CONSISTENT INTERPRETATION OF WTO RULINGS
IN THE EU LEGAL ORDER?

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1. Introduction

If EU Courts have to consistently interpret EU law when a WTO provision is at stake, why should this not be true a fortiori when the same provision has already been interpreted and clarified in a WTO adopted report?

The object of this chapter is neither the direct effect of WTO provisions nor their consistent interpretation. Rather, I analyze the interpretative relevance of reports of the Appellate Body (the ‘AB’) and the panels adopted by the Dispute Settlement Body (the ‘DSB’) with a view to their clarification of WTO provisions. The reference to their adoption is necessary because it is only after this moment that these reports become relevant in the WTO dispute settlement system, according to the provisions of the Dispute Settlement Understanding (DSU). The importance of the topic is underlined by some recent statements of the ECJ, which deserve a first analysis as the EU’s commitment to international law has been lately strengthened by the Treaty of Lisbon.

In some recent writings I only touched upon this question without answering it, while focussing on, still, possible forms of judicial relevance of WTO law in the EU legal system.

* The opinions expressed are only those of the author.

1 See the case law mentioned in paragraph 2.
2 See the respective chapters by A. Tancredi, ‘On the Absence of Direct Effect of the WTO Dispute Settlement Body’s Decisions in the EU Legal Order’, and F. Casolari, ‘Giving Indirect Effect to International Law within the EU Legal Order: The Doctrine of Consistent Interpretation’, in this volume.
3 That is the General Council of the World Trade Organization (WTO), representing all its Members, acting as DSB, see Article IV: 3 of the WTO Agreement, in OJEU 1994 L 336, p. 1.
4 See Articles 16, 17 (14), 21 (6), 22 (8) of the DSU.
5 See Articles 3 (5) and 21 (2), TEU.
The starting point of this analysis is a key element, which is a feature that, according to the EU Courts, WTO agreements share with other international agreements binding upon the EU (i.e., the primacy of international agreements on EU secondary law, as established in former Article 300 (7) of the EC Treaty that is now Article 216 (2) of the TFEU). In this vein, although WTO provisions cannot, on their own, be judicially implemented for reasons linked to their text and purpose, unless by the challenged measure the EU intended to implement a particular obligation in the context of the WTO (“Nakajima doctrine”) or the legal basis of the challenged EU measure contains an express reference to a WTO rule (“Fediol doctrine”), WTO agreements are nonetheless part of the EU legal order. They can steer the interpretation of other directly applicable EU administrative measures and legislation according to the principle of consistent interpretation of domestic law in light of international law (para. 2).

Once I have recalled the status of WTO dispute settlement decisions in the EU legal order (para. 3), I will analyse whether and how this duty of consistent interpretation should be applied also to the DSB adopted decisions as to the clarifications and interpretations of WTO provisions contained therein (para. 4). Then, I will draw some conclusions (para. 5).

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10 I use the words “WTO” or “DSB” dispute settlement decisions to mean adopted reports of the panels and the AB of the WTO.