

Annual Conference on International and EU Trade and Investment Law, Brussels

On 8 and 9 November 2018 I had the privilege of attending the European Academy of Law's annual International and EU Trade and Investment Law Conference in Brussels. I am grateful to COMBAR and the Young Barrister's Committee of the Bar Council for making this possible.

The conference is an opportunity to get an update on key issues in the International Trade Law arena, with specific focus on WTO and EU Investment law. It is also an opportunity to meet players active in that field: lawyers, civil servants, academics and potential clients.

This year's conference was organised by the European Academy of Law and Professor Christoph Hermann, from the University of Passau. This proved to be an excellent combination as the conference struck a near perfect balance between content (thoughtfully considered themes, deep and insightful analysis), speakers (academic and practical) and general atmosphere (convivial and relaxed).

The first day, 8 November, galloped through several hot-button issues in trade law. Professor Hermann started the morning diving into the current 'trade wars', looking at them from an EU perspective and reflecting on the legality of EU "rebalancing" measures under both WTO and EU Law. These rebalancing measures are important with regards to the EU's upcoming negotiations with the US regarding their 'trade wars', particularly on steel, aluminium and cars. Both countries are attempting to re-negotiate the tariffs on those items (and many others); such a re-negotiation will yield new tariff rates which will have to be submitted to the WTO, accordingly the legality of any such re-balancing exercise is of crucial importance. Professor Hermann's engaging presentation was followed by a non-legal presentation from the European Commission, on the upcoming negotiations between President Juncker and President Trump. This presentation offered a political/real world insight into the EU's response to the 'trade wars' and what its future positioning will likely be.

The second session of day 1 delved further into the current trade wars, with the theme "the current trade war: can anybody win it – and how?". Folkert Graafsma, a highly respected WTO and EU lawyer, presented on the legality of the US trade war against the rest of the world, analysing it from both a WTO and US legal perspective. This was highly informative and useful knowledge; it allowed me to conclude that the legal basis for the US's 'trade war' is, at best, questionable.

This was followed by a presentation from Professor Sacerdoti, a former judge on the WTO's Appellate Body, about the WTO Appellate Body crisis and the return of unilateralism. He described in detail how under the Obama administration the US had already taken a hard line against renewing judges for the WTO's appellate body due to concerns that judges were overreaching and creating *obiter dicta* in their appellate judgments. This has resulted in the

present crisis, namely that in 12 months' time there will only be one appellate body judge remaining, which means that the WTO dispute settlement system will come to a halt as no further disputes will be capable of being adjudicated. This is particularly worrying as nearly every week there is another notification of yet another country filing a case with the WTO regarding the ongoing 'trade wars'. As Professor Sacerdoti pointed out: there is an irony here because the US has won nearly every single dispute it has been involved in in the WTO. Further, and this was taken as a sign of hope, the US is still using the WTO as a forum to launch disputes despite its criticism and blocking of appellate body judges, it still seeks to use this forum to attempt to legitimise its trade wars. Clearly, the present situation for the WTO is dire.

The third session of the day involved the latest reforms to EU anti-dumping law, and the new methodology for calculating the dumping margin for countries that have significant distortions present in their market (e.g. China). This new method was introduced because of the expiry, in December 2016, of the previous agreement of WTO members to treat China as a non-market economy. There were two sessions devoted to this methodology: one by the excellent Philippe de Baere, a renowned trade lawyer, to discuss his practical experiences of using the new EU methodology. The second session was the by equally good Jan Bohanes, also a trade lawyer, on the EU methodology and its impact at the WTO level – what WTO jurisprudence says about the methodology and its legality. This was all very useful information for the future UK Trade Defence Mechanisms/Remedies Unit that is being set up when the UK exits the EU; it will likely adopt an analogous approach to dealing with Chinese imports.

The final session of the first day was devoted to Bi-lateral Trade Agreements; another hot button issue because of numerous CJEU cases on this in recent years and Brexit. Presentations were given by Isabelle van Damme, a trade lawyer, and Adeline Hinderer, a civil servant and Deputy Head of Unit, DG Trade at the European Commission. This was an important session because of the potential impacts for future UK-EU relations following Brexit.

At the end of that jam-packed first day there was a refreshing drinks session. I was able to ask the speakers questions over Belgian beer and crudites, and hear about their experiences in the trade law arena. A great topic of conversation was Brexit and the future of UK trade relations.

Day two saw two very important sessions: Investment protection and Brexit. These themes are highly relevant to my practice and it was a pleasure to listen and learn from the insights of Moritz Keller, partner at Clifford Chance and Colin Brown, Deputy Head of DG Trade at the European Commission about the current state of play in investment protection, the EU's position following key CJEU judgments and also the EU's position as to the Multilateral Investment Court that is being worked on via UNCITRAL. Brexit was also the session that everyone was waiting for, and here the speakers did not disappoint: Thomas Sebastian, the UK's leading WTO lawyer looking at the UK's perspective on its future relations with the EU and the rest of the world following Brexit and Lothar Ehring from DG Trade offering the EU's perspective post Brexit.

I thoroughly enjoyed attending the conference: I developed my legal knowledge in precisely the areas that are relevant in my practice, particularly as we push towards Brexit; and I spoke with leading figures in the field in a relaxed, comfortable environment. I couldn't have asked for a better conference experience. I highly recommend this annual conference to any Investment Law or Trade Law practitioner. It is worth every penny.

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