

In Place of Inter-State Retaliation: The European Unions Rejection of WTO-style Trade Sanctions and Trade Remedies

William Phelan

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Unlike many other trade regimes, the European Union forbids the use of inter-state retaliation to enforce its obligations, and rules out the use of common escape mechanisms such as anti-dumping between the EU member states. How does the EU do without these mechanisms that appear so vital to the political viability of other international trade regimes, including the World Trade Organization? How, therefore, is the European legal order, with the European Court of Justice at its centre, able to be so much more binding and intrusive than the legal obligations of many other trade regimes? This book puts forward a new explanation of a key part of the European Unions legal system, emphasising its break with the inter-state retaliation mechanisms and how Europes special form of legal integration is facilitated by intra-industry trade, parliamentary forms of national government, and European welfare states. It argues first that the EU member states have allowed the enforcement of EU obligations by domestic courts in order to avoid the problems associated with enforcing trade obligations by constant threats of trade retaliation. It argues second that the EU member states have been able to accept such a binding form of dispute settlement and treaty obligation because the policy adjustments required by the European legal order were politically acceptable. High levels of intra-industry trade reduced the severity of the economic adjustments required by the expansion of the European market, and inclusive and authoritative democratic institutions in the member states allowed policy-makers to prioritise a general interest in reliable trading relationships even when policy changes affected significantdomestic lobbies. Furthermore, generous national social security arrangements protected national constituents against any adverse consequences arising from the expansion of European law and the intensification of the European market. The European legal order should therefore be understood as a legalized dispute resolution institution well suited to an international trade and integration regime made up of highly interdependent parliamentary welfare states.

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