



## **Workshop of the ESIL Interest Group on International Economic Law**

**Vienna, 3 September 2014**

**Law School of the University of Vienna ("Juridicum")  
Schottenbastei 10-16  
1010 Vienna**

hrs 9,30 - 18

h. 9,30

### **Panel 1 - Preferential Trade Agreement and Global Trade**

*Chair: Andreas Ziegler, Université de Lausanne*

The EU's Trade Agreements in the Field of Services: the Level of Liberalization through the Lens of WTO Law, Johanna Jacobsson (EUI & Finnish Institute of International Affairs) (20')

Overcoming Low Preference Utilization in RTAs: Presumption of Origin for Small Shipments, Dan Ciuriak and Derk Bienen (BKP Development Research & Consulting GmbH, Munich) (20')

*Discussant: (15') Peter-Tobias Stoll, Georg-August-Universität Göttingen*

h. 11,15

### **Panel 2 - The EU Draft Investment Treaty Model and Recent Developments: A Change in Paradigm of International Investment Law?**

*Chair: Marina Trunk-Fedorova, Christian-Albrechts Universität zu Kiel*

Towards A New Generation of European Investment Agreements, Catharine Titi (Université Panthéon Assas Paris II) (20')

The EU as an actor in investor –state dispute settlement: Which rules of responsibility for the EU and its Member States?, Andrés Delgado Casteleiro (Durham Law School) (20')

New Paradigms and Remnants of the Past: Assessing co-existence over unity, Odysseas G. Repousis (University of Hong Kong - HKU) (20')

*Discussant: (15') Peter-Tobias Stoll, Georg-August-Universität Göttingen*

h. 14

**Panel 3 – Non-Commercial Values in WTO and Investment Law**

*Chair:* Laurence Boisson de Chazournes, *Université de Genève*

The International Covenant on Economic, Social and Cultural Rights in the WTO: A Legal and Empirical Analysis, Holger P. Hestermeyer (Court of Justice of the European Union) (20')

Balancing commercial and non-commercial values in international investment treaties, Caroline Henckels (University of New South Wales) (20')

Jurisdiction and Host State Values in Investment Arbitration, Emily Sipiorski (Martin Luther University, Halle-Wittenberg) (20')

*Discussant:* Elisa Baroncini, *Alma Mater Studiorum – Università di Bologna* (15')

h. 15,45

**Panel 4 - Non-Commercial Values in WTO and Investment Law – Some Relevant Case-Studies**

*Chair:* Friedl Weiss, *Universität Wien*

L'évolution de l'interprétation de la notion de moralité publique à l'Organisation mondiale du commerce par le différend sur les produits dérivés du phoque, Kristine Plouffe-Malette (Université de Sherbrooke, Québec) (20')

Beyond Export Restrictions: Resource Nationalism, Promotion of Renewables and Climate Change in the New Trade and Environment Disputes before the WTO, Ilaria Espa (World Trade Institute, Berne) (20')

Overcoming the Resource Curse - Reducing Poverty by Making Mining More Transparent, Lars Schönwald (University of Passau) (20')

*Discussant:* Giovanna Adinolfi, *Università degli Studi di Milano* (15')

## Short Bios of Speakers, Chairs, and Discussants

**Giovanna Adinolfi** is associate professor of International Law at the University of Milan. Graduated in Economics at the University of Naples, in 1998 she obtained the Ph.D. in International Economic Law at the University of Bergamo (Italy), and her thesis was later published in 2001. In 1999 she won a post-Ph.D. grant at the University of Milan, under a research project on “International Trade Relationships and Anti-trust Regulation”, whose results were published in 2002. Researcher, and then associate professor, as from 2002, at the University in Milan, Giovanna teaches International Economic Law at her university, and International Monetary and Financial Law at the Bocconi University in Milan, for the Ph.D. programme in Legal Studies. She has published widely on international trade and WTO law, international monetary and financial law, and international institutional law. Her latest publications are focused on the legal scope of the IMF policy of conditionality, the relevance of human rights protection in international trade and financial law, the jurisdiction immunity of sovereign wealth funds under international law, and international disaster response law.

**Elisa Baroncini** is Aggregate Professor of International Law at the School of Law of the University of Bologna. She has also been Visiting Fellow at the Law Department of the European University Institute in Fiesole, she is Associate Research Fellow at the Leuven Centre for Global Governance Studies, and Visiting Professor in EU Trade Law at the China-EU School of Law in Beijing. Currently Co-Chair of the ESIL IG on International Economic Law, together with Marion Panizzon and Peter-Tobias Stoll, Elisa holds a cum laude Bologna Law Degree and a PhD in EU Law, and obtained the national scientific habilitation as Associate Professor in the sector 12 E/1 (International Law and EU Law) from the Italian Ministry for Research and University (24 January 2014). She has been and is member and supervises various international research projects. Her main fields of research include: WTO Law (the TBT Agreement in the WTO dispute settlement system; the consumers' right to information in the WTO system; WTO-plus obligations; China in the WTO dispute settlement system; WTO and climate change issues); transparency in International Economic Law; and the law of EU external relations (EU/China relations; EU/China investment negotiations; the treaty-making power of the European Commission; the European Parliament and international agreements; the delegations of the European Union).

**Derk Bienen** is Managing Partner of BKP Development & Research GmbH, a German research and consulting firm specialising in trade, investment and competition issues, and Honorary Associate Professor at Addis Ababa University's Department of Economics. He holds a PhD in Economics from the University of Göttingen (Germany) and also studied Economics and Political Science at the University of Tübingen (Germany) and the University of the Andes in Mérida (Venezuela). Derk has published in a variety of academic journals on international trade and investment issues. Most recently, he has been co-editor of the *Guide to International Anti Dumping Practice*, published by Kluwer.

**Laurence Boisson de Chazournes**, President of the European Society of International Law, has been Professor of International Law and International Organizations at the Law Faculty of the University of Geneva since 1999. A Senior Jean Monnet Fellow with NYU Law School in 2013, she is invited as guest lecturer in numerous universities. She is a member of the UN Human Rights Council Advisory Committee. In the field of dispute

settlement Laurence Boisson de Chazournes has served as arbitrator and has pleaded before the ICJ. She is a member of the Permanent Court of Arbitration.

**Dan Ciuriak** is Director and Principal, Ciuriak Consulting Inc. (Ottawa), Research Fellow with the CD Howe Institute (Toronto), and Associate with BKP Development Research & Consulting GmbH (Munich). Previously, he was Deputy Chief Economist at the Department of Foreign Affairs and International Trade.

**Andrés Delgado Casteleiro** works as lecturer in Durham Law School since October 2011. He holds a PhD in Law from the European University as well as a Law degree from the Universidad Carlos III de Madrid, Spain. Andrés has been a visiting lecturer at the University of Utrecht, Netherlands (2011) and at the Universidad Pontificia de Comillas - ICADE, Madrid, Spain (2001 - 2012). He is currently a member of the Centre for the Law of EU External Relations (CLEER), The Hague, Netherlands. He has also been a trainee at the Legal Service of the European Commission (External Relations Team), and he is a qualified lawyer at the Madrid Bar Association. Andrés' research interests revolve around EU External Relations Law. He is particularly interested in the relations between EU Law and International Law, more specifically in the field of International Economic Law and International Dispute Settlement. He is currently working on a monograph for Cambridge University Press on international responsibility and the European Union

**Ilaria Espa** is a Marie Curie (COFIT) Senior Research Fellow at the World Trade Institute in Bern where she works within the NCCR/WP5 Cluster on “Energy, Trade and Climate Change”. She completed her Ph.D. in International Law and Economics in 2013 at the Department of Legal Studies of Bocconi University. During her Ph.D. studies, she was a Visiting Scholar at the Columbia Law School in 2012 and served as a consultant for the Trade and Environment Division at the WTO. She has published a number of articles on various WTO issues arising out the use of export restrictions and climate change-related trade measures, while also presenting seminars and international conferences on various topics related to WTO law.

**Caroline Henckels** is Vice-Chancellor’s Postdoctoral Research Fellow at the University of New South Wales in Sydney, Australia. In 2013 she completed her PhD at the University of Cambridge. A monograph based on her PhD thesis, entitled ‘Balancing Investment Protection and Regulatory Autonomy: Proportionality and Standards of Review in Investor-State Arbitration’ will be published by Cambridge University Press in 2015. She graduated with an LLM from the University of Melbourne and an LLB from Victoria University of Wellington, and is a Barrister and Solicitor of the Supreme Court of Victoria, Australia and of the High Court of New Zealand. She has published articles on international investment law and WTO law in journals including the European Journal of International Law, the Journal of International Economic Law, the Journal of International Dispute Settlement and the Chicago Journal of International Law.

**Holger Hestermeyer** is a Référéndaire in the cabinet of First Advocate General Cruz Villalón at the Court of Justice of the European Union. He joined the CJEU from the Max Planck Institute for Comparative Public and International Law, where he had worked as head of a research group and, before, as senior research fellow for ITLOS judge Prof. Dr. Rüdiger Wolfrum. Holger holds a doctorate from the university of Hamburg, an LL.M. from UC Berkeley, has passed both German state examinations and is admitted to the New York state bar. He was awarded several prizes and fellowships, including an Otto Hahn

Award and a Fulbright Fellowship. He is a member of the Executive Council of the Society of International Economic Law. He has lectured international and European law in Heidelberg, Münster, Berkeley and Santiago de Chile. His publications include *Human Rights and the WTO* (OUP, 2007) and, as co-editor, the volume “Trade in Goods” of the *Max Planck Commentaries on WTO Law* (BRILL, 2011). Holger speaks German, English, French, Spanish and Italian.

**Johanna Jacobsson** is currently a doctoral candidate at the Department of Law of European University Institute, Florence. The main focus of her research is on WTO law, especially on international services trade, and on EU internal market law. Johanna's LLM (2008) is from the University of Helsinki. She also has a BA in Russian studies. Johanna has two years of professional work experience at a Finnish law firm in the fields of general corporate law, EU law and litigation. Most recently, she has been a visiting researcher at the Finnish Institute of International Affairs. From September 2014, she will act as référendaire in the cabinet of Judge Allan Rosas at the Court of Justice of the European Union.

**Marion Panizzon** is Assistant Professor of International Economic Law at the Faculty of Law, University of Bern and the WTI. She studied law at the University of Fribourg, obtained an LLM at Duke Law School and earned a PhD in Law (Dr. iur.) from the University of Bern in 2004. Before joining the WTI in 2005, Marion was a Visiting Scholar at Georgetown University Law Center and at the Institute for Comparative Law, University of Lausanne. Drawing on transnational legal studies and global governance theories, the focus of her current research lies on international trade and migration with a strong emphasis on the interplay of free movement regimes in regional frameworks, bilateral migration agreements, Swiss and EU mobility partnerships. In 2010, Marion was elected officer of the International Economic Law Interest Group of the European Society of International Law (ESIL). Marion's work has been published in the *American Journal of International Law*, the *European Journal of International Law*, the *Melbourne Journal of International Law*, the *Journal of Migration and Refugee Issues*, the *Journal of World Trade* and the *Nordic Journal of International Law*. Her book publications focus on selected topics of international economic law and include ‘Good Faith in the Jurisprudence of the WTO’, Hart Publishing 2006, ‘Intellectual Property: Trade, Competition and Sustainable Development’, Michigan University Press 2003 (co-edited with Thomas Cottier and Petros C. Mavroidis), ‘GATS and the Regulation of International Trade in Services’, Cambridge University Press 2008 (co-edited with Pierre Sauvé and Nicole Pohl) and ‘Multilayered Migration Governance’, Routledge 2011 (co-edited with Sandra Lavenex and Rahel Kunz), *Palgrave Handbook of International Labor Migration* (co-edited with Elisa Fornale and Gottfried Zürcher), Palgrave 2015. She has worked as a consultant for the World Bank, the Swiss Agency for Development and Cooperation, the Friedrich-Ebert-Foundation, the Institut du Développement Durable and the Migration Policy Institute and the Global Forum on Migration and Development.

**Kristine Plouffe-Malette** est candidate au doctorat en droit de l'Université de Sherbrooke (Canada), rédactrice en chef de la Revue québécoise de droit international et chargée d'enseignements à l'Université du Québec à Montréal et à l'Université de Montréal. Elle est diplômée d'un baccalauréat (licence) en science politique et d'un baccalauréat (licence) en droit de l'Université de Montréal, d'un Master II en droit international des droits de l'homme et droit humanitaire de l'Université Paris II – Panthéon-Assas et d'une maîtrise en droit de l'Université Laval (Canada). Elle a

récemment publié, aux éditions Bruylant, un ouvrage intitulé « Protection des victimes de traite des êtres humains. Approches internationales et européennes ». Ces recherches actuelles portent sur l'interprétation de la moralité publique dans le cadre des systèmes de protection des droits de l'homme et du droit de l'Organisation mondiale du commerce.

**Odysseas Repousis** is a Research Assistant and a PhD candidate at the University of Hong Kong (HKU). Prior to his current position he clerked in the International Court of Arbitration of the ICC, worked as an attorney in Greece and was a Research Fellow at the Hellenic Institute of Procedural Studies where he conducted research on Bilateral Investment Treaties. He holds an LLB with high honours from the University of Athens and an LLM in Arbitration and Dispute Resolution with Distinction from HKU. His current research focus centers on international commercial and investment arbitration and on disputes in the energy sector. He is fluent in Greek, English, French and Arabic and has working knowledge of German and Spanish. His latest works include among others a book chapter on Investment Arbitration in the Nuclear Energy Sector and an article on the potential overlaps between Investment Treaties in the area of the ECT.

**Lars Schönwald** (born on 17 April 1983 in Osnabrück, Germany) is currently a Doctoral Candidate and Lecturer at the Chair of Constitutional and Administrative Law, Public International Law, European and International Economic Law of Professor Dr. Hans-Georg Dederer at the University of Passau. He has studied law at the University of Passau (Germany) and the University of Western Australia, Perth (Australia). He holds a law degree (First Legal State Examination, "Erstes Juristisches Staatsexamen"). As Lecturer, Lars works mainly in the fields of international economic law, international environmental law and public international law in general. He is heavily involved in the teaching of public international law at his university, and is also one of the coaches of Passau's Jessup Moot Court Team. Lars' publications deal with the legality of shooting down civil aircraft in order to prevent terrorist attacks, the legality of the use of depleted uranium ammunition, the legality of guaranteeing socio-economic rights through public-private partnerships, the possible future of protecting European investments in Sub-Saharan Africa, the impact of modern international investment agreements on the development of Sub-Saharan Africa (forthcoming), and the European Union regulations 1830/2003 and 1946/2003 (forthcoming). Lars' doctoral thesis deals with legal aspects of European foreign investments in the mining sectors of Sub-Saharan African States. At various conferences in Europe and Africa, Lars gave presentations in 2012, 2013 and 2014 linked to the general topic of his thesis. In addition, Lars attended several international economic law conferences throughout the world since 2011.

**Emily Sipiorski** is a senior researcher and lecturer at the Institute for Economic Law at Martin Luther University, Halle, Germany. She is currently completing her PhD dissertation on the application of the principle of good faith by investment tribunals. She has a JD from Hamline University in St Paul, Minnesota and an MA in Central European Studies from Jagiellonian University, Krakow, Poland.

**Peter-Tobias Stoll** holds a chair for Public and Public International Law at the University of Göttingen Faculty of Law and is the acting Managing Director of the Institute for International Law and European Law, where he heads the Department for International Economic and Environmental Law. Since 2007, he is also the German Director of the Sino-German Institute for Legal Studies at Nanjing University. His research focus is on international law, trade, investment and the environment. Tobias has published

extensively on international economic and environmental law. Inter alia, he is the co-editor of the Max-Planck Commentaries on World Trade Law. Tobias has been advisor to the German Federal Government, the UN and several civil society organizations. He has been visiting and teaching at a number of places, including Addis Abeba, Beijing, Berkeley, Cambridge, Kaliningrad, Minneapolis, Nanjing and Paris. Together with Elisa Baroncini and Marion Panizzon he chairs ESIL's Interest Group on International Economic Law. Furthermore, he is a co-convenor of the Study Group on Preferential Trade Agreements of the International Law Association.

**Catharine Titi** is a Postdoctoral Fellow at the University of Panthéon-Assas Paris II. She holds a PhD in Law from the University of Siegen, in Germany, and she has completed earlier studies in Greece, France and the United Kingdom. Catharine also holds a postgraduate qualification from the Courtauld Institute of Art, London and she has previously worked in management consulting for PwC, UK. She has published in a variety of academic journals in English and French on international investment law and investment arbitration and has contributed to edited volumes, such as in the *Yearbook on International Investment Law & Policy* (Oxford University Press). Her monograph on *The Right to Regulate in International Investment Law* was published earlier this year by Nomos and Hart Publishing.

**Marina Trunk-Fedorova** is a senior research fellow and coordinator of the research area “WTO and EurAsEC law” at KEEL – the Kiel Center for Eurasian Economic Law (Kiel University) established within the framework of a project supported by the Volkswagen Foundation. Marina is also associate professor at the St. Petersburg State University School of Law and at the Urals State Law University. She has been regularly teaching courses on International Law and International Economic Law. Marina has a number of publications on International Economic Law with a particular focus on WTO dispute settlement. She graduated from St. Petersburg State University School of Law, holds an LL.M. degree from the University of Connecticut School of Law and a Ph.D. degree from St. Petersburg State University School of Law.

**Friedl Weiss** is Professor in the Department of European, International and Comparative Law at the University of Vienna having studied law at the Universities of Vienna, Brussels and Cambridge. Previously he was law lecturer at the Universities of Birmingham and at the London School of Economics and Political Science (1979-92) and held the Chair of International (Economic) Law and Organisations (1992-2006) at the University of Amsterdam. He served as Legal adviser in the Secretariat of the European Free Trade Association (EFTA, 1984-86) and as Legal Consultant in the legal affairs division of the GATT Secretariat (1990-91) and as Academic Director, of Ethiopia- Training and Staff Development Programs at the University of Amsterdam (since 1992). He was nominated by the EU and listed as eligible for panel service by the Dispute Settlement Body (DSB) of the WTO. Visiting Professorships at various Universities, including: Catholic University of Louvain-la-Neuve, Belgium; Bocconi University, Milano; Fordham, Tulane, Minneapolis, USA; Wuhan, P.R. China; Nankai, Tianjin P.R.C.; Panthéon-Assas, Paris II, France; Institut Universitaire des Hautes Études Internationales, Geneva (HEI); University of Bratislava School of Law (Paneuropska); University of Granada, Spain. Lectures given at various other academic institutions including: Kings College, SOAS and IALS, London; Johns Hopkins SAIS, Washington DC; universities of Leiden, Utrecht, VU Amsterdam, Maastricht, Nijmegen, Netherlands; Eastern Univ.of Law and Political Science, Shanghai; South-West Univ. of Politics and Law, Chongqing; North-West Univ.of Political Science

and Law, Xi-an; universities of Salzburg, Linz, Austria; universities of Bologna, Teramo, Italy; universities of Zagreb, Ankara; Universidade Federal do Rio de Janeiro. Publications include: *Das Recht der Europäischen Union*, MANZ, 2013 (with G.Hafner and A.Kumin co-eds.), *EU Internal Market Law* (with C.Kaupa, CUP 2014); *Sketching 'Community Interest' in EU Law*, in *From Bilateralism to Community Interest*, in *Essays in Honour of Judge Bruno Simma* (2011); *Good Governance in the Procedural Practice of the WTO*, in *Liber Amicorum in onore di Paolo Picone* (2011); *Article XIII GATT* (with Hestermeyer), in *Rüdiger Wolfrum, Peter –Tobias Stoll, Holger P. Hestermeyer (eds.), WTO – Trade in Goods*, (2011); *Inherent Powers of National and International Courts: The Practice of the Iran-US Claims Tribunal*, in *International Investment Law for the 21<sup>st</sup> Century*, *Essays in Honour of Christoph Schreuer* (2009); *The Principle of Non-Discrimination in International Economic Law: A Conceptual and Historical Sketch*, in *International Law between Universalism and Fragmentation*, *Festschrift in Honour of Gerhard Hafner* (2008); *Trade and Investment*, in *Oxford Handbook of International Investment Law* (2008); *Free Movement of Persons Within European Community* (Kluwer Law International, 2<sup>nd</sup> ed. 2007, with Frank Wooldridge); *International Law and Sustainable Development. Principles and Practice* (Martinus Nijhoff co-ed. with Nico Schrijver, 2004).

**Andreas R. Ziegler** studied economics, international relations and law at the Universities of St. Gallen (BA, MA, BLaw, MLaw), Madrid (Escuela Diplomatica), Paris (SciencesPo), Florence (LL.M, European University Institute), Oxford and London (SOAS). After obtaining his doctorate in St. Gallen in 1995, he undertook post-doctoral research at Georgetown University Law Center (Washington DC, USA) and the Max-Planck-Institute in Heidelberg (Germany). He was a civil servant working for several Swiss Ministries in Berne as well as the EFTA Secretariat in Geneva and the European Commission in Brussels before being appointed full professor of law at the University of Lausanne in 2003. He currently is the Director of its LLM Program in International and European Economic and Commercial Law. He holds a conjoint professorship at the Law School of the University of New South Wales (Sydney, Australia) as well as permanent visiting appointments at the Universities of Saarbrücken, St. Gallen and ETH Zürich. He has been invited to teach at many universities around the world, including in Lund, Paris, Rome, Chicago-Kent, Stetson College of Law, UTS Sydney, Berlin, and Pittsburgh. He has published widely on European law, public international law, on international courts and tribunals, trade and investment. He has represented clients in arbitral proceedings (UNCITRAL Arbitration Rules), before the Swiss Federal Supreme Court and the European Court of Human Rights and is counsel with a law firm specialized in economic and business law (Blum & Grob Attorneys-at-law, Zurich). He is on the permanent roster of panelists of the WTO (appointed by Liechtenstein) and ICSID (appointed by Switzerland). His working languages are German, French, English, Italian, Spanish and Portuguese.