

KCL LAWTTIP Seminar Series

Andrea Biondi
Editor

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KCL LAwTTIP Seminar Series

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This Working Paper offers an overview of the Seminar Series
held at KCL within the LAwTTIP framework

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Abbreviations

CJEU	Court of Justice of the European Union
CFSP	Common Foreign and Security Policy
EU	European Union
OBOR	One Belt One Road
WTO	World Trade Organization

I KCL Seminar Event

London, 1 February 2018

Chinese Apples and the Emerging World Food Trade Order: Food Safety, International Trade and Regulatory Collaboration between China and the European Union

Professor Francis Snyder

China is the world's largest apple producer and it has increased opportunities to export high-quality apples to newly opened or potential high-value markets. However, differences between China and leading export markets concerning food safety standards, notably in regard to pesticide residues, may pose serious obstacles for Chinese exporters. The expansion of exports of apples from China is likely to have a significant impact on public health at global level, even though the regulatory regime for pesticides in China has been subject to significant reforms.

Hence, focusing on Chinese exports of fresh apples to the EU, Professor Snyder analysed the relationship between of food safety law, international and domestic standards, and international trade strategies as potential bases of an emerging world food trade order based on regulatory collaboration.

Professor Snyder noted that food safety law and standards today form part of a very complex configuration of global legal pluralism and existing differences in food safety standards may pose almost insuperable obstacles for international trade. For governments and exporters, these amount to polycentric policy and business concerns. In this regard, Professor Snyder explained that an interdisciplinary approach provides the best perspective for understanding these concerns and their possible solutions.

After an analysis of international, Chinese, and EU legal measures, Professor Snyder explored how the Chinese government has tried to develop strategies to meet this plethora of norms normative and to identify the potential implications for international trade in food.

It is worth saying that after China joined the WTO in 2001, the Chinese government adopted a policy of encouraging Chinese companies to export and invest abroad. Regarding to trade in fresh apples, Chinese exports initially met serious obstacles in relation to food safety standards. Thus, the efforts of the Chinese government focused on the modernization of Chinese agriculture, the necessity to meet the increasing domestic demand for safe food, the need to balance public and private food safety standards, and the elaboration of new international trade strategies to meet the demands of foreign markets.

In his research paper and in his talk, Professor Snyder concluded that two main results of these policy initiatives were: first, efforts to change China's economic growth model from growth based on exports to growth based on increasing domestic demand. Second, second, the new Silk Road initiative as a powerful lever of economic and legal changes at home and in China's relations with numerous other countries. The research shows that these seemingly diverse policies intersect in China's export of fresh apples. As a result, Professor Snyder noted that government–business relations in China have resulted in an unusual form of regulatory collaboration between China and the EU. Professor's Snyder argued that the factors underlying this form of regulatory collaboration are among the main drivers of transnational legal and economic relations in the international food trade today. They represent an emerging world food trade order.

Professor Snyder's research focused on three main aspects. First, Professor Snyder provided a sketch of world apple production and consumption, highlights the main features of apple production and consumption in China and of apple exports from China, and identified recent developments that opened up new opportunities for exporters of apples from China. Then, Professor Snyder analysed the complex normative web of standards,

legislation, and administrative regulations concerning pesticide residues that constitute challenges for Chinese producers and exporters. Finally, he considered how the Chinese government, producers, and exporters have sought to meet the challenges posed by this normative labyrinth.

In conclusion, by focusing mainly on Chinese exports of fresh apples to the EU, Professor Snyder illustrated, the challenges related to the gradual alignment of Chinese standards with international standards, an export strategy based on government support for selected elite export companies, and the conclusion of new bilateral agreements to open major new markets as parts of a single set of strategies to promote regulatory collaboration.

In doing so, Professor Snyder traced interconnections between international, EU, and Chinese food safety standards; China's post-WTO succession international trade strategies; the modernization of Chinese agriculture; relations between public and private standards; the 16 + 1 arrangement between China and the Central and Eastern European Member States of the EU; China's OBOR initiative; and the development of a China-centred global food economy for apples.

Using the example of trade in apples, Professor Snyder's research attempted to demonstrate the potential for a shift from regulatory competition to regulatory collaboration. Professor Snyder concluded that the importance of these factors is not limited, however, to apples. They are among the main drivers of transnational legal and economic relations in the international food trade today. They represent an emerging world food trade order.

II KCL Seminar Event

London, 5 March 2018

**How Courts and Tribunals approach their roles in
the international procurement system**

On 5 March 2018, the Centre of European Law of King's College London, in cooperation with GW Law, hosted the second event of its seminar series on "How Courts and Tribunals Approach Their Roles in the International Procurement System."

The event was divided in three sessions, all revolving around the underlying theme of the resolution of procurement disputes, including under the EU's Free Trade Agreements, from the perspective of the principle of effective judicial protection. The three sessions were organized in a view to offer participants the standpoint on the topic of both practitioners and courts.

The first session, discussing "Introduction to Bid Challenge Systems: How Should Bid Protests Be Resolved?" saw the participation of various members of judiciaries across a number of jurisdictions. Judge Elaine Kaplan (U.S. Court of Federal Claims), Ralph White (Government Accountability Office), Judge Katja Høegh (Østre Landsret, Copenhagen), Judge Marc Steiner (Administrative Judge, Swiss Federal Administrative Court, Basel), and Mrs. Justice O'Farrell DBE (Justice of the High Court, Tech. & Constr. Court, London), discussed emerging common patterns in their respective jurisdictions in relation to challenges to bids. The speakers also engaged in a review of the growing complexity of procurement chapters in international agreements, which regulate an increasingly large number of situations in cross-border procedures.

During the second sessions, on "Challenges for parties and professionals in the process: Do the systems work? How could they be improved?", high-profile practitioners—namely Paul Khoury (Wiley Rein, Washington DC), Vera Eiró (Linklaters, Lisbon), Roland Stein (BLOMSTEIN, Berlin), and Jane Jenkins (Freshfields Bruckhaus Deringer, London)—discussed the topic of access to remedies in national and international procurement disputes. Participants agreed that economic barriers to access to judicial and arbitral dispute settlement bodies often constitute a serious, if not insurmountable obstacle to justice, especially for SMEs. Ultimately, participants observed, such economic obstacles unavoidably have negative repercussions on the efficient regulation of international trade, limiting the potential effect of litigation to open markets and improve procurement standards.

During the third session on "Reviewing Other Courts' Decisions", members of various European judiciaries looked at how national and international courts interact among themselves to shape their case law on public procurement. Judge Christopher Vajda (Court of Justice for the European Union, Luxembourg), Judge Marco Lipari (Consiglio di Stato, Rome), and Justice Helena Rosén Andersson (Justice of the Supreme Administrative Court, Stockholm) pointed at judicial comity as an essential tool to avoid inconsistencies among overlapping legal systems and, ultimately, to ensure full judicial protection for the individuals, be them bidders or members of the general public affected by the outcome of public procedures.

IV KCL Seminar Event

London, 4 July 2018

External Relations and TTIP

Professor Takis Tridimas

During the seminar, Professor Takis Tridimas discussed the evolution of EU external relations law. Professor Tridimas considered the evolving external powers of the EU with particular focus on the interaction between trade and foreign policy. Then, the discussion considered the effects that international agreements and international law produce in EU law.

Professor Tridimas noted that in the late 1980s the Community was mainly engaged in trade policy and development aid. Some attempts were made to coordinate foreign policy through the vehicle of European Political Cooperation, but the Pillar structure of the European Union was still to be established, and those attempts were but the basis for the current system of Common Foreign and Security Policy (CFSP). The differences with current EU external policies is evident. Nowadays, the EU has become an international actor in both the political and economic spheres. Professor Tridimas noted that, particularly in the political field the EU does not always achieve the objective to speak with one voice and to be effective, but the EU is active even in defence matters. EU external relations law clearly reflect this expansion and diversification.

The EU is now competent to conclude international agreements having implications for all economic matters such as trade, investment, intellectual property, technical regulations and standards, competition and taxation. Additionally, Professor Tridimas noted that there is an increasing economic activity in non-economic areas such as conflict of laws, criminal law, even human rights law. The common commercial policy is now exclusive competence of the EU exercised through qualified majority voting by the Council and with a central role for the Commission. Member States can only take commercial policy measures where specifically authorized by the Community. It should also be noted that within the context of foreign policy the EU has also become an active player in international crises by implementing, for example, anti-terrorism policies. The EU is also a member of a number of international organizations, such as the WTO, and a main actor also in others, such as the UN, notwithstanding its status as an observer. The raised example show that EU external relations law has adapted to the evolving international context and developed.

Interestingly, Professor Tridimas noted that the development of external relations law is, at least in part, an internal affair in the sense that it finds its basis on the core legal principles of EU law. However, at the same time, the development of external policies also expose the EU to international law and its development. Although, the EU legal order constituted itself as distinct and different from public international law, the last decade was characterized by more and more interaction between these two legal systems, and, often, greater convergence too.

Professor Tridimas noted that this situation seem to suggest that EU external relations have been subject to main transformations. However, at the same time, there is also continuity. It was noted that the evolution of EU external relations should be read in the light of the foundations of EU law. During the seminar, Professor Tridimas provided an overview of the stages of evolutions of external relations law, focusing on both continuity and change. Some key issues should be highlighted. First, the evolving external powers of the EU in relation and the interaction between trade and foreign policy. Second, the impact which international agreements, and international law more broadly, have had on EU law.

In conclusion, the seminar demonstrated the enormous evolution of this area of EU law and the growing significance of external relations law is for the development of the EU constitutional system. On the basis on his previous research, Professor Tridimas, inter alia, touched upon issues such as the relationship between EU law and the corpus of WTO law and with the WTO dispute decisions, the effect of UN Security Council resolutions, and the correlation between respect for international law and respect for fundamental rights. It was noted that the challenges for EU policymakers and the judiciary in the years to come is to maintain continuity whilst adapting EU law to the evolving international context.

V KCL Seminar Event

London, 25 February 2019

Brexit Reflections: where do we stand?

Ian Forrester

In his speech Ian Forrester Q.C., judge at the General Court of the European Union discussed the challenges that Brexit poses to the UK and considered the potential impact that EU law will continue to have on the UK legal system. It was noted, that the decision of the UK to leave the EU raises a number of complex legal questions that fall under a number of categories, including the legal obligations arising from Article 50 TEU concerning the withdrawal of the Member State from the EU; the possible legal nature and scope of the UK's future legal and political relationship with the EU; and the implications of this future relationship for the internal market. However, it is worth noting that the future relationship between the UK and the EU may take different shapes depending on the policy choices of the EU and the UK in relation to, for example, trade cooperation, the legal means of this trade cooperation and compliance mechanisms. Overall, it appears that the EU's interest can be described as perpetuating the free movement of goods, services, capital and persons without excessive barriers and ensuring the level of protection defined by EU secondary law. In his speech, Ian Forrester discussed the role of EU regulation and its impact in the UK legal system.

The primary objective of the European Union is to establish a functioning common market, a process which involves the reduction or removal of national rules which impede this objective. While most EU legislation is economic in nature, it is essentially technical, prescriptive and precise. In this regard, the analysis focused on the future UK's approach to EU regulation and standards. It was noted that that a first option would be to incorporate and follow the EU regulations and standards; alternatively, law makers could seek to pursue "rival standards" or separate but equal ones established by UK experts after domestic consultation. Finally, a third option would be not to regulate a field at all. In his speech, Ian Forrester also considered some key features of free movement rights as well as the role of the Court of Justice in the protection of these rights. His view is that these rights are extremely valuable and that millions of EU citizens have benefited from them in terms of access to employment, qualifications, education, pensions and access to social benefits. In this sense, policy makers should consider the impact of leaving the European Union on the rights of individuals. Furthermore, it should be noted that during the possible transitional phase between the agreement to leave and the settling of the new regime, there will be need for the resolution of disputes before UK courts. Alternatively, appeals against EU actions to the General Court of the EU could also arise. Thus, it was noted that a number of questions still remain unanswered such as, for example, the existence of parallel systems of legal review during the transitional implementation phase. In his lecture, Ian Forrester identified a number of legal and regulatory issues which would arise in the event of Brexit.

EU law will continue to have a significant impact on the UK legal system. Hence, it should be noted a certain level of regulatory consistency of solutions across Europe has evident advantages. It follows that regardless of the outcome of the Brexit process, it is likely that the EU law and courts will continue to play a major regulatory role until the UK will develop its own procedures for decision making and judicial resolution of disputes. However, all these matters are of huge complexity, sensitivity and importance since they have an impact on the life of millions of EU citizens and their rights. Hence, since these topics have

the potential to raise additional tension between the EU and the UK, it is necessary for both EU and UK policy makers to walk the path of cooperation.



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 the 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).

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