Despite a decades-long debate, starting with the *Tuna-Dolphin* disputes of the 1990s, questions on the status of national regulatory measures linked to processes and production methods in WTO law have remained unsolved. Likewise, labelling requirements relating to unincorporated aspects of a product’s life cycle remain strongly contested. Ongoing disputes at the WTO, as well as global social and environmental challenges relating to economic activities show how topical and important the search for adequate answers still is. *Processes and Production Methods (PPMs) in WTO Law* identifies and comprehensively analyses the key legal problems concerning such measures, setting them in the context of the current debate and its economic and regulatory background. Christiane R. Conrad develops a new approach to this debate which draws on the objectives and established economic rationales of the WTO Agreements.

CHRISTIANE R. CONRAD is an attorney at law and in-house lawyer with a telecommunications company in Germany. She was a member of the Collaborative Research Centre ‘Transformations of the State’ at the University of Bremen, and she has also been a Visiting Fellow at Georgetown University Law Center.
As the processes of regionalization and globalization have intensified, there have been accompanying increases in the regulations of international trade and economic law at the levels of international, regional and national laws.

The subject matter of this series is international economic law. Its core is the regulation of international trade, investment and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labour, environment and culture, as well as sustainable development. These areas are vertically linked at the international, regional and national level, and the series extends to the implementation of these rules at these different levels. The series also includes works on governance, dealing with the structure and operation of related international organisations in the field of international economic law, and the way they interact with other subjects of international and national law.

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Christiane R. Conrad
PROCESSES AND PRODUCTION METHODS (PPMs) IN WTO LAW

Interfacing trade and social goals

CHRISTIANE R. CONRAD
The Parties to this Agreement,
Recognizing that their relations in the field of trade and economic
endeavour should be conducted
with a view to raising standards of living,
ensuring full employment,
and a large and steadily growing volume of real income and effective
demand,
and expanding the production of and trade in goods and services,
while allowing for the optimal use of the world’s resources in
accordance with the objective of sustainable development,
seeking both to protect and preserve the environment
and to enhance the means for doing so in a manner consistent with
their respective needs and concerns at different levels of economic
development

Marrakesh Agreement Establishing the
World Trade Organization
signed in Marrakesh, Morocco, on 15 April 1994

As of today, 153 countries and other WTO members as well as
29 candidate countries have committed themselves to the above
objectives.
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Figure
4.1 Determination of detrimental treatment under GATT Article III 240

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8.1 Regulation-based approach to WTO conformity of NPA measures 479
This book is a revised and updated version of my Ph.D. dissertation, which was accepted by the Law Faculty of the University of Berne in 2008. The sub-title of my dissertation, ‘A contribution to the debate on the impact of WTO law on national regulation pursuing social goals’, shows the broader context of my doctoral research which led to this book. As a member of the project group ‘Social regulation and world trade’ at the Collaborative Research Centre ‘Transformations of the State’, I placed a strong focus on the interplay of national social regulation and international trade, and, in particular, on the status of national regulatory measures under the law of the WTO. I found that despite a decades-long debate, the status of such measures – both from a legal and a political perspective – still remains unresolved. Existing regulatory measures show, that despite legal uncertainty, states do not totally refrain from exercising their power to enact such measures. However, there can be no doubt that the existence of the WTO Agreements and the heated legal and political debates on the legality of certain measures of national social regulation, which have been taking place at an international and, above all, at a transnational level, may lead to a chilling effect on the exercise of national powers. These, however, are still necessary to solve certain problems in cases where no capable institutions at other governance levels are in place. This book analyses the problem and offers a new ‘regulatory’ perspective, which might help to realize the common goals of national regulators and members of the WTO.

Writing this book would not have been possible without the encouragement, advice, help and support of many people, only a few of whom can be mentioned here. First and foremost, I owe particular gratitude to my supervisor, Professor Thomas Cottier, who inspired me to write this thesis in the first place. His advice and encouragement have been much needed major driving forces throughout my work. I am grateful also to Professor Ernst-Ulrich Petersmann for his comments and for reviewing my dissertation in the proceedings at the Law Faculty of the University of Berne. This work benefited greatly from discussions with scholars and
practitioners representing various academic disciplines and international backgrounds at the World Trade Institute (WTI) in Berne – thanks to the staff at the WTI for making this possible, and many thanks to my fellow Ph.D. students for candid comments and exciting discussions. I undertook important parts of my research at the Institute of International Economic Law (IIEL) at Georgetown University Law Center in Washington DC, which likewise offered ample opportunity to engage in academic and political exchange of thoughts in an atmosphere most beneficial for academic research. I enjoyed and gained a lot from discussions with Michelle Grando, Hong-Liu Gong and other fellows at the Institute, and especially with Professor John H. Jackson and Professor A. Jane Bradley, to both of whom I owe particular gratitude. Many thanks also to Professor Steve Charnovitz for thought-provoking comments on an earlier paper, and thanks to Tomer Broude and the Hebrew University of Jerusalem for granting me the opportunity to participate at a roundtable on the EC – Biotech case.

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*Belgium – Family Allowances:* Belgian Family Allowances, G/32, adopted 7 November 1952, BISD I/59  21, 166, 192, 193, 194


*Canada – FIRA:* Canada – Administration of the Foreign Investment Review Act, L/5504, adopted 7 February 1984, BISD 30S/140  155

*Canada – Gold Coins:* Canada – Measures Affecting the Sale of Gold Coins, L/5863, 17 September 1985, unadopted  190

*Canada – Ice Cream:* Canada – Import Restrictions on Ice Cream and Yoghurt, L/6568, 36S/68, adopted 4 December 1989  265


*EEC – Parts and Components:* European Economic Community – Regulation on Imports of Parts and Components, L/6657, adopted 16 May 1990, BISD 37S/132  43

*Germany – Sardines:* Treatment by Germany of Imports of Sardines, G/26, adopted 31 October 1952, BISD I/53  33, 174

*Italy – Agricultural Machinery:* Italian Discrimination against Imported Agricultural Machinery, L/833, adopted 23 October 1958, BISD 7S/60  153, 155, 165, 166


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*Tuna-Dolphin I*: United States – Restrictions on Imports of Tuna, DS21/R, 3 September 1991, unadopted, BISD 39S/155 14, 15, 16, 22, 37, 38, 151, 153, 155, 156, 158, 159, 179, 180, 184, 191, 195, 212, 276, 283, 284, 289, 291, 302, 303, 310, 311, 350  
*United States Customs User Fee*, L/6264, 35S/245, adopted 2 February 1988 265  
*US – Tuna I*: see *Tuna-Dolphin I*  
*US – Tuna II*: see *Tuna-Dolphin II*
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<tr>
<td>AAA</td>
<td>Agricultural Adjustment Administration</td>
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<td>AB</td>
<td>Appellate Body</td>
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<td>AD Agreement</td>
<td>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)</td>
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<td>CAC</td>
<td>Codex Alimentarius Commission</td>
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<td>CAFE</td>
<td>Corporate Average Fuel Economy law</td>
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<td>CITES</td>
<td>Convention on International Trade in Endangered Species of Wild Fauna and Flora</td>
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<td>CFC</td>
<td>Chlorofluorocarbon</td>
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<tr>
<td>DSB</td>
<td>Dispute Settlement Body</td>
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<tr>
<td>DSU</td>
<td>Understanding on Rules and Procedures Governing the Settlement of Disputes</td>
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<tr>
<td>EC</td>
<td>European Community/European Communities</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Social and Economic Council</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>European Union</td>
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<td>FDA</td>
<td>Food and Drug Administration</td>
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<td>FTC</td>
<td>Federal Trade Commission</td>
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<tr>
<td>GMO</td>
<td>Genetically Modified Organism</td>
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<td>GPA</td>
<td>Agreement on Government Procurement</td>
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<tr>
<td>GSP</td>
<td>Generalized System of Preferences</td>
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<tr>
<td>HS</td>
<td>Harmonized System: Harmonized Commodity Description and Coding System of the World Customs Organization</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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### Abbreviations

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<thead>
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<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>Marrakesh</td>
<td>Marrakesh Agreement Establishing the World Trade Organization</td>
</tr>
<tr>
<td>MEA</td>
<td>Multilateral Environmental Agreement</td>
</tr>
<tr>
<td>MFN</td>
<td>Most-Favoured-Nation treatment</td>
</tr>
<tr>
<td>MHPA</td>
<td>Marine Mammal Protection Act</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Area</td>
</tr>
<tr>
<td>NGO</td>
<td>non-governmental organization</td>
</tr>
<tr>
<td>NIOSH</td>
<td>National Institute for Occupational Safety and Health</td>
</tr>
<tr>
<td>NIRA</td>
<td>National Industrial Recovery Act</td>
</tr>
<tr>
<td>Note</td>
<td>GATT, Annex I Notes and Supplementary Provisions, Ad Article III</td>
</tr>
<tr>
<td>NPA</td>
<td>non-physical aspect</td>
</tr>
<tr>
<td>NPA measure</td>
<td>national measure linked to an NPA</td>
</tr>
<tr>
<td>NRA</td>
<td>National Recovery Administration</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OJ</td>
<td>Official Journal</td>
</tr>
<tr>
<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
</tr>
<tr>
<td>PPM</td>
<td>processes and production methods</td>
</tr>
<tr>
<td>PPM measure</td>
<td>national measures linked to a PPM</td>
</tr>
<tr>
<td>RIAA</td>
<td>Reports of International Arbitral Awards</td>
</tr>
<tr>
<td>SCM Agreement</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
</tr>
<tr>
<td>SDT</td>
<td>special and differential treatment of developing countries</td>
</tr>
<tr>
<td>SPS Agreement</td>
<td>Agreement on the Application of Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>TBT Agreement</td>
<td>Agreement on Technical Barriers to Trade</td>
</tr>
<tr>
<td>TED</td>
<td>turtle excluder device</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
</tr>
<tr>
<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>WCO</td>
<td>World Customs Organization</td>
</tr>
<tr>
<td>WEO</td>
<td>World Economic Organization (fictitious)</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organization</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</tbody>
</table>