Regulating for Globalization

Trade, Labor and EU Law Perspectives

Journal Highlights: Global Trade and Customs Journal 2017

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We wanted to draw your attention to some interesting articles about the topics of the Regulating for Globalization blog that appeared in the *Global Trade and Customs Journal* in 2017:

Lorand Bartels, 'The UK's WTO Schedules' (2017) 12, Issue 3

This article argues that the EU's GATT and GATS schedules are binding on the UK in its own right, in respect of UK territory, and will continue to be binding on the UK following Brexit. Establishing a new schedule is straightforward except for a small minority of commitments expressed in quantitative terms. Determining the UK's share of these quantities depends on identifying the correct legal principle, and this would be best done by the agreement of any affected exporting WTO Members. If such agreement fails, however, the UK's obligations are limited to compensation for any trade damage, set against the benchmark of its existing commitments. Any such damage is likely to be slight, and relatively easily compensable. In other words, the UK's position in the WTO post-Brexit is much more secure than many have said.

Christian Häberli, 'Brexit Without WTO-Problems: For the UK? The EU? Global Business?' (2017) 12, Issue 3

Among the responses to the Brexit Referendum result on 23 June 2016 one issue was noticeably absent: the implications from a WTO perspective. Leaders have tried to reassure the world that the UK would be at least as good a WTO Member as during its 43 years under the EU umbrella. Some have argued that, the UK could simply take back its place which it had partly relinquished upon its accession to the EU in 1973. Instead, a UK divorce from the EU will inevitably require a re-balancing of the rights and obligations under the traffic rules of the WTO. Taking the examples of country-specific agricultural import quotas and of farm subsidy limits, it shows that farmers and businesses will find different market access rights after Brexit. Even a remote possibility of impairments will lead other club members to safeguard their own rights when signposts are shifted. The key question then is in the procedure for handling claims of reduced access opportunities: does the consensus principle imply that anybody can block any change in that balance?

Michael Lux, Eric Pickett, 'The Brexit: Implications for the WTO, Free Trade Models and Customs Procedures' (2017) 12, Issue 3

Following the vote of British people in favour of the UK leaving the EU (so-called Brexit) there was much discussion and confusion about the future relationship between the UK and the EU, as well as the future trade relations between the UK and third countries. In Feb. 2017 the UK Government issued a White Paper which has clarified its position and was the basis for the vote in the Parliament to trigger the negotiations with the EU. According to that paper the UK will pursue a new strategic partnership with the EU, including 'an ambitious and comprehensive Free Trade Agreement (FTA) and a new customs agreement'. Furthermore, the UK wants to take advantage of the opportunity to negotiate its 'own preferential trade agreements around the world'. Based on these assumptions, this article will first describe the withdrawal process, and then the status of the UK in the WTO after the Brexit. Finally, the consequences of the available options for customs and trade policy matters will be addressed, in particular for economic operators in the UK and the EU, who will bear the main burden of the forthcoming changes.

Tobias Dolle, David Leys, 'The Trade and Customs Law Consequences of *Brexit*' (2017) 12, Issue 3

Businesses are encouraged to take a pro-active stand to understand, assess and monitor the trade and customs consequences of Brexit on the UK, on the EU and on their bilateral, plurilateral, regional and multilateral trade relations. The lengthy and complex process of negotiation and re-negotiations that will affect the EU and the UK looks poised to result in many commercial risks and opportunities for traders.

Clifford Sosnow, Alexandra Logvin, Kevin Massicotte, 'The Brexit Vote: Its Impact on the Canada-EU Comprehensive Economic and Trade Agreement and UK's Obligations Under Comprehensive Trade and Economic Trade Agreement' (2017) 12, Issue 3

With the United Kingdom's (UK) announcement of its withdrawal from the European Union (EU), questions have arisen with respect to the applicability of the Comprehensive Trade and Economic Trade Agreement (CETA) between the EU and Canada to UK-Canada trade and investment before the UK's withdrawal is complete. This article concludes that until such withdrawal, and pending appropriate approvals in both the EU and Canada, the CETA will apply provisionally to Canada and UK trade. While the exact boundaries of provisional application are not clear, the EU commission believes that other than a very limited set of mostly investment related provisions, provisional application would be extensive. Once the UK withdraws from the EU, the CETA will no longer apply to the UK. CETA is regarded as a high quality free trade agreement. This article concludes that as the UK has already agreed to the terms of the CETA, should both Canada and the UK wish, the path is available to them to have CETA function as template for a Canada-UK Free Trade Agreement. Although these negotiations may not formally commence while CETA provisionally applies to the UK and it is an EU Member State, Canada and the UK can conduct information discussions to map out areas for inclusion in a free trade agreement and the use, or not, of the CETA provisions as a basis for such agreement.

Ian Laird, Flip Petillion, 'Comprehensive Economic and Trade Agreement, ISDS and the Belgian Veto: A Warning of Failure for Future Trade Agreements with the EU?' (2017) 12, Issue 4

The recent free trade negotiations between the EU and Canada have provided a cautionary tale for the future of international trade involving the EU. Investor-State dispute settlement (or 'ISDS') has been a contentious element of EU negotiations and has been supplanted in the Comprehensive Economic and Trade Agreement (or 'CETA') by a new international investment court model. In the fall of 2016, the new investment court and regional politics involving Belgium became a flash point in the final stage of the signing of CETA. Although the Agreement was signed on 30 October 2016, the authors examine the question whether the continuing headwinds faced by CETA sends a message that all future trade agreements with the EU may experience similar problems.

Eric White, 'The Obstacles to Concluding the EU-Canada Comprehensive Economic and Trade Agreement and Lessons for the Future' (2017) 12, Issue 5

This article examines three issues arising out of the EU-Canada Comprehensive Economic and Trade Agreement and puts forward suggestions as to how they may be avoided in future EU agreements. The three issues are the participation of EU Member States as parties to such agreements ('mixity'), the goal of regulatory convergence and the provision of an investor-state dispute resolution mechanism.

Pablo Muñiz, 'Challenging the Validity of EU Customs Measures Before the Court of Justice of the EU: Please Use the Back Door' (2017) 12, Issue 6

The Treaty on the Functioning of the European Union introduced a new admissibility test to determine when economic operators are able to challenge the validity of EU acts of general application, such as EU customs-related measures, 'directly' before the Court of Justice of the EU ('action for annulment'). Prior to the introduction of this new test, the position in practice was that economic operators had to challenge EU measures of general application 'indirectly'. An 'indirect challenge' was made by bringing an appeal against national measures applying the EU act, before the court of an EU Member State, which could then refer a question on the validity of the underlying EU measure to the Court of Justice of the EU ('request for a preliminary ruling'). This article examines the case law of the Court of Justice of the EU concerning the application of the new admissibility test to EU customs-related measures between 2011 and the first half of 2017. The author takes the view that the new test has unfortunately been interpreted in an overly restrictive manner, thus continuing to deny economic operators direct access to the Court of Justice in customs-related cases. The author also examines how economic operators will need to proceed in order to challenge the validity of EU customs measures.

Timothy Lyons BL, 'Commentary: Customs Union: EU Foundation Stone, Brexit Stumbling Stone' (2017) 12, Issue 9

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This entry was posted on Tuesday, May 1st, 2018 at 1:07 pm and is filed under Brexit, Canada, The Court of Justice of the European Union (CJEU) is an EU institution that was established in 1952 and has its seat in Luxembourg. The CJEU consists of the Court of Justice, that deals inter alia with preliminary references, and the General Court, that handles various actions for annulment. The main task of the CJEU is interpreting EU law, thereby making sure that it is applied uniformly in all Member States. Moreover, it settles legal disputes between Member States and EU institutions, such as the European Commission.“>CJEU, EU, EU law is the body of law, consisting of primary and secondary legislation, that relates to the European Union. Primary legislation most importantly refers to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Secondary EU legislation, such as Directives and Regulations, is based on the principles and objectives as laid down in the Treaties (TEU and TFEU).“>EU Law, Free Trade Agreement, Journal Highlights, Trade Law, UK, WTO
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