

LSGL Working Group: International Trade & Investment Law

Trade between nations has been around since time immemorial. However, it was not until after World War II when states set out to agree upon an international governing mechanism for trade. This need was first conceived with the General Agreement on Tariffs and Trade 1947 which was aimed at bringing certainty, security and opportunities for international trade. In 1995, this vision was consolidated with the creation of the World Trade Organization. This institution was established to focus on three main purposes: as a forum to negotiate trade agreements, to establish institutional legal framework to implement them and to settle trade disputes. Today, nearly 25 years after this milestone was achieved, the WTO regulates trade amongst 164 Members and over 580 cross-border trade disputes have been brought to its Dispute Settlement Mechanism. Despite its successes, the WTO and the whole multilateral trading system lie in great peril, as they are being challenged on multiple fronts. Collapse of the WTO system would likely lead to the end of multilateral and legally enforced trading rules, and would leave economically weak countries largely on their own. It could mean going back to the era of protectionism and a highly fragmented global economic order. Among the many challenges that multilateralism and the global trading system are facing, the following disrupting trends can be identified in particular.

The technological advancements and digitalization in the last 25 years have revolutionized many industries (such as finance, shipping, e-commerce, etc) and will most likely continue to do so over the next decades. This calls for new forums where these new technologies are discussed and regulated. Smart contracts, blockchain technology, crypto currencies and e-commerce will become the most common tools of trade in the future. Also, they will provide new securities to trading partners and of course, present new regulatory challenges for both businesses and governments. Moreover, the WTO's Dispute Settlement Mechanism is in grave danger of collapsing altogether. For the last few years, the United States has blocked the reappointment of the WTO's Appellate Body (AB) members. In September 2018, the AB membership went down from seven to three, which is the bare minimum number of members that are required to hear appeals. If this continues, the AB can no longer function from as early as in 2019. Such a turn of events can demolish the multilateral adjudication of trade disputes and seriously affect the entire multilateral trading system.

The current volatile political, economic and diplomatic landscapes clearly pose serious challenges to the multilateral system and its institutions. What seemed like a steady march towards the lifting of borders since the creation of the WTO and the European Union has taken a lot of turns in the last few years. Brexit and the actions of the Trump administration have revealed how fragile global institutions can be. Certain WTO Members specifically have taken an advantage of the legal exceptions that the WTO Agreements have in place for national security and protection of the environment as ways to justify sanctions and trade barriers that they have imposed against other WTO Members.

WTO is not the only forum where these battles are taking place. Negotiations for international investment agreements are facing similar clashes of preferences. They have become a battleground between investors insisting on strong and effective protection of their private

Property and governments (especially from developing countries) claiming that the current investment regime favors private investors and does not include necessary protection of environment, human rights and public policy. Furthermore, many governments, scholars and civil society actors argue that investment agreements lack a transparent, consistent and reliable investor-state dispute resolution mechanism based on impartiality, accountability and coherent jurisprudence, and that the regime in general does not reflect the special needs of developing countries and countries in transition. More and more often there are calls to integrate sustainable development goals into international investment agreements to make the regime more balanced, to improve current dispute settlement mechanisms (perhaps, by creating a new world investment court or a uniform appellate process).

The current times are definitely challenging for existing trade and investment rules. Hence, this field of study presents many interesting and topical avenues for legal research, and now arguably more so than ever before. The work to be done by this working group will contribute to the global discussion on the regulation of global trade and investment rules. The participating legal scholars will analyze the ways in which international regulations and agreements can address the key changes in our society and in the international economy. In this regard, the group plans to focus on the following areas and topics in the next two years:

- Disrupting trends in trade and investment
- Non-market economies in trade remedy investigations
- Trade and technology
- Trade and dispute settlement
- Trade and sanctions
- Trade and social values
- Regional trade agreements
- Trade inclusiveness

We would like to focus on activities such as, but not limited to, the following:

- Special Journal Issue: Prepare 4-5 articles for a special issue of a prestigious peer reviewed journal on 'Recent trends in international trade: Protection or protectionism?'
- Collaborative Research: Forming research collaborations and co-authoring academic pieces.
- Outreach: Our next research workshop will be held at LSGL meet in Turin (July 2019). Attached is a call for papers for this research workshop. The theme for the workshop is: Recent trends in international trade: Protection or protectionism?
- Collaborative Teaching: Co-teach courses on international trade law issues in our respective institutions. Invite group members for ad-hoc classes, or for teaching an intensive course. Or, co-teaching an online course. We will also make a joint course proposal for the 2020 LSGL summer school.

Save the date: Turin LSGL Meeting 2019: 21-23 July

We will have our second research group meeting on 23 July. We are also organizing a research workshop on: Recent trends in international trade: Protection or protectionism? At this workshop, we will present our work in progress and get each others' feedback. We have agreed to have our respective papers ready to be sent for peer review process by September 2019. We will like to use this workshop as an opportunity to invite new members to the group and have them present their work in progress at the workshop.

You are welcome to join: The group is newly born, and is in look for new members who could

contribute to our activities and goals. If you are a trade or investment law enthusiast and are keen to join this group, you are most welcome. To do so, please send an email to Amrita Bahri on amrita.bahri@itam.mx.

List of Founding Members:

Dr. Amrita Bahri
Dr. Daria Boklan
Dr. Johanna Jacobsson
Dr. Ru Ding
Dr. Vladislav Starzhenetskiy

Brief Bios of Founding Members

Vladislav Starzhenetskiy is Associate Professor at the Chair of International Public and Private International Law, Faculty of Law, Higher School of Economics (Moscow). He also serves as First Vice Dean of the Law Faculty. His research interests include jurisdictional immunities of states, international economic sanctions, recognition and enforcement of foreign judgments and arbitral awards, human rights, property law, and intellectual property law. He graduated from the Moscow Institute of International Relations (MGIMO) with a degree in International Law. In 2003, he received his PhD for his dissertation dedicated to comparative analysis of property rights concepts under the ECHR and Russian law. From 1998 to 2014, he has been working at the Russian Federation's Supreme Commercial Court and was heading the Department of International Law and Cooperation from 2011 to 2014.

Johanna Jacobsson is Assistant Professor at IE University (Madrid, Spain) where she researches and teaches international law and EU law. Her main fields of expertise are international tradelaw (especially services trade and preferential trade agreements), the regulation of the digital economy and the EU's internal market law and external trade relations. Johanna holds a PhD from European University Institute (Florence, Italy, 2016) and LLB, LLM and BA degrees from University of Helsinki (Finland). She has previously been a law clerk at the Court of Justice of the European Union, a visiting researcher at the Finnish Institute of International Affairs and a practitioner in a law firm. She has been a member of the Executive Council of the Society of International Economic Law (SIEL) since July 2018. Johanna is currently finalizing a monograph, "Preferential Services Liberalization: the Case of the European Union and Federal States", for publication in 2019 (Cambridge University Press).

Amrita Bahri, who is currently an Assistant Professor of Law at ITAM University, is an international trade law scholar with the experience of practice, teaching and research. She is the Co-Chairholder of WTO Chair Programme and the Deputy Director for the Centre of International Economic Law at ITAM. She has a PhD in International Trade Law from University of Birmingham and an LLM in International Business Law from London School of Economics. Amrita has published on the issues of international trade law, dispute settlement and capacity building in developing countries. Her recent articles feature in the prestigious journals such as the Journal of World Trade and Trade, Law & Development. Her other works, in the form of a book and book chapters, are published by leading publishers such as Cambridge University Press and Edward Elgar. Amrita is the Founding Member of the South Asian International Economic Law Network (SAIELN) and the Member of Society of International Economic Law (SIEL).

Daria Boklan, Doctor of Law is a Professor of International Public and Private Law Department,

Faculty of Law, National Research University Higher School of Economics, Moscow, Russia. She is a Doctor of Legal Science, Moscow State University of International Relations. She is also a part time professor at MGIMO University (Moscow State University of International Relations) teaching WTO law. Professor Boklan was a member of the expert group, drafting the Treaty on Eurasian Economic Union (2013-2014). Dr. Boklan is the author of two books on international environmental law and international economic law and more than 50 scientific publications in international environmental law, law of the WTO and law of the Eurasian Economic Union in such journals as the *Environmental Earth Sciences* (Springer), the *Eurasian Economic Union and the European Union* (Eleven International Publishing), *International Justice* (Institute of Law and Public Policy), *Moscow Journal of International Law*, *Eurasian Law Journal*.

Dr. Ru Ding is Associate Professor at the School of International Law of China University of Political Science and Law. Dr. Ding holds a Doctor of Juridical Science (S.J.D.) from the Georgetown University Law Center, a Master of Law (LL.M.) from Duke University School of Law and a Bachelor of Law degree from Tsinghua University School of Law. She has briefly worked at the Appellate Body Secretariat of the World Trade Organization (WTO) and the WTO's Economic Research and Statistics Division. She was a lecturer at the Duke University School of Law, and a visiting scholar at Harvard University Law School. She has published in journals including *Journal of World Trade* and *Georgetown Journal of International Law*. Dr. Ding's research interests include WTO law, international economic law and trade remedies. Her recent research covers the topics of international rules on state-owned enterprises and also the legal institutional design of the Belt and Road Initiative.