

Articles

THE NEW TBT JURISPRUDENCE IN *US – CLOVE CIGARETTES*, *WTO US – TUNA II*, AND *US – COOL*

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ABSTRACT

In 2012, the Appellate Body of the World Trade Organization issued three important reports: US – Clove Cigarettes, WTO US – Tuna II, and US – COOL. These disputes concerned the flexibilities or “policy space” left to Members in dealing with non-trade concerns under the Agreement on Technical Barriers to Trade, which sets rules for technical regulations and standards. The primary issue arises from the fact that the TBT and relevant GATT provisions are not organized in the same manner, while their provisions overlap and apply simultaneously. This paper briefly examines the new TBT jurisprudence and discusses how TBT Articles 2.1 and 2.2 qualify and improve GATT rules. The scope of the TBT provisions, their interaction, and their relationship with overlapping GATT provisions are at the heart of the legal analysis undertaken by the panels and Appellate Body in this important new jurisprudence.

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KEYWORDS: *WTO, Technical Barriers to Trade, Technical Regulation, Standard, Domestic Regulation, TBT, GATT, US – Clove Cigarettes, US – Tuna II, US – COOL, national treatment, necessity, Health, Environment, Sustainable Development, Consumer Information*