

Table of Contents

<i>Table of Cases</i>	xi
Introduction: Defining the Boundaries of the Research	1
1. The EC and the WTO: Justification for a Comparison	2
2. Barriers to International Trade	7
A. Tariff v Non-Tariff Measures	7
B. Border v Domestic Measures	8
C. Market Access v Market Regulation Barriers	13
D. Government v Private Barriers	15
3. Approaches to Trade Liberalisation	16
A. Negative v Positive Integration	17
B. Judicial v Legislative (Positive) Integration	24
C. Shallow v Deep Integration	27
4. Structure of the Research	30
 PART I. SHALLOW INTEGRATION	 35
 1. Negative Integration <i>Stricto Sensu</i> : The Elimination of Border Measures	 37
1.1 Reduction/Elimination of Customs Duties and Other Charges Having Equivalent Effect	40
A. Normative Content	41
1. Articles 25-27 EC	41
2. Article II GATT	42
B. Objective Element	47
1. Article 25 EC	47
2. Article II GATT	55
C. Exceptions	65
1. No Justification Provision in EC Law	66
2. Articles II, III, VI, VIII and XX GATT	67
D. Conclusions	69
1.2 Elimination of Quantitative Restrictions and Other Import Restrictive Measures	72
A. Normative Content	72
B. Objective Element	74

1. Article XI GATT	75
2. Articles 28 and 29 EC	92
C. Exceptions	101
1. Article 30 EC	106
2. Article XX GATT	112
D. Conclusions	118
 2. Judicial Integration—First Layer: The National Treatment Principle and the Prohibition of De Jure Discrimination	 121
2.1 Prohibition of De Jure Discrimination and Fiscal Charges	127
A. Normative Content	127
1. Article III:2 GATT	127
2. Article 90 EC	135
B. Justification Options	137
1. Article XX GATT	137
2. Border Tax Adjustment in WTO Law	140
3. Judge-Made Public Policy Exception in EC Law	141
C. Conclusions	145
2.2 Prohibition of De Jure Discrimination and Non-Fiscal Regulation	147
A. Normative Content	147
1. Article III:4 GATT	147
2. Article 28 EC and the Concept of “Distinctly Applicable Measures”	161
B. Justification Options	183
1. Article 30 EC	183
2. Article XX GATT	192
C. Conclusions	240
 PART II. DEEP INTEGRATION	 247
 3. Judicial Integration—Second Layer: The National Treatment Principle and the Prohibition of De Facto Discrimination	 249
3.1 Prohibition of De Facto Discrimination and Fiscal Charges	252
A. Normative Content	252
1. Article III:2 GATT	252
2. Article 90 EC	277
B. Justification Options	297
1. Judge-made public policy exception in EC law	298

2.	Article XX GATT and Alternative Ways to Justify De Facto Discriminatory Fiscal (and Non-Fiscal) Measures on Public Policy Grounds	305
3.2	The Prohibition of De Facto Discrimination and Non-Fiscal Regulation	319
A.	Normative Content	319
1.	Article III:4 GATT	319
2.	Article 28 EC and the <i>Keck</i> Doctrine	341
B.	Justification Options	363
1.	De Facto Discriminatory Selling Arrangements and "Mandatory Requirements" in EC Law	363
2.	Article XX GATT	368
3.3	Conclusions	373
4.	Judicial Integration—Third Layer: The Reasonableness Rule	387
4.1	Article 28 EC and the <i>Dassonville</i>–<i>Cassis de Dijon</i> Jurisprudence: "Rule of Reason", "Mandatory Requirements" and the "Proportionality Principle"	388
A.	<i>Dassonville</i> and <i>Cassis de Dijon</i> : The Revolutionary Approach	389
B.	The <i>Dassonville</i> – <i>Cassis de Dijon</i> "Rule of Reason" Doctrine: Uncovering the Court's "Formalist Sophistry"	392
C.	Asymmetry Between "Normative Objectives" and "Legal Features"	400
D.	Proportionality as the "Normative Standard": A Few Preliminary Remarks	402
E.	What does "Proportionality" Actually Entail?	408
1.	<i>Cassis de Dijon</i> : "Suitability", "Necessity" and the Presumption of "Unreasonableness"	408
2.	<i>French Woodworking Machine</i> and "Functional Parallelism"	410
3.	<i>Danish Bottles</i> and "Proportionality <i>Stricto Sensu</i> "	413
4.	"Necessity" or "Proportionality <i>Stricto Sensu</i> "? The Issue of the "Level of Protection"	417
5.	Article 30, Second Sentence, EC: Substantive and Procedural Review	426
6.	A Few Concluding Remarks	432
4.2	Reasonableness Rule in WTO Law: The SPS and TBT Agreements	434
A.	Objective Element	436
B.	The Proportionality Requirements under TBT and SPS as Independent from the GATT	441
C.	Normative Content	445

1.	The “Suitability” Requirement or the Need to Establish a “Rational Relationship” Between the Measure and the Legitimate Public Policy Objective	445
2.	The “Necessity” Requirement or the Need to Establish that the Measure is the “Least-Trade Restrictive” Alternative to Achieve the Legitimate Public Policy Objective	457
3.	A “Proportionality <i>Stricto Sensu</i> ” Requirement Under WTO Law?	464
4.3	Conclusions	469
5.	Conclusion	474
	<i>Bibliography</i>	485
	<i>Index</i>	497