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

President's Corner

Moving Ever Closer to the Edge of the Abyss?

On Friday, 10 May 2019, US Trade Representative Robert Lighthizer released the following statement:

Earlier today, at the direction of the President, the United States increased the level of tariffs from 10 percent to 25 percent on approximately \$200 billion worth of Chinese imports. The President also ordered us to begin the process of raising tariffs on essentially all remaining imports from China, which are valued at approximately \$300 billion.

In the days preceding this decision, trade officials of both the United States and China were still optimistic that a deal ending their trade war could be reached at their meeting in Washington on 9 and 10 May 2019. Instead, talks have broken down. In a tweet President Trump described these talks as 'constructive' and in doing so gave a whole new meaning to this term. The US attempt to put more pressure on China for additional market access, better protection of intellectual property and structural changes to China's economy has been unsuccessful. While China's vice premier and chief negotiator Liu He called the failure to reach a deal 'a small setback

in the talks', on 13 May 2019 China retaliated and announced that it will increase, as from 1 June 2019, its import duties on \$60 billion worth of US goods. On 15 May 2019, President Trump signed an executive order that could prohibit the Chinese telecommunications-equipment giants Huawei Technologies Co. and ZTE Corp. from doing business in the United States. Rather than being brought to an end, the US - China trade war is escalating dramatically and will, more and more, infect trade relations worldwide. As long as this trade war rages and spreads further, the prospects for successful negotiations on a much-needed modernization of the WTO and its rulebook are very poor. To date, this has, however, not stopped WTO Members from initiating negotiations on 'new' topics such as e-commerce, or from engaging in discussions on difficult issues such as notification requirements, developing-country status and dispute settlement. Are these bleak rays of light in dark times, or not even that?

With the spectre of a dysfunctional WTO dispute settlement system looming ever larger, a number of new proposals for reform of the WTO appellate review process has been tabled in recent months. From January to April 2019, Honduras, Chinese Taipei, Brazil, Paraguay, Uruguay, Japan, Australia, Chile and Thailand have submitted communications to the General Council setting out further proposals – varying

Save the date: Next SIEL International Conference

The Seventh Biennial Global Conference of the Society of International Economic Law (SIEL) will take place from 9 to 11 July 2020 at Bocconi University, Milan, Italy.

SIEL GOVERNANCE

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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)

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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.

President's Corner (continued)

in detail and approach – for amending WTO appellate review. In parallel with formal discussions in the General Council, Members are engaged in frequent informal and confidential discussions on these and earlier proposals. Reportedly the United States is not actively participating in these discussions but has only sent a diplomat for note-taking. It takes two to tango. It is ever more likely that the current crisis will not be resolved by 11 December 2019 and that the WTO dispute settlement will at that time cease to be fully operational.

At present, however, the WTO dispute settlement system is busier than ever. There are currently panel proceedings ongoing in 35 disputes (counting United States – Measures on Steel and Aluminium with its 9 complainants as one) and there are 12 disputes before the Appellate Body. During the past few weeks, panels and the Appellate Body have circulated a number of reports that were long-awaited and/or much commented on, including the panel reports in Russia – Traffic in Transit (DS512) and United States – Differential Pricing Methodologies on Lumber (DS534) and the Appellate Body report in Korea –

Radionuclides (DS495). In the latter case Japan reacted very negatively to the Appellate Body's reversal of most of the Panel's findings of SPS-inconsistency of Korean import restrictions imposed in the wake of the Fukushima Daiichi nuclear disaster. Japan had clearly not expected such outcome in this politically highly sensitive case. In United States – Differential Pricing Methodologies on Lumber, the Panel – obviously emboldened by the current debate on the precedential value of Appellate Body rulings – rejected the established case law on the WTO-inconsistency of the zeroing methodology. Canada will appeal this panel report with a easy to predict outcome. Finally, in Russia – Traffic in Transit, a panel interpreted for the very first time Article XXI of the GATT. The Panel's inspiring and careful analysis of this provision will undoubtedly influence the argumentation in, and the outcome of, other pending disputes in which Article XXI is invoked. The Panel convincingly concluded that Article XXI is not a 'self-judging' provision and clarified the requirements for a successful invocation of this exception provision. In doing so, it gave much, but appropriate, deference to a Member invoking Article XXI. Less convincing is the order of analysis which

the Panel adopted, establishing first whether the panel had jurisdiction to examine the invocation of Article XXI and whether Russia met the requirements to invoke Article XXI before it established whether the measures at issue were inconsistent with relevant GATT obligations. This panel report was adopted by the DSB on 26 April 2019 and not appealed. However, this is unlikely to be the end of the debate on Article XXI. National security cases, a rarity until recently, have now become 'common'. The 'political' lid on this Pandora's box has been blown off.

To conclude on a personal note, on 28 March 2019, the date of circulation of the Appellate Body report in United States – Large Civil Aircraft (Second Complaint) (Article 21.5), I completed my duties as an Appellate Body Member. After nine years, three months and three weeks of service, I am happy to return to academia, even if it is at a time that we move ever closer to the edge of the abyss.

Peter Van den Bossche

18 May 2019

Publications by SIEL members

Conferences and other events

- A. G2 Annual Conference on the WTO and Global Economic Regulation
- B. Global Governance at a Critical Moment: Insights from Asia
- C. SIEL/PEPA Conference
- D. Law of the Blue Economy from and International and South Asia Perspective

Calls for Papers

Other Activities

- A. The SIEL/JIEL/OUP Prize
- B. Prize in Honour of H.E Rosalyn Higgins
- C. 2019 ALAI Congress
- D. Three New Courses in International Economic Law at AUWCL

Conferences and other events

A. G2 Annual Conference on the WTO and Global Economic Regulation

The G2 Annual Conference on the WTO and Global Economic Regulation, jointly organized by Georgetown Law and the Graduate Institute, Geneva (G2), will take place from 6 to 8 June 2019 at the Graduate Institute in Geneva. The conference benefits from academic input and guidance from the Society of International Economic Law. More information and program are available [here](#).

B. Global Governance at a Critical Moment: Insights from Asia

The Japan Chapter of the Asian Society of International Law is please to invite you to its 10th Anniversary Annual Conference, at Meiji Gakuin University, in Tokyo, on 14 July 2019. The theme is: "Global Governance at a Critical Moment: Insights from Asia." The deadline for registration is 6 July 2019. The program for the Conference is available [here](#).

C. SIEL/PEPA

The 8th SIEL/PEPA Conference will take place at King's College London on 30 – 31 May 2019. You are encouraged to attend and support PEPA. The programme of the conference is available [here](#). Volunteers to host next year's edition are warmly invited to contact [Freya Baetens](#) and/or [Jose Caiado](#) for more information.

D. Law of the Blue Economy from an International and South Asian perspective

The Second Biennial Conference of the South Asia International Economic Law Network (SAIELN) will take place in Thiruvananthapuram, Kerala, India, from 27-28 July 2019. More information can be found [here](#).

E. 5th Biennial Conference of the Latin American Network of International Economic Law (Red LADEI)

The 5th Biennial Conference of the Latin American Network of International Economic Law will take place in CDMX, Mexico, from 14-15 October 2019 (note

new date), under the theme: "Steps Back in the International Economic Law Order: Impacts to Latin America". The call for papers has been extended to May 31, 2019. More information on the Conference is available [here](#).

Calls for Papers

A. IX Seminar of Mexican Yearbook and V Seminar of Latin American Network

The 9th of the Mexican Yearbook of International Law and the 5th Seminar of the Latin American Network of International Law Journals will take place on 19 and 20 September 2019. More information on the two seminars is available [here](#). The deadline for submission of abstracts is 21 June 2019.

B. 3rd Biennale Hamburg Young Scholars' Workshop in International Law

The Institute of International Law, University of Hamburg is pleased to announce that the 3rd Biennale Hamburg Young Scholars' Workshop in International Law will take place on 20 to 21 September 2019. The deadline for application is 10 June 2019. More information on the Workshop is available [here](#).

C. International Investment and Ecological Sustainability

The International Investments in Latin America Network and the School of Policy and Government of the Universidad Nacional de San Martín, with the support of the University of Dundee and the Transnational Institute, are organizing a workshop on "International Investments and Ecological Sustainability," to take place July 25-26, 2019, at the Universidad Nacional de San Martín. Abstracts should be submitted by 31 May 2019. The call for papers is [here](#).

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](#).

Publications by SIEL members

Benevides Demasi, Joao O. The Precautionary Principle, the Labelling of Gene-edited Products, and the WTO Case Law. In: *Genome Editing in Agriculture. Between Precaution and Responsibility*. Dürnberger, C.; Pfeilmeier, S.; Schleissing, S. (eds). TTN-Studien, Volume 7, p.153-178.

Illaria Espa, 'Chinese Natural Resources Disputes: A Never-Ending Story?', in M. Bungenberg et al., *European Yearbook of International Economic Law* 2018 9 (2019), pp. 39-60.

Pasha L. Hsieh & Bryan Mercurio eds., (2019), *ASEAN Law in the New Regional Economic Order: Global Trends and Shifting Paradigms*, Cambridge University Press (2019).

Rafael Leal-Arcas, *EU Trade Law*, Elgar European Law series, Edward Elgar, (2019)

Deadline: 30 June 2019.

Other Activities

A. SIEL/JIEL/OUP

SIEL is pleased to announce that Ms Catherin E. Gascoigne was the winner of the 2018-2019 edition of the SIEL/JIEL/OUP Essay Prize Competition, with her essay entitled "The Role of Non-Attribution in Determining the Use of Trade Remedies". The essay can be found [here](#). Special thanks to Gracia Marin-Duran, Illaria Espa, Freya Baetens and Suresh Nanwani for coordinating and managing the Prize Competition on behalf of SIEL.

B: Vacancy Notice

Freya Baetens is looking for a research associate to assist with a project on State-owned enterprises in international dispute settlement (funded by the Norwegian Research Council and the PluriCourts Centre, Oslo Law Faculty). Candidates are invited to send a CV, publication list and motivation letter to freya.baetens@jus.uio.no by 1 June.

C. Prize in honour of H.E Rosalyn Higgins

In light of her outstanding and inspiring achievements in the field of international dispute settlement, the Law & Practice of International Courts and Tribunals (LPICT) has named a Prize in honour of H.E. Rosalyn Higgins. The Rosalyn Higgins Prize is an annual prize which awards EUR 1.000 of Brill book vouchers and a LPICT subscription to the author of the best article on the law and practice of the International Court of Justice, either focusing on the ICJ or with the ICJ as one of the dispute settlement mechanisms under consideration. The winning article will also be published in LPICT and made freely available online to maximize its dissemination. The deadline for application for the next Rosalyn Higgins Prize is 31 August 2019. For more information please see [here](#).

D. 2019 ALAI Congress

Registration is now open for the 2019 Congress International Association of Literary and Artistic Works (ALAI

Congress) which will take place in Prague, the Czech Republic, on 18 – 20 September 2019. More information on the Congress is available [here](#).

E. Three New Courses in International Economic Law at the AUWCL

The American University, Washington College of Law ([AUWCL](#)), is proud to introduce, next Fall, three new LLM courses on International Business and Trade Law, International Arbitration and Trade Law and Gender, International and Comparative Law.

Next Newsletter

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