



LAWTTIP Executive Summary 2019/2

The LAWTTIP Executive Summary series is intended to:

- take stock of the most relevant legal issues emerging from the negotiations and implementation of the EU trade agreements of new generation;
- illustrate the results of the LAWTTIP activities among EU and national decision-makers and stakeholders, thus ensuring the expected social impact of the research activities.



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA
DIPARTIMENTO DI SCIENZE GIURIDICHE
CENTRO INTERNAZIONALE DI RICERCHE SUL DIRITTO EUROPEO



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LAWTTIP Network Scientific Results

During the last year of the project, the research activities consisting of lectures and seminars given by leading scholars with strong expertise on the LAWTTIP Network topics further intensified. The lectures and the seminars provided a comprehensive and systematic analysis of the impact of current negotiations of FTAs on the EU legal order, the EU integration process and its constitutional identity. Each partner focused on specific issues and topics that allowed to address the main scientific results of the whole project according to each unit's research line.

The culminating event was, however, the LAWTTIP Final Expert Meeting held in Brussels on 8 July. It represented the occasion for gathering together key staff members of the LAWTTIP Network, European and national civil servants belonging to the main institutions involved in the New Generation Free Trade Agreements' (NGFTAs) negotiations and implementation and stakeholders from business organisations and NGOs. It offered a unique opportunity to summarise the main practical contributions of the Network and to identify future challenges for NGFTAs implementation. Among the speakers of the High-level Roundtable, the LAWTTIP Network had the pleasure to have Colin Brown (Deputy Head of the Dispute Settlement and Legal Aspects of Trade Policy Unit, Directorate-General for Trade, European Commission), Stephanie Leupold (Head of the Trade Strategy Unit, Directorate-General for Trade, European Commission), Sir Francis Jacobs (King's College London) and Prof. Marc Maresceau (University of Ghent).

IODE Major Scientific Results

The **Institut de l'Ouest: Droit et Europe (IODE) of the University of Rennes 1** mainly focused on the future challenges of the new generation of FTAs. In particular, it hosted a number of seminars aimed at analyse institutional and procedural aspects concerning the FTAs with a particular attention to the challenges



deriving from the Brexit process. Moreover, it paid attention to the EU's external action and to the role citizens may play in shaping the rules of international trade by addressing issues of transparency and democracy. Finally, particular consideration was devoted to the more recent development in the case law of the ECJ, including Opinion 1/17.

The new generation of EU FTAs: external and internal challenges

With regard to the external challenges, on February 2019 two seminars were dedicated to the relationship between the **EU Neighbourhood policy** and the more recent FTAs concluded by the Union. More to the point, the first one focused on the main institutional issues concerning the impact of the EU Neighbourhood policy on FTAs, while the second was devoted to Brexit. The third seminar entitled “**Legal features related to the Citizens’ involvement in the EU’s External Action**” intended to frame the role of EU citizens in the EU's external action with particular attention to the process of conclusion and post-assessment of the FTAs of new generation.

As for the internal challenges, IODE hosted the **III LAWTTIP Roundtable** which took place on 25 April 2019 in Rennes. The Roundtable on “Les accords de libre-échange de l’Union européenne, quels enjeux pour l’agriculture?” analysed the major legal features related to the impact on agriculture of the recent FTAs concluded by the EU. Additionally, the last seminar held in June 2019 and focusing on “**Opinion 1/17 of the ECJ on CETA**” represented the occasion to assess the major legal implications related to the ECJ's Opinion for the future FTAs concluded by the EU.

To completion of the framework, IODE organised the **II LAWTTIP Young Researchers’ Workshop** on “The new generation of EU FTAs: external and internal challenges”. The event, which took place in Rennes on 5-7 June 2019, gathered young researchers and doctoral students together with experts and more experienced academics, discussing the most relevant legal perspectives flowing from the recent practice on EU FTAs. In general, the workshop further explored uncertainties and ambiguities deriving from the EU's external action impact on the negotiation and the conclusion of the new FTAs established a new legal framework. It was demonstrated that the new generation of FTAs needs to consider the implication of the new legal framework for the EU's external relations, as developed in the case law of the ECJ. These include, for example, the necessity that trade agreements have to be consistent with the aims of the EU's external action as defined in Article 21 TEU with particular

focus on especially sustainable development and political cooperation objectives. Furthermore, the issue of competences has become more significant to clarify the scope of the right of Member States to ratify an agreement alongside the EU. In this respect, the research further considers the relevance of Opinion 1/17, regarding EU-Canada agreement. Finally, the conducted research further explored the challenges deriving from the unexpected involvement of non-institutional entities, such as citizens, in the EU external economic relations.

UNIBO Major Scientific Results

The International Research Centre on European Law (CIRDE) of the University of Bologna mainly focused on the **constitutional dimension of the EU external action with particular focus on trade** in order to increase public awareness on the major trends and future perspectives in this field.



The constitutional dimension of the EU external action in the field of trade

To this end, the UNIBO unit organised a **set of lectures** given by leading scholars with strong expertise on the LAWTTIP Network topics. The TTIPills were devoted to the following points:

1. The role of the European Union within the international context;
2. The principle of autonomy of EU law in external relations;
3. The implications of Brexit on the external relations of the EU;
4. The integration of the EU's Common Foreign and Security Policy into the Community method;
5. Rule of law and EU trade cooperation;
6. The requirement of consistency of EU external action.

The lectures offered the opportunity to cover a variety of areas in line with the current debates and lines of research as well as to discuss with students about the main legal issues rising from EU trade policy.

Additionally, the International Research Centre on European Law organised a

series of **UNIBO's TTIPills** which took place within the framework of the 19th Summer School "**The Protection of Fundamental Rights in Europe**" (Bertinoro, 23-28 June 2019). In line with the content of the Summer School, the lectures – given by four young researchers – set the legal interactions between EU Free Trade Agreements and European fundamental rights. It was the occasion to get young students closer to the role played by fundamental rights within EU FTAs of new generation, but also to discuss about more peculiar issues such as intellectual property rights and investment protection in the field of FTAs. The last lecture was devoted to involving the students in a Moot Court (LAWTTIP Moot Court on Fundamental Rights and Free Trade Agreements). The competition required participants to prepare written and oral arguments for two sides of a fictional case involving a trade dispute.

In general, the research conducted by the CIRDE further explored the interplay between the EU trade cooperation and the EU fundamental rights and values as expression of the EU constitutional identity. The conducted research demonstrated that under the Lisbon Treaty, human rights protection has become fully enshrined in primary sources of EU law not only in relation to the internal perspective but also, as indicated in Article 21 TEU, in relation to the external dimension. Finally, by starting from a reframing of the role of the EU in the international context, the analysis addressed the main potential conflicts and critical points rising in the constitutional dimension of the EU external action. Particular attention was devoted to the role played by principles of autonomy of EU law and consistency of the EU external action.

KCL Major Scientific Results

The **Centre of European Law of King's College London** conducted its research by taking into account the more recent developments concerning Brexit. It is indeed undisputed that it will have important implications in the field of EU international trade and investment. For this reason, the activities organised in the last year of the project were mainly devoted to the EU's role at



international level as global actor *vis-à-vis* **Brexit** and **international investment challenges**.

The EU as global actor vis-à-vis Brexit and international investment challenges

First of all, KCL organized a set of **TTIPills lectures** given by leading scholars with strong expertise on the LAWTTIP Network topics. The lectures focused on the following points:

1. Investing in a 'Minefield'? Shareholder Voting in Chinese Securities Markets
2. Investment Protection in a Post Brexit Era
3. The Treatment of Sovereign Investors in International Investment Agreements
4. The EU as a Global Actor & the role of the CJEU & EU Principles
5. External Policies and Gender Equality.

The Centre of European Law of King's College London also organised the seminar "**Brexit Reflections: where do we stand?**" on 25 February 2019 in London. The talk was given by Ian Forrester QC, Judge at the General Court of the European Union.

Additionally, the Centre of European Law of King's College London hosted the **III LAWTTIP Joint Conference** on 21-22 March 2019 in London. The Conference on "EU Law, Trade Agreements, and Dispute Resolution Mechanisms: Contemporary Challenges" focused on the dialogue among international and regional institutions as a tool to overcome fragmentation and implement the rule of law in the international economic relations of the EU. Among others, the President of the ECJ, the Secretary-General of the PCA and representatives of the EFTA Surveillance Authority, the European Commission and the European Council participated as speakers. The conference closed on 22 March 2019 with a short intra-EU moot. The idea was to give a practical twist to the conference, allowing attendees to get a flavour of the difficulties investment tribunals are facing when dealing with intra-EU issues.

Finally, the Centre of European Law of King's College London hosted the **II LAWTTIP Roundtable** which took place on 12 June 2019 in London. The Roundtable on "CETA and Beyond: Rethinking International Dispute Settlement the 'EU' Way" analysed the impact of Opinion 1/17 on the evolution of dispute settlement mechanisms in the EU.

The main strand of KCL research focused on ADR mechanisms provided by the new generation of FTAs. International dispute settlement mechanisms in

international economic law are at a cross-roads: the plurilateral liberal model that gave rise to the WTO's Dispute Settlement Understanding and to the widespread use of arbitration as a tool to solve investor-State disputes is under attack on several levels. Thus the feasibility of an arbitration model and its compatibility with the notion of autonomy of EU law were two of the most analyzed topics especially in the light of the *Achmea* and the CETA Opinion. Most of the contribution on those topics are being collected in the third volume of the research series. A specific aspect was of course the implications on Brexit especially on the settlement of the likely dispute that will arise between the EU and the UK.

The research conducted at the CEL of King's College London further explored the above topics by including an analysis of the current investment regime and recent case law involving state-owned enterprises (SOEs) and sovereign funds (SWFs) in front of ICSID and other arbitral tribunals. The analysis also considered the procedural conundrum of state-controlled entities (SCEs) accessing the investor-state dispute settlement mechanism. The conducted research proved that the vector of foreign direct investment (FDI) flows has faced a dramatic change since the beginning of the century. Emerging economies from Asia, the Middle East, and Africa are not anymore only recipients of FDI flows, but also sources of significant amounts of outbound FDI. Due to the different economic models of emerging countries, the change of direction of FDI flows has occurred through the participation of SCEs, including SOEs and SWFs, as a new class of economic actors. The activism of SCEs in FDI flows challenges the main idea of liberal capitalism and reflects the advancement of state capitalism, as a new economic model triggering a host of regulatory complexities. SCEs, in the absence of a specific regulation that covers their investments, are relying on the current investment regime and Investor-State Arbitration (ISA) to protect their investments.



Jean Monnet Network LAWTTIP

Based on a consortium among the **International Research Centre on European Law of the University of Bologna**, the **Centre of European Law of King's College London** and the **Institut de l'Ouest Droit et Europe of the University of Rennes 1**, the Jean Monnet Network **LAWTTIP – Legal Ambiguities withstanding TTIP** intends to promote a large-scale legal reflection of both the existing EU Free Trade Agreements of new generation and the ongoing negotiations on the Transatlantic Trade and Investment Partnership (TTIP).

<http://www.lawttip.eu> info@lawttip.eu https://twitter.com/JMN_LAWTTIP

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