

## DESARROLLOS RECIENTES\*

\* Sección coordinada por María Clara Lozano Ortiz de Zárate, abogada de la Pontificia Universidad Javeriana con posgrado en economía de la integración regional europea (Universidad de Deusto - España), profesora de derecho de la competencia en las universidades Javeriana, y Juan David Barbosa Mariño, abogado de la Pontificia Universidad Javeriana con especialización en derecho tributario de la misma universidad y en el Enterprise and Investment Lawyers Course, IDLO, Roma, Italia.



## CAN WTO MEMBERS RELY ON NON-WTO LAW TO JUSTIFY A VIOLATION OF WTO LAW?\*

ANDRÉS FELIPE CELIS SALAZAR\*\*

### ABSTRACT

In the *Mexico-Soft Drinks* case, Mexico tried to rely on the NAFTA to justify a breach of the GATT. To what extent did the Appellate Body reject the application of Non-WTO International Law in WTO dispute settlement proceedings? Was the Appellate Body's decision correct? This can become a sensitive issue in particular when WTO Law is in conflict with International Environmental Law or Human Rights Law.

Fecha de recepción: 20 de febrero de 2007  
Fecha de aceptación: 6 de marzo de 2007

\* Although the only WTO Decision analysed in this article is DS-308 Mexico - Tax Measures on Soft Drinks and Other Beverages (all information related available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds308\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds308_e.htm) Accessed 31 October 2007), there are some other Decisions that deal with the matter of overlap of jurisdictions and applicable law, such as, among others: DS 241 Argentina - Definitive Anti-Dumping Duties on Poultry from Brazil, DS58 United States - Import Prohibition of Certain Shrimp and Shrimp Products, DS31 Canada - Certain Measures Concerning Periodicals, DS33 United States - Measures Affecting Imports of Woven Wool Shirts and Blouses from India, DS27 European Communities - Regime for the Importation, Sale and Distribution of Bananas. Full documentation on these cases can be obtained at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm) Accessed 31 October 2007.

\*\* Law, Pontificia Universidad Javeriana. Postgraduate Studies in Commercial Law, Pontificia Universidad Javeriana. LLM International Trade Law, University of East Anglia (Norwich-England). Contacto: [afcelis@hotmail.com](mailto:afcelis@hotmail.com)

This essay will prove that the WTO principles are not incompatible with other goals set in other international agreements signed by the parties.

*Key words:* jurisdiction; law; México; WTO.

## ¿PUEDEN LOS MIEMBROS DE LA OMC APOYARSE EN UNA NORMA QUE NO SEA DE LA OMC PARA JUSTIFICAR UNA VIOLACIÓN DE LAS NORMAS DE LA OMC?

### *RESUMEN*

*En el caso México-Bebidas Suaves, México trató de justificar una violación de la OMC amparado en el NAFTA. ¿Hasta qué punto el Panel de Apelaciones rechazó la aplicación de normas externas a la OMC en el procedimiento de resolución de disputas? ¿Fue la decisión del Panel de apelación correcta? Este puede ser un tema muy sensible, en particular cuando las normas de la OMC están en conflicto con normas de derecho ambiental o de derechos humanos.*

*El presente ensayo demostrará que los principios de la OMC no son incompatibles con otros objetivos fijados en acuerdos internacionales firmados por las partes.*

*Palabras clave:* jurisdicción; ley; México; OMC.

### INTRODUCTION

World Trade Organization (WTO) disputes have faced, and will continue facing, issues that involve the consideration of International Non-WTO Law when solving a dispute. As with any other multilateral institution, the WTO has to deal with situations where some of its members recall agreements between themselves or even

other agreements where they and other parties are involved, that are as binding as any other treaty or international commitment, and for that reason, as a valid justification for “violating” WTO Law in their disputes.

This essay will prove that even though the WTO was established for the purpose of developing trade with fewer obstacles between its members, its principles are not incompatible with other goals set in other international agreements signed by the parties, that when developing them, may involve trade restrictions. That means that the WTO is not an “isolated haven” without any contacts with other international bodies and decisions. Therefore, some situations that at first sight might seem as contradictory with WTO norms will finally be seen as “permissible” in the WTO context. For the reasons stated before, WTO members are entitled to rely on Non-WTO Law when facing a dispute as defendants, if certain requirements (that will be explained later) are met.

The departing point of this analysis will be the *Mexico-Soft Drinks* case, where it will be considered if the Appellate Body rejected for future cases and if this decision was correct, the application of Non-WTO Law, when stating that it did have Jurisdiction to solve a dispute between two parties that were bound by the NAFTA Agreement, alongside with the GATT). As the issue is developed, it will be opened to other situations where the same fundamental matters of this writing may be brought, being these: Jurisdiction and applicable law.

#### I. TO WHAT EXTENT DID THE APPELLATE BODY REJECT THE APPLICATION OF NON-WTO INTERNATIONAL LAW IN WTO DISPUTE SETTLEMENT PROCEEDINGS?

In the *Soft Drinks*<sup>1</sup> case Mexico admitted that the Panel had the inherent power to decide by itself if it had jurisdiction to decide

---

1 As summarised by Joost Pauwelyn in “Choice of jurisdiction: WTO and regional dispute settlement Mechanisms: Challenges, options and opportunities”, p. 1. ICTSD / GIAN-RUIG dialogue on the “Mexico Soft Drinks dispute: Implications for regionalism and for trade and sustainable development”, available at <http://www.>

on its own jurisdiction (competence de la competence) for the case brought up to it. However, Mexico stated<sup>2</sup> that due to the special nature of the NAFTA agreement, and the previous commitment of the parties to submit a NAFTA dispute before a NAFTA Panel exclusively, the WTO Panel should not have taken the case<sup>3</sup>.

Not taking into account Mexico's arguments, the Panel<sup>4</sup> and then the Appellate Body<sup>5</sup> accepted to take the case relying on the Dispute Settlement Understanding articles (3.2 and 19.2) that mention the Panel's duties to decide a case brought before them

---

ictsd.org/dlogue/2006-05-30/dialogue\_materials/Joost\_Pauwelyn\_speaker\_notes.pdf Accessed 3 March 2007, the case was as follows: Mexico received a sugar quota for export to the US under NAFTA. However, for over five years Mexico has tried to enforce those quota rights without success as the United States continues to block the appointment of panel members on a NAFTA Chapter 20 panel (which Mexico got established to examine US restrictions on Mexican sugar). Because of this blockage, Mexico decided to retaliate unilaterally with the tax that later became the object of the Soft Drinks procedures at the WTO. Ironically, Mexico thereby did exactly what the US used to do in the old GATT days: When the US was faced with obstructions by the EC or Japan to the establishment of GATT panels, the US imposed unilateral sanctions under Section 301. When Mexico did the same thing in response to blockage at NAFTA (this time by the US) the US vehemently objected with a WTO complaint.

Additionally on the case, please refer to the WTO summary of the relevant issues of the case at [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/1pagesum\\_e/ds308sum\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds308sum_e.pdf) Accessed 31 October 2007.

- 2 As read on para. 7.11 of the Panel Report WT/DS308/R 7 October 2005. Mexico Tax Measures on Soft Drinks and other Beverages: Mexico has argued that the United States' claims are linked to a broader dispute between the two countries related to trade in sweeteners under a regional treaty, the NAFTA. In Mexico's opinion, under those circumstances, it would not be appropriate for the Panel to issue findings on the merits of the United States' claims. In this regard, Mexico emphasized that its request to the Panel was not so much that the Panel decline to exercise its jurisdiction, but rather that it decline to exercise it "in favour of a NAFTA Chapter Twenty Arbitral Panel". In Mexico's opinion, only such a panel under the NAFTA would be in a position to "address the dispute as a whole".
- 3 The NAFTA Agreement has a high potential of Overlap of Jurisdiction with the WTO. See Kyung Kwak & Gabrielle Marceau, *Overlaps and Conflicts of Jurisdiction Between the WTO and RTAS*, p. 36. Available at [http://www.wto.org/english/tratop\\_e/region\\_e/sem\\_april02\\_e/sem\\_april02\\_reading\\_e.htm](http://www.wto.org/english/tratop_e/region_e/sem_april02_e/sem_april02_reading_e.htm) Accessed 7th March 2007.
- 4 Panel Report WT/DS308/R 7 October 2005. Mexico Tax Measures on Soft Drinks and other Beverages.
- 5 Appellate Body Report WT/DS308/AB/R 6 March 2006 Mexico Tax Measures on Soft Drinks and other Beverages.

and also on Mexico's consent in the Panel's Jurisdiction to decide its own limits, as stated before. In addition the Panel argued that the reasons given for taking the issue to the WTO were not the same as NAFTA's<sup>6</sup>.

By refusing to accept "NAFTA's arguments" (Non-WTO International Law) given by Mexico, the Appellate body did not expressly state that the WTO would never consider other sources of Law to decide its cases, as it might be seen at first sight by an incautious reader<sup>7</sup>. The Panel only stressed that it is established to decide over WTO disputes, and that it cannot decide on behalf of other International Bodies rules; but it did not say that it would not consider other laws when doing so<sup>8</sup>.

- 
- 6 (n. 5) Para 7.14: Moreover, neither the subject matter nor the respective positions of the parties are identical in the dispute under the NAFTA which has been mentioned by Mexico and the dispute before us. In the present case, the complaining party is the United States and the measures in dispute are allegedly imposed by Mexico. In the NAFTA case, the situation appears to be the reverse: the complaining party is Mexico and the measures in dispute are allegedly imposed by the United States. As for the subject matter of the claims, in the present case the United States is alleging discriminatory treatment against its products resulting from internal taxes and other internal measures imposed by Mexico. In the NAFTA case, instead, Mexico is arguing that the United States is violating its market access commitments under the NAFTA.
- 7 As explained by Joost Pauwelyn (n. 2), p. 5: That the Appellate Body did not decide the issue of applicable law cannot be contested: if the Appellate Body's statement that it cannot "adjudicate Non-WTO disputes" (para. 56) were to mean that the applicable law before a WTO panel is limited to WTO covered agreements only, then the Appellate Body's statement, just two paragraphs earlier (in para. 54), would not make sense, as there the Appellate Body stresses that it does "not express any view on whether a legal impediment to the exercise of a panel's jurisdiction would exist" in the event NAFTA Article 2005 were triggered. In other words, paras. 56 and 78 relate to the jurisdiction of WTO panels, not the question of applicable law. The latter question was left explicitly open in para. 54.
- 8 (n. 6) Para. 54: "...Finally, we note that Mexico has expressly stated that the so-called 'exclusion clause' of Article 2005.6 of the NAFTA had not been 'exercised'. We do not express any view on whether a legal impediment to the exercise of a panel's jurisdiction would exist in the event that features such as those mentioned above were present. In any event, we see no legal impediments applicable in this case".

Two vital reasons can be given in support of this view:

First, a body can decide what would be the *applicable law* to decide its disputes. So, if a necessary tool (an external treaty) is required to decide a case, the Judge is authorised to do so.

Second, it should be noted that as with any other International Body, the WTO has to take into account the Vienna Convention on the interpretation of Treaties when solving disputes. Article 31 of the Convention has to be used if the case requires so.

As a part of an international order, the WTO is influenced and influences as well, other international organizations. It could be said then, that despite its speciality, still the WTO as any other Body, is one subject to what has been called International Public Law. It cannot ignore the rules that are set by the same members, sovereign States, which in most of the cases are parts of other organizations that have some norms that are similar or related to the ones brought up under dispute in the WTO.

## II. WAS THE APPELLATE BODY'S DECISION CORRECT?

The Appellate Body's decision was correct because it was supported mainly in one reason: The sovereignty and therefore free consent of the parties to submit a dispute in a certain way, and what is even more, to decide not to exercise that right when the time to do so comes. Mexico could have alleged before the Panel that it simply did not had jurisdiction to solve the dispute, due to the exclusivity of forum agreed beforehand with the United States. However, because this argument was not exposed, Mexico did give its consent regarding that the dispute could be fairly resolved by the WTO if it decided it had the jurisdiction.

It is true that the question will always be opened: If Mexico had exposed this argument, what would have happened? Considering the principles of international public law, and cooperation between multilateral bodies, it could have been expected that the Panel would have declined jurisdiction and therefore the case would have



been taken to a NAFTA Panel. It is true that there is not truly “an international hierarchy of agreements”, and this can be seen specially in possible events of overlap of jurisdictions and decisions, where in order to avoid this happening, a careful behaviour is expected by the involved parties in the whole process of the making of their international agreements<sup>9</sup> and also the behaviour of International dispute settlement bodies by means of mutual respect of their autonomy and expected cooperation.

### III. SPECIFIC ISSUES WHEN CONSIDERING NON-WTO INTERNATIONAL LAW TO JUSTIFY A “VIOLATION” OF WTO LAW

A scale of situations can be established when considering this matter in its *procedure*. These can go from express pacts agreed later in time than the GATT Agreement, where the parties just decide to solve their disputes in a different way than GATT rules, to more complex cases where an evident overlap or even a violation of the WTO Law can be noticed.

States, as in the case of private individuals, have the right to opt in or out a certain set of rules. This contractual view allows States to do different things such as renouncing the right to appeal a panel Jurisdiction or deciding not to invoke a WTO Panel to solve a dispute.

From this clear area of applicable rules, cases start moving to grey situations where some problems may arise. It could have been signed in another agreement that the parties would follow the path given there, which differs from the WTO rules. What would be the solving criteria then? Two principles may be taken into account to move forward: The *lex posteriori* principle and the *lex specialis* principle. It has to be seen which law suits better the situation before study, particularly the first criteria of Lex Posteriori that unmistakably is

9 Kwak & Marceau (n. 4), p. 12: “It is therefore for WTO Members to negotiate how they want to allocate jurisdiction between RTAs and the WTO, and how the dispute settlement mechanism of RTAs and that of the WTO will operate”.

the latest manifestation of consent from the parties. An extra sense of respect of other Courts powers also aids to tackle the problem on where to take the dispute to the safest ground for its resolution.

The States can choose also the exclusivity of a selected forum. This means, that at the beginning of the conflict, the complaining party has the choice to go to at least two different jurisdictions, but once it has decided to follow one of them, it automatically renounces to assist to the other. The NAFTA agreement, among others, contemplates this scenario and the WTO is of the view of accepting the validity of these kinds of pacts.

Other situations would include: The possibility of “splitting” the dispute in WTO and Non-WTO issues by a previous agreement and the “*Res Judicata*” doctrine, on which one party can argue that the case has been solved fully somewhere else.

That would be the panorama for procedural matters, on the declining, suspension or partial taking of jurisdiction by the WTO, which means the acceptance of other, Non-WTO rules. But if after all of these considerations, a case is brought before the Panel with due justification on WTO merits, and Non-WTO Law has to be considered in a *substantive* way, how can this be handled properly? It should be restated again, that the Panel has the obligation to use all the tools at its reach to solve the dispute in the most objective and comprehensive manner (Articles 7.2 and 11 of the DSU).

As said by Pauwelyn, four situations have been identified where Non-WTO Law yields with WTO Law in substantive matters:

(1) defences under Non-WTO Law explicitly incorporated into the WTO legal system; (2) measures allegedly violating the WTO treaty but specifically permitted (or even imposed) pursuant to the dispute settlement provisions of another treaty; (3) measures that a WTO Member must enact (or is explicitly permitted to enact) pursuant to the provisions of another treaty; (4) measures normally in breach of WTO rules but permitted under another treaty on condition that the WTO Panel finds that this other treaty is respected/violated<sup>10</sup>.

---

10 Joost Pauwelyn, How to win a World Trade Organization Dispute Based on Non-World Trade Organization Law?, *Journal of World Trade*, 37 (6), 2003, pp 997-1030, 1020.

For the first situation, it could be very easily noticed that this would just be a violation in appearance, because the same parties that are WTO members, have accepted this exceptions in other agreements. The second situation comes again to the matter of international cooperation and respect for the decisions of other settlement bodies. WTO is not “a supra-multilateral Body”, therefore, it must recognise the decision of other bodies who have the same autonomy and authority to rule over a case.

The last two situations are the ones that demand more effort from the defendant party as well as for the Panel on its analysis. Being the third one, one where it should be seen which of the two norms in conflict should prevail. If it is the WTO norm, then definitely there is a violation.

The last situation is the one that really should be seen as a clear full use of Non-WTO Law to solve a dispute and justify a violation. Here, there is not only a conflict of laws, to where the panel can finally decide which one should be given recognition. The case here demands from the judge to incorporate a provision from another treaty and judge on it solely. That is, in a way, extending the Panel’s jurisdiction over another treaty. Is there a justification to do so? For the given principles of international respect of other bodies and the limits of jurisdiction, it should be stated clearly that no justification is found, unless it comes to a very rare case where the dispute before the Panel can not be solved by another dispute settlement body and all other possibilities of conflict resolution are extinguished. Since this is very rare, in the vast majority of the cases, the WTO Panel should decline jurisdiction or suspend the dispute process, until another body, specialized in the resolution of the dispute brought under that other treaty, makes a decision. That way of behaving will also encourage mutual understanding and negotiation between States. And in the very end, if a WTO issue is still in dispute, there is always a door to enter WTO jurisdiction.

#### IV. SENSITIVE CONFLICT ISSUES BETWEEN WTO LAW AND INTERNATIONAL ENVIRONMENTAL LAW AND HUMAN RIGHTS LAW AMONG OTHERS

If confronted with a case where a possible violation of a Human Rights or Environmental treaty is exposed, and therefore one State has taken trade restriction measures in accordance to the non-compliance of those laws by the other State, should the WTO Body turn its back and just ignore these laws?<sup>11</sup> Should the general and main interest of liberalising trade prevail over all other issues? After all, the WTO was established for specifically that purpose.

It must be restated that the WTO is part of an international order that has permanent connection with other rules and bodies set up by the same State members that established it<sup>12</sup>. It would be absurd to think that the same parties that signed a different agreement elsewhere would afterwards not want to perform that agreement. The tools provided for cases of possible conflict of laws include: consulting the intention of the parties when they signed other treaties, *jus cogens*, custom, *lex specialis*, *lex posterioris*, *res judicata*, limitation of jurisdiction and, seeking advice from other bodies or experts. These guarantee that a fair and rational solution will be provided. It seems that the WTO is confident on these mechanisms to overcome a potential conflict<sup>13</sup>.

---

11 Joost Pauwelyn, *The Role of Public International Law in the WTO: How far can we go?*, *The American Journal of International Law* 95, 535-578. See p. 544, citing Non-WTO laws in contradiction with WTO Law.

12 *Ibidem*, p. 565: An idea on thinking the opposite, would lead to a nonsense scenario, given the extreme example of a hypothetical agreement regulating slave trade: "This example confirms the absurdity of portraying the DSU as some alien mechanism divorced from, and superior to, all other international law".

13 See Joel P. Trachtman, *The Domain of WTO Dispute Resolution*, 40 *Harv. Int'l L.J.* 333, 1999, p. 21: "...This expression seems to suggest that further 'legislative' or treaty action is not required to address these types of trade and environmental problems". And the WTO statement that commercial interests do not take priority over environmental protection at [http://www.wto.org/english/thewto\\_e/whatis\\_e/10mis\\_e/10m04\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/10mis_e/10m04_e.htm) Accessed March 11<sup>th</sup> 2007.

It is not admissible to say that the GATT agreement is a frozen norm that came into existence without any contact with the background in international public law it had before and no further recognition of the development of the relationships (trade and others) among States<sup>14</sup>. If that would have been the intention, then it would have been expressly indicated by the parties in the text of the treaty. Given that, the WTO is part of an “evolving” environment of international rules that within themselves have no hierarchy.

It should also be noticed that the case here is not bringing a claim to the WTO based on a “foreign” (Non-WTO) law. For that reason, here, the defendant party has a valid justification to “violate” WTO Law, for the main motive that it is entitled on the previous consent of the claimant. There are certain conditions to use Non-WTO as a valid justification for not compliance with WTO rules: 1. The law invoked should be binding on the other party. It should have given its consent previously. 2. This rule should be seen as *lex specialis* and therefore prevail within the WTO context, which in this case would be *lex generalis*. 3. There must be some link with the WTO Law anyway, been it procedural or substantive. The claimant party who started the dispute cannot bring a claim to the WTO just relying solely on a “foreign” rule. 4. These invoked rules can not affect the rights of third parties in their implementation.

Environmental and Human Rights Laws, thus have to be seen as *lex specialis* within the WTO, providing that the parties in dispute are bound by the same agreement in the case of environmental matters. In the latter, it should also be noticed that article XX of the GATT provides a wide space for accepting the enforcing of a Multilateral Environmental agreement for instance, as a necessary measure to protect the environment<sup>15</sup>.

14 Ernst-Ulrich Petersmann, Justice in International Economic Law? From the ‘International Law among States’ to ‘International Integration law’ and ‘Constitutional Law’, EUI Working Paper LAW No. 2006/46, pp. 16 and 21: “WTO members have not responded to the proposals by the UN High Commissioner for Human Rights for a human rights approach to international trade, and continue to insist that the WTO should remain outside the system of UN Specialized Agencies”.

15 Regarding the view of Article XX in front of MEA’s, see G. Marceau, Conflicts of Norms and Conflicts of Jurisdictions: The Relationship Between the WTO Agree-

For the case of Human Rights, it should be stated clearly that they should prevail, even if just one of the parties is bound to the agreement, for the mandatory character of *jus cogens*, which includes Human Rights<sup>16</sup>.

The Panel and Appellate Bodies do have limits on its jurisdiction, given in the WTO agreement, but it did not mean that they have a limit on the applicable law. What is more, if the burden of facts allows them to, the Judges may also recognise validity to an agreement on which just one of the parties is bound, with the assistance of article XX<sup>17</sup> of trade restrictions under GATT, if they notice that several WTO States have ratified that other Convention<sup>18</sup>.

## CONCLUSIONS

Despite the fears expressed by some that the consideration of agreements or rules other than WTO would lead to the imposition of conditions by strong States to weak ones via bilateral agreements<sup>19</sup>; or that the consideration of, for instance, international custom, would open a gate to the misinterpretation of the parties will, the study of other legal tools for the solving of a WTO conflict<sup>20</sup>, is something that plainly can not be ignored. The risks expressed

---

ement and MEA's and other Treaties, *Journal of World Trade* 35 (2001), 1081, p. 1098: "It would be illogical if a WTO Member, acting in furtherance of the goals of a relevant MEA and as party to such an MEA, were to be placed in a worse position than if no such MEA existed".

16 Petersmann (n. 15), p. 16.

17 For example, regarding Multilateral Environmental Agreements, see Duncan Brack & Kevin Gray, *Multilateral Environmental Agreements and the WTO*, Report, The Royal Institute of International Affairs, September 2003, p. 26: "Although the word environment is not mentioned specifically –hardly surprising, as the GATT was drafted many years before the term passed into common use– the Appellate Body decided in 1998 that the interpretation of Article XX is to be read in light of the contemporary concerns of the community of nations about the protection and conservation of the environment".

18 Pauwelyn (n. 12), p. 572.

19 Pauwelyn (n. 11), p. 1005.

20 *Ibidem*, p. 1025.

below, existed evenly before the creation of the WTO. So, ignoring them will not diminish them. They should give space to a bigger interest: the Harmonisation of the relationship between States, which includes trade, among other things, the most effective, intelligent and civilized way of solving a dispute.

Good faith and mutual understanding in the conduct of the States and dispute settlement bodies could lead as the two guiding criteria to solving and eventual conflict of laws and jurisdiction, that, being properly fair, nowadays remains more as an hypothetical and academic issue, rather than a real obstacle for trade. With all of the tools provided previously it is more than enough to reach for a successful outcome. It would be a utopia to think that States would renounce much of their sovereignty to put it in the hands of one supranational body established just to solve international jurisdictional issues. That belongs to a post WTO era, on which we are not yet.

#### BIBLIOGRAPHY

- DS-308 Mexico - Tax Measures on Soft Drinks and Other Beverages  
Available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds308\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds308_e.htm) Accessed 31 October 2007.
- Brack, Duncan & Kevin Gray, *Multilateral Environmental Agreements and the WTO*, Report, September 2003, The Royal Institute of International Affairs.
- Kyung Kwak & Gabrielle Marceau, *Overlaps and Conflicts of Jurisdiction Between the WTO and RTAs*, Available at [http://www.wto.org/english/tratop\\_e/region\\_e/sem\\_april02\\_e/sem\\_april02\\_reading\\_e.htm](http://www.wto.org/english/tratop_e/region_e/sem_april02_e/sem_april02_reading_e.htm) Accessed 7th March 2007.
- Marceau, G., *Conflicts of Norms and Conflicts of Jurisdictions: the Relationship Between the WTO Agreement and MEA's and other Treaties*, *Journal of World Trade* 35 (2001), 1081.
- Pauwelyn, Joost, *Choice of Jurisdiction: WTO and Regional Dispute Settlement Mechanisms: Challenges, Options and Opportunities*, ICTSD/GIAN-RUIG dialogue on the "Mexico Soft Drinks dispute: Implications for regionalism and for trade and sustainable

development’, available at [http://www.ictsd.org/dlogue/2006-05-30/dialogue\\_materials/Joost\\_Pauwelyn\\_speaker\\_notes.pdf](http://www.ictsd.org/dlogue/2006-05-30/dialogue_materials/Joost_Pauwelyn_speaker_notes.pdf) Accessed 3 March 2007

Pauwelyn, Joost, *How to win a World Trade Organization Dispute Based on Non – World Trade Organization Law?*, *Journal of World Trade*, 37 (6), 2003, pp 997-1030.

Pauwelyn, Joost, *The Role of Public International Law in the WTO: How far can we go?*, *The American Journal of International Law* 95, pp. 535-578.

Petersmann, Ernst-Ulrich, *Justice in International Economic Law? From the ‘International Law among States’ to ‘International Integration law’ and ‘Constitutional Law’*, EUI Working Paper LAW No. 2006/46.

Trachtman, Joel P., *The Domain of WTO Dispute Resolution*, 40 *Harv. Int’l L.J.* 333 1999.