16th Annual WTO Conference

10 & 11 June 2016

Call for Papers

The Annual WTO Conference was originally established in 2000 through a partnership between the British Institute of International and Comparative Law (BIICL) and the Institute of International Economic Law (IIEL) at the Georgetown University Law Center. The 16th edition of the Conference is organized jointly by BIICL, IIEL, the Graduate Institute, Geneva and the Society of International Economic Law (SIEL). As originally established by University Professor John H. Jackson of Georgetown, and Professor Sir Francis Jacobs, KCMG, QC, a Trustee of BIICL, the Annual WTO Conference has a longstanding affiliation with the Journal of International Economic Law (JIEL), published by the Oxford University Press. The Annual WTO Conference is one of the most important and prestigious conferences addressing developments in international trade law, pursuing cutting-edge issues of interest to academics and practitioners alike.

To celebrate the life and achievements of Professor Jackson, who passed away in 2015, the Conference will be held in Geneva this year (not London), with a special tribute at the WTO Headquarters, the second day of the Conference, in honour of Professor Jackson.

The Annual WTO Conference has traditionally selected speakers by invitation only; like last year, however, the organizers have decided to conduct a call for papers aimed at opening opportunities especially for younger scholars to present their research and analysis at the Conference. The organizers will consider proposals, in the form of an abstract or a completed short paper, submitted **on or before 14 March 2016**, for inclusion on the panels being organized on the following five topics:

- **1. LEGAL INNOVATION IN TPP AND OTHER "DEEP" FTAs: TOWARD A "COMMON LAW" OF FTAs OR SUBSTANTIVE FRAGMENTATION ON "NEW ISSUES"?**
  The conclusion in fall 2015 of the Trans-Pacific Partnership (TPP) was a major landmark. Other "deep" FTAs such as CETA or the EU-Singapore agreement have also been concluded, and more are under negotiation (TTIP, TiSA, RCEP etc.). What legal/rule innovation can be found in and across these 21st century trade agreements, both at the institutional and the substantive or procedural level (including dispute

settlement)? Are some "new issues" (e.g. e-commerce, investment, corruption, data flows, environment, competition, labor, SOEs, regulatory cooperation) dealt with in all of these agreements and in similar ways, making some of them possible candidates for a multilateral or at least plurilateral approach? Where, in contrast, reside the major differences, both on substantive and institutional issues and why are they there? Are some FTAs more open or "WTO friendly" than others? Is the trend one of consolidation toward something of a "common law of international trade" (the term used by J.H.H. Weiler in a 2001 edited book) or rather one of fragmentation with deepening divisions especially on "new issues"?

- **2. INTERPRETING "OLD" WTO RULES IN A WORLD OF NEW FTAs AND OTHER NORM DEVELOPMENTS OUTSIDE THE WTO TREATY**
  In a recent ruling (*Peru – Agricultural Products*, DS457), the WTO Appellate Body addressed the potential impact of a bilateral free trade agreement on the interpretation of WTO rules between the disputing parties. In a context where WTO treaty updates are stalled, can or should the AB interpret 20 years-old WTO rules to accommodate new developments, be it new clarifications in post-1995 WTO declarations or committee decisions (outside of the formal WTO treaty), party agreements to settle disputes outside the WTO or substantive rules in FTAs or multilateral environmental agreements (such as the 2015 Paris Agreement on climate change)? If the AB sticks strictly to the "old rules" does it risk losing credibility or even becoming obsolete? Or, conversely, would reference to such "outside sources" depart from the AB's original purpose and risk undermining its hard-fought authority? Is it the AB's task to bring some clarity and order in the world of overlapping trade agreements, or should the AB "do what it does best" and consider only WTO rules and defend those rules against "outside interference"? How can treaty interpretation in this evolving legal context remain objective and predictable? What is the role of competing dispute settlement fora under other trade and investment agreements?

- **3. GLOBAL TAX REFORMS & DISPUTES AT THE INTERSECTION OF TRADE AND DIRECT TAXATION OF MULTINATIONALS**
  In October 2015, OECD members agreed on major new tax rules to address tax avoidance and increase tax transparency (the so-called Base Erosion and Profit Shifting (BEPS) Package). At the same time, Panama filed a noted WTO complaint (DS453) against Argentina for "blacklisting" Panama as a tax haven and imposing certain allegedly trade restrictive measures against it (Appellate Body report expected in the first half of 2016). Also, in another move to counter unfair or illegal tax practices of multinationals, the EU Commission is examining the tax treatment offered by certain EU countries to certain multinationals as potential state-aid/subsidization, and by the end of January 2016 it will have proposed a new set of binding rules to curb corporate tax avoidance. These global tax reforms and disputes will likely have an important impact on multinationals and how countries divide tax revenues. How do updated tax rules interrelate with existing trade rules? Could the WTO (e.g. the traditional arms-length

principle in the Subsidies Agreement) be used to stall the implementation of some of these tax reforms (e.g. in respect of BEPS transfer pricing rules which move away from the traditional arms-length principle)? Or rather is there scope to use WTO dispute settlement (e.g. national treatment disciplines in GATT and GATS) to enforce some of these tax reforms or to settle direct taxation disputes between WTO members in the absence of binding dispute settlement in the international tax arena? What is the continued relevance in this context of the direct v. indirect taxation distinction?

- **4. THE WTO APPELLATE BODY: AN EXAMPLE TO SHUN OR TO FOLLOW?**
  At the 20th anniversary of the WTO, most observers are celebrating the achievements of WTO dispute settlement and the WTO Appellate Body (AB) in particular. In on-going efforts to reform investor-state dispute settlement (ISDS) some countries have even urged to copy the AB model including AB appointment and remuneration rules. Other voices have strongly criticized the AB for an obsessive textual approach or, conversely, expansive activism or "subjective" interpretations, reading new obligations into the WTO treaty. When the AB "clarifies" ambiguities, does it assist WTO members or rather make future negotiations more difficult (as negotiators may refuse to conclude a deal with any ambiguity in it for fear that the AB will "complete the contract" in some unexpected way)? Yet others have stated that rather than clarifying WTO rules and making them more predictable, the AB has complicated compliance and reduced predictability especially in the trade remedies field. Has the AB gone out of bounds or been too conservative? Has WTO dispute settlement clarified or complicated the WTO treaty? Is the AB respecting the same standard of review in all disputes (*e.g.*, comparing the non-interventionist standard of review in EC - Hormones II with that in the zeroing disputes and the recent US – Tuna II 21.5 AB report)? Is the standard "recommendation", after lengthy and complex legal findings, to "bring the measure into compliance" specific enough or too vague (and inviting even more complicated 21.5 compliance proceedings where claimants may get to re-litigate the entire case)? After 20 years, does WTO dispute settlement remain an attractive proposition for the private sector affected by trade barriers? Is its success spread equally across agreements and WTO members, or have WTO disputes been filed selectively in some areas and against some countries leaving "black holes" elsewhere?

- **5. WTO NEGOTIATIONS POST-NAIROBI: WHAT? HOW? WHEN?**
  The 10th WTO Ministerial Conference in Nairobi, Kenya, resulted in a series of discrete, substantive commitments (e.g. on export competition) but disagreement on what to discuss next and in what format, in terms of WTO negotiations post-Nairobi. How can negotiations on outstanding "old issues" (e.g. domestic farm subsidies) be completed? What "new issues" can realistically be taken on board, how and when, if at all? Should negotiations be issue-specific or continue to be "package deals" with bargains across subject matters? Given the complexity and time it takes for formal WTO amendments (e.g. the TRIPS amendment) or new treaties (e.g. the Trade Facilitation Agreement) to enter into force, how can the WTO remain relevant and engage in effective rulemaking

or rule clarification? Can new commitments, for example, be taken on in mere "ministerial declarations" but are they subject then to WTO dispute settlement and sufficient domestic scrutiny and democratic support?

It is expected that each panelist will be allotted approximately 15 minutes to present his or her paper, and that a question and answer period will follow.

Proposers must be available to attend the Conference in Geneva on 10 & 11 June 2015.

Everyone is eligible to submit proposals but a preference will be given to current graduate students, and academics and practitioners who completed their most recent academic qualification after June 2008. Proposals should be prepared for anonymous review, should identify which of the five panel themes they fall under and should be submitted in PDF or Word format to Mr. Manuel Sanchez, at his email: manuel.sanchez@graduateinstitute.ch.

Emails should have "16th ANNUAL WTO CONFERENCE PROPOSAL" in the subject line and should include the proposal title in the body of the email. No identifying information should be included in the attached proposal. Proposers should certify their availability to attend the Conference in Geneva on June 10 and 11, 2016, in the body of the email, and should attach a brief CV of the proposer that includes the dates of award of relevant academic qualifications. The organizers will make every effort to respond to all proposals by the end of March.

If the author so wishes, selected papers will be considered for subsequent publication in the JIEL. Proposers should be aware that if their paper is selected for publication it may be necessary to expand the paper to publishable length in a relatively short time frame.

Successful proposers will have Conference fees waived, and will be invited to attend the annual dinner for speakers on Friday night (10 June). The organizers regret that they do not normally have funding available for travel or lodging expenses. In exceptional cases, however, requests for (partial) funding of travel and/or lodging expenses will be considered, in particular from proposers based in developing countries.