



RESEARCH PROJECT TITLE:

The Law and Practice of Trade Relations between the European Union and Australia *(CUHK Direct Grant for Research)*

Section 92 of the Australian Constitution and the Court of Justice of the European Union

Monday 14 January 2013, 12:30pm - 1:30pm

Moot Court, Graduate Law Centre, 2/F Bank of America Tower, 12 Harcourt Road, Central, Hong Kong



Principal Investigator:

Prof Gonzalo Villalta Puig *Professor of Law and*

Director of the Master of Laws Programme in International Economic Law, The Chinese University of Hong Kong

will host his discussant

The Hon Justice Susan Kiefel AC *High Court of Australia*



The Hon Justice Susan Kiefel AC was educated in Queensland and at the University of Cambridge. Justice Kiefel was later admitted to the Queensland Bar in 1975 and became the first woman in Queensland to be appointed Queen's Counsel in 1987. She was appointed a Justice of the Supreme Court of Queensland in 1993 and in 1994 was appointed to the Federal Court of Australia. Justice Kiefel also held a commission as a Justice of the Supreme Court of Norfolk Island and served as a part-time Commissioner of the Australian Law Reform Commission. She was appointed a Justice of the High Court of Australia on 3 September 2007. Justice Kiefel was appointed a Companion in the General Division of the Order of Australia in 2011.

Forum Topic

Together with matters of multilateral and bilateral regulation, domestic regulation affects the law and policy of trade relations between the European Union and Australia. This forum discusses the constitutional determinants of the Australian single market and the significance to its development of the free trade jurisprudence of the Court of Justice of the European Union. When Australia was federated, free trade between the States and the removal of barriers at the borders were at the forefront of constitutional objectives. They find expression in s 92 of the Australian Constitution. It took some time for the jurisprudence on s 92 to develop by reference to principles of competition. Recent decisions of the High Court of Australia highlight the need to prove that a law may have anti-competitive effects within a market to hold it invalid. Application of this (unacknowledged) test of proportionality invites comparison with European Union law and opens to question the usefulness of protectionism as a criterion of constitutional invalidity for trade without borders in the 'new economy'.

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