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**The Development of World Trade Organization Law:  
Examining Change in International Law**

By GREGORY MESSENGER, Oxford, UK: Oxford University Press, 2016.  
ISBN 978-0-19-871646-4, pp216.

“How does international law develop and how do we examine...the development of World Trade Organization (WTO) law?”<sup>1</sup>

With this simple opening statement, Messenger asks a question that lies at the heart of all WTO scholarship; whether it is scholarship that explores change in a discrete area of WTO law like, for example, the existing WTO rules of the interpretation of sanitary and phytosanitary (SPS) rules in the Trans-Pacific Partnership Agreement (TPP);<sup>2</sup> or more complex analyses that investigate whether new interpretations based on human rights and sustainable development can be read into WTO rules and if not, whether those rules must be updated to accommodate these new norms.<sup>3</sup> In each example, these scholars seek to understand how WTO changes and on what basis that change should be understood.

Messenger’s question is deceptive as, at one level, it merely describes the ways that change in WTO law has been explored in the past. Yet, at the same time, it implies a new depth and complexity to this scholarship. For example, some scholars see legal change as synonymous only with institutional development, like accounts that focus on the outcome of multilateral trade negotiations, particularly how agreements supplement existing rules.<sup>4</sup> Whereas for other scholars, normative change is important, with the result that they focus on why existing rules are interpreted in a dispute before the WTO Appellate Body differently than before. The lasting nature and scope of this latter change might be less easy to discern than changes to the rules brought about by the addition of new agreements following successful multilateral trade talks.<sup>5</sup> The reasons why multilateral talks are successful at a particular point in time after years of stagnation, or why actors, their interests, and the political reality of trade at national, regional and global levels all come together to constitute a change to WTO law, have all been subjects of study too.<sup>6</sup>

This diverse and complex array of ideas reveals important truths about how WTO law develops. But how should scholars understand these disparate ideas? Conventional wisdom suggests it is either a question of reconciling these accounts, or of determining which account presents the correct approach, with the remainder being discarded. Yet historic rivalries between particular schools of thought that advocate a choice between ideas, are giving way to nuanced new accounts of interdisciplinary scholarship that sees interdisciplinarity as a two-way discussion. For example, legal scholarship has been shown to reinvigorate theories of international relations and is strengthened in turn when those new understandings are fed

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<sup>1</sup> G Messenger, *The Development of World Trade Organization Law: Examining Change in International Law*, (2016), OUP, 1.

<sup>2</sup> Wagner, “The Future of SPS Governance-SPS Plus or SPS Minus,” (2017) *Journal of World Trade* 445.

<sup>3</sup> O De Schutter, *Trade in the Service of Sustainable Development*, (2015) Hart.

<sup>4</sup> Messenger, 3.

<sup>5</sup> Messenger, 193.

<sup>6</sup> Messenger, 192; AD Lang, *World Trade After Neoliberalism: Reimagining the Global Economic Order*, (2011), OUP.

back into legal scholarship.<sup>7</sup> It is in this tradition of reconciling ideas in ways that enlighten and strengthen existing thinking that Messenger's book sits.

To say that Messenger is simply drawing together existing accounts does not do justice to his complex and nuanced analysis however. Messenger shows instead that seemingly disparate accounts of legal change and the development of WTO law are connected if they are explored at a deeper level. To make this connection, he draws on the work of theorists from a wide range of disciplines not commonly seen in WTO scholarship, including (but by no means limited to) Aristotle,<sup>8</sup> David Hume, Quentin Skinner and Ronald Dworkin,<sup>9</sup> together with more familiar discussions of power, constructivism and sociology from Nye,<sup>10</sup> Orford<sup>11</sup> and Bourdieu respectively.<sup>12</sup> It is this range of sources, ideas and analysis that sets Messenger's book apart and marks it out as an innovative and important contribution to WTO law scholarship.

The book is divided into two notional parts: chapters one through to three set out the theoretical argument, starting with an analysis of the nature of international law as both part of a larger global process and as a legal system, (Chapters 1 and 2). It moves on to consider legal change in more detail, specifically how law functions and what it means for one event to "cause" another (Chapter 2). Chapter 3 then applies these broader ideas about the nature of change in, and the development of, international law to WTO law to show that whilst many theoretical perspectives have an important role to play in understanding such change, only legal accounts "explain most clearly how actors develop the law across the globe, influenced by the law they seek to develop."<sup>13</sup> As Messenger rightly notes, although WTO Law is one of many legal fields in which he could explore the development of international law, WTO law is a "bellwether," or "laboratory para excellence."<sup>14</sup> This is because developments in international law occur in the WTO first: debates about the meaning, function and effectiveness of international law happen in WTO; tensions between public and private actors arise, and formal and informal normative and institutional developments can be observed readily because documents from WTO dispute settlement proceedings, Ministerial meetings and committee decisions are publically available and widely disseminated by the WTO itself.<sup>15</sup> This perceptive account easily convinces even the most sceptical scholar that exploring the development of law through a case study as rich and varied as WTO law reveals important insights for other fields of international law.

Following this opening theoretical account, the book considers three specific instances of WTO law-safeguards (Chapter 4), sanitary and phytosanitary measures (SPS measures) (Chapter 5) and subsidies (Chapter 6)-to explore the ideas set out in Chapter 3. There is a detailed exposition of the rules and their interpretation in each of these three chapters. But it is the drawing out of a different theoretical strand from the three earlier chapters in each one the substantive chapters that is most notable. For example, the discussion on safeguards (Chapter 4) brings out the influence of domestic legal instruments on the development of

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<sup>7</sup> Dunoff & Pollack: "Reversing Fields: What Can International Relations Learn from International Law?" (2015 revision) APSA paper [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2037299](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2037299) 1.

<sup>8</sup> Messenger, 35.

<sup>9</sup> Messenger, 29.

<sup>10</sup> Messenger, 71.

<sup>11</sup> Messenger, 32.

<sup>12</sup> Messenger, 32.

<sup>13</sup> Messenger, 11.

<sup>14</sup> Messenger, 9.

<sup>15</sup> Messenger, 9-10.

WTO law; whereas chapter 5 on SPS measures touches on this element, but concentrates on the inter-regime contestation of norms between the European Union, the United States and the CODEX Alimentarius Commission (CODEX).<sup>16</sup> Chapter 6 (subsidies), by contrast, focuses on the probity of the WTO's "judicial" oversight of state activity, particularly that of the European Union and the United States.<sup>17</sup> Messenger suggests that this transatlantic focus may be a weakness in a book that claims to give an account of the development of WTO for all states and non-state actors.<sup>18</sup> The effect of new dominant actors like China is still being assessed, however, so I would agree with Messenger when he contends that it is difficult to determine how any theoretical account must be changed to take into account that country's influence on, and participation in, the development of WTO law.<sup>19</sup> Until that point when the place of China is clear, much can be learnt from the way WTO law develops through over seventy years of the transatlantic dynamic in the way Messenger suggests throughout the book.

Messenger's book is a rich intellectual feast of thought-provoking ideas about the way international law and WTO law in particular develops. It challenges the reader from the scholarship it draws upon to the new ways it suggests state and non-state actors influence and are influenced by WTO law. This book is an important contribution to the growing canon of interdisciplinary scholarship in WTO law and an excellent springboard for further research.

Fiona Smith\*

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<sup>16</sup> Messenger, 126-7.

<sup>17</sup> Messenger, 167-171.

<sup>18</sup> Messenger, 192.

<sup>19</sup> Messenger, 174.

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