

Editorial

This issue of *Law, Democracy and Development* introduces a number of exciting changes and developments: Its status has been elevated to that of official journal of the Faculty of Law at the University of the Western Cape. Its mission has been broadened to include international, continental and regional developments. The aim is to create a forum of discussion and debate for scholars, practitioners and policy-makers from across the African continent, thus contributing to the development of shared knowledge and cooperative effort.

This extended mission, which has been made possible by the support provided by the Friedrich Ebert Stiftung, is reflected in our adapted language policy to include French as a working language.

The current issue also augments the content of *LDD* by the inclusion of a number of case notes. Future issues will also be open to shorter articles and book reviews.

This issue is devoted to a critical enquiry into the impact of economic globalisation on South and Southern Africa. It focuses on the international positioning of the World Trade Organisation (WTO), its influence on the domestic policies and laws of the Republic of South Africa as a member country of the WTO, and its far-reaching implications for trade relations in Southern Africa.

Economic globalisation is already demonstrating its inevitable and lasting effect on virtually every aspect of life. Almost no area of human co-existence and interaction with the environment and natural resources of the earth is left untouched. This form of globalisation is mainly driven by international and regional organisations, and transnational companies, but also increasingly by private electronic commerce across international frontiers.

Several of these economic activities have serious implications for the political and legislative activities of (modern) nation states. While some "open up" access by states to the riches of the world in unprecedented ways, others may prejudice their proper functioning and even threaten their very existence as political and juridical entities. For developing countries it is absolutely vital to engage in the debate on these issues which affect them all and to participate in the establishment and proper functioning of institutions and legal and political procedures addressing these issues.

The contributions in this issue are all based on papers read at a conference with the theme *The World Trade Organisation: Law and Development in South Africa*, held at the University of the Western Cape in November 1998, and co-hosted by the French Embassy in South Africa.

Synopsis of articles

The articles are arranged in their order of presentation at the conference. **Brigitte Stern** opens the discussion by contextualising the issues to be addressed within the framework of the driving forces and subjacent philosophies and theories of globalisation and regionalisation. She introduces the governing rules and principles and the prevailing institutional structures of the World Trade Organisation (WTO) and their implications for all international and regional trade arrangements. She asks the question whether the rule-based WTO system is really the answer to the need of meaningful global regulation of relations among states and other entities operating on an international level. The conclusion that she comes to is that the system tends towards exaggerated liberalism, only peripherally treating the issues of its impact on social values, culture, health, the environment, and largely ignoring the distribution of the proceeds of the (international) economy.

In his discussion of the dispute resolution mechanisms provided for by the WTO **Xavier Philippe** is concerned with the developments of the system over the past five years. He starts by giving an overview of its scope and its key features, notably subsidiarity, diversity and balance, before going on to consider some controversial results of the implementation thereof. The major part of his article is devoted to the procedural aspects of the international trade dispute settlement system.

Dot Keet takes an in-depth and critical look at globalised trade liberalisation and the influences thereof on economic development in developing countries. She criticises the abuse of the GATT/WTO rules-based system by sophisticated developed countries. She is particularly disillusioned by the systematic marginalisation of lesser and least-developed countries which in no small measure results from the exploitation of their lack of expertise and resources to make effective use of the "more favourable treatment" measures available to them. She questions the viability, and indeed global legitimacy of the WTO multilateral agreements (MTA's) from a developing country's perspective and claims a new, fully-fledged, multi-sectoral negotiating round in order to address and, if possible remedy, the deficiencies of the Uruguay Round. Like many others, she regards the 1999 – Seattle Ministerial Meeting of the WTO, despite its focus on several contentious issues, as ill-suited for purposes of review of the current system.

Nico Steytler's article investigates the interrelationship between the GATT/WTO system and the South African legal system. He investigates the implications of the WTO rules for the international and regional trade relations of the new South African democratic governmental structures. He firstly asks as to the "fit" of the undertaking of WTO obligations into South Africa's new *democratic* form of governance. Secondly, he turns to examining the ways in which the constitutional "dispersal" of powers between "spheres of government"- at national, provincial and local level, and within these spheres affect South Africa's WTO obligations. He focuses on the impact of WTO obligations on the federal features in the Constitution resulting from the decentralisation of South Africa into spheres of government and conversely, on the equally important question of how WTO obligations do or should impact on intergovernmental relations and co-operative government between these spheres.

Esme du Plessis takes an evaluative overview of the topic of parallel importation and the issues facing South Africa in that regard. Her article deals with these issues against the background of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in the context of the recent South African legislation in the medical field. Parallel importation issues will become increasingly relevant to the countries of Africa as they are emerging as new destinations for technology, which means that the intellectual property rights relating to the technology will require protection. As more countries on the African continent join multiple-filing systems such as the Patent Co-operation Treaty, the protection of intellectual property (IP) in African countries will become easier and therefore more attractive. IP owners will not necessarily, however, put up manufacturing operations in all countries where they hold rights. It is more than likely that the local demand in individual countries will be met by importation.

This is entirely in line with TRIPS provisions which means that the scene will be set for parallel traders to see an opportunity of profit. Many hold the view that this might ultimately be to the benefit of African countries, as a mechanism to suppress elevated price structures. If parallel importation of pharmaceuticals is to be used to benefit the people of Africa, it is essential that an accurate and reliable study should be made of all of the aspects outlined above, with particular relevance to the countries of Africa. She emphasises the need for a debate amongst African countries to commence, and believes that much can be learnt from recent decisions by the European Court of Justice in regard to parallel imports of pharmaceuticals in European countries, and from the writings of learned authors on that subject, but that the fundamental differences between the situation in African countries and that of European Community Member States (with the fundamental principle of the free movement of goods) should not be overlooked.

Rosalind Thomas concludes the debate by focusing on the impact of the WTO on regional economic integration and free trade agreements between developing countries. She discusses the anomalies and inconsistencies of the economic classification system of the GATT/WTO. She takes a specifically critical look at South Africa's position within the WTO system and her important role within the SADC treaty context.

In a new addition to LDD Sam Rugege discusses a few recent cases of African continental interest falling within the focal areas of the journal. The issues range from; the discussion of defense force members to join trade unions and to participate in public protest action (South Africa); the right of an accused person to a fair hearing by an independent and impartial court, on the one hand, and the right of the press to freedom of expression and the duty to inform the public on matters of public interest, on the other. To the right of the press to freedom of expression and the duty to inform the public on matters of public interest (Zimbabwe); the right of prisoners, both those awaiting trial and those already convicted, to vote in national elections (South Africa); the right of a citizen spouse to have his/her alien spouse live with her in his/her home country on a permanent basis (Zimbabwe); the power of the National Assembly to suspend a member of the assembly and the right of a member to freedom

of expression (South Africa); succession rights in African kingdoms in the era of republican democracy (Uganda).

Forthcoming issues

The next issue 1999(2) will be focused on transitional law and justice. Issue 2000(1) will focus on social security law; issue 2000(2) on criminal justice and human rights; and issue 2001(1) on new developments in labour law.

Internet access to information on LDD is at <http://www.uwc.ac.za/law>.

Call for Contributions

Prospective contributors are cordially invited to send in material and express their views on the content and structure of the journal (for further information see the inside of the back cover page).

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Issue editors