This book deals with a subject which has gained enormous importance in recent years, the relationship between European Union law and WTO law. While in the past the reciprocal interdependencies between the EC and the GATT were the subject of study by only a rather small number of experts, this situation radically changed during the course of the Uruguay Round and especially after the establishment of the WTO on 1 January 1995. Both entities, the European Union and the WTO, are the result of an institution-building process, which saw during the last decade of the twentieth century, in Europe as well as on a universal level, an increase in membership, power and competences for the relevant organizations. The ongoing accession process to the WTO, which gained particular attention with the accession of the People’s Republic of China to the WTO on 11 December 2001 and the intensified accession negotiations with Russia and, on the other hand, the enlargement process of the EU, show that there is still considerable momentum in this direction. As these institutions gain ever more importance, their fields of interaction should attract increasing attention. This is especially true if we consider that these points of interaction are growing. Thus, one may predict that many legal questions arising from this interaction process will favour the development of a special discipline in international economic law dealing with ever more numerous and complex questions in the intersection between the law of the European Union and that of the WTO. The book under review will constitute a pivotal contribution for the development of such a discipline.

This collection of essays explores the possibilities of comparison between EU law and WTO law — and the limits of such a comparison. In this sense, the studies can be attributed not only to the disciplines of public international law and European Union law, but also comparative (public) law. In the literature it has been stated that comparison in comparative law is not an end in itself, but helps to better understand a legal system. Reformulated in the context of public international law, where overlapping legal structures mean that it is not always possible to distinguish between ‘ours’ and ‘theirs’, and applied to the specific context under consideration here, this statement takes on particular significance as the juxtaposition of related aspects of EU law and WTO law opens the way to interesting new insights and a new understanding both of individual elements of these legal systems as well as of their specific roles in international trade relations.

The introductory chapter by Gráinne de Búrca and Joanne Scott on ‘The Impact of the WTO on EU Decision-making’ starts out by offering a broad panoply of similarities and differences between EU law and WTO law. In so doing, the limits of such comparison are also evidenced. Several case studies show that there are subtle and very effective ways that WTO law, even without direct effect, has an

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1 On 1 January 2002 the WTO had 144 members.

impact on the EU system. In this context, emphasis is given to the importance of procedural values, such as participation, consultation and due process, which the WTO Appellate Body referred to in the Shrimp/Turtle dispute. It is suggested that these values can lead to more inclusive political processes, giving voice to unrepresented communities and individuals. If these procedural values are applied in an effective and flexible manner and are not translated in a formal, elusive way, they could make a powerful contribution to bridging the 'legitimacy gap' which seems to threaten the foundations of the WTO.

The next two chapters address the various attempts to 'constitutionalize' WTO law from a rather abstract point of view. 'Constitutionalism' is much en vogue as an issue these days. The title of the book itself speaks of 'legal and constitutional' issues, giving, at first glance, the impression that they are two conflicting concepts. This impression is misleading; the sub-title was probably intended to provide catchwords to attract attention to the main issues of this book rather than as an attempt to devise a new delimitation for an intensely debated subject.

Many reasons could be given for the continuing attempts to give a 'constitutional' connotation to WTO law. Whatever the concrete meaning of this qualification, it certainly gives a more prominent status to the subject, at least at the academic level, as it can be associated with meanings such as 'basic norms', 'higher norms', 'provisions which cannot be easily modified'. Those who study these norms can expect to be dealing with the very foundations of international economic law. In the past, I have suggested that attempts to constitutionalize GATT/WTO law are especially pronounced in countries like Germany where international economic law is taught mainly by academics specializing both in public international law and in constitutional law. There is an attempt to give structure to a legal system which has grown at an extremely rapid pace, leaving open many questions of interpretation. There are the repercussions of the various initiatives to give a constitution to the European Union. Finally, to end this by no means exhaustive list, this development is the result of efforts to address the legitimacy question, to democratize WTO law and to transpose basic values of our national constitutions to the new international trade regulations in order to make sure that standards achieved with great effort on the national level are not contradicted, at least partly, by new international agreements. The existence of these and many other divergent explanations for the various attempts to describe the WTO from a constitutional viewpoint guarantees that the results reached are widely differing. Contrasting viewpoints on the constitutionalization process are also expounded by the various authors of this book.

In his essay entitled 'The EU and the WTO: Constitutionalism in a New Key', Neil Walker presents a very sophisticated analysis of the concept of 'constitutionalism'. He shows that much of the misunderstanding associated with this concept is due to a problem of 'translation', in that a concept created in a national context has to be transposed to an international setting. By pointing to the fact that there is a relationship of mutual constitution and containment between politics and constitutional law he develops a series of factors according to which the intensity and the direction of a constitutionalization process, understood in a broad sense, can be measured. These are discursive maturity, authority, jurisdiction, interpretive autonomy, institutional capacity, citizenship and representation. By applying them both to the WTO and the EU he shows that the constitutionalization process is far more developed in the latter. However, this does not allow, according to Walker, a total denial of a constitutional quality to WTO law, as constitutionalization and constitutionalism are multifaceted phenomena and cannot be quali-

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3 United States — Import prohibitions of certain shrimp and shrimp products.

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8 1999 ECR I–8395.

autonomy to its Member States, but this also implies that it is very difficult to develop a common policy by which a Community position could be strongly defended at the international level.

Finally,11 in his essay ‘Is There Any Such Thing as Free or Fair Trade? A Constitutional Analysis of the Impact of International Trade on the European Social Model’, Miguel Poiares Maduro turns to the broad free trade versus fair trade debate. In this essay, he poses the fundamental question of who should, in different circumstances, determine the balance between these two principles, thereby focusing the debate once more on a constitutional level.

This book does not claim to have the final word on the issues it treats. Indeed, this would not be possible as the relationship between WTO law and European Union law is rapidly evolving and continuously changing. Behind the transitory nature of many elements of this relationship there are, however, some basic questions which remain constant in time and which are fundamental for the entire international order. One of the most important of these regards the place to be given to human rights in the international economic order. As the recent exchange of views on this issue in this journal12 has shown, we are a long way from even the appearance of a consensus on such a basic question. Therefore, at the moment, the primary goal has to be to find a common language for this necessary and inevitable debate. Recourse to the term ‘constitution’, notwithstanding its elusiveness, has created a large platform on which this discussion can engage. In this sense, the most important contribution of this book has been to prepare the field for further research and discussion. All in all, this is a very important book on a very important issue for international lawyers; for academics with a special interest in international economic law (or, more modestly, in WTO law) it is essential reading.

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