

TABLE OF CONTENTS

SIEL News from the VPs

p. 1

President's Corner

p. 2

Publications by SIEL members

Conferences and other events

Calls for Papers

Other activities

p. 3-4

Newsletter editors

[Johanna Jacobsson](#)

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



SIEL NEWS FROM THE VPs

Dear SIEL Members:

SIEL has been a remarkable success since its humble beginnings in 2007. We have witnessed successful conferences in Geneva, Barcelona, Singapore, Bern, Johannesburg and Washington DC. And we are very much looking forward to the 2020 conference in Milan at Bocconi University.

SIEL is working on a number of initiatives and we wanted to give you an update on these projects. Some of these will be familiar to you, others may be new and are meant to keep SIEL running smoothly but also inclusive and open to everyone.

These projects include our newsletter team who we owe gratitude for putting together our recurring updates to the membership (Susan Isiko Strba, Johanna Jacobsson and Victor Saco); the website team (Maria Laura Marceddu, Weihuan Zhou and James Losari); social media (Lisa Toohey and Markus Wagner); the SIEL/JIEL/OUP Essay Prize (Gracia Marín Durán, Ilaria Espa, Suresh Nanwani, Freya Baetens); the SIEL/HART Prize (Krista Nadakavukaren Schefer, Federico Ortino); the PEPA network (Freya Baetens); our UNCTAD liaison (Federico Ortino); the SIEL 2020 preparation group (Ilaria Espa, Pasha Hsieh, David Kleimann, Gracia Marín Durán, Maria Pereyra); the SIEL development plan task force (Meredith Kolsky Lewis, Colin Picker, Padideh Ala'i and the current officers). By default, Shin-yi Peng and Markus Wagner are involved in all of these groups in one way or another.

If you have any input or feedback regarding SIEL governance and development, please don't hesitate to get in touch with either Shin-yi or Markus. We very much welcome engagement from SIEL members for these and future initiatives.

Shin-yi Peng & Markus Wagner

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, Meredith Kolsky Lewis, Gracia Marín Durán, Suresh Nanwani, Federico Ortino, Colin B. Picker, Maria J. Pereyra, Lisa Toohey, Weihuan Zhou.

The WTO in 2019: A Future Mired in Uncertainty

In this first SIEL Newsletter of 2019, I would like to wish, belated but no less sincere, all SIEL members a healthy, happy and successful year. 2019 is a pivotal year for the multilateral trading system. Looking back on the last months, there is some good but more bad news to report. The Buenos Aires '90-day truce' agreed to by Presidents Trump and Xi on 1 December 2018 has, at least temporarily, halted a further escalation of the trade war between the US and China. Also, discussions on the reform of the WTO and its dispute settlement system have significantly increased both in number and intensity. However, in its Joint Communiqué of 25 January 2019, the Ottawa Group of 13 'like-minded' WTO developed and developing country Members expressed grave concern that the challenges facing the multilateral trading system 'have only become more urgent' since its last meeting in October 2018 (see WT/L/1057). To date, no real progress towards a solution to the current crisis has been made. To the contrary, there has been a sharp increase in trade-restrictive measures in 2018 (see WT/TPR/OV/21).

With regard to the rule-making function of the WTO, the European Commission had suggested in its September 2018 *Concept Paper on the Modernization of the WTO* that future negotiations should focus on 'issues that are key to global trade as it evolves', including e-commerce. The idea of negotiating rules on e-commerce has now gained considerable support among WTO Members. At the WEF Annual Meeting in Davos, 76 WTO Members agreed on 25 January 2019 to start negotiations on e-commerce. As the Financial Times commented on 28 January 2019, 'the World Trade Organization may well be on its last legs, but on the snowy slopes of Davos last week it received a welcome lifeline.'

With regard to market-distorting government support channeled through state-owned enterprises (SOEs), an issue which the European Commission had identified in its Concept Paper as an issue that needs to be addressed 'as a matter of urgency', the EU, Japan and the US have in the context of their

trilateral meetings explored how to take this issue forward. However, genuine negotiations on this issue with the rest of the WTO membership, and in particular China, are still far off.

With regard to the trade policy monitoring function of the WTO, the US, Argentina, Australia, Costa Rica, the EU, Chinese Taipei and Japan tabled on 1 November 2018 a proposal on enhancing Members' compliance with their notification requirements (see JOB/GC/204). This proposal, which was based on a 2017 US proposal, provides for both incentives for complete and timely notification as well as sanctions for failure thereof. At the meeting of the Council of Trade in Goods on 12 and 13 November 2018, almost 40 WTO Members responded to this proposal. While all those Members recognized the importance of transparency as a fundamental pillar of the multilateral trading system, many of them objected to the proposed sanctions and noted the need to consider the capacity constraints of developing country Members.

Finally, and perhaps most importantly, with regard to the dispute settlement function of the WTO, the EU, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro submitted on 23 November 2018 a communication to the WTO General Council setting out a number of concrete proposals for WTO dispute settlement reform (see WT/GC/W/752/REV. 2). These proposals concerned *inter alia* the 90-day timeframe for appellate review, transitional rules on outgoing Appellate Body Members, the mandate of the Appellate Body to review panel findings on the meaning of municipal law, the issue of precedent, and '*obiter dicta*' in Appellate Body reports. On the same day, the EU, China, India and Montenegro submitted a second communication to the General Council with proposals on the number of Appellate Body Members, their term of office and employment conditions as well as resources for the Appellate Body Secretariat. This communication also included a more 'radical' proposal regarding the transitional rules for

outgoing Appellate Body Members (see WT/GC/W/753/REV. 1). At the General Council meeting of 12 December 2018, however, the United States responded to both communications by stating that: '... on a close reading, the proposals would not effectively address the concerns that Members have raised. ... [T]he proposals instead appear to endorse changing the rules to accommodate and authorize the very approaches that have given rise to Members' concerns. Since last summer, the US has made a number of detailed statements in meetings of the Dispute Settlement Body, in which it elaborated on the concerns raised in the US President's 2018 Trade Policy Agenda (see the US statements concerning the issue of precedent (18 December 2018); concerning the scope of appellate review (27 August 2018 and 26 September 2018), and concerning the 90-day timeframe for appellate review (22 June 2018). While other WTO Members have proposed changes to the DSU to address these concerns, the US now takes the position that there is no need to amend the DSU, but that 'the Appellate Body must follow the rules we agreed in 1995'. Are WTO Members engaging in a *dialogue de sourds*? At its meeting on 11 January 2019, the WTO General Council appointed Amb. David Walker of New Zealand as facilitator 'to resolve differences on the urgent matter' of the functioning of the Appellate Body.

While the first round of talks between the US and China from 7 to 9 January 2019 reportedly justified some cautious optimism, the outcome of the second round is yet unknown and there is now very little time left to avoid a further escalation of the US-China trade war. Needless to say, that such escalation would severely affect the chances of success of any reform of the WTO and its dispute settlement system. We have difficult weeks and months ahead of us and uncertainty is all-pervasive.

Peter Van den Bossche

Publications by SIEL members

Conferences and other events

- A. A common European Law on Investment Screening
- B. Red DEI Biennial Conference 2019
- C. International Trade Update 2019

Calls for Papers

Other Activities

- A. The SIEL/JIEL/OUP Prize
- B. International Colloquium on Restoring Trust in Trade in Honour of Peter Van den Bossche
- C. SIEL - Routledge partnership
- D. Georgetown Law's Global Trade Academy

Publications by SIEL members

Denise Prévost, Iveta Alexovicová and Jens Hillebrand Pohl (eds) '[Restoring Trust in Trade. Liber Amicorum in Honour of Peter Van den Bossche](#)' (Hart Publishing, 2018). Order online at www.hartpublishing.co.uk - use the code CV7 at the checkout to get 20% off your order.

Pasha L. Hsieh, '[Against Populist Isolationism: New Asian Regionalism and Global South Powers in International Economic Law](#)' *Cornell International Law Journal*, 51:3, 101-50 (2018).

James Nedumpara and Weihuan Zhou (eds), '[Non-Market Economies in the Global Trading System: The Special Case of China](#)' (Singapore: Springer, 2018).

Weihuan Zhou, '[Appellate Body Report on EU - Biodiesel: The Future of China's State Capitalism under the WTO Anti-](#)

[Dumping Agreement](#)' (2018)17(4) *World Trade Review* 609-633.

I. Espa and G. Marín Durán, '[Renewable Energy Subsidies and WTO Law: Time to Rethink the Case for Reform Beyond Canada - Renewable Energy/FIT Program](#)', 21 *Journal of International Economic Law* 3 (2018), pp. 621-653.

Rafael Leal-Arcas, '[Commentary on the Energy Charter Treaty](#)' (Edward Elgar Publishing, 2018).

Conferences and other events

A. "A common European Law on Investment Screening. *Foreign Investment in Times of Change - Europe's Answer to China's "Belt and Road Initiative" and other Foreign State-backed Investment Strategies*"

Hosted by Steffen Hindelang, SDU and Andreas Moberg, GU; held on 7-8 March 2019; at the Department of Law, University of Gothenburg, Sweden. More information on the conferences can be found [here](#).

B. Red DEI Biennial Conference 2019

The *Red Latinoamericana de Derecho Económico Internacional* announces that its fifth biennial conference will take place in Mexico at the *Instituto Tecnológico Autónomo de México*, in August 2019. More information will be soon available [here](#).

C. International Trade Update 2019

Annual two-day roundup on international trade and customs law, March 7-8, 2019 at Georgetown University Law Center in Washington DC. 2019 programme includes keynote lecture by Commissioner Cecilia Malmström, panels on challenges to the WTO, NAFTA 2.0, China trade policy, US trade law, supply chain realignment and more; more information [here](#).

Calls for Papers

PEPA/SIEL

The 8th PEPA/SIEL Conference will take place on 30-31 May 2019 at King's College London. The Call is available [here](#). Deadline: 20 February 2019.

Polish Yearbook of International Law

The Polish Yearbook of International Law is looking for submissions in the field of broadly understood international economic law for its next volume. Although the profile of the journal remains general, the editors are interested in increasing the share of IEL texts. The call is available [here](#). Deadline: 28 February 2019.

CIBEL Global Network Conference and PhD workshop on China International Business and Economic Law: Technological Change and the Future of International Economic Legal Order: China and beyond.

Organized by the Herbert Smith Freehills China International Business and Economic Law (CIBEL) Centre, Faculty of Law, the University of New South Wales, Sydney (UNSW Law). The call can be found [here](#). Deadline: 28 February 2019 (paper abstracts and panel proposals).

The Legitimate Role for Investment Law and Arbitration in Protecting Human Rights

LEGINVEST and PluriCourts, in collaboration with Monash University and the Minerva Center for Human Rights at the Hebrew University of Jerusalem, are organizing an international symposium on the legitimacy and increasingly important role for international investment law and arbitration in the protection of international human rights. The symposium will take place in Oslo, Norway on the campus of the University of Oslo on Wednesday and Thursday, September 4 and 5, 2019. The Call can be found [here](#). Deadline: 1 March 2019 (abstracts).

Asian International Economic Law Network (AIELN) 6th Biennial Conference

This Conference is themed as “*International Trade Regime for the Data-Driven Economy: How will Artificial Intelligence Transform International Economic Law*”. The Call can be found [here](#). Deadline: 31 March 2019 (abstracts).

Journal of International Trade Law and Policy

The Journal of International Trade Law and Policy is currently inviting article submissions to its special issue on “The International Economic System and China”. The Call can be found [here](#). Deadline: 30 June 2019.

Other Activities

A. 2018-2019 SIEL/JIEL/OUP Essay Prize Competition

The deadline for entering the 2018-2019 SIEL/JIEL/OUP Essay Prize competition is fast approaching, and authors meeting the stated conditions are warmly encouraged to send their submissions by **15 February 2019**. Further information is available [here](#). Any queries should be addressed by email to [Dr Gracia Marín Durán](#) (UCL).

B. International Colloquium on Restoring Trust in Trade in Honour of Peter Van den Bossche

On 17 December 2018, the Law Faculty of Maastricht University hosted an international colloquium entitled “Restoring Trust in Trade” in honour of Professor Peter Van den Bossche, former Appellate Body Member (2009-2017). The slides and video recordings of the presentations can be found [here](#).

C. SIEL-Routledge partnership

SIEL has partnered with Routledge for

its members. SIEL members will have the following benefits, starting in February 2019: A specially curated book collection will feature new and noteworthy economic law books, in addition to a 14 day free trial access to over 2500 journals. SIEL members will have a 20% discount across the whole range of Routledge books. There will also be free resources to support SIEL members in their research and academic career. The benefits are available [here](#).

D. Georgetown Law's Global Trade Academy

Georgetown Law's Institute of International Economic Law (IIEL) is running the 13th Global Trade Academy this Winter, from February 11-15, 2019. The Global Trade Academy is a pillar of IIEL's Executive Education program with over a decade of experience in training government, NGO, international organization and private sector leaders the world over. Early enrollment discounts run through February 4th. More information can be found [here](#).

Next Newsletter

Please note that the next SIEL newsletter is scheduled for May 2019. Should you wish to include an item in the next issue, please contact us by the beginning of May.

Thanks for your support and interest.

Susan Isiko Strba, Johanna Jacobsson & Victor Saco.