Constitutionalism, Multilevel Trade Governance and Social Regulation

Edited by

CHRISTIAN JOERGES
and
ERNST-ULRICH PETERSMANN

HART PUBLISHING
OXFORD AND PORTLAND, OREGON 2006
Table of Contents

Preface and Acknowledgements ......................................................... v
List of Contributors ....................................................................... xi
Abbreviations ................................................................................ xvi
Introduction and Overview ............................................................... xxi

Section I: International Trade Law: Constitutionalisation and Judicialisation in the WTO and Beyond ........... 1

Section I.1 Constitutionalisation and the WTO: Two Competing Visions from Two Different Disciplines ........ 3

1 Multilevel Trade Governance in the WTO Requires Multilevel Constitutionalism ..................................... 5
Ernst-Ulrich Petersmann

2 Democratic Legitimacy of Transnational Trade Governance: A View from Political Theory .................. 59
Patrizia Nanz

Section I.2 Judicialisation: Empirical Inquiries and Constitutional Concerns ........................................... 83

3 Dispute Settlement under GATT and WTO: An Empirical Enquiry into a Regime Change .................. 85
Achim Helmedach and Bernhard Zangl

4 The Appellate Body's 'Response' to the Tensions and Interdependencies Between Transnational Trade Governance and Social Regulation ........................................... 111
Christiane Gerstetter

Section I.3 Participatory Governance: Emerging Patterns and their Juridification ................................... 133

5 Why Co-operate? Civil Society Participation at the WTO ................................................................. 135
Jens Steffek and Claudia Kissling

6 Participatory Transnational Governance ........................................ 157
Section I.4 Legalisation Patterns outside the WTO ..............197

7 Non-Traditional Patterns of Global Regulation:
Is the WTO 'Missing the Boat'? ....................................199
Joost Pauwelyn

8 Conflicts and Comity in Transnational Governance:
Private International Law as Mechanism and Metaphor for
Transnational Social Regulation through Plural Legal Regimes .229
Robert Wai

Section II: Transnational Governance Arrangements for
Product Safety .....................................................263

Section II.1 Food Safety Regulation: the SPS Agreement and the
Codex Alimentarius ...............................................265

9 Fixing the Codex? Global Food-Safety Governance
Under Review ......................................................267
Thorsten Hüller and Matthias Leonhard Maier

10 The Precautionary Principle in Support of Practical Reason:
an Argument Against Formalistic Interpretations of
the Precautionary Principle ......................................301
Alexia Herwig

11 Beyond the Science/Democracy Dichotomy: The World Trade
Organisation Sanitary and Phytosanitary Agreement and
Administrative Constitutionalism ................................327
Elizabeth Fisher

12 Administrative Globalisation and Curbing the Excesses
of the State ......................................................351
Damian Chalmers

Section II.2 The TBT Agreement and International
Standardisation ..................................................381

13 A New Device for creating International Legal Normativity:
The WTO Technical Barriers to Trade Agreement and
'International Standards' .......................................383
Robert Howse

14 The Empire's Drains: Sources of Legal Recognition of Private
Standardisation under the TBT Agreement .................397
Harm Schepel
<table>
<thead>
<tr>
<th>Section III</th>
<th>The WTO and Transnational Environmental Governance</th>
<th>411</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td><strong>Global Environmental Governance and the WTO:</strong> Emerging Rules through Evolving Practice: The CBD-Bonn Guidelines</td>
<td>413</td>
</tr>
<tr>
<td></td>
<td>Christine Godt</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td><strong>Environmental Policies and the WTO Committee on Trade and Environment: A Record of Failure?</strong></td>
<td>437</td>
</tr>
<tr>
<td></td>
<td>Ulrike Ehling</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td><strong>Facing the Global Hydra: Ecological Transformation at the Global Financial Frontier: The Ambitious Case of the Global Reporting Initiative</strong></td>
<td>459</td>
</tr>
<tr>
<td></td>
<td>Oren Perez</td>
<td></td>
</tr>
<tr>
<td>Section IV</td>
<td><strong>Epilogue</strong></td>
<td>489</td>
</tr>
<tr>
<td>18</td>
<td><strong>Constitutionalism in Postnational Constellations: Contrasting Social Regulation in the EU and in the WTO</strong></td>
<td>491</td>
</tr>
<tr>
<td></td>
<td>Christian Joerges</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Index</strong></td>
<td>529</td>
</tr>
</tbody>
</table>