Peter Hilpold. ***Die EU im GATT/WTO-System.*** Innsbruck: Innsbruck University Press, 2009, 3rd ed. Pp. 610. €79.90. ISBN: 9783902571946.

The first edition of this book, written by Peter Hilpold, professor at the University of Innsbruck, instantly became an important reference book on the relationship between the EU and the WTO, particularly on the German language market. With this third edition, Hilpold has updated the book without

changing its main structure, a decision to be welcomed given that this structure, with each chapter opening with a historical perspective, is fundamental for understanding this complex topic. The book is divided into nine major chapters, which deal with the most important aspects of WTO law and its interaction with Community law. In addition, the book contains several indexes, including a useful index of persons.

By way of introduction, Hilpold starts off with a new chapter on the issue of regionalism in the GATT/WTO trading system. In this context, the vagueness and flexibility of Article XXIV GATT is extensively discussed. Naturally, the EC itself, as well as its many bilateral trade agreements, play an important role because they illustrate the tensions and complexities involved when it comes to the application of Article XXIV GATTT.

Based on this introduction Hilpold discusses the question of the conformity of the E(E)C Treaty with GATT law and the position of the EC in the multilateral trading system. Whilst this issue was of some practical importance in the old GATT days when the EEC was not formally a Contracting Party to the GATT, this has become less of a problem since the EC was a founding member of the WTO next to the EC Member States. In this sense, this issue is more of academic than practical relevance.

Subsequently, Hilpold focuses on EC law. The distribution of competences between the EC and its Member States as determined by the ECJ and codified by the EC Member States in the various Treaty revisions obviously plays a central role in this chapter. At the end of the day, as Hilpold correctly concludes, the situation remains complex and far from clear. Thus, the Lisbon Treaty must prove in practice whether the EC's trade policy will indeed become more transparent. Similarly, as the following short chapter on transparency in international trade law illustrates, transparency is increasingly becoming an important issue within the WTO.

Finally, Hilpold turns to the second major theme of his book, namely, the issue of direct effect or direct applicability of WTO law in the Community legal order. It is in this context that the historical approach by Hilpold proves most valuable, since this theme can only be fully understood from a historical perspective. Indeed, Hilpold must be praised for his complete, detailed and up-to-date analysis, which is almost unique in the German legal literature. Hilpold fully supports the continuing denial by the ECJ and the CFI of any direct effect or direct applicability of WTO law in the Community legal order. Although, unlike the European courts, he tables a wealth of legal, political and economic arguments to support this jurisprudence, in the final score these arguments still cannot convincingly explain why the rule of law must be violated.[1] Be that as it may, Hilpold can safely rely on the jurisprudence of the European courts to prove that his point of view still prevails. Nonetheless, even Hilpold seems to have some doubts as to whether the ECJ did not go too far in its recent *FIAMM* judgment (C-120/06 & C-121/06 of 9 February 2008) in which it flatly rejected the idea of non-contractual liability of the EC for its refusal to implement a final and binding WTO Appellate Body ruling. This situation is essentially analogous to the issue of the right to compensation for legislative injustice. If the EC is really a Community based on the rule of law as the ECJ always claims, then its jurisprudence regarding WTO law is simply an anomaly that is inconsistent with fundamental principles of the Community legal order. This is particularly so because individuals and companies are directly affected by the illegal acts of the EC institutions, which is usually the case with the non-implementation of WTO Appellate Body rulings since punitive tariffs imposed against the EC are eventually paid by companies and consumers.

Indeed, the increasing role of enterprises in the interaction between WTO law and EC law deserves more space in Hilpold's book. For instance, in the short section (at 277 *et seq.*) dealing with the EC Trade Barriers Regulation, Hilpold, it would appear, does not discuss the CFI's *FICF* judgment (T-90/03 of 11 July 2007).

[1] See further, e.g., Lavranos, 'The Communitarization of WTO Dispute Settlement Reports: An Exception to the Rule of Law', *EFA Rev.* (2005) 313.

However, this judgment is particularly important because it is the first judgment on the EC Trade Barriers Regulation in which the CFI determined the scope of competence and the wide margin of appreciation of the European Commission.[2]

Moreover, in my view, the increasing role of multinationals, NGOs and other parties in the WTO dispute settlement system – be it informally behind the scenes or formally through the submission of *amicus briefs* – also deserves a more extensive discussion. Such an analysis would illustrate that both WTO and EC law are not only dominated by International Organizations and Member States but increasingly influenced by private parties and their interests. Clearly, this new development needs to be thoroughly addressed.

This point is also highlighted by another aspect, namely, the exclusive competence of the EC regarding foreign direct investment treaties, which Article 207 TFEU (former Article 133 EC) contains since the Lisbon Treaty entered into force. The questions concerning the legal status of the thousands of bilateral investment treaties (BITs) of EC Member States with third states has recently been vividly discussed in the legal literature.[3] In fact, the ECJ recently decided that even a 'hypothetical conflict' between pre-accession BITs of the EC Member States with third states and Community law must be resolved in favour of the latter either by suspension, re-negotiation or denouncement of the BITs concerned (C-205/06 *Commission v. Austria*, C-246/06 *Commission v. Sweden*, both of 3 March 2009). It is not difficult to predict that these judgments will have huge consequences for the Member States and the investments of enterprises covered by those BITs. In addition, the consequences resulting from these judgments for the still existing intra-EC Member States BITs need to be assessed.[4] It must be admitted, however, that Hilpold could only have discussed the Opinion of the Advocate General, which the ECJ eventually followed, since the judgments of the ECJ in the BITs cases were issued after the manuscript was completed.

These minor points of critique should be viewed as recommendations to be taken into account in the next edition. In sum, it must be concluded that Hilpold's book is a laudable and exceptional presentation of the complex relationship between WTO and EC law, to be considered obligatory reading for all interested in this topic.

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doi: 10.1093/ejil/chq042

[2] See further, Lavranos, 'Case Note on *FICF*', *AJIL* (2007) 331.

[3] See e.g., Eilmansberger, 'Bilateral Investment Treaties and EU law', *CML Rev.* (2009) 383.

[4] See e.g., Wehland, 'Intra-EU Investment Agreements and Arbitration: Is EC law an Obstacle?', *ICLQ* (2009) 297.