

President's Corner

What (Not) to Expect from MC12?

Peter Van den Bossche

The WTO Ministerial Conference (MC12) is in less than one month from now and success is all but certain. Members are working hard on a number of important issues in both multilateral and plurilateral mode. However, those of us who were lucky enough to participate on site in the WTO Public Forum in September and were privileged to have in-person contacts with delegates could not fail to notice a growing fear that things might go terribly wrong at MC12.

An agreement on fisheries subsidies is within reach, but not yet a done deal. The most troubling issue still to be resolved is special and differential treatment for developing country Members. Last week, India tabled a proposal to exempt, for a period of 25 years, developing country Members. However, the (sixth) draft agreement circulated a few days ago, gives us good hope that there is sufficient willingness to (and room for) compromise.

Many, both inside and outside the WTO, see the successful conclusion of the fisheries subsidies negotiations as the litmus test for the relevance of the WTO as a forum for multilateral trade negotiations in the years to come. Obviously also high on the WTO's agenda is the role of trade and trade rules in managing and recovering from the COVID-19 pandemic. To date, the pandemic has already claimed more than 4.5 million lives worldwide. It is essential for the WTO's credibility that WTO Members agree at MC12 on a strong response to the COVID-19 pandemic, including measures to accelerate the production of and ensure worldwide access to vaccines.

As DG Ngozi Okonjo-Iweala said at the opening of the WTO Public Forum: 'The longer vaccine inequity is allowed to persist, the greater the chance that even more dangerous variants of COVID- 19 will emerge, setting back the health and economic progress we have made to date'. Let us hope that on the trade-related aspects of the COVID-19 pandemic, MC12 is able to produce more than a statement of good intentions. On other multilateral issues demanding the urgent attention of the WTO, I note that there is still no consensus on an extension of the moratorium on customs duties on electronic transmissions, and that on carbon border adjustment we should probably already be satisfied if MC12 can agree on some future work programme

Can one expect MC12 to be more successful on the plurilateral front? Perhaps. On 27 September, 65 WTO Members concluded their negotiations on the 'Reference Paper on Services Domestic Regulation'. The Members involved intend to adopt this plurilateral agreement at the Ministerial Conference and subsequently incorporate the Reference Paper in their respective GATS schedules.

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However, it is argued by some Members and academics that such incorporation is not appropriate, given that the Reference Paper does not set out market access commitments in the narrow sense, but rather provides for rules on licensing and qualification requirements and related procedures as well as technical standards for services.

The launch of the negotiations on domestic regulation of services was one of the Joint Statement Initiatives (JSIs) decided on at the Buenos Aires Ministerial Conference in December 2017. Among the other JSIs launched in Buenos Aires were also the negotiations on investment facilitation for development (IFD). It has been reported that much progress has been made also in these negotiations and that an agreement at MC12 is within reach. The big question here is whether a future IFD Agreement will be applied on an MFN basis.

The ongoing JSI negotiations on e-commerce, on the other hand, are much less likely to produce any concrete results by this year's Ministerial Conference. Progress has undoubtedly been made in these negotiations that now involve 87 Members.

On the negotiating table is a 91-page stock-taking text, produced by Australia, Japan and Singapore. This text looks already a bit like an agreement, but has many alternative text options and much bracketed text in it. Any deal is still far off as the differences between the United States, the European Union and China on issues such as the protection of privacy, cybersecurity and IT network market access are very substantial. The WTO Members participating in these negotiations may, nevertheless, be able to announce at MC 12 an agreement on less controversial, 'technical' issues such as rules on SPAM and digital signatures.

However, the biggest problem for all JSI negotiations and the agreements that would result from them is that their WTO legality is strongly challenged by some developing country Members. India and South Africa, in particular, argue that the WTO should only be involved in JSI negotiations which have been mandated by the whole membership and that agreements eventually resulting from JSIs can only be added to Annex 4 of the WTO Agreement by consensus. If the Members currently involved in JSI negotiations will seek to agree on future work programmes for these negotiations or seek to adopt agreements at MC12, the dispute on the legal status of JSI negotiations and their outcome may well derail the meeting.

The challenges facing the WTO in the run-up to, at and after MC12 are daunting. It is fortunate that global trade is recovering faster than expected, but it is important to note that it does so in an unequal manner, leaving behind many developing countries. Dark clouds continue to hang over global trade and the multilateral trading system. While the Biden administration has in recent weeks indicated its willingness to talk about the reform of the Appellate Body, it continues to block the process for the appointment of new Appellate Body members. The crisis of the WTO dispute settlement system will therefore persist.

The Biden administration has also announced its intention to continue the Trump policy on trade with China. The US/China trade war will thus rage on unabated. This of course makes a successful MC12 all the more important for the future of the multilateral trading system.

The clock is ticking ... mercilessly!

Peter Van den Bossche

11 November 2021



Anna-Alexandra Marhold

How did you become involved in SIEL?

I have been attending SIEL events (both PEPA and regular) for several years now, and always found them very valuable, a true outlet for academics and practitioners in the field. In 2017, I decided to organise the SIEL/PEPA conference on the theme of law and economics and it was a very gratifying experience to see so many young scholars from both disciplines interact.

Why did you become interested in serving on the Executive Council?

An Executive Council member and former colleague of mine from the EUI, Johanna Jacobsson, brought this possibility to my attention. It seemed like wonderful opportunity to become more involved in SIEL. The last in-person conference in Washington DC in the summer of 2018 was what really did it for me: what a great event! Thought-provoking panels, great organisation, and fun! So far, the cooperation with other Executive Council Members and the Board has been very productive, inspiring and running smoothly. You can see that all the members really enjoy contributing to SIEL.

What are the main projects on which you would like to work in your new role?

I think it is important to emphasize the interdisciplinarity of international economic law, acknowledging its connections to economics and political science, but also to firmly place SIEL on the map of public international law scholars. I want to ensure that SIEL’s work has a wide reach, not only geographically, but also thematically, so to say.

Apart from your service for SIEL, what kind of work do you do?

I am an Assistant Professor at the Grotius Centre of Leiden Law School in the Netherlands. In that capacity I do research, teach and participate in other academic activities in the area of international economic law and international public law. For instance, I convene my own International Trade Law course in the Advanced LLM Programme in International Dispute Settlement and Arbitration (IDSA) and in the Duke-Leiden Summer Programme. Aside from my appointment in Leiden, I am also a Visiting Professor at Vermont Law School, where I teach a bi-annual course on EU Energy Law and Policy. In the framework of the WTO-Netherlands Trainee Programme (NTP), I in addition teach public officials from developing and least developed countries on topical WTO issues.



Yuka Fukunaga

How did you become involved in SIEL?

It might sound strange, but it is not very common for researchers in our country to speak at international conferences or publish in international journals, possibly because of language barriers. So, as a junior scholar, it was a little difficult for me, to figure out how to make an “international debut.” However, I was fortunate to be given an opportunity to speak at the SIEL inaugural conference in Geneva in 2008. That experience gave me the confidence and reassurance to explore more opportunities outside the country. Since then, I have participated in several SIEL biennial conferences and other events.

Why did you become interested in serving on the Executive Council?

To be honest, I was initially not very interested in joining the Executive Council. I was satisfied just by participating in SIEL events. However, in the last couple of years, I have undertaken administrative positions in other academic organizations and have become interested in not just participating in events but also organizing them. Besides, some of my friends and colleagues were actively engaged in organizing SIEL events as Executive Council members, and I was extremely inspired by their dedication.



What are the main projects on which you would like to work in your new role?

First, I would like to assist SIEL in expanding its global reach. From my own experience, I believe there are many scholars and practitioners who are eager to participate in the global community of international economic law but are unsure how to do so. Second, I hope to contribute to the development of new and innovative approaches to promote academic and professional activities in SIEL in the post-COVID-19 era. As already announced, the SIEL 2023 Biennial Conference will be held in a hybrid format, and we will need out-of-the-box thinking to make it a success. I am on the venue committee for SIEL 2023, and finding the right venue will be one of my first responsibilities as an Executive Council member!

Apart from your service for SIEL, what kind of work do you do?

I am a professor at Waseda University in Tokyo. I am currently pursuing a fellowship at the Lauterpacht Centre for International Law in Cambridge. I have several ongoing research projects, many of which are related to international trade and investment dispute settlement. One of them is sponsored by a generous grant from the Japan Society for the Promotion of Science, and I am hoping to organize a conference in 2022 focusing on the future of international economic dispute settlement.

Publications

Anna-Alexandra Marhold, *Energy in International Trade Law: Concepts, Regulation and Changing Markets* (Cambridge: Cambridge University Press, 2021).

Amrita Bahri, **Weihuan Zhou** and **Daria Boklan** (eds), *Rethinking, Repackaging and Rescuing World Trade Law in the Post-Pandemic Era* (Oxford and Portland, Oregon: Hart Publishing, 2021).

Fabio Costa Morosini and **Laura Martins Miller**, *A Entrada do Brasil na OCDE e Seus Acordos de Investimento: oportunidades para promoção de investimento direto de baixo carbono*. Boletim de Economia e Política Internacional-BEPI. N. 28. Set./Dez. 2020.

G.M. Vaccaro-Incisa, *China's treaty policy & practice in international investment law & arbitration* (BRILL, 2021).

Marina Sanches Wünsch and **Fabio Costa Morosini**, *Acordos de Investimento e a Difusão das Ideias de Responsabilidade Social Corporativa: apontamentos críticos a partir do modelo brasileiro*. Boletim de Economia e Política Internacional-BEPI. N. 29. Jan./Abr. 2021.

Michelle Ratton Sanchez-Badin and **Fabio Morosini**, 'International Economic Law by other means: A three-level matrix of Chinese investments in Brazil's electric power sector', (2021) 62 Harvard International Law Journal.

Pasha L. Hsieh, *New Asian Regionalism in International Economic Law* (Cambridge University Press – online 2021; print 2022)

Philippe De Baere, **Clotilde du Parc**, and **Isabelle Van Damme**, *The WTO Anti-Dumping Agreement - A Detailed Commentary* (Cambridge: Cambridge University Press, 2021).

Suresh Nanwani, *Organization and Education Development: Reflecting and Transforming in a Self-Discovery Journey* (Hard copy) (Open access) (Routledge, London, 2022).

Susan Isiko Štrba, World Health Organization: Contributions to Access to Health and TRIPS Agreement Discourse, in Srividhya Ragavan and Amaka Vanni (eds) *Intellectual Property Law and Access to Medicine: TRIPS Agreement, Health, and Pharmaceuticals* (Routledge, London, 2021).

Weihuan Zhou, **Amrita Bahri** and **Daria Boklan**, 'Introduction: Rethinking, Repacking and Rescuing World Trade Law' in Amrita Bahri, Weihuan Zhou and Daria Boklan (eds.) *Rethinking, Repackaging, and Rescuing World Trade Law in the Post-Pandemic Era* (Oxford and Portland, Oregon: Hart Publishing, 2021) 1-13.

Weihuan Zhou, 'Rethinking the (CP)TPP As A Model for Regulation of Chinese State-Owned Enterprises', (2021)24(3) Journal of International Economic Law 1-19 (Advance).

The TaPP Network

The TaPP Network aims to connect academic researchers with civil servants, parliamentary researchers, journalists, and others looking for expert input on UK trade policy. The aim is to increase the breadth and depth of evidence available to decision-makers in UK policy and help improve the quality of the public debate. You can find out more about the TaPP Network *here*.



SIEL/JIEL/OUP Essay Prize

The 2021-2022 edition of the SIEL/JIEL/OUP Essay Prize competition is open for all current undergraduate and graduate students of any university or other tertiary education institution, and those who have graduated no earlier than five years before the submission deadline. Deadline for submissions: Monday 28 February 2022. More information available *here*.

SIEL-Hart Prize

The SIEL-Hart Prize is awarded every two years to an outstanding unpublished manuscript by an early career scholar in the field of International Economic Law and is sponsored by Hart Publishing and the Society of International Economic Law. Deadline: Wednesday 1 December 2021. More information available *here*.

Important Dates

1 **SIEL Annual General Meeting**

The 2021 Annual General Meeting will take place on 17 December 2021.

2 **SIEL Elections**

The SIEL Nominating Committee seeks nominations of SIEL members to fill a number of SIEL Executive Council positions, and positions as President, Executive Vice-President, Treasurers (2x), and Secretary. These positions will be filled by vote of the members at the 2021 Annual General Meeting. Please send nominations or self-nominations by 15 November 2021 to the Secretaries of SIEL, *Weihuan Zhou* and *Amy Porges*.

3 **Call for venues for the SIEL 2023 Global Conference**

SIEL is seeking a suitable venue and institutional host for the Eighth Biennial SIEL Conference, to be held in July 2023. This Call for Venues is open to all institutions. Proposals from interested institutions should be submitted by 30 November 2021 to *siel2023@gmail.com* with copies to *Gracia Marin-Duran*; *Yuka Fukunaga*; and *Fabio Morosini*. More information available *here*.

SIEL Governance

Officers: Peter Van den Bossche (President); Isabelle Van Damme & Markus Wagner (Executive Vice-Presidents); Maria Laura Marceddu & Franziska Sucker (Treasurers); Weihuan Zhou & Amelia Porges (SIEL Secretaries).

Executive Council: Olabisi D. Akinkugbe, Padideh Ala'i, Freya Baetens, Gracia Marín Durán, Ilaria Espa, Yuka Fukunaga, Pasha L. Hsieh, Johanna Jacobson, Susan Isiko Štrba, Johanna Jacobsson, David Kleimann, Jaemin Lee, Anna-Alexandra Marhold, Fabio Morosini, Suresh Nanwani, Maria J. Pereyra, Susan Isiko Strba, Andreas R. Ziegler.

Newsletter Editors

Susan Isiko Štrba
Johanna Jacobsson
Victor Saco

Should you wish to include an item in the next SIEL newsletter, please *contact us*.