



CONSTITUTIONALISM,
MULTILEVEL TRADE
GOVERNANCE AND
SOCIAL REGULATION

EDITED BY
CHRISTIAN JOERGES AND ERNST-ULRICH PETERSMANN

STUDIES IN INTERNATIONAL TRADE LAW

Constitutionalism, Multilevel Trade Governance and Social Regulation

Edited by

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and

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CONSTITUTIONALISM, MULTILEVEL
TRADE GOVERNANCE AND
SOCIAL REGULATION

This is a book about the ever more complex legal networks of transnational economic governance structures and their legitimacy problems. It takes up the challenge of the editors' earlier pioneering works which have called for more cross-sectoral and interdisciplinary analyses by scholars of international law, European and international economic law, private international law, international relations theory and social philosophy to examine the interdependences of multilevel governance in transnational economic, social, environmental and legal relations. Two complementary strands of theorising are expounded: one argues that globalisation and the universal recognition of human rights are transforming the intergovernmental 'society of states' into a cosmopolitan community of citizens which requires more effective constitutional safeguards for protecting human rights and consumer welfare in the national and international governance and legal regulation of international trade. The second emphasises the dependence of the functioning of international markets and liberal trade on governance, arrangements which respond credibly to safety and environmental concerns of consumers, traders, political and non-governmental actors. Enquiries into the generation of international standards and empirical analyses of legalisation and judicialisation practices form part of this agenda.

The perspectives and conclusions of the more than 20 contributors from Europe and North-America cannot be uniform. But they converge in their search for a constitutional architecture which limits, empowers and legitimises multilevel trade governance, as well as in their common premise that respect for human rights, private and democratic self-government and social justice require more transparent, participatory and deliberative forms of transnational 'cosmopolitan democracy'.

Volume 9: Studies in International Trade Law

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Preface and Acknowledgments

This book is a product of two long-term research agendas—and of their co-ordination. One of the editors—Ernst-Ulrich Petersmann—has published extensively on the ‘constitutional functions’ of international trade law, and of their inter-relationships with domestic constitutional laws in Europe and the United States, for the promotion of individual freedom, non-discrimination, rule of law and human rights across national frontiers. The co-editor—Christian Joerges—has, for a long period, undertaken studies on the law’s potential to ensure the social responsibility of the economy, focusing first on issues of social regulation and the safety of products within the EU, and gradually extending the European focus of his research by studies on transnational governance and WTO law. The co-editors joined forces in their common seminar on *Constitutionalising Economic Market Integration and Multilevel Governance in Europe and Worldwide* in 2003/2004 at the European University Institute in Florence, Italy, and received funding from the EUI Research Council for a conference on *Legal Patterns of Transnational Social Regulation and International Trade*. Since January 2003, Christian Joerges and Josef Falke have also been directing a closely related project on *Social Regulation and World Trade* at the University of Bremen, which is part of a broader research project on *Transformations of the State*, financed by the German Science Foundation.¹ The conference on *Legal Patterns of Transnational Social Regulation and International Trade*, organised on 24-25 September 2004 at the EUI, and this conference book resulted from these co-ordinated activities. We benefited substantially from this collaboration with the Research Centre at the University of Bremen and from the interdisciplinary studies undertaken by their political scientists.

The contributions to this book have been revised several times since they were first presented at the interdisciplinary conference in Florence. This book is thus a product of a long-term and ongoing co-operation, rather than a mere collection of conference papers.

We wish to express our gratitude for the financial support we have received from the EUI and, more indirectly, from the German Science

¹ Details at: <http://www.staatlichkeit.uni-bremen.de>

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Christian Joerges and Ernst-Ulrich Petersmann

Florence, January 2006

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Abbreviations

AASB.....	Australian Accounting Standards Board
AB	Appellate Body
ABS.....	Access and Benefit Sharing
ASTM.....	American Society for Testing and Materials International
CAC.....	Codex Alimentarius Commission
CBD.....	Convention on Biological Diversity
CCEXEC.....	Codex (Alimentarius) Commission Executive Committee
CCGP	Codex Committee on General Principles
CCNFSDU.....	Codex Committee on Nutrition and Food for Special Dietary Purposes
CCPR.....	Codex Committee on Pesticide Residues
CFI	Count of First Instance of the EC
CI.....	Consumers International
CITES.....	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Codex	Codex Alimentarius Commission of the FAO/WHO
CSR.....	Corporate Social Responsibility
CTE	Committee on Trade and Environment
CTESS.....	Committee on Trade and Environment Special Session
DC.....	Deliberative-Constitutive
DCIS.....	Democratic Constitutional Interventionist State
DD	Doha Ministerial Declaration
DPG.....	Domestically Prohibited Goods
DSB	Dispute Settlement Body (WTO)
DSU.....	Dispute Settlement Understanding
EC.....	European Community
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECOSOC.....	Economic and Social Council of the United Nations
EEA	European Environment Agency
EFTA	European Free Trade Association
EMIT.....	Environmental Measures and International Trade
EMS	Environmental Management System
EPA	Environmental Protection Agency
EPER.....	European Pollution Emissions Register
EU.....	The European Union
EUI	The European University Institute
FAO.....	Food and Agriculture Organisation

FASB.....	Financial Accounting Standards Board
FTA.....	Free Trade Agreement
GA	General Assembly of the United Nations
GAAP.....	Generally Accepted Accounting Principles
GATS	General Agreement on Trade and Services
GATT.....	General Agreement on Tariffs and Trade
GMO	Genetically Modified Organism
GRI	Global Reporting Initiative
GSP.....	Generalised System of Preferences
IAS.....	International Accounting Standards
IASB.....	International Accounting Standards Board
IASC.....	International Accounting Standards Committee
ICANN.....	Internet Corporation for Assigned Names and Numbers
ICJ.....	International Court of Justice
ICSID.....	International Centre for the Settlement of Investment Disputes
IDF	International Dairy Federation
IGC	Intergovernmental Conference
IGO	International Governmental Organisation
ILO.....	International Labour Organisation
IMF.....	International Monetary Fund
IO	International Organisation
IPPC.....	International Plant Protection Convention
IPU	Inter-Parliamentary Union
ISO	International Standardisation Organisation
ITO.....	International Trade Organisation
JECFA.....	Joint (FAO/WHO) Expert Committee on Food Additives
JEMRA.....	Joint (FAO/WHO) Expert Meetings on Microbiological Risk Assessment
JMPR.....	Joint (FAO/WHO) Meetings on Pesticide Residues
MEA	Multilateral Environmental Agreement
MFN.....	Most Favoured Nation
MNC.....	Multi-national Corporation
MRL.....	Maximum Residue Level
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organisation
NPRI.....	The Canadian National Pollutant Release Inventory Scheme
OECA	Office of Enforcement and Compliance Assurance
OECD	Organisation for Economic Co-operation and Development
OIE.....	Office International des Epizooties (World Organisation for Animal Health)
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PrepCom.....	Preparatory Committee
RA	Risk Assessment

RM	Risk Management
RI	Rational Instrumental
SAI	Social Accountability International
SEC	Securities and Exchange Commission
SPS.....	Sanitary and Phytosanitary (relating to food safety or animal/plant health)
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
STDF.....	Standards and Trade Development Facility
TBT	Technical Barriers to Trade
TCE	Treaty establishing a Constitution for Europe
TRI.....	Toxic Release Inventory
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UK.....	The United Kingdom
UN.....	The United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCED	United Nations Conference on Environment and Development
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UP.....	University Press
US	The United States
WHO.....	World Health Organisation
WIPO	World Intellectual Property Organisation
WTO.....	World Trade Organisation

Introduction and Overview

ERNST-ULRICH PETERSMANN

THIS BOOK SUPPLEMENTS the editors' previous publications on *Transnational Governance and Constitutionalism*¹ and *Legitimacy, Efficiency and Democratic Governance* in the World Trade Organization (WTO)² in order to promote cross-sectoral studies inducing private law, European law and international law experts and political scientists to analyse jointly the ever more complex reality of multilevel governance in transnational economic, social, environmental and legal relations. This Introduction summarises Chapters 1 to 8 in Section I on *International Trade Law: Constitutionalisation and Judicialisation in the WTO and Beyond*, Chapters 9 to 14 in Section II on *Transnational Governance Arrangements for Product Safety*, and Chapters 15 to 17 in Section III on *The WTO and Transnational Environmental Governance*. While this Introduction is written from the perspective of public constitutional and international law, Section IV, by the co-editor Christian Joerges, offers an account of *Constitutionalism in Postnational Constellations* with conclusions from the perspectives of international private and European law. The perspectives and conclusions of the private and public, American, European and international lawyers and political scientists, the authors of the 18 chapters of this book, are inevitably diverse and often focus on particular regulatory problems. This Introduction and the concluding Epilogue draw conclusions concerning the constitutional structures limiting, empowering and legitimising multilevel trade governance. They share the constitutional value premise that respect for human rights, private and democratic self-government and social justice requires more transparent, participatory and deliberative forms of transnational 'cosmopolitan democracy', as well as more legal coherence in multilevel trade governance, so that citizens can

¹ See C. Joerges, I.-J. Sand and G. Teubner (eds), *Transnational Governance and Constitutionalism* (Oxford: Hart, 2004); C. Joerges and C. Godt, 'Free Trade: The Erosion of National and the Birth of Transnational Governance' in S. Leibfried and M. Zürn (eds), *Transformation of the State* (Cambridge: CUP, 2005), at 93–117.

² See E.-U. Petersmann (ed), *Reforming the World Trading System. Legitimacy, Efficiency and Democratic Governance* (Oxford: OUP, 2005). For comparative constitutional, economic and political analyses of trade laws and policies in constitutional democracies in Europe and North America, see M. Hilf and E.-U. Petersmann (eds), *National Constitutions and International Economic Law* (Amsterdam: Kluwer, 1993).