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SIEL Conversations - a new monthly webinar on International Economic Law

SIEL has launched **SIEL Conversations**, a monthly webinar on international economic law.

We have so far held three events, all of which are available on our (also new) SIEL [Youtube Channel](#). Please subscribe to remain abreast of upcoming events. The past events include:

a. SIEL Conversation July 2020: [The Origin and Evolution of Investment Treaty Standards](#)

b. SIEL Conversation August 2020: [Teaching International Economic Law in a Changing World](#)

c. SIEL Conversation September 2020: [African Continental FTA in an Era of Waning Multilateralism](#)

Also, please mark your calendars! We have plans for the following future events:

29 October 2020: Litigation & Virtual Hearings at ICSID / PCA / WTO

Speakers: Jara Minguez Almeida (ICSID), Martin Doe (PCA), Philippe Cellard (Canadian Mission to the WTO), Cherise Valles

(Advisory Centre for WTO Law), John Adank (WTO)

Moderator: Hugo Perezcano (iuris, CIGI)

19 November 2020: COVID-19 and Its impacts on the Belt and Road Initiative

Speakers: Maria Adele Carrai (New York University Shanghai) Heng Wang (UNSW), Linda Calabrese (Overseas Development Institute)

Moderator: Suresh Nanwani (Durham University)

Further details will be available on the SIEL [website](#).

For any further information and if you would like to let us know what other events you may have in mind that we can put on, please contact [Dr Maria Laura Marceddu](#).

Newsletter editors

[Susan Isiko Štrba](#)

[Johanna Jacobsson](#)

[Victor Saco](#)

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

SIEL GOVERNANCE

Officers

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Back to the Good Old Days of GATT Dispute Settlement?

What many of us expected to happen, did happen. Losing parties in WTO dispute settlement have systematically appealed panel reports into the void, and have thus prevented these reports from being adopted by the DSB and becoming legally binding. The United States was the first to do so on 18 December 2019 in *US – Carbon Steel (Article 21.5)* (DS436), and has done so again on 28 September 2020 in *US – Softwood Lumber VII* (DS533). It is most likely to do this also in *US – Tariff Measures on Certain Goods from China* (DS543). On 28 July 2020, Saudi Arabia appealed the unfavourable panel report in *Saudi Arabia – Protection of IPRs* (DS567) and on 28 August 2020 the European Union did the same in *EU – Cost Adjustment Methodologies II (Russia)* (DS494). For all practical purposes, we have now returned to pre-1995 GATT dispute settlement, as a losing party can, and does, block the adoption of a panel report by appealing it into the void. Also, while there are panel proceedings ongoing in no less than 34 separate disputes, only four panel reports have been circulated since the beginning of this year. This is a remarkably low number, certainly if one considers that the moribund Appellate Body still circulated three reports this year, including its 232-page report in *Australia – Tobacco Plain Packaging* (DS435/DS441), circulated on 9 June 2020 and possibly the last Appellate Body report ever. Is the impact of COVID lockdown the only explanation for the lack of 'productivity' on the part of panels? Another clear sign of the existential crisis of the WTO dispute settlement system is that Members have this year brought only three new disputes to the WTO. While there are three months left until the end of 2020, we are heading for a historical low in the number of requests for consultations. The lowest number to date was in 2011 with eight requests. In 2019 and 2018, 19

and 39 new disputes respectively were referred to WTO dispute settlement. On 20 August 2020, USTR Robert Lighthizer wrote in an op-ed in the *Wall Street Journal*, entitled 'How to Set World Trade Straight':

"The WTO's dispute settlement system should be totally rethought. The current two-tiers system should be replaced with a single-stage process akin to commercial arbitration, in which ad hoc tribunals are impaneled and resolve particular disputes in an expeditious manner. The rulings of these one-off panels should only apply to the parties in the dispute, and not become part of an ever-evolving body of free-trade jurisprudence. Rather than give the losing party an automatic appeal to a judicial body, there should be a mechanism that allows the WTO membership to set aside erroneous panel opinions in exceptional cases."

Can a dispute settlement mechanism of this kind be expected to provide the multilateral trading system with the degree of security and predictability desperately needed in the multipolar world of the 21st century? With great concern I note that none of the leading candidates for the post of WTO Director-General has taken a strong stance in defense of a two-stage, rules-based WTO dispute settlement system. On the contrary, the leading candidates remain almost silent on dispute settlement or are very vague and do not go beyond the usual platitudes.

In light of the above, it is not surprising that the Multi-Party Interim Appeal Arbitration Arrangement, the MPIA, to which 24 WTO Members are now parties, continues to receive considerable attention. The MPIA was given a significant boost when on 31 July 2020 the parties to the arrangement appointed 10 excellent MPIA arbitrators. However, there have also been rumors that certain stakeholders are trying to undermine the MPIA from within by advocating a very minimalist interpretation of the terms of

the arrangement, with the intention to make MPIA proceedings more like international arbitration and less like appellate review under Article 17 of the DSU. Most worrisome in this respect is the backtracking on the clearly stated intention to provide for 'collegiality' among the 10 MPIA arbitrators, i.e. to provide for an effective exchange of views between the arbitrators, in order to ensure the quality and consistency of the case law. Let's hope that this is a mere rumor. What is of course not a rumor is the United States' strong opposition to the MPIA, which it considers to establish an 'ersatz' Appellate Body, which would be even worse than the original. The United States objects to any WTO funding or staff being used in support of the MPIA. It is not clear to me how the MPIA could effectively function without the support of WTO staff in particular. The time to clarify matters regarding MPIA funding and staffing as well as procedural MPIA issues is running out as the panel reports in two cases in which the parties have agreed to resort to the MPIA, *Canada – Sale of Wine* (DS537) and *Costa Rica – Avocados* (DS524), should 'normally' be circulated before the end of the year.

From other WTO fronts, there has been some encouraging news regarding the negotiations on e-commerce, fisheries subsidies and investment facilitation, and the process of selecting a new WTO Director-General is, at least for now, still more or less on track. On 18 September 2020, the initial list of eight candidates was narrowed down to five and a further narrowing down of the list of 'papabili' is expected in early October. However, I fear that it will be well into 2021 before the WTO will have a Director-General again. More on this and on ongoing negotiations in my next message. For now, a final thought on WTO dispute settlement. Tomorrow cannot be like yesterday. If it is, there will be no tomorrow.

Peter Van den Bossche
29 September 2020

Publications by SIEL members

Conferences and other events

- A. The 2020 BIICL Annual WTO Conference
- B. Webinar series on the USMCA
- C. Colloquium on International Investment Law and State Capitalism
- D. Online events organized by the World Trade Institute (WTI)

Calls for Papers

Derecho PUCP's special number on IEL

Prizes and Awards

2020 UNCTAD-SIEL Award Winner

Vacancies

- A. Global Ph.D. Fellowships at the Singapore Management University
- B. Ph.D. Fellowship at Leiden University

Publications by SIEL members

Leal-Arcas, Rafael (ed.) [International Trade, Investment and the Rule of Law](#) (Eliva Press, 2020).

Marceddu, Maria Laura & Ortolani, Pietro. [What Is Wrong with Investment Arbitration? Evidence from a Set of Behavioural Experiments](#) (European Journal of International Law, Volume 31, Issue 2, September 2020, pp. 405–428).

Marín Durán, Gracia. [Sustainable Development Chapters in EU Free Trade Agreements: Emerging Compliance Issues](#) ((2020) 57(4) Common Market Law Review 1031-1068).

Hsieh, Pasha L. [Rethinking non-recognition: The EU's Investment Agreement with Taiwan under the One China Policy](#) (Leiden Journal of International Law, Volume 33, Issue 3, September 2020, pp. 689-712).

Nanwani, Suresh. "Belt and Road Initiative: Interface with Multilateral Development Banks on International Cooperation and Governance" in Maria Adele Carrai, Jean-Christophe DeFraigne & Jan Wouters (ed.), [The Belt and Road Initiative and Global Governance](#) (Edward Elgar, 2020).

Nanwani, Suresh. "SDGs and the Role of International Financial Institutions" in Julia Walker, Alma Pekmezovic and Gordon Walker (eds), [Sustainable Development Goals: Harnessing business to achieve the SDGs through finance, technology, and law reform](#) (John Wiley, 2019).

Van den Bossche, Peter & Shan, Wenhua. The Chinese edition of The Law and Policy of the World Trade Organization by **Peter Van den Bossche and Werner Zdouc** (Cambridge University Press, 2017) has been published by Law Press China. [This Chinese edition](#) (1155 pages in two volumes) contains China-specific commentary in addition to updates.

Conferences and other events

A. The 2020 BIICL Annual WTO Conference

The British Institute of International and Comparative Law will once again hold its prestigious WTO conference. This year, amidst a global pandemic, the conference will take place virtually over two half days: 22 October 12.00-17.00 and 23 October 09.00-13.00 (BST).

BIICL will host 6 virtual panels around the world to cover strategically important geographical areas where major developments, discussions and decisions impacting international trade are taking place.

The programme, pricing and registration are available [here](#).

B. Webinar series on the USMCA

Rice University's Baker Institute for Public Policy organizes a series of five webinars on the USMCA, co-sponsored by the Center for the United States and Mexico and Haynes and Boone, LLP. Each webinar in the series features experts from the United States, Mexico and Canada and provides viewers with up-to-date information on the progress, successes and challenges of putting the USMCA's provisions into practice. There are three webinars left: 14 October (Assessing the Impact of the USMCA's New Rules on the Auto Sector), 18 November (Improving the Environment Under the USMCA) and 9 December (Cross-border Customs Issues in USMCA Implementation After Five Months). More information is available on [the website](#) of the Baker Institute for Public Policy.

C. Colloquium on International Investment Law & State Capitalism

Panos Delimatsis, Tilburg University, Georgios Dimitropoulos, Hamad Bin Khalifa University and Anastasios Gourgourinis, National and Kapodistrian University of Athens co-organise an International Investment Law & State Capitalism Colloquium. The Colloquium will take place as a Zoom Webinar on 15 & 16 October 2020. Participation is free of charge, but a limited number of places is available and advance registration will be required. Information on registration and the programme is available [here](#).

D. Online events organized by the World Trade Institute (WTI)

The WTI Global Economic Governance Seminar Series are back. This series consists of a number of stand-alone seminars on different aspects of global economic governance. The purpose of these seminars is to allow students and interested externals to benefit from the insights and personal experiences of the experts invited.

The following (online) events are planned for the ongoing Autumn term:

12 October 2020

Tensions and changes in WTO Geopolitics
By Gabrielle Marceau, Senior Counsellor, Economic Research Division, WTO Secretariat

26 October 2020

Proposals on WTO Reform
By Victor do Prado, Director, Council and TNC Division, WTO Secretariat

7 December 2020

Global Economic Governance Seminar by either the Minister or a Vice Minister of the Taiwanese Ministry of Economic Affairs (More details available on the [WTI website](#) soon)

14 December 2020

Breaking New Ground - An Introduction to the WTO Agreement on Facilitation and its Implementation
By Nora Neufeld, Counsellor, Market Access Division, WTO Secretariat

Calls for Papers

Derecho PUCP's special number on IEL

Derecho PUCP, the indexed Law Review of the Pontificia Universidad Católica del Perú, is launching a special number on International Economic Law. Papers can be presented in Spanish, English and French. Please write to: revistaderechopucp@pucp.edu.pe. More information for authors is available [here](#). Deadline for submissions: 16 November 2020.

Prizes and Awards

2020 UNCTAD-SIEL Award Winner

SIEL warmly congratulates **Dominic Npoanlari Dagbanja** on winning the 2020 UNCTAD-SIEL award for his essay entitled '[The intersection of public procurement law and policy and international investment law](#)'.

Vacancies

A. Global Ph.D. Fellowships at the Singapore Management University

The Singapore Management University (SMU) School of Law invites applications for three Global Ph.D. Fellows to begin in August 2021, for a period of six months. The Fellowship prepares promising legal academics for entering the global teaching market. Ph.D. Fellows will spend six months at SMU, developing research in their fields. Questions can be directed to Pasha Hsieh, Associate Dean (Faculty Matters & Research), at pashahsieh@smu.edu.sg. The application deadline is 10 February 2021. More information is available [here](#).

B. Ph.D. Fellowship at Leiden University

Prof. Marco Bronckers and Prof. Freya Baetens have a vacancy for an unsalaried Ph.D. fellowship at Leiden University. Interested candidates are invited to send a motivation letter (2 pages max.), a PhD proposal in international economic law (4-5 pages max.), a CV (3 pages max.), a list of publications and the contact details of three referees by 15 December, to m.c.e.j.bronckers@law.leidenuniv.nl and f.baetens@law.leidenuniv.nl.

Other Announcements

Invitation to join the Beyond Trade Network

The new Beyond Trade Network provides an exclusive space on the web for those interested in trade to meet, network, share ideas and disseminate their work. With 300 members joining since it was launched less than two weeks ago, it is a rapidly growing professional network for trade policymakers, academics, activists and private sector practitioners. Lightly curated by the Geneva Trade Platform, the Beyond Trade Network is free and open to all SIEL members via [this link](#).

Next Newsletter

Please note that the next SIEL newsletter is scheduled for January 2021. Should you wish to include an item in the next issue, please contact us by the beginning of January. Thank you for your support and interest.

Susan Isiko Strba, Johanna Jacobsson & Victor Saco