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

President's Corner

Between Hope and Despair

Since 11 December 2019, the Appellate Body is no longer able to hear any new appeals and all work on 10 of the 13 pending appeals has been suspended. Only the appeal proceedings in Australia - Tobacco Plain Packaging, Russia - Railway Equipment, US - Supercalendered Paper will still be brought to an end. On 18 December 2019, the United States showed other WTO Members what the future may have in store for WTO dispute settlement when it appealed the 'displeasing' panel report in US - Carbon Steel (Art. 21.5), thus 'conveniently' leaving this dispute with India in legal limbo. There is, however, a growing realization among other WTO Members that a functioning dispute settlement system, with independent and impartial appellate review, is essential for a rules-based multilateral trading system. On 24 January 2020, Brazil, Canada, China, the European Union and 13 other WTO Members stated that they remain committed to find a lasting solution to the current crisis of the Appellate Body. Recognizing that such solution will take time, these WTO Members agreed to work towards a multi-party interim appeal arrangement based on Article 25 of the DSU, so as to allow for appellate review in disputes between them. This contingency arrangement would be open to all WTO Members willing to join it and would only be in place until

a reformed Appellate Body becomes operational. While the aforementioned WTO Members are committed to 'expeditiously finalize work on such an arrangement', there is disagreement among these Members as to whether this arrangement should replicate as much as possible the working of the now paralyzed Appellate Body or whether it should be a plain and simple arbitration arrangement.

Many of us heaved a sigh of relief on 13 December 2019 when the United States and China announced that they had reached a trade deal which halted just in time a further escalation of their trade war. This Phase-One Trade Agreement, which was signed on 15 January 2020, provides for: (1) better IP protection; (2) binding obligations regarding technology transfer practices; (3) measures to expand US agricultural exports to China; (4) more market access for US financial services; (5) policy and transparency commitments related to currency issues; and (6) a commitment from China to purchase an additional USD 200 bn of US goods and services over the next two years. While averting - at least for now - further escalation of the trade war, average US duties on Chinese imports, which were 3.1% in January 2018, will remain at 19.3%. Such high level of import duties is likely to be the new normal for a long time to come, since a significant reduction of these duties depends on the United States and China reaching a phase-two trade agreement providing for structural reform

Save the date: Next SIEL
Biennial Conference

The 2020 SIEL Biennial
Conference will take place
from 9 to 11 July 2020 at
Bocconi University, Italy.

SIEL GOVERNANCE

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Isiko Štrba, Johanna Jacobsson, David
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Pereyra, Weihuan Zhou.

of China's economic system and addressing the very contentious issues of industrial subsidies and the role of SOEs. There is much (justified) skepticism regarding the chances of ever reaching such phase-two agreement. Many also wonder whether China will even be able to meet its commitments under the Phase-One Trade Agreement. Concerns have been raised in particular regarding China's commitment to purchase an additional USD 200 bn of US goods and services over the next two years. To meet this commitment, China would have to increase its purchase of US goods and services by 92% over the next two years. Can this goal be achieved without China diverting trade away from current suppliers of goods and services to US suppliers, and can that be done without violating on an unprecedented scale the WTO MFN treatment obligations, i.e. the bedrock of the multilateral trading system? These are confusing times in which yesteryear's champion of free trade converts to previously accursed 'managed trade'.

Reflecting a more traditional US free-trade position, the United States, the European Union and Japan announced on 14 January 2020 - the day before the signing of the Phase-One Trade Agreement - that they had reached, in the context of their trilateral talks, an agreement on how to strengthen the current WTO rules on subsidies. The United States, the European Union and Japan consider these rules insufficient to tackle trade and market distorting subsidization by China and other emerging economies. They therefore want to expand the list of prohibited subsidies and propose that, for certain other subsidies, it would be for the subsidizing Member to show that these subsidies do not have any adverse effects

to the interests of other Members. The United States, the European Union and Japan also reject the Appellate Body's case law on 'public body' and seem to agree that each and every Chinese SOE should be considered to be a 'public body'. Needless to say that the negotiations on such amendments of the SCM Agreement are unlikely to be successful any time soon. Whereas the Joint Statement of 14 January 2020 by the United States, the European Union and Japan might signal further coalition building for WTO reform among developed economies, this has not stopped the United States from threatening the European Union with increased US import duties on European goods, most recently in response to a now suspended French digital services tax or a planned EU carbon tax. Also, on 24 January 2020 the United States announced that it would be expanding its 2018 national security duties on steel and aluminum to cover also products such as nails, wire and auto panels. This is much in line with the 'do as we want or we will hit and hurt you' approach to trade relations of the current US Administration. While this approach may allow the United States to score a few 'successes', it is very unlikely to bring about a broadly supported, reformed multilateral trading system able to address the challenges of the 21st century.

The WTO marks its 25th anniversary this year but, considering the current state of affairs, there is little cause for jubilant celebration. While there is a broad consensus among Members that the WTO is in need of reform, there is no agreement on what that reformed WTO should look like. At least one Member seems to prefer a power-based, rather than rules-based, multilateral trading system.

From 9 to 11 July 2020, SIEL will organize at Bocconi University, Milan, its Biennial Conference on Reshaping Global Economic Governance for the 21st Century. I am heartened by the massive response to the call for papers and panels. This response bears witness of our collective determination not to give up on rules-based multilateralism. Hope must prevail over despair!

Peter Van den Bossche

30 January 2020

Publications by SIEL members

Conferences and other events

- A. Global Trade Academy
- B. David Caron Praelium
- C. Sustainable Natural Resources Governance in the SDGs Era

Calls for Papers

Other Activities

- A. The SIEL/JIEL/OUP Prize
- B. CCLS & ESRC LISS CASE PhD Studentship
- C. Teaching Fellow IEL Stanford Law School
- D. Discount on Hart Publishing

Publications by SIEL members

Gabrielle Marceau, [Evolutionary Interpretation and International Law](#), (Ed with G. Abi-Saab, K. Keith and C. Marquet), Hart (2019).

Gabrielle Marceau, Trade and Women—Opportunities for Women in the Framework of the World Trade Organization, *Journal of International Economic Law (JIEL)*, volume 22, issue 3, p.1-32.

Weihuan Zhou, [China's Implementation of the Rulings of the World Trade Organization](#), Hart (2019).

Weihuan Zhou, 'In Defense of the WTO: Why Do We Need A Multilateral Trading System', (2020)47(1) *Legal Issues of Economic Integration* 9-42.

Rafael Leal-Arcas, [Solutions for sustainability: How the international trade,](#)

[energy and climate change regimes can help](#), Springer (2019).

Bashar H. Malkawi, The Design and Operation of Rules of Origin in Greater Arab Free Trade Area: Challenges of Implementation and Reform, 53 *Journal of World Trade* 243-272 (2019).

Federico Ortino, [The Origin and Evolution of Investment Treaty Standards](#), OUP (2019).

Johanna Jacobsson, [Preferential Services Liberalization: the Case of the European Union and Federal States](#), Cambridge University Press (2019).

Suresh Nanwani, [Belt and Road Initiative: Responses from Japan and India - Bilateralism, Multilateralism and Collaborations](#), Global Policy UK, (2019).

Owen McIntyre and Suresh Nanwani (editors), [The Practice of Independent Accountability Mechanisms \(IAMs\) Towards Good Governance in Development Finance](#), Brill, (2019).

Conferences and other events

A. David Caron Praelium: The Best of Arbitral Advocacy

The Praelium, first introduced in 2015, is an annual celebration of advocacy, with two leading international advocates deploying their oratorical and advocacy skills in the service of important current legal issues before a distinguished three-member tribunal. This year, in commemoration of its inaugural session in the U.S., the Praelium will take place on the evening before the annual Columbia Arbitration Day. The Praelium will take place on Thursday, 5 March 2020, in New York City. Information [here](#).

C. Sustainable Natural Resources Governance in the SDGs Era: The Role of International Law in Shaping the Responsibilities of States and Investors

USI Lugano will host the next meeting of the International Law Association (ILA) Committee on "The Role of International Law for the Sustainable Management of Natural Resources". In addition, is organizing a public event on "Sustainable

Natural Resources Governance in the SDGs Era: The Role of International Law in Shaping the Responsibilities of States and Investors" on March 12, 2020. Please contact [Ilaria Espa](#) for more information.

Calls for Papers

A. International Investment Law & State Capitalism

The Athens Public International Law Center (Athens PIL) of the National and Kapodistrian University of Athens School of Law is hosting a Colloquium on 'International Investment Law & State Capitalism', which will take place on 15 and 16 October 2020 in Athens, Greece. Information regarding the event and the call for papers is available [here](#).

B. Custom and International Investment Law Conference

The Organizing Committee of the Conference "Custom and International Investment Law" is pleased to invite to the Conference, which will hold six thematic panels. Scholars and practitioners interested in presenting during the Conference are encouraged to send their proposals. Details [here](#).

C. International Economic Law

The *Revista Derecho PUCP* is editing a number on International Economic Law. SIEL members are invited to publish not only in Spanish. More information [here](#).

Other Activities

A. SIEL/JIEL/OUP 2019-2020

The deadline for entering the 2019-2020 SIEL/JIEL/OUP Essay Prize competition is fast approaching, and authors meeting the stated conditions are warmly encouraged to send their submission by **14 FEBRUARY 2020**. For further details, please visit [here](#).

B. CCLS & ESRC LISS CASE PhD Studentship - Digital Trade

The Centre for Commercial Law Studies at Queen Mary University of London, in partnership with the UK Department for International Trade, calls for applications for an ESRC funded +3 (PhD only) or 1+3

(Masters + PhD) studentship to support research in the field of International Trade Law. Information can be found [here](#).

C. Vacancy: Teaching Fellow, International Economic Law, Business and Policy (IELBP), Stanford Law School

STANFORD LAW SCHOOL seeks to hire a teaching fellow for the LLM Program in International Economic Law, Business & Policy. The appointment is for a two-year position with the possibility of a third year by mutual agreement, beginning in August 2020. Apply [here](#).

D. Discount on Hart Publishing

Hart Publishing is offering a discount on the books of Professors Marceau and Zhou listed in the Section "Publications by SIEL Members". Use the code CV7 ordering online at: www.hartpublishing.co.uk

Next Newsletter

Please note that the next SIEL newsletter is scheduled for June 2020. Should you wish to include an item in the next issue, please contact us by the end of May.

Thanks for your support and interest.

Susan Isiko Strba, Johanna Jacobsson & Victor Saco.