

Liberalising Trade in the EU and the WTO

A Legal Comparison

EDITED BY

Sanford E. Gaines

Birgitte Egelund Olsen

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CAMBRIDGE

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BIRGITTE EGELUND OLSEN

AND

KARSTEN ENGSIG SØRENSEN



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LIBERALISING TRADE IN THE EU AND THE WTO

This comparison of EU and WTO approaches to common trade liberalisation challenges brings together 21 authors from Europe and America. Together they explore fundamental legal issues, such as the role of general principles of law, the role of the judiciary in the development of law, the effect of the principle of non-discrimination and the elimination of non-discriminatory barriers to trade. The contributions also examine the most recent developments in trade law across a full range of trade issues, including TBT and SPS, services, intellectual property, customs rules, safeguards, anti-dumping and government procurement. Adopting a comparative perspective throughout, this volume sheds light on today's trade law and suggests paths forward for each system through the perennial tensions between open, non-discriminatory trade and strongly held national values and objectives. This book is part of the research project 'WTO law and EU law: legal conflict and integration (2007–2011)' funded by the Danish Council for Independent Research, Social Sciences.

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PART I

Introduction

Comparing two trade liberalisation regimes

SANFORD E. GAINES, BIRGITTE EGELUND OLSEN AND
KARSTEN ENGSIG SØRENSEN

1 Aim of the book

Through the combined efforts of 21 contributing authors, this book broadly compares how the liberalised trade regimes of the European Union (EU) and the World Trade Organization (WTO) function, how they manage a wide range of trade and trade-related topics, and how experiences from one system may benefit trade liberalisation in the other system. Comparing trade liberalisation in the EU and the WTO is, of course, hardly a new idea, so a reader's first question might understandably be: what fresh perspective, what new insights, does this book promise to offer?

We write in 2012, and our timing is not accidental. The first wave of studies comparing the two systems came after dramatic changes in their law and institutional frameworks in the 1990s. It is worth briefly recalling, some 20 years later, just how much each system was transformed in those years.

The changes began in the late 1980s as these organisations, then known as the European Communities and the General Agreement on Tariffs and Trade (GATT), responded to rapid globalisation in production and in commercial relationships. The characteristically European approach to trade liberalisation in the twenty-first century began to take shape with the Single European Act in 1987, which aimed at facilitating the 'completion' of the internal market project by the end of 1992. The deepening economic integration was accompanied by a steady expansion of the internal market as new members joined, and an augmentation of the areas of social and economic responsibility at the European level of government. All of this was codified in the Maastricht Treaty along with a restructuring of the European institutions to match the new scale and complexity of this transformed system, now under the banner 'European Union'. Meanwhile,