

BOOK REVIEW

Gonzalo Villalta Puig, *Economic Relations between Australia and the European Union: Law and Policy* (Kluwer Law International, 2014)

Professor Gonzalo Villalta Puig is a renowned specialist in the regulation of economic globalisation. *Economic Relations between Australia and the European Union: Law and Policy* is a long-awaited addition to the literature on relations between Australia and the European Union (EU). Well written in an accessible style, the book starts logically with a detailed overview of the nature and scope of the economic relationship between the jurisdictions including underlying strengths, weaknesses and prospects for further development. The basic premise is that there is huge potential in the Australia-EU economic relationship and that now is the time to ‘unlock that potential’¹ to take the relationship ‘to a new level’.² The relationship is, however, lopsided. By a series of facts and figures demonstrating that Australia needs the EU more than the EU needs Australia, the book invites the conclusion that it is incumbent on Australia to reappraise the relationship and re-engage with the EU if it wishes to increase prosperity through economic integration.

At a time when Australia is doubling its efforts to negotiate and conclude Free Trade Agreements (FTA) with its major trading partners it appears incongruous that Australia has not yet negotiated an FTA or a Preferential Trade Agreement (PTA) with the EU. This is particularly perplexing given the adherence of both jurisdictions to an agenda of trade liberalisation. Surveying a somewhat difficult trade relationship, the book posits a rational explanation for the absence of such an agreement — that is, inflexible positions in respect of agricultural products and other sticking points — whilst eschewing the usual blame game which has stymied progress in bilateral trade negotiations in the past. Villalta Puig’s book aims at, and succeeds in, helping the interested reader to achieve clarity in relation to the respective positions of Australia and the EU to trade liberalisation. This clarity is achieved primarily through a comprehensive discussion of the evolution of the economic relationship and an examination of the economic constitutions of both jurisdictions, which the book manages to get across without being overly technical. The book’s overview of the fundamental trade laws, policies and practices of the respective jurisdictions will appeal to academics, policymakers and students of the economic analysis of constitutional law, free trade and political economy.

Economic Relations between Australia and the European Union: Law and Policy follows a clear structure, allowing both depth and balance in the analysis

- 1 Gonzalo Villalta Puig, *Economic Relations between Australia and the European Union: Law and Policy* (Kluwer Law International, 2014) 50.
- 2 Ibid, quoting Simon Crean, ‘Australia and Europe: Partners in Progress’ (Speech delivered at the European Policy Centre, Brussels, 23 June 2009).

of the respective jurisdictions. Part I, the introduction, focuses on the origins and development of the relationship. The discussion is well supported by statistical evidence and provides a background to the ‘combative attitude’ that ‘has long informed Australian approaches to the EU’.³ Part II examines various aspects of external regulation — bilateral and multilateral. In terms of bilateral regulation, Chapter three champions the need for a trade and investment agreement with the EU to enhance the economic relationship, pending which the further development of the relationship is dependent on sectoral agreements (limited as they may be) such as the *Mutual Recognition Agreement*,⁴ the *Wine Agreement*⁵ and the *Air Services Agreement*.⁶

Despite growing recognition of the need for Australia to re-engage with the European Commission, the fact that Australia still places inordinate reliance on country-to-country agreements is correctly deemed ‘unwise’ as ‘competence over external trade lies exclusively with the EU’.⁷ Australia’s attitudes in this regard have been repeatedly criticised by academics in this space, most prominently by Philomena Murray in her seminal book *Australia and the European Superpower: Engaging with the European Union*,⁸ to which Villalta Puig refers throughout his book. Chapter three also provides a straightforward account of missed opportunities following the breakdown of negotiations over a Framework Trade and Cooperation Agreement with the EU in 1997 when the Howard Government failed to accept human rights provisions in the draft agreement. By reviewing past and present sectoral agreements and events such as the collapse of negotiations in 1997 within a framework of future prospects and challenges, Villalta Puig succeeds in giving life to old debates while urging reconsideration according to current imperatives.

Multilateral regulation is comprehensively discussed in Chapter four. The chapter predictably and appropriately provides detailed examination of the international trading regime with a focus on the World Trade Organisation (WTO). Also covered are the respective views and approaches of the EU and Australia to trade liberalisation practices within the multilateral trading system. Despite a common commitment to a rules-based and transparent multilateral system, the Australia-EU relationship is plagued with two major problems — the difficulty of third country access to the EU agricultural market and the protectionist effect of Australia’s biosecurity system. Australia’s attitudes to the EU’s Common Agricultural Policy and a generally difficult trade history in respect of agricultural

3 Villalta Puig, above n 1, 32.

4 *Agreement between Australia and the European Union Amending the Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between Australia and the European Community*, signed 23 February 2012, [2013] ATS 2 (entered into force 1 January 2013).

5 *Agreement between Australia and the European Community on Trade in Wine*, signed 1 December 2008, [2010] ATS 19 (entered into force 1 September 2010).

6 *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services*, signed 29 April 2008, [2009] ATS 17 (entered into force 2 July 2009).

7 Villalta Puig, above n 1, 66.

8 Philomena Murray, *Australia and the European Superpower: Engaging with the European Union* (Melbourne University Press, 2005).

products are further discussed in this chapter. The author expresses the hope that the entry into force of the prospective Framework Agreement will diffuse future trade disputes between Australia and the EU.⁹

Part III examines important elements of internal regulation both in Australia and the EU. The analysis is symmetrical, comprising an examination of key aspects of the economic constitution of Australia and of the EU as well as their respective constitutional traditions founded on economic integration. The Australian discussion critiques the scope and effect of s 92 of the *Australian Constitution* with reference to the leading case of *Cole v Whitfield*.¹⁰ In a clear and methodical diagnosis of the High Court's decision in *Cole*, Villalta Puig calls on the High Court to do away with its anti-protectionist interpretation of s 92; to reinterpret s 92 purely as a non-discrimination norm to 'facilitate and not impede trade among the States of Australia'.¹¹ Analysis of ss 51(i)–(iii) and 90 of the *Australian Constitution* in the context of relevant jurisprudence completes the discussion of Australia's economic constitution. This discussion serves to contrast the traditionally narrow and formalistic approach of the High Court with that of its EU counterpart, the European Court of Justice.

Villalta Puig provides a competent and traditional account of the EU's already well articulated economic constitution — the four freedoms — found in the *Treaty on the Functioning of the European Union*.¹² Particularly noteworthy, however, is the comparison with Australia's economic constitution and the conclusion Villalta Puig reaches regarding the absurdity of Australia's approach of discriminatory protectionism founded on *Cole*.¹³ According to Villalta Puig, this result justifies (perhaps counterintuitively) the widespread belief 'that the Australian *national* single market is less free than the EU *supranational* single market'.¹⁴

Villalta Puig's concluding observations about the ways in which Australia can maximise its trade relationship with the EU in a post-Doha world, in which the WTO's capacity to advance trade liberalisation is seriously curtailed, are worth paying attention to. Equally, it is instructive to see how Australia's economic constitution can be enhanced.

Villalta Puig's primary contention re-emerges forcefully in the Conclusion. It is that Australia's economic wellbeing and its capacity to generate further prosperity would be enhanced by greater pragmatism in negotiating with EU policymakers on trade and investment and by a departure from the traditional stridency that has marked trade negotiations between the two jurisdictions resulting in frequent deadlocks and blockages. Echoing Murray's influential research in *Australia and the European Superpower: Engaging with the European Union*,¹⁵ the writer

9 Villalta Puig, above n 1, 129.

10 (1988) 165 CLR 360 ('*Cole*').

11 Villalta Puig, above n 1, 137.

12 *Treaty on the Functioning of the European Union*, opened for signature 7 February 1957 [2012] OJ C 326/47 (entered into force 1 November 1958).

13 Villalta Puig, above n 1, 237.

14 *Ibid* (emphasis added).

15 Murray, above n 8.

invites the reader to question whether Australia can afford to take a detached stance in respect of the EU when the EU is Australia's foremost trading partner in services, and while Australia is only a small market for the EU. Bringing this cleavage into the open can begin to dismantle the obstacles to stronger bilateral integration of the Australian and EU economies that have characterised the relationship to varying degrees to date. The negotiation of a trade and investment agreement, or failing that, an agreement in trade in services and trade-related investment measures,¹⁶ is rightly presented as a continuing political challenge for Australian governments, which (reading between the lines) must replace memories of historical difficulties with flexibility and pragmatism if progress in this field is to be made. Villalta Puig's excellent book charts a realistic path forward.

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16 Villalta Puig, above n 1, 283.