Sustainable Consumption: The Right to a Healthy Environment

Edited by Alberto do Amaral Junior, Luciane Klein Vieira and Lucila de Almeida

(*forthcoming: Springer International Publishing AG, 2019*)

Peer-reviewed chapter below (Suvi Sankari: ‘Collective valuation of common good through consumption: What is (un)lawful in mandatory country-of-origin labelling of non-food products?’) accepted for publication in the volume.

Collective valuation of common good through consumption: What is (un)lawful in mandatory country-of-origin labelling of non-food products?

Suvi Sankari

Abstract *This chapter aims to assess whether the concept of sustainable consumption would support a reinterpretation of relevant trade law—namely EU and WTO rules—to allow robust and harmonious country-of-origin (COO) labelling. Some—but only some—consumers have a bias towards goods and services produced locally, which relatively recent opinion polling confirms. Nevertheless, 40 percent of the EU population, when polled, signals a willingness to pay more for goods 'produced under certain social and environmental standards', and roughly a fifth claim that the origin of products affects their everyday purchase decisions.*

A product's COO arguably works as a proxy for social and environmental standards in its production. COO is also material product information in itself, especially in light of product safety statistics. EU case law on the (discriminatory) requirements of COO indication has traditionally been interpreted as holding mandatory COO requirements to be 'obviously illegal'. To uphold national COO labelling measures, defences based on consumer protection and the fairness of commercial transactions have been rejected as 'equally applicable in form only'. This is despite the fact that a duty to disclose COO arguably already exists in EU law and the European Commission continues to pursue harmonised mandatory COO labelling rules for non-food products. Under WTO law, mandatory COO labelling—understood as information on processes and production methods (PPMs)—is a suspect category of trade barrier. Assessment of its lawfulness may fall under Article XX GATT and Article 2 of the Agreement on Technical Barriers to Trade (TBT). Hence the legality of mandatory COO labelling under both EU and WTO law remains unclear.

1 Introduction

What does trade law offer to consumers? The traditional free trade ideology—or economic rationality—that informs much of WTO law (or more precisely that of its predecessor, the GATT) as well as EU internal market law rests on the promise of efficiency or productivity gains arising from comparative advantage

or scale economics.[1] The very specific brand of traditional economic theory that conventionally underlies these disciplines perceives the added value of free trade to consumers in narrow terms of price and quantity, and to society in terms of (global, or at least national) economic surplus without any specific emphasis on consumer welfare. In fact, the entrenched economic (libertarian) free trade perspective actually rejects the idea of trade agreements at all, in favour of unrestricted free and open trade.[2]

Pure free trade, however, has been eschewed by nations, which have instead pursued regulated forms governed by multilateral trade agreements. Trade law has traditionally been justified by internalizing the externalities of national decisions ('terms-of-trade theory') or anti-protectionism ('commitment theory'). It first focused on banning quantitative restrictions and stabilising as well as reducing tariffs and latterly on guarding against regulatory trade barriers (Rolland 2014). Such barriers are, to WTO law, discriminatory national measures, whereas for EU law all national measures hindering free movement (e.g., protectionist domestic regulation) are barriers. Both the traditional economic and legal perspectives build on an understanding dating from a remarkably different time than the present in terms of how goods and services are produced. Supply or value chains have become global long after the foundations of both disciplines were already firmly carved in stone. Ideologically, the cornerstone of trade law is non-discrimination—against products but perhaps even more against producers, as well as the countries in which they are located. The sole focus on this principle, especially in the WTO era has, albeit inadvertently, tended to limit the national regulatory choices available for importing states and, in turn, reduced ('legitimate') consumer interests to price-rationality only.

As discussed in more detail below, when buying products, a large share of consumers arguably also consider variables other than price. If trade law offers choices to consumers, that choice is by design generally limited to product preference, that is from a selection of similar products (in WTO jargon, 'like products') where price and quality are the key differentials. Choice regarding, for example, place of origin, ecological footprint, mode of transport or process of manufacturing has been scant. In WTO law, the design may not specifically aim at excluding the possibility of consumer choice based on preferences as to production processes. This, however, is the unintended side-effect or

* Adjunct Professor of European Law, Academy of Finland Post-Doctoral Researcher, Faculty of Law, University of Helsinki, e-mail: suvi.sankari@helsinki.fi.

[1] Modern free trade economists (such as Graham, Balassa, Krugman, and Melitz) claim they build on Adam Smith (1776) and David Ricardo (1821). For a concise, WTO-focused introduction for lawyers to the strand of free trade economics underlying trade law, see Jackson, Davey and Sykes (2013, p. 15ff), and for another in a text-book of EU law, see Barnard (2016) pp. 4–8.

[2] For a recent literature review, discussing also economic theories supporting the existence of trade agreements, see Rigod (2015) p. 80ff, critical of both 'commitment' and 'terms-of-trade' theories. See Mavroidis (2012) p. 16ff.

practical outcome of: laying much emphasis on non-discrimination; limited WTO Appellate Body (AB) case law; and of much unresolved scholarly debate on how the law should be interpreted. Whereas scholarship maintains that EU law has moved beyond non-discrimination regarding the four market freedoms, especially for goods, WTO law as a discipline struggles to accept the same.[3] It may be telling that, for example, market access means very different things to these two disciplines (Snell 2010).

In WTO law these other-than-physical qualities of products are referred to as either product-related or non-product-related processes and production methods (PPMs). Even though Article IX of the GATT Agreement already covered 'Marks of Origin', national provisions on the indication of country of origin (COO) arguably fall within the scope of application of the TBT Agreement as PPMs, although it remains debatable whether product-related ('PR') or non-product-related ('NPR') ones. Hence, under WTO law, PPMs are not prohibited as such but national measures containing them are challengeable for their WTO compliance as (technical) barriers to trade under both GATT and TBT Agreements.[4] In EU law, national measures requiring mandatory marking of COO on product labels are, at least according to some accounts,[5] considered forbidden product labelling requirements.[6] In EU law, therefore, national (unharmonized) measures requiring mandatory COO labelling carry a stigma of illegality. However, uncertainty in WTO law over the 'correct' interpretation of the illegality of NPR-PPMs under GATT/TBT provisions has seen WTO members take a somewhat overcautious approach in adopting such national measures—a phenomenon witnessed also in the EU legislative context as to COO labelling.[7]

[3] The problems of WTO law seem to essentially relate to two specific issues illustrated by the WTO AB 'COOL' ruling from 2012, dealing with US COO labelling for beef (note 7 below): in the GATT context, the AB seems to identify discrimination from data on trade effects of measures (effect on quantity of imports)—such as market preference for US beef—and in the TBT context, the AB fails to distinguish between market likeness and policy likeness of products. See Mavroidis (2013). EU law suffers partly from similar issues. For a critical view on how the logic of the EU Court of Justice fails even applying non-discrimination, see Davies (2003), especially pp. 9-14, 42, 90 and 201. For discussion beyond non-discrimination, see Saydé (2017) and Davies (2017).

[4] As no consensus or definitive AB rulings exist on the relationship between the instruments, the safest approach for PPM measures is to comply with both GATT and TBT. See Durán (2015).

[5] Gormley (2009) p. 430 cites EU Court of Justice Case 207/83 *Commission v United Kingdom*, EU:C:1985:161, p. 1212.

[6] In practice indications of origin are given on labels, and the assumption is that different (national) rules on disclosing COO require different, Member State specific labelling. This, while indistinctly applicable, is still a hindrance to trade and one considered lacking in legitimate justification.

[7] See proposal COM(2005) 661 final, which the Commission withdrew after the WTO AB report in the 'COOL case' (United States—Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/AB/R / WT/DS386/AB/R, adopted 23 July 2012, DSR 2012:V, p. 2449), see COM/2012/0629 final.

The twelfth UN sustainable development goal (SDG 12) is called 'responsible consumption and production'.[8] Sustainable consumption and production is defined both by the UN and OECD by citing the Oslo Symposium definition from 1994:

> the use of services and related products, which respond to basic needs and bring a better quality of life while minimizing the use of natural resources and toxic materials as well as the emissions of waste and pollutants over the life cycle of the service or product so as not to jeopardize the needs of further generations'.[9]

In 1993/4, the principle of sustainable development was included among the goals of high-level trade law, EU and WTO law, simultaneously with each other and the Oslo Symposium.[10] Both EU and WTO legal orders assign considerable weight to the aims or goals of the respective treaties, which translates into teleological, dynamic or purposive interpretation of the law.[11] Regardless of adding sustainable development into the mix, the value of freedom of trade perceived as freedom to make use of comparative advantage and protection against discrimination afforded to producers and traders in these disciplines remains strong.[12]At the same time, consideration of the consumer's role in making decisions on the market based on values other than price or brand remains weak.

More specifically, what is considered problematic about PPMs in WTO law is that such measures aim unilaterally to pressure governments of other sovereign countries to amend their product, or production, regulation.[13] This goes against the idea of equality between sovereigns central to international law and could affect comparative advantages. In EU law, what is problematic about Member States' measures posing mandatory labelling requirements is

[8] Responsible consumption and production is number 12 of the 17 goals as to sustainable consumption and production, possibly to avoid repeating the word sustainability. The UN website suggests consumers can in practice 'help' by '1. Reducing your waste and 2. *Being thoughtful about what you buy and choosing* a sustainable option whenever possible.' See UN (2016) (italics mine).
[9] OECD (2002) p. 9.
[10] According to the Treaty on European Union (TEU) Preamble (from 1993), the EU Member States will together 'promote economic and social progress for their peoples, taking into account the principle of sustainable development'. Moreover, after the Lisbon Treaty changes, the EU's Court of Justice has in Opinion 2/15 (EU:C:2017:376, para. 147) stated that: 'the objective of sustainable development henceforth forms an integral part of the common commercial policy.' The Preamble of the WTO founding agreement of 1994 states that parties to it aim at 'expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development'—this is added to the goals inherited from the GATT Agreement (raise standards of living, full employment, growth, expanding production and trade).
[11] On international treaty law, see Art. 31(1) of the Vienna Convention of the Law of Treaties. On interpreting EU law, see Sankari (2013).
[12] Rolland (2012), pp. 375 and 417.
[13] Ankersmit (2017), p. 43ff.

that they are considered measures having equivalent effect to quantitative restrictions (QRs), which is prohibited by Article 34 TFEU.[14] Thus, such national measures are caught by Article 34 TFEU and their compliance with EU law is subject to the limited regime allowing for certain derogations from the general prohibition. Moreover, in EU law facilitating consumer choice between different Member State COOs is seen as enabling protectionism or, in other words, discrimination. What this means is that the traditional trade law view—hegemony of free trade and non-discrimination as well as the WTO dichotomy between process-based and product-based measures—is difficult to reconcile with the idea that consumers should be provided a real chance at consuming more sustainably or responsibly, by basing transactional choices on a broad set of potentially relevant product information. In effect, the lodestars of free trade (law) work in the exact opposite direction than a regime designed to protect the more holistic approach of the citizen–consumer would. The multidimensional approach of the responsible consumer differs from the more compartmentalised approach of market regulators.[15] The consumer can simultaneously consider multiple values related to transactional decisions, weigh the ecological, economic, political and social consequences of choices, even be altruistic—rationally or not. Free trade (law) furthering responsible consumption should not prohibit but assist in making value-based transactional decisions on the market, the global ballot-box, by shifting focus to informing the consumer from fretting how the consumer might (not) use that information.

This chapter focuses on one PPM or labelling requirement only (i.e., COO) and examines the argument that mandatory disclosure of COO would provide the consumer valuable information on the products and services between which the consumer is choosing. Therefore, information on COO should legitimately be perceived as material information on the product or service, and the consumer should have a right to this information. Such a right is best guaranteed by mandatory COO labelling requirements. Were consumers to have access to this information, they could take it into account when making purchasing decisions, with the subsequent prospect of more sustainable or responsible consumption—an outcome aligned with the general goal shared by the EU and WTO of sustainable development.[16] For example, COO is a signal—robust, although somewhat primitive and approximate, not to mention open to manipulation—of the social, labour and environmental conditions

[14] For recent French and Italian examples on national labelling requirements (as measures having equivalent effect to import bans and quotas prohibited by Art. 34 TFEU) loosely termed 'gastronationalism', on food labelling measures not notified to the Commission, see <https://www.politico.eu/article/belgium-calls-for-eu-help-against-french-gastronationalism/>, accessed 15 May 2018 and <https://www.politico.eu/article/italian-pasta-labels-test-limits-of-eu-law/, accessed 15 May 2018.

[15] Kysar (2004), pp. 590 and 636.

[16] The underlying assumption here is not that all consumers would integrate COO into their transactional decision-making matrix, even if information was available. However, were COO information available, they *could*—and a segment of consumers *would*—take into account COO (ethnocentric ones as COO only but others as a proxy for something else).

under which goods have been manufactured.[17] As discussed in more detail below, COO also correlates with non-compliance with product requirements and product safety. What is more, COO information is readily available, meaning that detailed information exists throughout the GVCs but is not necessarily given to consumers. The question is, if a valid justification for mandatory COO disclosure exists which in turn could further responsible consumption, could such measures either fit the established doctrines of WTO and EU law, or is there room (post-1993) to reinterpret the doctrines in a way that COO measures would comply with them?[18]

In general, from the point of view of trade regimes like WTO and EU law, non-discrimination essentially boils down to treating like products alike. Products have traditionally been considered alike regardless of differences in their manufacturing processes or production methods. However, from the point of view of responsible consumption, is it not part of consumers' global political responsibility—each within their economic means—to consider not just product-related but also non-product-related PPMs in their private transactional decisions, which in turn affect the market?

The emphasis in this chapter is on EU law rather than WTO law and on products rather than services. However, as EU law does not operate in a vacuum, WTO law is considered as part of the trade law framework with which EU law must comply. To denote a difference between individual and aggregate choices, this chapter refers to transactional decisions (to consume, or not, and what) made at the individual level as responsible consumption (micro-level behaviour), whereas larger consumption patterns such as aggregate choices of consumers on the market are referred to as sustainable consumption (macro-level behaviour).

2 Concern justifying disclosure of COO to consumers?

Universally, a significant number of consumers has a bias for domestic food products (especially in food products).[19] Ethnocentric consumers, as they are

[17] Only a few of EU's Southeast Asian trading partners (The Philippines, Sri Lanka, Vietnam) are beneficiary countries of the EU's preferential tariff system ('Generalised Scheme of Preferences', GSP or GSP+), having put into practice certain central international conventions, see <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>, accessed 15 May 2018.

[18] The legality of NPR-PPMs has been widely debated in literature on WTO law, but the precise contours of the result remain vague. See Durán (2015); Mavroidis (2013); Charnovitz (2002); Kysar (2004); and Howse and Regan (2000) stating at p. 251: 'It is widely thought that all process-based measures not directly related to physical characteristics of the product itself are prima facie violations of GATT.'

[19] More predominant preference as to food products, see Lewis and Grebitus (2016) p. 257, and for example <https://ecommercenews.eu/uk-consumers-want-country-origin-labels-online-products/>, accessed 15 May 2018.

sometimes referred to, also prefer domestic goods more generally,[20] as confirmed by relatively recent EU polling results.[21] Preference for domestic goods is but one of several preferences consumers hold, as both individual consumers as well as consumers at large have an abundance of (mixed) preferences. For example, polling revealed that 40% of the European population signal willingness to pay more for goods 'produced under certain social and environmental standards'.[22] What is more, roughly a fifth claim that the origin of products affects their everyday transactional decisions—though the poll does not explain what the impact of COO is in more detail.[23] However, in marketing research for example the correlation between consumers' willingness to pay and products' COO is no novel observation, which is confirmed by literature review in the field drawing on sources from 1981 stating the same.[24] Suffice it to say that with regard to their transactional decisions, consumers also hold interests other than price.[25] What is more, such preferences can be endogenously held by consumers, or can be the result of social conditioning or other mechanisms (Schaefer and Crane 2006),[26] but are not necessarily the result of (nor need they result in) import bans or media campaigns against certain products or producers, governmental or not.

On a general level, EU legislation already divides products into two categories: food and non-food items. For the former category, several pieces of EU legislation regarding food and feed already require mandatory disclosure of COO information.[27] For the latter category, no harmonized requirements as to COO disclosure currently exist. An array of general ('European standards') as well as sector specific mandatory EU rules and technical specifications (as well as voluntary standards) concern both categories of products. What the EU rules have in common is the aim, in general, of free movement, high-level consumer protection and, more specifically, the aims of protecting the health, well-being, social and economic interests and safety of consumers, and shielding them from unfair commercial practices. More precisely, existing EU law on mandatory disclosure of the COO of food items is justified, for example: by arguing that omitting COO misleads consumers; in order to secure a level playing field for businesses; as a response to food scares or crises; as well as because of consumer interest; and for undisclosed 'particular interests'.[28] With

[20] Cappelli, D'Ascenzo, Natale, Rossetti, Ruggieri and Vistocco (2017).
[21] Eurostat (2010).
[22] More precisely Eurostat (2010) p. 44: 'A significant proportion of Europeans are willing to pay more for products which help the environment, respect social standards, help developing countries or which are made in their countries'.
[23] Eurostat (2010) p. 44.
[24] Aichner, Forza and Trentin (2016).
[25] The hegemony of price is taken at face value, whereas speculating on other values involved in consumer decision-making requires referencing. For one illustrative example of this, see Van den Bossche, Schrijver and Faber (2007) p. 64.
[26] Schaefer and Crane (2006).
[27] For references to some, see the Preamble of Regulation (EU) No 1169/2011.
[28] See Recitals 29-33 of the Preamble to Regulation (EU) No 1169/2011.

the exception of drawing attention to food scares and the interests of the general public (including European Commission impact assessments), the justifications for legislation do not differ between food and industrial products. Moreover, the means for reaching the desired ends do not differ much as legislation on both categories relies heavily on informing the consumer, though the approach can also be criticised building on behavioural insights.[29] In food, the COO rules follow the Union's non-preferential rules of origin established in its Customs Code which in turn are aligned with WTO law. Also, voluntary disclosure of the COO of food should comply with this harmonized COO criteria. Hence one must ask why mandatory COO labelling of industrial products (in the EU) would be any different from that in food?

As to the enforcement of the (high) regulatory standards of the EU, legal academics have questioned whether the style in which the mutual recognition principle is applied on its internal market has led to a situation where all goods in circulation, especially those imported from outside the EU, must meet zero technical standards. This is instead of meeting the one intended standard—harmonized or not—or the banned dual burden of two sets of different standards, which is what mutual recognition aims to avoid.[30] In other words, regardless of existing regulation that sets detailed high-level technical requirements for products and the materials they are made of, a significant part of non-food products (i.e., industrial products) in circulation in the internal market do not comply with EU requirements for them. This is not only problematic from the point of view of immediate issues concerning consumer health and safety and a level playing field for business, but also from the environmental sustainability point of view. Non-compliance with core sets of European standards and product requirements also has long-term effects on, for example, energy use and (toxic) waste.[31] The Commission has also recognized non-compliance as an issue. Citing benefits for both businesses and citizens as the object, it has thus recently proposed to strengthen market surveillance, because '[t]he increasing number of illegal and non-compliant products on the market distorts competition and puts consumers at risk.'[32] The Commission recognizes that the main reasons for this development are economic operators' lack of knowledge of the rules as well as their choice to

[29] Helleringer and Sibony (2016-2017).
[30] See Ankersmit (2013). More specifically Gormley (2008) pp. 1649–50 argues: 'However, *Cassis de Dijon* contained two central errors: first, the ECJ spoke about goods 'lawfully produced and marketed' in another Member State, whereas it should have referred to goods lawfully produced or marketed in another Member State,' secondly, in the (illustrative) list of justifications for measures, the ECJ referred to the protection of public health. This latter error was subsequently corrected by the ECJ, although, surprisingly, the former never has been' (References in the original omitted here).
[31] European Environmental Bureau report (2017) draws attention to the fact that the current EU legal framework does not adequately protect against hazardous chemicals entering the circular economy as materials recovered from waste for making new products.
[32] COM (2017) 795 final, p. 1.

intentionally disregard the rules to gain a competitive advantage.[33] What is more, the choice of disregarding rules as a strategy is met—if not rewarded—on the EU internal market with lacking enforcement mechanisms: ineffective market surveillance and deterrence failure, especially as to the non-EU operators forming part of global value chains generating industrial products.[34]

2.1 The empirically based case for COO

The Commission's view is at least in part empirically based, relying on empirical data on specific industrial sectors and the market generally.[35] Additionally, according to EU customs data,[36] in 2015 customs enforced 'sanitary, phyto-sanitary and veterinary technical standards' (i.e., a loose category of basic product requirements protecting human, animal and plant health) in 14,000 cases out of 347 million imported articles (i.e., 166 million customs declarations, known as SADs[37]). Plainly, this means that customs refused entry on this ground in less than 0.01% of cases.[38] Moreover, altogether 'more than 37 million items were identified as unsafe or uncompliant in terms of product safety' by customs—meaning 10% of all imported items.[39] These aggregate figures say little about the level of customs scrutiny or the COO of non-compliant products.

However, as to the first point—the customs part of market surveillance—the fact that 63% of all customs declarations (both import and export) are 'cleared' in under 5 minutes—91% within one hour of reception and only 2% take more than 48 hours—suggests relatively few or some relatively superficial actual (physical) customs checks are in fact being carried out. As to the second point—COO—in terms of what is in free circulation in the internal market, either as having originated in the EU or having passed customs onto the market, estimates of non-compliance with (a broad category of) standards vary generally from 5–53% for products, depending on the sector of the EU internal market.[40] Hence it seems neither customs nor market surveillance authorities adequately detect or address non-compliant products, which all feeds into the deterrence failure. Therefore, presently, consumers are offered plenty of choice in non-compliant products on the market.

Despite lax customs and market surveillance, in detected cases of non-compliance the relationship between non-compliant products and certain

[33] COM (2017) 795 final.
[34] SWD(2015) 202 final, pp. 95-97 and references there.
[35] These are numbers cited by the Commission (2017a) Inception Impact Assessment document.
[36] European Commission (2016a).
[37] Single Administrative Document (SAD).
[38] Assuming the cases were equally distributed between the 2,000-odd customs offices, or entry points, into the customs union, there would be 9.5 cases (out of 83,000 declarations) of such enforcement per entry point each year.
[39] European Commission (2016a).
[40] Numbers cited by the Commission (note 36 above).

countries of origin is straightforward. According to the Commission, during 2010-2016 59% of all RAPEX[41] notifications concerned products of Chinese origin.[42] Comparing the origin of other goods circulating in the internal market, in 2014, yearly imports from China made up 13% of all imports, whereas total intra-EU imports were roughly the same (15%). According to market surveillance statistics in 2015,[43] there is a difference between these two categories in the relatively inordinate amount of RAPEX notifications concerning products of Chinese origin (1,262 notifications) when compared to goods produced in all EU countries combined (290 notifications). This is a trend which remained rather stable during 2004-2016, notifications on goods of Chinese origin increasing and EU origin decreasing.[44] However, in 2017, the respective numbers were 1,167 (53% overall) and 574 (26% overall) for alerts, and the Commission explains rising number of alerts in goods of EU origin with alerts increasingly concerning motor vehicles (of EU origin).[45] Relying on the longer trend (2004-2016) and assuming the choice to inspect and notify is unbiased and builds on accurate information, then COO seems to matter with regard to product safety. Moreover, IP protection most certainly relates to misleading consumers and to a level playing field for businesses but may or may not relate to consumer safety as well. In 2012, 64% of all counterfeit or falsified goods seized upon EU borders were from China[46] and in 2014 80% of detained counterfeit goods originated from China. The figure overall remained the same in 2016.[47]

As to other possible reasons consumers might have for COO preference, according to one recent survey of the general public 93% of French, 92% of German, and 88% of Spanish people believe that China does not respect personal freedoms (human rights) of its people.[48] Without going deeper into the accuracy of these beliefs, this is the consumer understanding—opinions on Chinese labour rights are presumably no more favourable.

Thus far, we have established that consumers have preferences that are broader than price, fact-based or not, including reasons for rational and empirically based COO related health and safety concerns, environmental worries, intellectual property right worries and general unease with the societal circumstances under which products are made. Were the consumer to have information on COO, these preferences might all play into consumers'

[41] The EU's Rapid Alert System for Dangerous Non-Food Products (RAPEX).
[42] According to Sajn (2018) p. 2: '[t]hese notifications refer only to products suspected of presenting a "serious risk", and typically not to products whose non-compliance refers to administrative requirements, such as labelling or placing of warnings.'
[43] European Commission (2016b) p. 31.
[44] European Commission (2016b) p. 19.
[45] European Commission (2018).
[46] European Commission (2009).
[47] European Commission (2016a) and (2017b).
[48] Pew Research Centre (2015) p. 31.

transactional decisions. The question remains: should the consumer have that information?

3 Why would mandatory COO information be allowed or prohibited in WTO and EU law?

3.1 The approach of EU law to COO

We have discussed the general lack of compliance—and that market surveillance does not work—and have detailed specific data concerning consumer preferences above. Based on this, one could argue that a COO indication on product labels would concern not just consumer protection in general but provide enhanced information directly related to product safety for the consumer. Viewed in this light, the latest move in consecutive Commission proposals for mandatory COO indication in non-food products is easier to understand. In 2015 the Commission unsuccessfully pursued a specific instrument harmonising mandatory COO labelling, applicable *only to products from third countries* (i.e., non-EU countries). The reasons stated for the proposal included 'growing concern over the mounting incidence of misleading and/or fraudulent origin marks'—in a vein similar to Article IX GATT on Marks of Origin, which refers to protecting consumers from fraudulent or misleading use of COO—as well as disadvantage with regard to trade partners who require COO labelling and the differing national (EU Member State) rules on voluntary COO marking.[49] The Commission nevertheless withdrew the 2005 proposal in 2012 right after the WTO AB handed out its COOL decision, citing the following reasons: 'In addition to lack of agreement in the Council, recent developments in the legal interpretation of WTO rules by the organization's Appellate Body have rendered this proposal outdated.'[50] More recently, in 2013, the Commission has pursued the same goal—though this time with *universal applicability* instead of limiting the measure (discriminatorily) to third country products—as part of consumer product safety, emphasizing only product traceability for market surveillance purposes.[51] In addition to the scope of mandatory COO labelling becoming universal, the European Parliament (EP) in its amendments to the proposal specifically reduced the labelling

[49] The 3rd recital of the preamble of the Proposal COM(2005) 661 final even states that: 'The economic significance of origin marking to consumer decision and trade is recognized by the practice of other major trading partners which have enacted mandatory origin marking requirements.'

[50] Communication (COM/2012/0629 final) including withdrawal of Proposal for a Council Regulation on the indication of the country of origin of certain products imported from third countries (COM(2005)661, 2005/0254/COD).

[51] Proposal for a Regulation (COM(2013) 78 final). Especially EP amendments 31-32 to the proposal continue to cite as reasons for the legislation: consumer access to supply chain information and increased level of awareness; reducing the risk of misleading the consumers as to the country of production; and similar practice being applied by many EU trade partners.

requirements to stating COO only in English.[52] However, the proposal has faced political deadlock in the Council for unspecified reasons.[53] Regardless, the Commission has not withdrawn the proposal, as it considers the measure would be compatible with the 'goods package', i.e., the policy it currently pursues,[54] should the necessary political agreement for accepting it be found. This proposal for a Regulation replacing the General Product Safety Directive (GPSD) which includes mandatory COO labelling of industrial products thus remains on the table, which may also indicate that with these modifications it is considered compliant with WTO law.

Although not problematised by the Commission in either of the proposals just discussed, the question remains whether the proposed COO rule of the currently deadlocked proposal for a 'GPSD' Regulation is compatible with EU law itself. A following type of concern over protectionist aim of the EU measure—which needs to comply with WTO law—has been reported: 'There have also been criticisms that the proposed indication of origin obligation [Art. 7] is more a desire to protect European markets from competition from countries like China than having any necessary connection with safety.'[55] Whether the same suspicion of protectionism applies between different EU Member State COO is unclear. The traditional EU internal market approach, or interpretation of the law, dictates that *mandatory* national measures of Member States requiring COO labelling when applied (only) to *goods produced in other Member States* are distinctly applicable measures of equivalent effect to quantitative restrictions and serve no legitimate purpose, only give rise to discrimination and protectionism (between Member States).[56] Applying this interpretation based on national measure of an EU Member State that distinctly targets goods from other Member States to national measures requiring disclosure of COO universally (indistinctly) is highly questionable, however, uncertainty over whether indistinct national measures are both EU and WTO law compliant might serve as one reason to introduce harmonised EU legislation on COO labelling. The relatively few EU Court of Justice cases that exist to date do not address the distinction between different foreign

[52] Concerning the point of labelling requirements as trade hindrance, the EP amendments to COM(2013) 78 final added that COO can throughout the EU be indicated in English only (see Art. 3(a) of the proposed Regulation).
[53] Note from General Secretariat of the Council to Council (ST 8985 2016 INIT - 2013/048 (OLP)). The political deadlock concerns Art. 7 of the proposal, which includes paragraphs on mandatory COO labelling for all industrial products, harmonizing legislation to determine COO, the option to use either a Member State or the EU as COO, and authorization to use English in doing this. Documents on the legislative process do not reveal which of these points gives rise to the deadlock, however, 11 Member States are willing to accept the proposal, whereas another 11 (BG, CY, EL, ES, FR, HR, IT, MT, PT, RO, SI) wish to delete Art. 7.
[54] COM(2017) 787 final.
[55] Howells (2014) p. 531.
[56] For example, Gormley (2009) p. 430 (citing Case 207/83) argues that '[w]hilst the defences of consumer protection and the fairness of commercial transactions in particular have been advanced to justify an equally applicable origin marking requirement, they have been rejected on the basis that such an origin marking requirement is equally applicable in form only.'

countries of origin—if there is a difference between Member States and non-Member States as countries of origin—and thus is mostly limited to assessing EU Member States (the internal market) as potential countries of origin.[57]

As the EU Court of Justice (the Court) has not further clarified or revised its approach to justifying restrictions to free movement of goods within the internal market in case of indistinct and distinct national measures, the academic consensus remains that national mandatory COO labelling measures are caught by Article 34 TFEU.[58] As additional labelling requirements (producing costs), the measures are, first, restrictions to the free movement of goods between EU Member States and hence contrary to Article 34 TFEU.[59] Second, their purpose, the aim, is perceived inherently (not just arbitrarily or disguisedly) discriminatory in nature: 'the purpose of indications of origin or origin-marking […] is to enable consumers to distinguish between domestic and imported goods and that this enables them to assert any prejudices which they may have against foreign goods.'[60] Because the measures are discriminatory (distinctly applicable to imported products), the traditional interpretation of EU law is that the so-called 'mandatory requirements' cannot be successfully invoked to derogate from the right to free movement as in the case of indistinctly applicable measures, only the express derogations listed in Article 36 TFEU.[61] In spite of forceful criticism against this view,[62] the Court has thus far avoided developing its interpretation and is perceived at times to work around this omission by skipping the thorny issue of establishing discrimination (whether a measure is distinctly or indistinctly applicable—in law or in fact, or directly, indirectly or not at all discriminatory) and discussing justifying restrictions to trade only.[63] Measures adopted by EU institutions have to abide by Article 34 TFEU, however, indistinctly applicable harmonised COO disclosure most likely could stand review against Article 34 TFEU if considered not to be a manifestly inappropriate measure. For the Court to find a measure

[57] Case 249/81 *Commission v Ireland*, Case 222/82 *Apple and Pear*, EU:C:1983:370, para. 18; Case 207/83 *Commission v United Kingdom*, EU:C:1985:161, para. 17, Case 325/00 *Commission v Germany*, para. 23, but cf. Case C-95/14 *Unione Nazionale Industria Conciaria (UNIC) and Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti (Uni.co.pel) v FS Retail and Others*, EU:C:2015:492, paras 41-44.

[58] The prohibition of quantitative restrictions to the free movement of goods.

[59] Case C-95/14 (note 58 above), para 45: 'Furthermore, it is clear from the case law in relation to Article 34 TFEU that language requirements such as those laid down by the national legislation at issue in the main proceedings constitute a barrier to intra-Community trade in so far as goods coming from other Member States have to be given different labelling involving additional packaging costs (judgment in Colim, C-33/97, EU:C:1999:274, paragraph 36).'

[60] Case C-95/14 *UNIC and Uni.co.pel*, EU:C:2015:492, para. 44.

[61] Gormley (2009) p. 430; Barnard (2016) pp. 83–85.

[62] Enchelmaier (2010) p. 216ff; European Commission (2013) p. 28; and Shuibhne (2017) p. 486ff.

[63] See Shuibhne (2017) p. 486ff and references therein. In addition to indistinct and distinct measures, a third category exists, Case C-110/05 *Commission v Italy ('Trailers')*, EU:C:2009:66, para. 37: '[a]ny other measure which hinders access of products originating in other Member States to the market of a Member State'.

manifestly inappropriate, the EU legislator must have made a manifest error as to the suitability or proportionality of the measure in terms of the objective it pursues.

The general exceptions included in Article 36 TFEU include national measures that aim to protect health and life of humans. However, the above problem as to whether a COO measure concerning industrial products can pursue some other objective than feeding prejudices (protectionism) as its *main* objective remains. No Court case law on national *universally applicable* (i.e., indistinct) mandatory COO indication measures exists. Whatever the standard against which national measures are reviewed is, one would assume a harmonised EU measure on COO labelling, such as the universally (indistinctly) applicable measure proposed by the Commission in 2013, requiring no EU Member State specific relabelling of products could be considered to comply with the requirements of EU law, in other words, if reviewed, it would pass the test of 'EU legality'. The objective the measure pursues is, in the 2013 proposal, product safety. The proposed measure could have an effect in furthering responsible consumption and production, which in turn would contribute to reaching the EU goal of sustainable development.

As to the objective of COO measures, what seems to underlie the EU approach when consumers are concerned is hardly strict adherence to thinking consumers are only (or even mainly) guided by price-rationality. If consumers are the end-users of goods that the 'protectionism view' has in mind, then the approach assumes consumers are (illegitimately) ethnocentric, which gives rise to their protectionist behaviour. The traditional EU approach—likely building on a certain branch of economics—seems to regard consumers *en bloc* as prone to protectionism and does not recognise there are different types of consumers who hold and balance plenty of values at the same time. There are also consumers who have legitimate reasons, for example, empirically based product safety concerns, for giving COO (positive or negative) weight among all the information they consider prior to purchase.

What is more, one can argue that EU law on which consumers could rely as to their right to COO disclosure already exists. If considered material information on what is being purchased, a trader not disclosing this information would be breaching the rights granted to consumers by the Unfair Commercial Practices Directive.[64] Although the Directive textually allows for such an alternative interpretation—which could be supported by referring to the overall goal of sustainability and the empirically based information above—this is not how the text is currently interpreted. However, the legal challenges faced by a

[64] Cf. Art. 7 of Directive 2005/29/EC on the trader's duty to disclose material information on the product required for the 'average consumer' to take a 'transactional decision' on products and services. See also Howells, Micklitz and Wilhelmsson (2006) especially p. 141ff.

harmonised EU measure on mandatory COO disclosure do not stop here because they must also comply with WTO law.

3.2 The WTO approach to mandatory COO

The central arguments beyond non-discrimination (Art. IX GATT) that can be made from the WTO law perspective against mandatory COO disclosure relate to arguments against PPM labelling in general. As concisely put by Cheyne:[65]

> the desire to control consumer labelling is linked to two concerns: the idea that the use of non-product-related PPMs needs to be controlled because it is inappropriate and anti-competitive, and anxiety about the 'irrational consumer' who is misguided or misled about complex issues.

The first, more producer-oriented, concern revolves around costs and market effects of labelling requirements. The second, more consumer-oriented concern is relatively sadly patronising and denies consumers access to a direct mechanism for collective valuation, in other words, makes responsible consumption difficult if not impossible.

Although the concerns giving rise to the law may be relatively straightforward, the law itself is not. All labelling requirements (both mandatory and not forms of 'PR-PPMs' and 'NPR-PPMs') definitively fall under the TBT Agreement. Scholarship maintains that the relationship between the TBT and GATT Agreements is unclear, and no definitive body of WTO AB case law exists on the issue.[66] Mavroidis argues that

> the TBT ['Agreement on Technical Barriers to Trade'] should be regarded as substitute and not complement to the GATT, at least with respect to Articles III and XX', and hence the compliance with WTO law of technical regulations should be assessed against Article 2 TBT only'.[67]

Under Article 2 TBT, technical regulations can concern the product or PPMs, and to stand review need to have a legitimate aim and be both necessary as well as applied non-discriminatorily to like products. Hence, for a measure requiring mandatory COO labelling to stand WTO law review, for sure, it would need to comply with both TBT and GATT Agreements.[68]

Though the analyses proceed somewhat differently, standing WTO law scrutiny requires—regarding both TBT and GATT– that the measure is not arbitrarily discriminatory or a disguised restriction of international trade and is

[65] Cheyne (2014) p. 330.
[66] For example, the famous WTO US-Tuna and US-Shrimp cases deal with absolute import bans only, and the COOL case seems to be the first one dealing with lesser barriers—marks of origin - to trade under both TBT and GATT.
[67] Mavroidis (2013) p. 524.
[68] Durán (2015) p. 112ff.

necessary to protect a legitimate aim. Before crossing those hurdles, one central question in terms of PPMs as to whether discrimination exists revolves around what are determined 'like products'. The broader or narrower definition given to 'likeness' much affects the chances of a given measure to stand WTO review. Mavroidis, for example, suggests that in the context of TBT, the AB should distinguish between 'market likeness' and 'policy likeness' of products, which it at the moment does not do.[69] As to 'policy likeness', Andersen points out that the question is problematic in, for example, accepting that there is a market for products of child slave labour and for similar products that are not.[70] The PPM measure needs to have a legitimate aim in order to withstand review. For the purposes of our measure of mandatory COO disclosure example, GATT Art. XX exhaustive list of such aims includes, for example, protecting human, animal or plant life or health.[71] The legitimate objectives that justify technical barriers to trade under the TBT Agreement are non-exhaustively listed in Art. 2.2 TBT.[72] The list specifically includes prevention of deceptive practices, which omitting COO information could be (in addition to how it is regulated by Art. IX GATT), does not include consumer protection but does, *inter alia*, include protection of human health as well as environment.[73]

However, it seems that although in our COO measure example establishing legitimate objective under both GATT and TBT Agreement might succeed, the hurdles of non-discrimination and the test of necessity (in EU parlance close to proportionality review) may be tricky.[74] What is more, the COOL ruling of the WTO AB from 2015—the Panel decisions in which case inspired the Commission to withdraw the EU COO measure proposal of 2005—seems to complicate things further. Problems essentially relate to two specific issues illustrated by the ruling that dealt with US mandatory COO labelling for domestic and foreign beef alike. Unlike the import bans that were at question in US-Shrimp and US-Tuna, the labelling system merely informed consumers of the origin of meat. In the GATT context, the AB seems to identify discrimination (disguised restriction) from data on trade effects of measures (an effect on quantity of imports)—regardless of whether they emerge from presumed market preference for US beef or, as in this case, operative

[69] Mavroidis (2013) p. 519.
[70] Andersen (2015) p. 398.
[71] More precisely objectives in Article XX (b): 'necessary to protect human, animal or plant life or health') considered to cover also protecting the environment; and (g) 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'; as well as to an extent sub-paragraph (e) 'relating to products of prison labour'.
[72] The WTO AB has not provided further guidelines for extending the list. See Andersen (2015) p. 396.
[73] TBT 2.2 Article lists as legitimate objectives, *inter alia*: 'the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment'. The non-exhaustive list of objectives is complemented by a non-exhaustive list of what is relevant to consider in assessing such risks. Both lists are open, the first for the general goal of sustainable consumption, the second for consumer preference (responsible consumption).
[74] Mavroidis (2012) pp. 355ff and 689ff.

complications in the meat supply chain leading to, in effect, not processing as much meats of certain origin as before. In the TBT context, the AB fails to distinguish between market likeness and policy likeness of products, applying a broad understanding of likeness—opening a vast field for econometric research on potential market effects.

The aspect of necessity of the measure is evaluated similarly in both GATT and TBT reviews. The more important the protected aim and the less restrictive the measure effectively to achieve it, the stronger the chance for the national measure to stand review. Hence, based on the product safety example above, one could argue that disclosing COO of all products, domestic and foreign, to consumers is a necessary and non-discriminatory measure justified by the legitimate objectives of protecting the environment and human health. The aspects related to non-compliant toxic products finding their way into the circular economy could be one alternative way to justify the disclosure of COO—in order to curb the purchasing of products from countries of origin that struggle to meet EU product requirements. As argued above, this approach builds on two ideas: first, the idea that as COO in itself is not a wholly reliable indication of compliance or non-compliance but only an empirically based proxy, hence it could justify employing a 'softer' market signal, a lesser barrier to trade than an import ban; and second, the idea that research has shown consumers are diverse group with variable values affecting their transactional decisions and hence the market effects of their decisions based on more encompassing information will be diverse. It is difficult to foresee whether trade effects of such a measure would concern foreign products, but this would be rather incidental. Finding a way to interpret WTO law in a way that would allow mandatory COO labelling measures to stand would be supported by increasing the role of responsible consumption in order to further sustainable consumption and thereby contribute to reaching one of the WTO law goals: (global) sustainability. What is more, several mandatory COO labelling regimes exist currently and their compliance with WTO law has not been challenged—however, this is no proof as to the WTO lawfulness of such measures.

4 Conclusions

The thorny bundle of issues that COO labelling is part of—i.e., (non-)product-related processes and production methods (PPMs)—relates to consumers holding preferences for more sustainable process-distinguished products. As described by Kysar:

> The heroic role of the consumer, then, is becoming even more heroic. Long understood to include a patriotic obligation continually to increase expenditure on material goods, the consumer's role also is being cast as an unwitting mechanism for

> collective valuation… - …by revealing through private market behavior their true level of support for human safety, the environment, and a host of other public goods.[75]

Politicians may be interested in tracking this market behaviour to gain knowledge of their voters' preferences, and economists may continue to rely on rational self-interested cost-benefit analyses to explain consumer behaviour. For the consumer, however, market choices may be more intrinsic and direct means to a preferred end, including the end of responsible or sustainable consumption, than is traditionally thought. This direct mechanism of responsible consumption market choices as well as the more indirect signal that travels through politicians to shape decisions on societal collective good both require that the necessary information—such as PPMs—on which to base those choices is available.

From the consumer perspective, the 'more information' approach—that of mandatory COO disclosure—is warranted by increased autonomy and freedom of choice as well as, in the light of the above, health, safety and environmental protection. From the market perspective, COO disclosure is supported by the goal to maintain fair competition between businesses (manufacturers), by rewarding costs of compliance.[76] This approach as to mandatory disclosure of COO is already widespread in EU food law.

This chapter argued that based on statistical information concerning correlation between product safety and COO, consumers have a rational reason to consider also COO when making transactional choices. With many other social, environmental and other variables, the COO of a product works as a good available proxy as to its PPMs. Moreover, consumers as a heterogeneous group balance many different values against each other and arrive at alternating results. In effect, it is through this mechanism that responsible consumption by individuals may turn into collective valuation of common good through consumption. The information legally required to be disclosed to the consumer plays a role in whether consumers can be responsible if they wish to and, in turn, whether their market choices lead to sustainable consumption.

If there is a problem with disclosure, it is not lack of information on COO of products generated by global value chains. The same goes for the parts from which products are assembled, if not courtesy of in-house electronic systems tracking the supply chain, then because of existing information at parcel-specific EAN code accuracy that is regularly required by customs whenever goods are transported. At least larger companies already hold COO information for a variety of reasons: customs rules on origin (RoO) are essential for accessing markets and for customs officials defining customs

[75] Kysar (2004) pp. 635 and 533.
[76] Sajn (2018) p. 2.

duties, moreover, providers of financial services as well as clients may require this information. A PWC survey is said to have found that companies in fact are 100% aware of RoOs,[77] which in turn means the COO of items is relevant and known to economic operators.

Hence COO disclosure seems to hinge upon its lawfulness. As argued above, though considered a thorny issue in trade law in the past, presently there are good reasons to suggest that an interpretation of relevant EU and WTO law that takes into consideration the goal of sustainable development should allow an EU measure of mandatory COO disclosure. Therefore, the remaining obstacle for mandatory COO disclosure in the EU context seems to presently be that either the Member States are reluctant to allow the EU to decide on rules concerning 'made in' rules instead of each Member State deciding for itself, or there are interests involved that wish not to disclose COO to consumers, or both.

References

Aichner T, Forza C, and Trentin A (2016) The country-of-origin lie: impact of foreign branding on customers' willingness to buy and willingness to pay when the product's actual origin is disclosed. The International Review of Retail, Distribution and Consumer Research 27(1):43-60.

Andersen H (2015) Protection of Non-Trade Values in WTO Appellate Body Jurisprudence: Exceptions, Economic Arguments, and Eluding Questions. Journal of International Economic Law 18: 383–405.

Ankersmit L (2013) What if Cassis de Dijon were Cassis de Quebec? The Assimilation of Goods of Third Country Origin in the Internal Market. Common Market Law Review 50:1387-1410.

Anliker M (2016) Non-Preferential Rules of Origin: High Level Assessment. Price Waterhouse Coopers, as cited by Hoekman B, Inama S in Harmonization of Rules of Origin: An Agenda for Plurilateral Cooperation? East Asian Economic Review 22(1):3-28.

Cappelli L, D'Ascenzo F, Natale L, et al. (2017) Are Consumers Willing to Pay More for a 'Made in' Product? An Empirical Investigation on 'Made in Italy'. Sustainability 9:556-573.

Charnovitz S (2002) The Law of Environmental PPMs in the WTO: Debunking the Myth of Illegality. Yale J. Int'l L. 27:59-110.

[77] Anliker (2016) p.10.

Cheyne I (2014) Consumer Labelling in EU and WTO Law. In Gaines S et al. (eds.) Liberalising Trade in the EU and the WTO: A Legal Comparison. CUP, Cambridge, p 309-332.

Davies G (2003) Nationality Discrimination in the European Internal Market. Kluwer Law International, The Hague.

Davies G (2017) Between Market Access and Discrimination: Free Movement as a Right to Fair Conditions of Competition. In Koutrakos P, Snell J (eds) Research Handbook on the Law of the EU's Internal Market. Edward Elgar, Cheltenham, p 13-28.

Durán GM (2015) NTBs and the WTO Agreement on Technical Barriers to Trade: The Case of PPM-Based Measures Following US—Tuna II and EC—Seal Products. In: Herrmann C, Krajewski M, Terhechte J (eds) European Yearbook of International Economic Law. Springer, Berlin, Heidelberg, p 87-136.

Enchelmaier S (2010) Article 36 TFEU: General. In Oliver P (ed) Oliver on Free Movement of Goods in the European Union. Hart Publishing, Oxford, p 215-312.

Gormley LW (2008) Silver Threads among the Gold. 50 Years of the Free Movement of Goods. 31 Fordham Int'l L.J. 1637

Gormley LW (2009) EU Law of Free Movement of Goods and Customs Union. OUP, Oxford.

Helleringer G, Sibony A-L (2016-2017) European Consumer Protection through the Behavioral Lens. Colum. J. Eur. L. 23:607-646.

Howells G (2014) Product Safety—A Model for EU Legislation and Reform. In: Purnhagen K, Rott P (eds) Varieties of European Economic Law and Regulation: Liber Amicorum for Hans Micklitz. Springer, Cham, p 525-538.

Howells G, Micklitz H-W, Wilhelmsson T (2006) European Fair Trading Law. Ashgate, Aldershot.

Howse R, Regan D (2000) The Product/Process Distinction—An Illusory Basis for Disciplining 'Unilateralism' in Trade Policy. European Journal of International Law 11:(2):249-289.

Kysar DA (2004) Preferences for processes: The Process/Product Distinction and the Regulation of Consumer Choice. Harvard Law Review 118:526-642.

Mavroidis PC (2012) Trade in Goods 2nd ed. OUP, Oxford.

Mavroidis PC (2013) Driftin' too far from shore–why the test for compliance with the TBT Agreement developed by the WTO Appellate Body is wrong, and what should the AB have done instead'. World Trade Review 12(3):509-531.

Lewis KE, Grebitus C (2016) Why U.S. Consumers Support Country of Origin Labeling: Examining the Impact of Ethnocentrism and Food Safety. Journal of International Food & Agribusiness Marketing 28(3):254-270.

Ricardo D (1821) On the Principles of Political Economy and Taxation. John Murray, London.

Rigod B (2015) Optimal Regulation and the Law of International Trade: The Interface between the Right to Regulate and WTO Law. Cambridge University Press, Cambridge.

Rolland SE (2014) Are Consumer-Oriented Rules the New Frontier of Trade Liberalization? Harvard International Law Journal 55(2):361-419.

Sajn N (2018) EPRS Briefing: EU Legislation in Progress - Strengthening market surveillance of harmonised industrial products. Available via http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614696/EPRS_BRI(2018)614696_EN.pdf. Accessed 15 May 2018.

Sankari S (2013) European Court of Justice Legal Reasoning in Context. Europa Law Publishing, Groningen.

Saydé A (2017) Freedom as a Source of Constraint. Expanding Market Discipline Through Free Movement. In: Koutrakos P, Snell J (eds) Research Handbook on the Law of the EU's Internal Market. Edward Elgar Cheltenham, p 29-53.

Schaefer A, Crane A (2005) Addressing Sustainability and Consumption. Journal of Macromarketing 25(1):76-92.

Shuibhne NN (2017) Exceptions to the free movement rules. In: Barnard C, Peers S (eds) European Union Law 2nd ed. OUP, Oxford, p 471-503.

Smith A (1776) Wealth of Nations.

Snell J (2010) The Notion of Market Access: A Concept or a Slogan? Common Market Law Review 47:437–472.

Van den Bossche P, Schrijver N, Faber G (2007) Unilateral Measures addressing Non-Trade Concerns. A study on WTO Consistency, Relevance of other International Agreements, Economic Effectiveness and Impact on Developing Countries of Measures concerning Non-Product-Related

Processes and Production Methods. The Ministry of Foreign Affairs of The Netherlands, The Hague.

Official sources:

Consolidated version of the Treaty on European Union, OJ C 202 (2016).

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, The Goods Package: Reinforcing trust in the single market (COM(2017) 787 final).

Commission Staff Working Document, A Single Market Strategy for Europe - Analysis and Evidence, Accompanying the document, Upgrading the Single Market: more opportunities for people and business (SWD(2015) 202 final).

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Commission Work Programme 2013' (COM/2012/0629 final).

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22–39).

European Commission (2013) 'Free movement of goods Guide to the application of Treaty provisions governing the free movement of goods' (Ref. Ares(2013)3759436 - 18/12/2013).

European Environmental Bureau (2017) 'Keeping it Clean: How to Protect the Circular Economy from Hazardous Substances' by Bernard A and Buonsante V of Client Earth. Available via http://eeb.org/publications/83/waste-and-recycling/1651/report-on-how-to-protect-the-circular-economy-from-hazardous-substances.pdf. Accessed 15 May 2018

European Commission (2017a) Inception Impact Assessment on 'Internal Market for Goods—Enforcement and Compliance'. Available via http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_grow_007_enforcement_compliance_en.pdf. Accessed 15 May 2018

European Commission (2017b) Report on EU customs enforcement of intellectual property rights: Results at the EU boarder in 2016 Available via https://ec.europa.eu/taxation_customs/sites/taxation/files/report_on_eu_cu

stoms_enforcement_of_ipr_at_the_border_2017.pdf. Accessed 15 May 2018

European Commission (2016a) Website: EU Customs Union—Facts and Figures. Available via https://ec.europa.eu/taxation_customs/sites/taxation/files/facts_figures_en.pdf. Accessed 15 May 2018

European Commission (2016b) Website: Rapid Alert System for dangerous products - 2015 Results. Available via https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/reports/index_en.htm. Accessed 15 May 2018.

European Commission (2018) Press Release. Available via http://europa.eu/rapid/press-release_MEMO-18-1722_en.htm. Accessed 15 May 2018

European Commission (2009) Website. Available via http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144591.pdf. Accessed 15 May 2018

Eurostat (2010) Special Eurobarometer 357 'International Trade'.

OECD (2002) Towards Sustainable Consumption: an economic conceptual framework (No. NV/EPOC/WPNEP(2001)12/FINAL).

Pew Research Centre (2015) 'Global Publics back U.S. on Fighting ISIS, but Are Critical of Post-9/11 Torture', p. 31, <http://www.pewglobal.org/files/2015/06/Balance-of-Power-Report-FINAL-June-23- 20151.pdf>, accessed 15 May 2018.

Proposal for a Council Regulation on the indication of the country of origin of certain products imported from third countries (COM(2005) 661 final).

Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council (COM (2017) 795 final).

UN (2016) Website: Sustainable Development Goals. Available via http://www.un.org/sustainabledevelopment/wp-

content/uploads/2016/08/16-00055L_Why-it-Matters_Goal-12_Consumption_2p.pdf. Accessed 15 May 2018