

International Trade Disputes and EU Liability

The European Union has become the respondent of several international trade disputes. This book examines the right to compensation for damage resulting from retaliatory measures imposed under the system of the World Trade Organization in disputes triggered by the EU. Anne Thies evaluates the implications of the EU's membership in the WTO for its domestic system of rights and judicial protection. Emphasising the necessity of maintaining EU standards of protection independently of the external dimension of EU action, the book offers suggestions on how the current gap of protection could be filled while upholding the scope for manoeuvre of the EU institutions on the international plane. In addition, it places the issue in its broader context of the relationship between international law and EU law on the one hand, and the discretion of the EU as a global actor and standards of individual rights protection under EU law on the other.

Anne Thies has been a lecturer in European and international law at the University of Reading since 2007. Her research focuses on the interrelationship between international law, EU external relations law and EU constitutional law.

Cambridge Studies in European Law and Policy

This series aims to produce original works which contain a critical analysis of the state of the law in particular areas of European law and set out different perspectives and suggestions for its future development. It also aims to encourage a range of work on law, legal institutions and legal phenomena in Europe, including 'law in context' approaches. The titles in the series will be of interest to academics; policy makers; policy formers who are interested in European legal, commercial and political affairs; practising lawyers, including the judiciary; and advanced law students and researchers.

Joint Editors

Professor Dr. Laurence Gormley
University of Groningen
Professor Jo Shaw
University of Edinburgh

Editorial advisory board

Professor Richard Bellamy, *University College London*
Professor Catherine Barnard, *University of Cambridge*
Professor Marise Cremona, *European University Institute, Florence*
Professor Alan Dashwood, *University of Cambridge*
Professor Dr Jacqueline Dutheil de la Rochère, *Université de Paris II, Director of the Centre de Droit Européen, Paris*
Dr Andrew Drzemczewski, *Council of Europe, Strasbourg*
Sir David Edward, *KCMG, QC, former Judge, Court of Justice of the European Communities, Luxembourg*
Professor Dr Walter Baron van Gerven, *Emeritus Professor, Leuven and Maastricht, and former Advocate General, Court of Justice of the European Communities*
Professor Daniel Halberstam, *University of Michigan*
Professor Dr Ingolf Pernice, *Director of the Walter Hallstein Institut, Humboldt University*
Michel Petite, *Former Director-General of the Legal Service, Commission of the European Communities, Brussels*
Professor Dr Sinisa Rodin, *University of Zagreb*
Professor Neil Walker, *University of Edinburgh*

Books in the series

EU Enlargement and the Constitutions of Central and Eastern Europe
Anneli Albi

Social Rights and Market Freedom in the European Constitution: A Labour Law Perspective
Stefano Giubboni

The Constitution for Europe: A Legal Analysis
Jean-Claude Piris

The European Convention on Human Rights: Achievements, Problems and Prospects
Steven Greer

European Broadcasting Law and Policy
Jackie Harrison and Lorna Woods

The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space
Jo Shaw

Implementing EU Pollution Control: Law and Integration
Bettina Lange

The Evolving European Union: Migration Law and Policy
Dora Kostakopoulou

Ethical Dimensions of the Foreign Policy of the European Union: A Legal Appraisal
Urfan Khaliq

The European Civil Code: The Way Forward
Hugh Collins

State and Market in European Union Law
Wolf Sauter and Harm Schepel

The Ethos of Europe: Values, Law and Justice in the EU
Andrew Williams

The European Union's Fight Against Corruption: The Evolving Policy Towards Member States and Candidate Countries
Patrycja Szarek-Mason

The Lisbon Treaty: A Legal and Political Analysis
Jean-Claude Piris

*New Governance and the Transformation of European Law: Coordinating EU
Social Law and Policy*
Mark Dawson

The Limits of Legal Reasoning and the European Court of Justice
Gerard Conway

International Trade Disputes and EU Liability
Anne Thies

International Trade Disputes and EU Liability

Anne Thies



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
 978-1-107-00966-0 — International Trade Disputes and EU Liability
 Anne Thies
 Frontmatter
[More Information](#)



Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
 103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107009660

© Anne Thies 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press & Assessment.

First published 2013

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Thies, Anne, 1975–

International trade disputes and EU liability / Anne Thies.

pages cm. – (Cambridge studies in European law and policy)

Includes bibliographical references and index.

ISBN 978-1-107-00966-0

1. Foreign trade regulation – European Union countries. 2. International commercial arbitration – European Union countries. 3. International and municipal law – European Union countries. 4. World Trade Organization – European Union countries. 5. European Union countries – Foreign economic relations. I. Title.

KJE6791.T44 2013

3820.5094–dc23

2012034996

ISBN 978-1-107-00966-0 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Series editors' preface</i>	<i>page xi</i>
<i>Preface</i>	xiii
<i>List of abbreviations</i>	xv
<i>Table of cases</i>	xvii
<i>Table of legislation</i>	xxviii
Introduction	1
1 Setting the scene: WTO disputes, retaliation and the EU courts' reception of WTO law	6
1.1 Relevant international trade disputes so far: the <i>Hormones</i> and <i>Bananas</i> cases brought before the WTO	7
1.2 Overview of existing EU jurisprudence	19
1.3 EU conduct under review	37
1.4 Conclusions	42
2 Liability for unlawful conduct: the role of the legal remedy and conditions of the right to compensation in the EU legal order	44
2.1 Background	45
2.2 Independence and complementarity of legal actions in the EU legal order	47
2.3 EU liability for unlawful conduct	50
2.4 EU liability in the absence of unlawfulness	78
2.5 Conclusions	80

3	Enforceability of the EU's WTO law obligations in the EU legal order: EU liability due to WTO law infringement	81
3.1	Unlawfulness of EU conduct in breach of WTO law	82
3.2	Sufficiently serious breach	112
3.3	'Conferral of rights': 'right holders' or 'beneficiaries'?	114
3.4	Further conditions	119
3.5	Conclusions	124
4	The impact of EU general principles on the EU's liability regime I: liability due to infringement of EU general principles	126
4.1	Liability for breaches of general principles of EU law	127
4.2	Effect of the external dimension of EU conduct on the applicability of general principles of EU law	128
4.3	Effect of the external dimension of EU conduct on the scope of general principles of EU law	138
4.4	Scope of the general principles of EU law invoked by retaliation victims	140
4.5	Conclusions	147
5	The impact of EU general principles on the EU's liability regime II: liability in the absence of (invokable) unlawfulness in international trade disputes or 'no-fault liability'	148
5.1	Existence of the liability principle in the absence of unlawfulness under EU law	149
5.2	Application of the liability regime to the situation of retaliation victims	159
5.3	Conclusions	172
6	The current situation of retaliation victims and how to fill the gap in judicial protection while further respecting the EU institutions' international scope for manoeuvre	173
6.1	WTO law and the position of individuals	173
6.2	EU constitutional law and retaliation victims	187

6.3 Concluding remarks: the EU as a global actor, the international legal order and individual rights	195
<i>Bibliography</i>	200
<i>Index</i>	218

Series editors' preface

Trade disputes are often bitter, long-lasting, contorted and sagas from which few emerge with credit. The European Union has over the years been embroiled in a number of such sagas, prompting the distinguished German jurist and former Judge at the Court of Justice to ask whether Europe would slip on bananas.¹ That dispute has now mercifully finally been resolved, officially ending in November 2012 after more than 20 years. At the level of States, trade disputes can be difficult enough, but for individuals affected by them they can spell disaster, both financially and otherwise. The rights of those affected are often trodden upon and quickly forgotten, and it can be notoriously difficult to obtain adequate remedies. The sense of injustice is manifest, and it might be expected that in a European Union governed by the rule of law there should be adequate remedies available to victims of international trade disputes. But the inadequacy of judicial remedies at EU level is distinctly unimpressive.

Anne Thies's timely book is an extremely important contribution to the debate on remedies in EU law, as well as to the literature on trade disputes. She makes an extremely convincing argument that successful compensation actions on the basis of a breach of WTO law do not require EU acts to be declared wholly or partially void. She argues further that liability should not be denied in principle only because the financial burden could be so large as to restrict the political institutions in their political discretion provided under the WTO system.

This book is a call to the judiciary to reassess its case-law: it is a good example of detailed and systematic analysis leading to a very clear

¹ U. Everling, 'Will Europe Slip on Bananas?' (1996) 33 *CMLRev.* 401.

xii SERIES EDITORS' PREFACE

indication of the inadequacy of the case-law. But it goes further than dealing merely with inadequacy: it makes clear and well-argued suggestions for improvement.

For these reasons we very much welcome Anne Thies's book in the *Cambridge Studies in European Law and Policy* series.

Laurence Gormley
Jo Shaw

Preface

This book entails a study of rights and remedies under the European legal order of natural and legal persons hit by the consequences of international trade disputes triggered by the European Union (EU). It analyses the legal situation established by the European treaties and the case law of the EU courts regarding the right to compensation of those who have allegedly suffered damage because of retaliatory measures imposed lawfully by other World Trade Organization (WTO) members. The book evaluates the implications of the EU's membership of the WTO for the EU's domestic system of rights and judicial protection. In the course of its enquiry, it demonstrates that the current approach of the European courts has left 'retaliation victims' without any judicial protection. Emphasising the necessity under EU law to maintain standards of rights and judicial protection independently of the external dimension of EU action, the book addresses the role and implications of EU fundamental rights and general principles for compensation actions. It makes suggestions on how the current protection gap could be filled while upholding the international scope for manoeuvre of the political institutions, and places the issue in its broader context of the relationship between international and EU law on the one hand, and the discretion of the EU as a global actor and standards of individual rights protection under EU law on the other hand.

This book is based on my doctoral thesis, which I submitted to the Ludwig-Maximilians-Universität in spring 2009, and the writing of which had been supported with a gratefully received two-year scholarship from the Hanns-Seidel Foundation. I would like to express my warmest thanks to my supervisor and mentor, Bruno Simma, who has supported me over many years with his valuable advice. Looking back at the significant period of time during which I travelled with my research project and

combined it with other commitments, I would like to thank colleagues, family and friends for their support, encouragement and patience at different stages of this project. Many thanks to Deborah Z. Cass, who encouraged me to start, and Susan Marks, who encouraged me to end my doctoral studies. I am also grateful for the advice I received from Gisela Elsner, Michael Hahn, Julia Legleitner, Werner Meng and Torsten Stein during the early stages of my research undertaken in Saarbrücken. My particular thanks go to Thomas Cottier and Piet Eeckhout, whose continuous advice and feedback were crucial for the progress of my work. I would like to thank Marco Bronckers and Pieter-Jan Kuijper for engaging with my ideas at conferences and in writing, which was not only enjoyable but also – so I hope – beneficial for the development of my arguments. I would like to thank my second examiner, Horst Krenzler, and Rudolf Streinz, who helped to make the final stages of my doctoral studies in Munich go so smoothly, my colleagues at the University of Reading – in particular Alison Bisset, Chris Hilson, Stuart Lakin, Patricia Leopold and Ronan McCrea – and at the European University Institute – in particular Marise Cremona and Miguel Maduro – for their support during the final stages of this project. I dedicate this book to my parents, Helga and Erich Thies, whose continuous support, love and faith in me made the undertaking and completion of this project possible.

Anne Thies, July 2012

List of abbreviations

AB	Appellate Body
AG	Advocate General
AJIL	American Journal of International Law
AÖR	Archiv des öffentlichen Rechts
Brook. J. Int'l L.	Brooklyn Journal of International Law
Cal. W. Int'l L.J.	California Western International Law Journal
CFI	Court of First Instance
CML Rev	Common Market Law Review
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Community
ECJ	European Court of Justice
ECL Rev	European Constitutional Law Review
EC Treaty	Treaty Establishing the European Community
EJIL	European Journal of International Law
ELJ	European Law Journal
EL Rev	European Law Review
EU Treaty	Treaty on European Union
EuR	Europarecht
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
FS	Festschrift
Geo. J. Int'l L	Georgetown Journal of International Law
GYIL	German Yearbook of International Law
HILJ	Harvard International Law Journal
ICJ	International Court of Justice
Int. T.L.R.	International Trade Law and Regulation
JIEL	Journal of International Economic Law

xvi LIST OF ABBREVIATIONS

JPLRes	Japanese Law Resources
JuS	Juristische Schulung
JWT	Journal of World Trade
JZ	Juristenzeitung
LIEI	Legal Issues of European Integration
LQR	The Law Quarterly Review
MJ	Maastricht Journal of European and Comparative Law
MJIL	Michigan Journal of International Law
Max Planck UNYB	Max Planck Yearbook of United Nations Law
OJ	Official Journal
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RGDIP	Revue Générale de Droit International Public
RIW	Recht der Internationalen Wirtschaft
RMC	Revue du Marché Commun
RMUE	Revue du Marché Unique Européen
RTDE	Revue trimestrielle de droit européen
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TILJ	Texas International Law Journal
U.S.C	United States Code
USTR	United States Trade Representative
WTO	World Trade Organization
YEL	Yearbook of European Law
ZEuS	Zeitschrift für Europarechtliche Studien

Table of cases

In chronological order

European Court of Justice

- Case 8/55, *Fédération Charbonnière de Belgique v. High Authority* [1954–56] ECR 245 53
- Joined Cases 9 and 12/60, *Société commerciale Antoine Vloeberghs SA v. High Authority of the European Coal and Steel Community* [1961] ECR 197 56
- Cases 14, 16, 17, 20, 24, 26 and 27/60 and 1/61, *Meroni v. High Authority* [1961] ECR 161 55
- Case 25/62, *Plaumann v. Commission* [1963] ECR 95 47, 74
- Case 26/62, *Van Gend en Loos* [1963] ECR 1 46, 59, 119
- Case 29/63, *Laminoirs de la Providence v. High Authority* [1965] ECR 911 121
- Joined Cases 5, 7 and 13–24/66, *Kampffmeyer et al. v. Commission* [1967] ECR 245 50, 57, 70, 114, 121
- Case 4/69, *Lütticke v. Commission* [1971] ECR 325 47
- Case 9/69, *Claude Sayag et S.A. Zürich v. Jean-Pierre Leduc etc.* [1969] ECR 329 50
- Joined Cases 19, 20, 25 and 30/69, *Richez-Parise and others v. Commission* [1970] ECR 325 119
- Case 22/70, *Commission v. Council (ERTA)* [1971] CMLR 335 53
- Case 5/71, *Aktien-Zuckerfabrik Schöppenstedt v. Council* [1971] ECR 975 48, 50, 52, 53, 57, 70, 114
- Joined Cases 9 and 11/71, *Compagnie d'Approvisionnement de Transport et de Crédit SA et Grands Moulins de Paris SA v. Commission* [1972] ECR 391 47, 48, 52, 160, 170
- Case 92/71, *Interfood v. Hauptzollamt Hamburg-Ericus* [1972] ECR 231 21
- Joined Cases 21–4/72, *International Fruit Company NV and others v. Produktschap voor Groenten en Fruit* [1972] ECR 1219 19, 22, 62, 84

xviii TABLE OF CASES

- Case 43/72, *Merkur v. Commission* [1973] ECR 1055 47, 49
 Cases 63–9/72, *Werhahn Hansamühle and others v. Council* [1973] ECR 1229 52
 Case 4/73, *Nold* [1974] ECR 491 140, 141
 Case 9/73, *Schlüter v. Hauptzollamt Lörrach* [1973] ECR 1135 19, 22
 Case 153/73, *Holtz & Willemsen GmbH v. Council and Commission* [1974] ECR 675 47
 Case 181/73, *Haegeman v. Belgian State* [1974] ECR 449 61, 175
 Case 6/74, *Costa v. ENEL* [1964] ECR 585 46
 Case 26/74, *Roquette Frères v. Commission* [1976] ECR 677 58, 160
 Cases 56–60/74, *Kampffmeyer* [1976] ECR 711 119
 Case 74/74, *Comptoir National Technique Agricole (CNTA) SA v. Commission* [1975] ECR 533 52, 128, 143, 145
 Case 43/75, *Defrenne v. Société anonyme belge de navigation aérienne (Sabena)* [1976] ECR 455 21
 Case 87/75, *Bresciani* [1976] ECR 129 62
 Opinion 1/76 [1977] ECR 741 53
 Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79, *Dumortier Frères v. Council* [1982] ECR 3091 58, 121, 122
 Joined Cases 83 and 94/76, 4, 15 and 40/77, *HNL* [1978] ECR 1209 45, 57, 128
 Joined Cases 117/76 and 16/77, *Ruckdeschel v. Hauptzollamt Hamburg-St Annen* [1977] ECR 1753 169
 Joined Cases 124/76 and 20/77, *Moulins et Huileries de Pont-à-Mousson and Another v. Office Interprofessionnel des Céréales* [1977] ECR 1795 169
 Joined Cases 103/77 and 145/77, *Royal Scholten-Honig v. Intervention Board for Agricultural Products* [1978] ECR 2037 169
 Case 112/77, *Töpfer v. Commission* [1978] ECR 1019 145
 Case 125/77, *Koninklijke Scholten-Honig v. Hoofdprodukschap voor Akkerbouwprodukten* [1978] ECR 1991 169
 Case 238/78, *Ireks-Arkady v. Council and Commission* [1979] ECR 2955 57, 119
 Joined Cases 241, 242, 245–50/78, *DGV v. Council and Commission* [1979] ECR 3017 57
 Joined Cases 261 and 262/78, *Interquell Stärke-Chemie GmbH & Co. KG and Diamalt AG v. Council and Commission* [1979] ECR 3045 57
 Case 4/79, *Société Coopérative ‘Providence Agricole de la Champagne’ v. ONIC* [1980] ECR 2823 49
 Case 44/79, *Hauer v. Land Rheinland-Pfalz* [1979] ECR 3727 140, 141
 Case 145/79, *Roquette Frères SA v. France* [1980] ECR 2917 49
 Case 66/80, *International Chemical Corporation v. Amministrazione delle Finanze dello Stato* [1981] ECR 1191 176

- Case 127/80, *Grogan v. Commission* [1982] ECR 869 145
 Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81, *Birra Wührer and others v. Council and Commission* [1982] ECR 85 57, 160
 Case 270/80, *Polydor* [1982] ECR 329 62
 Case 17/81, *Pabst-Richarz* [1982] ECR 1331 62
 Case 26/81, *Oleifici Mediterranei v. EEC* [1982] ECR 3057 51
 Case 51/81, *De Franceschi v. Council and Commission* [1982] ECR 117 160
 Case 104/81, *Hauptzollamt Mainz v. C.A. Kupferberg & Cie KG a.A.* [1982] ECR 3641 60, 61, 62, 63, 88
 Case 266/81, *Società Italiana per l'Oleodotto Transalpino v. Ministero delle finanze et al. (SIOT)* [1983] ECR 731 19, 22
 Cases 267 to 269/81, *Amministrazione delle finanze dello Stato v. Società Petrolifera Italiana (SPI) and Michelin Italiana (SAMI)* [1983] ECR 801 20, 22
 Case C-289/81, *Mavridis v. Parliament* [1983] ECR 1731 145
 Case 267/82, *Développement SA and Clemessy v. Commission* [1986] ECR 1907 150, 160, 190
 Case 59/83, *Biovilac* [1984] ECR 4057 123, 150, 153, 161, 162, 190
 Case 112/83, *Société de Produits de Maïs v. Administration des Douanes* [1985] ECR 719 49
 Case 240/83, *Procureur de la République v. ADBHU* [1985] ECR 531 140, 141
 Case 294/83, *Les Verts v. European Parliament* [1986] ECR 1339 46
 Cases 71 and 72/84, *Surcouf and Vidou* [1985] ECR 2925 51
 Case 175/84, *Krohn v. Commission* [1986] ECR 753 48
 Case 281/84, *Zuckerfabrik Bedburg v. Council and Commission* [1987] ECR 49 52, 128
 Case 265/85, *Van den Bergh en Jurgens v. Commission* [1987] ECR 1155 52
 Cases 281, 283–5 and 287/85, *Germany v. Commission* [1987] ECR 3203 53
 Case 12/86, *Meryem Demirel v. Stadt Schwäbisch Gmünd* [1987] ECR 3719 61, 62, 63
 Case 50/86, *Grand Moulins* [1987] ECR 4833 52
 Case 81/86, *De Boer Buizen v. Council and Commission* [1987] ECR 3677 36, 78, 150, 160, 190
 Case C-120/86, *Mulder v. Minister van Landbouw en Visserij (Mulder I)* [1988] ECR 2321 141, 145
 Cases 46/87 and 227/88, *Hoechst v. Commission* [1989] ECR 2859 21
 Case 70/87, *Fediol v. Commission*, [1989] ECR 1781 21, 22, 32, 105, 175
 Case 265/87, *Schräder HS Kraftfutter* [1989] ECR 2237 198
 Case C-308/87, *Grifoni v. European Atomic Energy Community* [1994] ECR I-341 52, 119
 Case 5/88, *Wachauf* [1989] ECR 2609 198

XX TABLE OF CASES

- Case C-119/88, *AERPO v. Commission* [1990] ECR I-2189 128
 Case C-152/88, *Sofrimport v. Commission* [1990] ECR I-2477 145
 Case C-69/89, *Nakajima All Precision Co. Ltd. v. Council*, [1991] ECR I-2069 21, 22, 28, 32, 105, 108, 175
 Joined Cases C-104/89 and C-37/90, *Mulder and others v. Council of the EU and Commission of the EC* [2000] ECR I-203 119, 121, 143
 Case C-192/89, *Sevince* [1990] ECR 3461 27, 62, 88, 95, 96
 Case C-260/89, *Elliniki Radiophonia Tielorassi v. Dimotiki Etairia Pliroforis (ERT)* [1991] ECR I-2925 21
 Case C-309/89, *Codorniu* [1994] ECR I-1853 141
 Joined Cases C-6/90 and C-9/90, *Francovich and others* [1991] ECR I-5357 48, 75, 76, 178
 Case C-18/90, *Kziber* [1991] ECR I-199 88
 Cases C-38, 151/90, *R v. Lomas* [1992] ECR I-178 49
 Case C-55/90, *Cato v. Commission* [1992] ECR I-2533 51
 Case C-177/90, *Kühn v. Landwirtschaftskammer Weser-Ems* [1992] ECR I-35 145, 198
 Case C-282/90, *Vreugdenhil* [1992] ECR I-1937 52, 57
 Case C-286/90, *Anklagemindigheden v. Poulsen and Diva Navigation* [1992] ECR I-6019 21, 62
 Case C-358/90, *Compagnia Italiana Alcool v. Commission* [1992] ECR I-2457 121
 Opinion 1/91 on the Draft Agreement relating to the creation of the EEA, [1991] ECR I-6079 29, 94, 100
 Case C-146/91, *KYDEP v. Council and Commission* [1994] ECR I-4199 51
 Case C-327/91, *French Republic v. Commission* [1994] ECR I-3641 60
 Case C-228/92, *Roquette Frères SA v. Hauptzollamt Geldern* [1994] ECR I-1445 49
 Cases C-46/93 and 48/93, *Brasserie du Pêcheur SA v. Bundesrepublik Deutschland and The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd. and others* [1996] ECR I-1029 45, 51, 55, 156
 Case C-58/93, *Yousfi* [1994] ECR I-1353 88
 Case C-280/93, *Germany v. Council (Bananas)* [1994] ECR I-4973 20, 22, 88, 142, 198
 Case C-392/93, *British Telecommunications* [1996] ECR I-1631 55
 Case C-469/93, *Amministrazione delle finanze dello Stato v. Chiquita Italia SpA* [1995] ECR I-4533 20, 22, 89
 Opinion 2/94 [1996] ECR I-1759 21, 53, 127
 Opinion 3/94 [1995] ECR I-4577 23
 Case C-5/94, *Hedley Lomas* [1996] ECR I-2553 52
 Case C-22/94, *Irish Farmers Association and others v. Minister for Agriculture, Food and Forestry, Ireland and the Attorney General* [1997] ECR I-1809 198

- Case C-61/94, *Commission v. Germany (International Dairy Arrangement)* [1996] ECR I-3989 21, 62, 110
- Case C-70/94, *Werner v. Germany* [1995] ECR I-3189 21, 111
- Case C-83/94, *Leifer and others* [1995] ECR I-3231 21, 111
- Case C-103/94, *Krid* [1995] ECR I-719 88
- Cases C-153 and C-205/94, *Faroe Seafood and others* [1996] ECR I-2465 141
- Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, *Dillenkofer and others* [1996] ECR I-4845 55
- Case C-122/95, *Germany v. Council* [1998] ECR I-973 23
- Case C-126/95, *Hallouzi-Choho* [1996] ECR I-4807 88
- Case C-183/95, *Affish BV v. Rijksdienst voor de keuring van Vee en Vlees* [1997] ECR I-4315 23
- Case C-341/95, *Gianni Bettati v. Safety Hi-Tech Srl* [1998] ECR I-4355 21
- Case C-362/95 P, *Blackspur DIY and others v. Council and Commission* [1997] ECR I-4775 160
- Joined Cases C-364 and 365/95, *T. Port GmbH & Co. v. Hauptzollamt Hamburg-Jonas (T. Port III)* [1998] ECR I-1023 23, 169
- Case C-53/96, *Hermès International v. FHT Marketing Choice BV* [1998] ECR I-3603 21, 23, 24, 111
- Case C-149/96, *Portugal v. Council* [1999] ECR I-8395 20, 21, 24, 25, 32, 62, 63, 84, 85, 90, 103, 105, 115, 139, 175, 177, 180
- Case C-162/96, *A. Racke GmbH & Co v. Hauptzollamt Mainz* [1998] ECR I-3655 60, 94
- Case C-352/96, *Italy v. Council* [1998] ECR I-6937 24
- Case C-416/96, *El Yassini* [1999] ECR I-1209 88
- Case C-104/97 P, *Atlanta v. European Community* [1999] ECR I-6983 30, 32, 84, 99, 145, 150, 170
- Case C-113/97, *Babahenini* [1998] ECR I-183 88
- Case C-37/98, *Savas* [2000] ECR I-2927 62
- Case C-237/98 P, *Dorsch Consult v. Council and Commission* [2000] ECR I-4549 36, 79, 150, 152, 159, 160, 190
- Cases C-300/98 and 392/98, *Parfums Christian Dior SA v. Tuk Consultancy BV, Assco Gerüste GmbH and Rob van Dijk v. Wilhem Layher GmbH & Co. KG and Layher BV* [2000] ECR I-11307 21, 25, 27, 84, 85, 111
- Case C-352/98 P, *Laboratoires Pharmaceutiques Bergaderm and Goupil v. Commission* [2000] ECR I-5291 51, 52, 55, 56, 112, 127
- Case C-377/98, *Netherlands v. Parliament and Council* [2001] ECR I-7079 20, 25, 62, 84, 85
- Case C-18/99, *Kziber* [1991] ECR I-199 62
- Case C-63/99, *Gloszczuk* [2001] ECR I-6369 62, 88

xxii TABLE OF CASES

- Case C-89/99, *Schievin-Nijstad vof and others* [2001] ECR I-5851 111
 Case C-235/99, *Kondova* [2001] ECR I-6427 62, 88
 Case C-257/99, *Barkoci and Malik* [2001] ECR I-6557 62, 88
 Case C-268/99, *Aldona Malgorzata Jany and others* [2001] ECR I-8615 62, 88
 Order in Case C-307/99, *OGT Fruchthandelsgesellschaft mbH v. Hauptzollamt Hamburg-St. Annen* [2001] ECR I-3159 20, 24, 25, 84, 85, 109
 Opinion 2/00 [2001] ECR I-5713 53
 Cases C-27/00 and C-122/00, *Omega Air and others* [2002] ECR I-2569 20, 21, 25, 84, 85
 Case C-50/00 P, *Unión de Pequeños Agricultores v. Council* [2002] ECR I-6677 46, 74, 191
 Case C-76/00 P, *Petrotub SA and Republica SA v. Council* [2003] ECR I-73 20, 21, 24, 25, 26, 110
 Case C-112/00, *Schmidberger v. Austria* [2003] ECR I-5659 55, 127
 Case C-162/00, *Land Nordrhein-Westfalen v. Beata Pokrzeptowicz-Meyer* [2002] ECR I-1049 62
 Case C-312/00 P, *Commission v. Camar and Tico* [2002] ECR I-11355 52, 112
 Case C-438/00, *Kolpak* [2003] ECR I-4135 62
 Case C-472/00 P, *Commission v. Fresh Marine* [2003] ECR I-7541 53
 Case C-76/01 P, *Eurocoton v. Council* [2003] ECR I-10091 57
 Case C-160/01, *Karen Mau* [2003] ECR I-4791 52
 Case C-171/01, *Wählergruppe* [2003] ECR I-4301 62
 Case C-192/01, *Commission v. Denmark* [2003] ECR I-9693 95
 Case C-224/01, *Köbler* [2003] ECR I-10239 47, 48, 49, 75, 76, 77, 118, 178
 Case C-23/02, *Alami* [2003] ECR I-1399 88
 Cases C-37 and C-38/02, *Di Lenardo Adriano and Dilexport v. Ministero del Commercio con l'Estero* [2004] ECR I-6911 142
 Cases C-93/02 P and C-94/02, *Biret International SA et al. v. Council* [2003] ECR I-10497 and 10565 32, 33, 49, 79, 84, 85, 89, 96, 97, 98, 99, 100, 109, 110, 137, 149, 166
 Case C-234/02, *Frank Lamberts v. European Ombudsman* [2004] ECR II-2803 48
 Case C-245/02, *Anheuser-Busch v. Budvar* [2004] ECR I-10989 22, 95
 Case C-263/02, *Commision v. Jégo-Quééré* [2004] ECR I-3425 46
 Case C-286/02, *Bellio F.lli* [2004] ECR I-3465 62
 Case C-377/02, *Van Parys* [2005] ECR I-1465 20, 27, 28, 33, 84, 85, 99, 103, 113, 139, 176
 Case C-265/03, *Simutenkov* [2005] ECR I-2579 62, 88
 Case C-295/03 P, *Alessandrini and others v. Commission* [2005] ECR I-5673 198
 Case C-459/03, *Commission v. Ireland* [2006] ECR I-4635 61
 Case C-311/04, *Algemene Scheeps Agentuur Dordrecht* [2006] ECR I-609 62

- Case C-344/04, *IATA and ELFAA* [2006] ECR I-403 61, 62, 63
 Case C-351/04, *IKEA Wholesale Ltd.* [2007] ECR I-7723 29, 84, 100, 139
 Case C-502/04, *Ergün Torun* [2006] ECR I-1563 62, 88, 95, 96
 Case C-97/05, *Mohamed Gattoussi v. Stadt Rüsselsheim* [2006] ECR I-11917 62, 88
 Case C-305/05, *Ordre des barreaux francophones et germanophone and others* [2007] ECR I-5305 127
 Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council* [2008] ECR I-6351 61, 128, 133, 134, 136, 137, 197, 198
 Case C-431/05, *Merck Genéricos-Produtos Farmacêuticos Ld^a v. Merck & Co. Inc. and Merck Sharp & Dohme Ld^a* [2007] ECR I-7001 27, 61, 62
 Cases C-120 and 121/06 P, *FIAMM et al.* [2008] ECR I-6513 2, 3, 36, 37, 42, 79, 80, 84, 85, 96, 103, 104, 106, 112, 115, 120, 124, 127, 128, 130, 134, 135, 139, 141, 142, 143, 148, 149, 150, 152, 153, 155, 156, 158, 160, 162, 165, 167, 169, 170, 171, 176, 177, 178, 180, 189, 190, 191, 192, 193, 194, 195, 198
 Case C-308/06, *The Queen on the Application of: International Association of Independent Tanker Owners (Intertanko) and others v. Secretary of State for Transport* [2008] ECR I-4057 62, 63, 69, 104, 115, 131, 132
 Case C-414/08 P, *Sviluppo Italia Basilicata SpA v. European Commission* [2010] ECR I-2559 159, 190
- Court of First Instance (now the General Court)
 Case T-472/93, *Campo Ebro* [1995] ECR II-421 52
 Case T-481/93 and T-484/93, *Vereniging van Exporteurs v. Commission* [1995] ECR II-2941 52, 128, 144
 Case T-489/93, *Unifruit Hellas v. Commission* [1994] ECR II-1201 144
 Case T-514/93, *Cobrecaf v. Commission* [1995] ECR II-621 123
 Case T-521/93, *Atlanta* [1996] ECR II-1707 30, 143, 145, 150
 Case T-571/93, *Lefebvre and others v. Commission* [1995] ECR II-2379 145
 Case T-572/93, *Odigitria v. Council and Commission* [1995] ECR II-2025 123
 Case T-575/93, *Koelman v. Commission* [1996] ECR II-1 58, 160
 Case T-108/94, *Candiotte v. Council* [1996] ECR II-87 57, 160
 Case T-175/94, *International Procurement Services v. Commission* [1996] ECR II-729 51
 Case T-201/94, *Kusterman v. Council and Commission* [2002] ECR II-415 48
 Case T-261/94, *Schulte v. Council and Commission* [2002] ECR II-441 48
 Case T-267/94, *Oleifici Italiani v. Commission* [1997] ECR II-1239 57, 160
 Case T-99/95, *Stott v. Commission* [1996] ECR II- 2227 160
 Case T-184/95, *Dorsch Consult v. Council and Commission* [1998] ECR II-667 58, 79, 122, 150, 160, 161, 169

xxiv TABLE OF CASES

- Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99,
Comafrika and Dole Fresh Fruit Europe v. Commission [2001] ECR II-1975 52
 Case T-79/96, *Camar Srl* [2000] ECR II-2193 119
 Case T-105/96, *Pharos v. Commission* [1998] ECR II-285 145
 Case T-113/96, *Dubois et Fils v. Council and Commission* [1998] ECR II-125 51
 Case T-290/97, *Mehibas Dordtselaan v. Commission* [2000] ECR II-15 144
 Joined Cases T-33/98 and T-34/98 *Petrotub and Republica v. Council* [1999]
 ECR II-3837 26
 Case T-99/98, *Hameico Stuttgart GmbH v. Council and Commission* [2003] ECR
 II-2195 48, 57
 Case T-178/98, *Fresh Marine Company SA v. Commission* [2000] ECR II-3331 48
 Case T-3/99, *Bananatrading v. Council* [2001] ECR II-2123 31, 69, 84, 115
 Case T-18/99, *Cordis Obst und Gemüse Großhandel v. Commission* [2001] ECR
 II-913 31, 64, 69, 84, 108, 115
 Case T-30/99, *Bocchi Food Trade International v. Commission* [2001] ECR
 II-943 31, 69, 84, 108, 115
 Case T-52/99, *T. Port GmbH & Co. KG v. Commission* [2001] ECR II-981 31,
 69, 84, 108, 115
 Case T-70/99, *Alpharma v. Council* [2002] ECR II-3495 144
 Case T-155/99, *Dieckmann v. Commission* [2001] ECR II-3143 51
 Case T-196/99, *Area Cova and others v. Council and Commission* [2001] ECR II-
 3597 57, 150
 Joined Cases T-3/00 and T-337/04, *Athansios Pitsiorlas v. Council and ECB*
 [2007] ECR II-4779 49, 51, 52, 57, 58
 Case T-69/00, *FIAMM and FIAMM Technologies* [2005] ECR II-5393 2, 3, 34,
 35, 36, 38, 62, 64, 71, 78, 79, 84, 120, 124, 128, 129, 136, 142, 143, 144,
 145, 149, 151, 152, 155, 159, 161, 163, 167, 175, 187, 189
 Case T-151/00, *Le Laboratoire du Bain* [2005] ECR II-23* 2, 34, 35, 64, 78,
 84, 129, 146, 149, 151, 167, 175, 189
 Case T-170/00, *Förde-Reederei* [2002] ECR II-515 162, 170
 Case T-174/00, *Biret International SA v. Council* [2002] ECR II-17 31, 32, 33,
 64, 84, 85, 88, 95, 105, 109, 110, 145, 150
 Case T-301/00, *Fremaux* [2005] ECR II-25* 2, 34, 35, 64, 78, 84, 129, 146,
 149, 151, 167, 175, 189
 Case T-320/00, *CD Cartondruck AG* [2005] ECR II-27* 2, 34, 35, 64, 78, 84,
 129, 142, 143, 144, 145, 146, 149, 151, 167, 175, 189
 Case T-383/00, *Beamglow Ltd.* [2005] ECR II-5459 2, 14, 16, 34, 35, 64, 78,
 84, 120, 129, 142, 143, 144, 145, 149, 151, 167, 189
 Case T-19/01, *Chiquita Brands and others* [2005] ECR II-315 27, 28, 34, 84,
 85, 99, 113, 139, 176

- Joined Cases T-64 and 65/01, *Afrikanische Frucht-Compagnie et al. v. Commission* [2004] ECR II-521 161,170
 Case T-135/01, *Giorgio Fedon & Figli S.p.A., Fedon S.r.l. and Fedon America USA Inc.* [2005] ECR II-29* 35, 64, 78, 84, 120, 149, 151, 167, 189
 Case T-306/01, *Yusuf et al. v. Council* [2005] ECR II-3533 61, 94, 132, 133, 136
 Case T-315/01, *Kadi v. Council and Commission* [2005] ECR II-3649 61, 94, 132, 133, 136
 Case T-333/01, *Meyer v. Commission* [2003] ECR II-117 58
 Case T-274/02, *Ritek and Prodisc Technology v. Council* [2006] ECR II-4305 29
 Case T-193/04, *Tillack v. Commission* [2006] ECR II-3995 52, 56, 57, 58
 Case T-231/04, *Greece v. Commission* [2007] ECR II-63 94
 Case T-264/07, *CSL Behring GmbH v. Commission and European Medicines Agency (EMA)* [2010] ECR II-4469 144

World Trade Organization

- Japan – Taxes on Alcoholic Beverages II*, Panel Report of 11 July 1996, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by the Appellate Body Report, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:1, 125 92
 (see www.wto.org/english/tratop_e/dispu_e/cases_e/ds8_e.htm)
European Communities – Regime for the Importation, Sale and Distribution of Bananas (Bananas), Complaints by Ecuador, Guatemala and Honduras, Mexico and the United States, Panel Reports of 22 May 1997, WT/DS27/R/ECU, GTM, HND, MEX, USA, adopted 25 September 1997, as modified by the Appellate Body Report of 9 September 1997, WT/DS27/AB/R, DSR 1997:II, 695, 783; III,1085 13, 94, 108, 151, 174
 (see www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm)
European Communities – Measures Concerning Meat and Meat Products (Hormones), Complaints by Canada and the United States, Panel Reports of 18 August 1997, WT/DS26/R/CAN and WT/DS48/R/US, adopted 13 February 1998, as modified by the Appellate Body Report of 16 January 1998, WT/DS26,48/AB/R, DSR 1998:II, 235; III, 699 1, 9, 10, 31, 94, 151, 174
 (see www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm and www.wto.org/english/tratop_e/dispu_e/cases_e/ds48_e.htm)
European Communities – Measures Concerning Meat and Meat Products (Hormones) – Arbitration under Art. 21.3(c) of the DSU, Award of the Arbitrator, WT/DS26/15 and WT/DS48/13, 29 May 1998, DSR 1998:V, 1833 10
 (see www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm and www.wto.org/english/tratop_e/dispu_e/cases_e/ds48_e.htm)

xxvi TABLE OF CASES

European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU, Decision by the Arbitrators of 9 April 1999, WT/DS27/ARB 1, 107, 174

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm)

European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by Ecuador, Report of the Panel of 12 April 1999, WT/DS27/RW/ECU, adopted 6 May 1999, DSR 1999:II, 803 107

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm)

European Communities – Measures Concerning Meat and Meat Products (Hormones) – Recourse to Arbitration by the European Communities under Art. 22.6 of the DSU, Original Complaint by the United States, Decision by the Arbitrators of 12 July 1999, WT/DS26/ARB, DSR 1999:III, 1105 1, 10, 174, 175

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm)

European Communities – Anti-dumping Duties on Cotton-Type Bed Linen from India (Bed linen), Panel Report of 30 October 2000, WT/DS141/R, adopted 12 March 2001, as modified by the Appellate Body Report of 1 March 2001, WT/DS141/AB/R, DSR 2001:VI, 2077 29

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds141_e.htm)

United States – Final Anti-Dumping Measures on Stainless Steel from Mexico, Panel Report of 20 December 2007, WT/DS344/R, adopted 20 May 2008, as modified by the Appellate Body Report of 30 April 2008, WT/DS344/AB/R 92

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds344_e.htm)

United States – Continued Existence and Application of Zeroing Methodology, Panel Report of 1 October 2008, WT/DS350/R, adopted on 19 February 2009, as modified by the Appellate Body report of 4 February 2009, WT/DS350/AB/R 92

(www.wto.org/english/tratop_e/dispu_e/cases_e/ds350_e.htm)

Canada – Continued Suspension of Obligations in the EC-Hormones Dispute, Panel Report of 31 March 2008, WT/DS321/R, adopted 14 November 2008, as modified by the Appellate Body Report of 16 October 2008, WT/DS321/AB/R 11, 12, 110

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds321_e.htm)

United States – Continued Suspension of Obligations in the EC-Hormones Dispute, Panel Report of 31 March 2008, WT/DS320/R, adopted 14 November 2008, as modified by the Appellate Body Report of 16 October 2008, WT/DS320/AB/R 11, 12, 110

(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds320_e.htm)

European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States, WT/DS27/AB/RW/USA, and European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador, WT/DS27/AB/RW2/ECU, Reports of the Panel of 7 April (ECU) and 19 May (USA) 2008, adopted on 11 (USA)/22 (ECU) December 2008, as modified/upheld by Report of the Appellate Body of 26 November 2008 17, 18
(see www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm)

Table of legislation

In chronological order

- Council Directive 81/602/EEC concerning the prohibition of certain substances having a hormonal action and of any substances having a thyrostatic action of 31 July 1981, OJ 1981 L 222/32 8, 31, 174
- Council Directive 88/146/EEC prohibiting the use in livestock farming of certain substances having a hormonal action of 7 March 1988, OJ 1988 L 70/16 8, 31, 174
- Council Directive 88/299/EEC on trade in animals treated with certain substances having a hormonal action and their meat, as referred to in Article 7 of Directive 88/146/EEC, of 17 May 1988, OJ 1988 L 128/36 8
- Council Regulation (EEC) No 404/93 on the common organization of the market in bananas of 13 February 1993, OJ 1993 L 47/1 ('the COM for bananas') 13, 109, 174
- Council Decision 94/800/EC of 22 December 1994 approving the results of the Uruguay Round on behalf of the Community, OJ 1994 L 336/1 1, 7, 22, 23, 175
- Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC, 29 April 1996, OJ 1996 L 125/3 8, 31, 109, 110, 174
- Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia, OJ 1997 L 322/1 26

TABLE OF LEGISLATION xxix

- Council Regulation (EC) No 1637/98 of 20 July 1998 amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas, OJ 1998 L 210/28 14, 108
- Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community, OJ 1998 L 293/32 14, 108
- Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, OJ 2005 L 255/11 131