

**GONZALO VILLALTA PUIG, *ECONOMIC RELATIONS  
BETWEEN AUSTRALIA AND THE EUROPEAN UNION:  
LAW AND POLICY***

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Professor Gonzalo Villalta Puig, who has written extensively on matters of constitutional economics and legal issues of economic integration, has produced in *Economic Relations between Australia and the European Union: Law and Policy* an outstanding book that fills a void in the literature on trade and investment liberalisation and the regulation of economic globalisation. The European Union (EU) is the only major trading partner with whom Australia has not yet signed a Free Trade Agreement (FTA) let alone a Preferential Trade Agreement. This book explains clearly, relentlessly, the reasons why Australia has not yet signed an agreement with the EU and, furthermore, explains why such an agreement is necessary. After all, the EU is still Australia's major economic partner when the bilateral exchange of goods and services and the two-way investment flow are taken together. The book is not only important as a resource for academics working in international economic law and international political economy but it is also compulsory reading for students and industry leaders involved in export and import. What is more, the book ought to be read by officials in Canberra, Brussels, and Geneva involved in setting trade and investment policy priorities.

*Economic Relations between Australia and the European Union: Law and Policy* is organised in clearly defined topics. It has the consistency and rigour of a significant work of scholarship but also functions for the discerning reader as a book containing ten originally distinctive chapters along a perfectly logical sequence of four parts. As such it is not only the first book to present a thorough study – a reconceptualization in fact – of the Australia-EU trade and investment relationship but also manages to combine the advantages of a monograph and a book containing highly accessible stand-alone chapters, each at the forefront of research.

As an introduction, Part I sets out the framework in which the Australia-EU relationship is based. Chapter 1 itemises the difficulties in the relationship, which are predominantly faced on a political level as well as law. Professor Villalta Puig points out that, despite the importance of the Australia-EU

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economic relationship, a FTA has not been realised nor is currently anticipated. Negotiations to forge a FTA are important as the barriers are not in Australia's favour. For tariffs for trade in goods, Australia applies an average rate of 3.1% whereas the EU imposes a rate of 6.5%. Both Australia and the EU have high behind-the-border barriers.

Chapter 2 explains the origins and development of economic relations between Australia and the EU. Professor Villalta Puig sets out the statistical framework on which an analysis is based to develop the theme that it is necessary for Australia to engage with the EU. The author specifically notes that Australia should not concentrate on East Asia alone as the only area in which to develop further economic relationships.

Part II deals with external regulation. Chapter 3 sets out the bilateral regulation of the relationship. It is a coherent and easy-to-understand account of the random nature of coverage of trade and investment issues between the two sides. Of special interest are the reasons Professor Villalta Puig gives to explain the failure of Australia's piecemeal approach to the relationship with the EU, which has resulted in little, if any, policy of legal significance. He concludes, correctly, by quoting Alastair Walton of the European Australia Business Council who noted that it is time for Australia to move beyond common values and a shared history with Britain and embrace the EU.

A comprehensive study of World Trade Organization (WTO) regulations affecting the Australia-EU relationship follows in chapter 4. It cogently explains how the multilateral trading system affects the relationship between Australia and the EU due to the absence of a FTA or any meaningful bilateral agreement for that matter. The chapter argues that the WTO is not able to provide better multilateral solutions to what is, ultimately, a bilateral problem, resolving not so much tariffs but regulatory divergences as they exist between Australia and the EU.

Part III of the book analyses the internal regulations of Australia and the EU with a view to explain the roadblocks, perceived or otherwise, to there being a bilateral trade agreement in place.

Section A of Part III discusses the economic constitution of Australia. Chapter 5 explains the law of the internal Australian market, specifically, the law applicable to the freedom of interstate trade. The development of the interpretation of section 92 of the Australian Constitution is concisely and insightfully discussed. The seminal case of *Cole v Whitfield* is analysed at length and Professor Villalta Puig argues that it was decided wrongly. The author argues for an interpretation of section 92 as a non-discrimination norm. Only on that interpretation can section 92 be fit for its federal purpose to create and preserve a national market.

The law of the external market, namely the trade and commerce power, is discussed in chapter 6. This chapter argues that, because of the lack of a

bilateral agreement, trade and investment relations fall under the jurisdiction of the WTO, namely, the twin principle of most-favoured-nation treatment and national treatment. However, this still does not preclude Australia and the EU from regulating external trade based on their constitutional competences. This chapter explains the scope and effect of section 51(i) of the Australian Constitution. The chapter again relies on pertinent case law and concludes that Australian customs relies on biosecurity as its foundational pillar which, in effect, acts as a barrier to trade.

Section B of Part III is devoted to the economic constitution of the EU. Article 28 of the Treaty on the Functioning of the European Union - which guarantees the free movement of goods - is discussed in chapter 7. The arguments of the author are made in the light of relevant judgments of the European Court of Justice. The author advances the argument that Article 28, in effect, created a truly single market within the EU. The chapter, in its conclusion, compares the approaches of the judiciary in Australia and the EU to the constitutionalisation of free trade and concludes that the High Court of Australia, still caught up in the *Cole v Whitfield* rapture, is reluctant to do away with the protectionist element of the test of invalidity for section 92 and move closer to the European model of economic integration.

Chapter 8 addresses the law of the external market within the EU. This chapter concludes that the Common Customs Tariff and the Common Commercial Policy of the EU provide a regulatory framework for the effective functioning of the EU as a customs union.

Part IV is the conclusion. Chapter 9 critically discusses the issue of the utility of a trade and investment agreement between Australia and the EU. Professor Villalta Puig notes that economic relations between Australia and the EU have a missing link, namely the lack of an Economic Integration Agreement that covers not only goods and services trade but also investment. The lack of such an agreement is mainly due to policy considerations as the barriers in both customs territories make it difficult to trade at an optimal level. Without a bilateral agreement between Australia and the EU, trade and investment relations between Australia and the EU are at a loss.

Chapter 10 concludes that a trade and investment agreement between Australia and the EU is long overdue and necessary as it would create benefits for both partners.

Professor Villalta Puig's *Economic Relations Between Australia and the European Union, Law and Policy* warrants careful reading and recognition from the academic and policy communities in Australia and the EU. His work is a great example of excellence in research and scholarship.