

Ingo Niemann. ***Geistiges Eigentum in konkurrierenden völkerrechtlichen Vertragsordnungen: Das Verhältnis zwischen WIPO und WTO/TRIPS.***

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As a result of the conclusion of the WTO Agreement and its mandatory Annex C, the famous Agreement on Trade-related Aspects of

Intellectual Property Rights (TRIPS), intellectual property rights (IPRs) have become an integral part of global trade policy. Whereas the majority of literature devoted to TRIPS has subsequently concentrated on the contents of the Agreement and its potential impact on the economies of developing countries (and hence which strategies they should adopt in implementing TRIPS in their respective national laws), structural issues raised by the paradigm shift from a property approach to a trade perspective have so far attracted much less attention. Indeed, the exclusive character of national IPRs permits the partitioning of markets along national borders. This is diametrically opposed to the free-trade logic of removing non-tariff barriers to trade. In addition, at the institutional level, the World Intellectual Property Organization (WIPO), which administers the existing international IPR Conventions and continues to develop the international IPR system, is now paralleled by another international organization which also is responsible for the application and development of IPRs at the international level. This raises a number of interesting – both substantive and institutional – questions, the answers to which could have an impact well beyond the area of IPRs, or so the author hopes.

The book – the title of which the author himself translates into English as ‘Intellectual Property under Concurring Treaty Regimes – The Relation of WIPO and WTO/TRIPS’ – was written as a PhD thesis. This might be the explanation for both its strengths and its weakness.

Its strength lies undoubtedly in the rather comprehensive and well written description of the history, development and rationale of IPRs, both in general and with regard to the international IPR system. The layout of the book is clear: Part 1 is devoted to ‘fundamentals’ (IP, the trade system, trade aspects of IPRs and IPRs in customary public international law); Part 2 describes the current situation (structure of both WIPO and WTO, substantive law provisions of TRIPS, enforcement mechanisms), and Part 3 then embarks on an analysis (of the competing competencies of WTO and WIPO, of competing sub-

stantive rules, and of competing dispute settlement and norm-setting mechanisms).

However, this layout is also rather conventional and mirrors the largely descriptive character of the book. Here lies, in my opinion, the weakness of the book: contrary to what the author promises as the focus of his analysis in the brief introduction, the reader finds little discussion truly centring on the issue of the property/trade dichotomy as such (which was already analysed in some depth in an early article by Ullrich¹ cited in the extensive list of literature), and which is epitomized in the famous non-agreement on the issue of international exhaustion in Article 6 TRIPS. Likewise, the principle of most-favoured nation (MFN, Article 4 TRIPS), which hardly fits into the IPR system, is only briefly touched upon (the difficulties the EU might have with MFN in view of the Community principle of non-discrimination is, however, not even mentioned). Moreover, the comparison of the organizational structures of WIPO and WTO leads to far fewer, let alone useful, conclusions than one might initially have hoped for. This is reflected in the 12 ‘summary conclusions’ at the end of the book (also in English and French), which to some extent restate the rather obvious (e.g., that the protection of IPRs and a liberalization-oriented trade policy do not follow a common economic rationale, or that WIPO and WTO pursue different policy strategies). Of course, there are also some additional insights, for instance the fact that IP and trade were initially coupled in 19th-century bilateral treaties, so that their decoupling by the major international IPR conventions has now been undone again.

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¹ Ullrich, ‘Technology Protection According to TRIPS: Principles and Problems’, in F.-K. Beier and G. Schricker (eds), *From GATT to TRIPS: The Agreement on Trade-related Aspects of Intellectual Property Rights* (1996), at 357 et seq.