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In this paper the author deals with the legal possibilities for non-Member States to gain access to the internal market of the European Union. In particular, a comparison is made between Switzerland - which was never part of the Union - and the UK, which after almost 50 years of membership has decided to leave the EU and will soon take the place of another third country. Although Switzerland recently rejected participation in the EEA in a referendum, it is one of the best integrated countries in Europe: more than 150 treaties exist between Switzerland and the EU; Switzerland implements many directives autonomously faster and better than most Member States, which means that Switzerland now enjoys advantages normally reserved for Member States. In contrast, the UK is leaving the EU, and although it is trying to „have the cake and eat it too“, it is likely to fall out of the internal market. The author therefore explores various ways in which products from the UK could regain access to the internal market after Brexit. He also describes how Brussels regulates and supervises the economic activities of third countries through so-called "equivalence clauses" - after the principle "If what you do has an effect on us then our law will apply". In this way, too, the UK will remain influenced by EU law after Brexit as a trading partner of the EU-27 - but without the possibility of legislative participation in it.

Thomas Cottier, The Changing Structure of International Trade Law

Trade policy evolved in different regulatory generations, from tariffs to domestic legislation and what are called “behind-the-border-issues” (BBIs). They are predominant today due to enhanced global value chains and trade in components, calling for harmonization of international product standards and related regulations which traditionally pertain to the prerogative of parliament in domestic law. The changing structure of international trade law calls, as a corollary, for more inclusive modes of negotiations which the paper discusses under the heading of “front-loading” trade policy making in the European Union. Upon discussing the US Trade Act, the paper suggest to adopt a European Trade Act in the EU which secures early input of the European Parliament, of civil society and national parliaments in defining the scope and goals of EU trade policy prior to defining a specific mandate and to engaging international negotiations.

Maria Meng-Papantoni, Legal Issues Regarding The Representation of the Euro Area In The International Monetary Fund (IMF)

Almost 20 years following the introduction of the euro as the official currency of member countries of the euro area, representation thereof is still not unified in the International Monetary Fund (IMF). This paper analyses the interaction between the European Union’s rules on external representation at international organisations, based on the internal allocation of competences in view of the creation of the Economic and Monetary Union (EMU), and IMF rules laying down the regime governing its Members’ representation within it. It also brings up the existing representation of the EU/euro area at IMF bodies and presents its shortcomings. In 2015, the European Commission adopted a new proposal for a Council Decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund. This paper also examines institutional issues that arise, in order for euro area representation in the IMF to be unified. It looks into the question whether the euro area may become an IMF member, as well as into the inescapable issues that may ensue with regard to the
Harald Hohmann, Freedom of Exporting in Germany: At the Discretion of Courts and Export Agency BAFA? Some Recent Trends

By the help of two cases, the author demonstrates the impact of the Constitutional freedom of trade: In the Protective Vests Case, if BAFA/Courts were forced to answer the detailed questions of the User’s Guide, the answers concerning repression goods/repression country would very likely have been different; but the Court decided, that this EU document may not limit the discretion of BAFA. In the Iran Case, a narrow interpretation of the Iran list position was required, due to the conflict with international law: Lack of justification by Art. XXI c GATT, there was violation of Art. XI GATT (individual protection under Nakajima) and of national/EU rights of freedom of trade; but the Court decided, that such a Constitutional interpretation cannot be done due to the clear wording of the Iran list position. Nevertheless, the author remains optimistic concerning the freedom of trade: in the last years, there are ca. 5 or more cases per year, in which the exporter lodges a law suit against BAFA for denial of export licenses (instead of a symbolical importance in the sixties); however, all must agree, that only a concrete danger justifies an intervention into this basic right (an abstract danger is sufficient only in case of compensation for the intervention or for danger investigations). Important would be to eliminate a very generous interpretation of foreign affairs risks, and to use the examining competence and applying established principles of administrative, Constitutional and international law, as already Prof. Meng has pointed out.

Ernst-Ulrich Petersmann, The Trade Wars of President Trump as a Threat to the Rule of Law and to Constitutional Democracy

Section I describes US President Trump’s assault on the multilateral trading, legal and dispute settlement system, for instance through systemic violations of the law of the World Trade Organization (WTO) and by withdrawal from related, multilateral trade and environmental agreements. Section II explains why US constitutionalism, US trade legislation, and American neo-liberalism fail to prevent congressional, executive and judicial governance failures undermining the rules-based world trading system, for instance through discriminatory, illegal import taxes and ‘blocking’ of the WTO Appellate Body system by the US Trump administration. Section III explains why – in spite of the EU’s multilevel constitutionalism and ‘cosmopolitan foreign policy constitution’ - also EU trade diplomacy lacks effective democratic, legal and judicial accountability for non-transparent trade negotiations disregarding fundamental rights of EU citizens and the collective WTO legal obligations to protect the WTO Appellate Body (AB) as legally prescribed in Article 17 of the WTO Dispute Settlement Understanding (e.g. as being ‘composed of seven persons’, with vacancies being ‘filled as they arise’). Section IV concludes that the WTO objectives of non-discriminatory conditions of trade and transnational rule of law for ‘sustainable development’ require not only additional democratic legislation limiting intergovernmental power politics violating international agreements approved by parliaments for the benefit of citizens. Multilevel governance of transnational public goods – like poverty reduction through global division of labor, promotion of sustainable development, and ‘providing security and predictability to the multilateral trading system’ based on WTO law (Article 3 Dispute Settlement Understanding) - must also use the existing regulatory powers
under Article IX WTO Agreement for majority decisions (e.g. on the filling of the currently four AB vacancies) and for plurilateral agreements limiting the ‘governance failures’ in the consensus-based Doha Round negotiations in the WTO since 2001.

Marc Bungenberg, Small tensions: EU state aid and international investment law

EU state aid law and international investment law seem to be inextricably contradictory, as recent practice suggests. EU state aid legislation does not regulate how it intends to deal with international investment protection issues – and vice versa. In bilateral investment protection treaties, the treatment of state aid in the broader sense is not regulated at all, inconsistently or even partially contradictorily. Therefore, potential conflicts seem to be unavoidable. There are substantive conflicts of judgements as well as procedural head-on collisions. In that process, a frequently raised question is whether European commercial law is being upset by international law – or the other way around. This contribution highlights the problems and areas of tensions currently existing.