the EU as a whole. Thies correctly argues that the EU should find an appropriate balance between its own general principles and international trade law. In addition, the EU and its justice system should appropriately respect the rights and obligations of the EU on the world stage and individual rights as defined by EU constitutional law.

Upon reading this book, it was clear that it is primarily intended for academics, policy makers and practitioners. It is a good reference book for anyone who is interested in the topic and would like to have a more detailed discussion of EU liability within the framework of international trade law. For anyone who is not too familiar with the topic and legal studies in general, the book might be a somewhat challenging read. It is filled with references to EU treaties and legal terms, which require prior knowledge for adequate comprehension.

The book is an impressive analysis from a young academic to produce original research in the field of international trade law and the EU legal institutional approach. It is indeed a brave attempt to understand a rather difficult and complex topic. The book opens a door for further research and detailed policy recommendations and is a worthwhile read for those who are interested in reading about legal aspects of the famous 'Bananas' and 'Hormones' cases.
