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

## President's Corner

### Can It Get Any Worse?

The WTO Secretariat expects that in 2020 the volume of international trade will decline by between 13 and 32 per cent, and will thus fall by (much) more than during the Global Financial Crisis of 2008-9. The COVID-19 pandemic has not only disrupted our lives and kept us locked up, but has obviously and not surprisingly also severely affected the global economy and international trade. While some countries are now lifting, or have already lifted, the most stringent restrictions and lockdown measures imposed to address the pandemic, in many other countries the pandemic still rages. The COVID-19 health crisis is likely to affect international trade for a long time to come.

Today's wretched state of international trade is, however, not merely due to the COVID-19 pandemic. International trade was in trouble already before any of us had heard of the new corona virus or considered 'social distancing' a civil duty (rather than deviant behavior). In 2019, global trade in goods declined by 3 per cent in dollar terms and trade in commercial services grew by a paltry 2 per cent. Contributing to this trend was undoubtedly the crisis of the rules-based multilateral trading system, as exemplified by the US-China trade war and the paralysis of

the Appellate Body. This crisis will make it much more difficult to repair the destructive impact of the COVID-19 pandemic on the global economy and to repeat the swift recovery after the Global Financial Crisis.

In times of populist economic nationalism and superpower confrontation, reviving, let alone improving, the multilateral trading system will be a herculean task. And yet, this is what will have to be done. First, WTO Members will have to agree on new WTO rules, which address the problems of international trade in the 21st century and come to a novel consensus on the appropriate balance between trade and other societal values and interests. Second, Members will need to reform the WTO and its procedures for negotiations, decision-making, dispute settlement and the monitoring of trade policy measures. Both institutional reform and negotiations on new rules will, however, take much time and require political courage, a 'commodity' in global and local short supply.

Over the next year, the situation may still worsen, not in the least because of a further escalation of the US-China trade war (in the run-up to the US presidential elections and after it becomes clear that China will fall (far) short of importing an additional \$200 bn. of US goods in 2020-21, as agreed under the Phase One Trade Deal). Also, trade tensions worldwide are likely

## Watch this space: Next SIEL International Conference

Due to COVID-19, the SIEL International Conference which was scheduled to take place in July 2020 was postponed. The next Conference will take place in 2021. Watch this space and the website for the call for papers and panel proposals.

## SIEL GOVERNANCE

### Officers

Peter Van den Bossche (President); Shin-yi Peng & Markus Wagner (Executive Vice-Presidents); Maria Laura Marceddu & Franziska Sucker (Treasurers); Krista Nadakavukaren Schefer & Amelia Porges (SIEL Corporate Secretaries)

### Executive Council

Padideh Ala'i, Freya Baetens, Ilaria Espa, Holger Hestermeyer, Pasha L. Hsieh, Susan Isiko Štrba, Johanna Jacobsson, David Kleimann, Gracia Marín Durán, Suresh Nanwani, Maria J. Pereyra, Weihuan Zhou.

## President's Corner (continued)

to surge as countries will seek to recover from the COVID-19 pandemic by restricting import competition and by granting unprecedented amounts of trade-distorting subsidies to domestic industries. In early May 2020, US Senator Josh Hawley introduced a joint resolution for the withdrawal of the United States from the WTO, something President Trump has repeatedly threatened with if the WTO would not 'shape up'. Senator Hawley argues that 'international organizations like the W.T.O. have enabled the rise of China and benefitted elites around the globe while hollowing out American industry'. While it is unlikely that this joint resolution will find majority support, it is a clear sign of the times. In mid-May 2020, Roberto Acevedo announced that he will resign as WTO Director-General on 31 August 2020, one year before the end of his second term in office. In the months to come, WTO Members will have to elect a new DG. As they disagree fundamentally on the kind of WTO that is needed, it is to be expected that the election of a new DG will be a long and difficult process. In the meantime, the WTO will have to muddle on without a DG as a much-needed honest broker and bridge-builder in negotiations between WTO Members.

Fortunately, there are also some rays of hope in these dark days. First, WTO Members have, in COVID-mode, continued to 'negotiate', multilaterally, on fisheries subsidies, and, plurilaterally, on

e-commerce and investment facilitation. Second, 35 Members, including most major players in agri-food trade, issued on 20 May 2020 a joint statement on how to respond to the COVID-19 pandemic with open and predictable trade. Third,

21 WTO Members, including Australia, Brazil, Canada, China, the EU and Mexico, have now joined the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Under the MPIA, the parties thereto agree not to appeal panel reports to the paralyzed Appellate Body (i.e. agree not to appeal panel reports into the void), but will resort to appellate arbitration under Article 25 of the DSU. To the extent that the procedures followed under the MPIA will mimic appellate review under Article 17 of the DSU and the Working Procedures for Appellate Review – and that is the stated intention – the MPIA may serve us well as long as the Appellate Body is paralyzed. The nominations made for the pool of 10 MPIA arbitrators justify this hope. However, it remains to be seen how the MPIA will work in practice.

On 3 June 2020, Australia and Canada in Canada – Sale of Wine (DS 537), Mexico and Costa Rica in Costa Rica – Avocados (DS524), and Brazil and Canada in Canada – Aircraft (DS522) notified the DSB that they have agreed – under the MPIA – to Procedures for Arbitration under Article 25 DSU. However, on 5

June 2020, the United States reportedly wrote to DG Acevedo objecting to the MPIA, which was referred to as a 'China-EU arrangement' and was said to create an 'ersatz' Appellate Body 'exacerbating the erroneous WTO appellate practice rather than reforming it'. According to the United States, the WTO Members that are parties to the MPIA have no right to use any WTO financial or staff resources on arbitration under the MPIA or instruct the Director-General to do so. To be continued ...

Peter Van den Bossche

15 June 2020

## Publications by SIEL members

### Conferences and other events

- A. Tilburg University Conference
- B. 2020 CIBEL Global Network Virtual Conference
- C. Geneva Trade Week

### Calls for Papers

- A. Conference on Imperial Artefacts, University of Leiden
- B. Ethical Governance of Surveillance Technologies
- C. Journal of Trade, Law and Development
- D. Derecho PUCP special issue on IEL

### Other Activities

- A. Prize in Honour of H.E Rosalyn Higgins
- B. The SIEL/ Hart Prize 2020

### Next Newsletter

## Publications by SIEL members

**I. Espa and G. Marín Durán**, 'Supporting Green Energy through EU Preferential Trade Agreements: Potential and Limitations', 47 *Legal Issues of Economic Integration* (2020), pp. 115-150.

**R. Leal-Arcas et al.**, [The Great Energy Transition in the European Union, Volume 1](#), Eliva Press, 2020; 438 pages; ISBN-13: 978-9975-3417-1-4.

**R. Leal-Arcas et al.**, [The Great Energy Transition in the European Union, Volume 2](#), Eliva Press, 2020; 429 pages; ISBN-13: 978-9975-3417-3-8.

**Weihuan Zhou, Huiqin Jiang and Qingjiang Kong**, 'Technology Transfer under China's Foreign Investment Regime: Does the WTO Provide a Solution?', (2020) 54(3) *Journal of World Trade* 455-480.

## Conferences and other events

### A. Tilburg University Conference

The International Conference on 'The evolution of transnational private rule-makers: Understanding drivers and dynamics', organized by Tilburg Law and Economics Centre will take place on December 3, 2020. Draft papers or extended outlines should be submitted by August 31, 2020. More information on the conference can be found [here](#).

### B. 2020 CIBEL Global Network Virtual Conference

The Herbert Smith Freehills China International Business and Economic Law (CIBEL) Centre at the Faculty of Law UNSW Sydney will be hosting a series of virtual sessions/panels as part of its 2020 Global Network Conference and Young Scholar Workshop from June to September 2020. The conference is dedicated to research on the urging issues in the international business and economic law field with the theme of "COVID-19 and international economic law: China and a changing world". The details of the event and the registration information is available [here](#).

### C. Geneva Trade Week

To fill the void left by the cancellation of the 2020 WTO Public Forum, the Geneva Trade Platform (GTP) is organizing a week of primarily digital events, discussions, and debates that we are calling "Geneva Trade Week (GTW)." The events will run from 28 September to 2 October 2020. More information about Trade Week is available [here](#).

Our special thanks go to Ilaria Espa and Pasha Hsieh, from the SIEL Executive Council, for co-organizing the Prize completion.

## Calls for Papers

### A. Conference on Imperial Artefacts, Leiden University

A call for papers has been issued for a conference on "Imperial Artefacts: History, Law, and the Looting of Cultural Property," to be held January 28-29, 2021, in Leiden. The deadline for submission of abstracts is August 31, 2020. The call is [here](#).

### B. Ethical Governance of Surveillance Technologies

The research platform on Disrupting Technological Innovation? Towards an Ethical and Legal Framework, of the Utrecht Centre for Global Challenges, has issued a call for papers for an online workshop on 'Ethical Governance of Surveillance Technologies in Times of Crisis: Global Challenges and Divergent Perspectives'. Abstracts should be submitted by July 15, 2020. The call for papers is [here](#).

### C. Journal of Trade, Law and Development

The journal of Trade, Law and Development is inviting submissions of unpublished papers for its Winter 2020 issue (Vol. 12, no.2), by August 15, 2020. More information on the call is available [here](#).

### D. Derecho PUCP special issue on IEL

The indexed Law Review of the Pontificia Universidad Católica del Perú (PUCP), is launching a special number on International Economic Law. Papers can be presented in Spanish, English and French to this email address: [revistaderechopucp@pucp.edu.pe](mailto:revistaderechopucp@pucp.edu.pe) More information for authors is available [here](#).

## Other Activities

### A. Rosalyn Higgins Prize 2020

Law & Practice of International Courts and Tribunals now invites submissions for the 2020 Rosalyn Higgins Prize. Submissions are due on 30 June 2020. More details on the Prize are available [here](#).

### B. SIEL-Hart 2020 Prizewinner

SIEL and Hart Publishing are pleased to announce the 2020 Prizewinner. With his innovative manuscript Flexible

Economic Integration in Africa: Lessons and Implications for the Multilateral Trading System, Timothy Masiko, from Nottingham University (UK), has won the 2020 SIEL–Hart Prize in International Economic Law. Submissions for the 2022 prize will open in September 2021. More information about the Prize program is available [here](#).

Special thanks go to Ilaria Espa, Pasha Hsieh, Gabrielle Marceau, Krista Nadakavukaren, Federico Ortino, and Greg Sheffer for organizing the 2020 Prize Competition.

## Next Newsletter

Please note that the next SIEL newsletter is scheduled for October 2020. Should you wish to include an item in the next issue, please contact us by the mid-September.

Thanks for your support and interest.

**Susan Isiko Štrba, Johanna Jacobsson & Victor Saco.**