GELN Biennial Symposium Program

19–20 May, 2016
Melbourne Law School, The University of Melbourne, Australia
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The successful conclusion of the Trans-Pacific Partnership (TPP) negotiations in October 2015, and the much-awaited public release of the treaty text in November 2015, represent a defining moment in trade policy and regulation. The depth and breadth of the agreement, as well as the diversity of its 12 parties in terms of both geography and development, pose a challenge to both traditional free trade agreements and to the future of the Doha Development Agenda in the World Trade Organization (WTO), notwithstanding the conclusion of the Nairobi Package in December 2015.

At the same time, the Bilcon decision against Canada under the North American Free Trade Agreement may also represent a watershed in international investment law. As both investment patterns and litigation scenarios change, concerns about regulatory space, inconsistency and incoherence are multiplying. The European Commission’s proposal for an investment court system reflects these concerns for a key player in the international investment system.

Mega-regionals such as the TPP and the Transatlantic Trade and Investment Partnership (TTIP) provide one way of harmonising and reforming trade and investment protections, taking greater account of sovereign policy objectives and offering an opportunity to terminate or replace older-style, less nuanced treaties. As global tariffs drop, can mega-regionals deal with the increasingly significant regulatory barriers without sacrificing regulatory autonomy? Can trade and investment agreements in general get the balance right?

Australia offers a unique vantage point for considering these issues, given its inclusion in both the TPP including the United States and the ongoing negotiations towards the Regional Comprehensive Economic Partnership (RCEP) including China, as well as its joint leadership of the Trade in Services Agreement (TiSA). Australia has also brought issues of regulatory autonomy in international economic law into the international spotlight due to its world-first standardised tobacco packaging laws, against which the investment claim by Philip Morris was recently dismissed and the claims by four countries continue in the WTO.
### Thursday 19 May 2016

#### Sovereign Regulatory Autonomy in International Economic Law

**REGISTRATION 8:30am**

**WELCOME 9am**

**9:15–11:15am | Room A: Public Health, Trade and Investment (Chair T. Voon)**

- **Mr John Atwood** (Attorney-General’s Department, Australia): *Philip Morris v Australia*
- **Prof Sharon Friel** (Australian National University): *The Over-Reach of Trade and Investment and its Implications for National Sovereignty and the Public’s Health*
- **Mr Jonathan Liberman** (McCabe Centre for Law and Cancer): *Regulatory Autonomy to Prevent Cancer under Australia’s Trade and Investment Framework*
- **Dr Constantinos Salonidis** (Foley Hoag LLP): *Philip Morris v Uruguay*

**MORNING TEA 11:15–11:45am**

**11:45am–1:15pm | Room A: Regulatory Autonomy (Chair S. Lester)**

- **Ms Elizabeth Sheargold** (Melbourne Law School): *Safeguarding Regulatory Autonomy in the Drafting of International Trade and Investment Agreements*
- **Prof Tania Voon** (Melbourne Law School): *Protecting Regulatory Autonomy – The Evolution of Australia’s Trade and Investment Treaties*
- **Assoc Prof Anthea Roberts** (Australian National University): *Who Should Decide?*

**11:45am–1:15pm | Room B: IP & Services (Chair K. Weatherall)**

- **Dr Matthew Rimmer** (Professor, Queensland University of Technology): *The TPP – Trade Secrets, Computer Crimes, and Whistleblowers*
- **Mr Bruce Hardy** (Telstra): *Australia and the beanstalk – the illusion of regulatory autonomy in the negotiation of intellectual property trade provisions*
- **Ms Ana María Palacio** (Melbourne Law School): *What ‘Gold’ Standard for Services Governance: TPP, TISA or TTIP?*

**LUNCH 1:15–2pm**

**2–3:30pm | Room A: Investment (Chair E. Sheargold)**

- **Prof Andrew Mitchell** (Melbourne Law School): *ISDS in the TPP*
- **Mr Kyle Naish** (Department of Foreign Affairs and Trade, Australia): *The Future of ISDS – Three Different Approaches to Investment Obligations*
- **Commentator: Mr Simon Lester** (Cato Institute)

**2–3:30pm | Room B: Regional Perspectives (Chair M. Lewis)**

- **Ms Kekeletso Mashigo** (Department of Trade and Industry, South Africa): *Reforming the Investment Regime: A View from South Africa*
- **Prof Michelle Ratton Sanchez Badin** (Fundação Getulio Vargas): *Skipping the Rules, Out of the Game? The Case of Brazil in the New Regulatory Convergence Moment*
- **Dr Weihuan Zhou** (University of New South Wales): *Debunking the Myth of ‘Particular Market Situation’ – Unfinished Business from GATT/WTO to ChAFTA*

**AFTERNOON TEA 3:30–4pm**

**4–5:30pm | Room A: Dispute Settlement (Chair M. Ratton Sanchez Badin)**

- **Mr Stephen Bouwhuis** (Attorney-General’s Department, Australia): *An ISDS Appellate Mechanism: Real World or Quixotic Ideal?*
- **Dr Luke Nottage** (Professor, Sydney Law School): *Comparing ISDS Policy and Politics in TPP States*
- **Mr Hunter Nottage** (Ministry of Foreign Affairs and Trade, New Zealand): *The Practicalities of Litigating and Arbitrating International Economic Disputes*

**4–5:30pm | Room B: Tax and Finance (Chair K. Mashigo)**

- **Prof Julien Chaisse** (Chinese University of Hong Kong): *The Treatment of (National) Taxes in Tax and Non-Tax (International) Agreements*
- **Prof Bryan Mercurio** (Chinese University of Hong Kong): *Confluence or Contradictory: Understanding & Managing the Conflicting Standards of the IMF, WTO & IIAs on Capital Controls*
- **Ms Jacky Mandelbaum**: *Transfers of Mineral Rights - Can Countries Capture the Benefits?*

**CLOSE 5:30–5:45pm**

7pm Dinner for Thursday presenters & guests registered for Thursday dinner: University House Professors Walk
Friday 20 May 2016

Close-Up on the Trans-Pacific Partnership

REGISTRATION 8:30am
WELCOME 9:00am

9:15–10:45am | Room A: Australia and the US – Treaty Practice and Theory (Chair A. Mitchell)
Ms Tegan Brink (Department of Foreign Affairs and Trade, Australia): The TPP – an Australian Government Perspective
Prof David Gantz (University of Arizona): Increasing the Host State’s Regulatory Flexibility under the TPP
Investment Chapter – US Approaches under NAFTA, the AUSFTA and the TPP
Mr Simon Lester (Cato Institute): Applying Public Choice Theory to the TPP

MORNING TEA 10:45–11:15am

11:15–1pm | Room A: Investment and Trade (Chair T. Brink)
Prof Charles-Emmanuel Côté (Université Laval): A Mari Usque ad Mare: Regulatory Space of Federal and Provincial Governments in Canada under CETA and TPP Investment Chapters
Mr Richard Braddock (Lexbridge Lawyers): Discrimination or Legitimate Government Regulation? Striking a Balance in the TPP
Commentator: Mr Donald Robertson (Herbert Smith Freehills)
Prof Colin picker (University of New South Wales): TPP – Yet Another Example of IEL’s Coherent Fragmentation

11:15am–1pm | Room B: IP & Services (Chair A. Palacio)
Assoc Prof Kimberlee Weatherall (Sydney Law School): The TPP and IP
Mr Danny Kotlowitz (Telstra) and Prof Tania Voon (Melbourne Law School): Telecommunications Services in the TPP – Will the Mobile Roaming Provisions Benefit Tourists and Traders?
Mr Peter Gallagher (Consultant): Negative-list Schedules of the TPP

LUNCH 1–1:45pm

1:45–3:15pm | Room A: Investment (Chair J. Mandelbaum)
Prof Chester Brown (Sydney Law School): The TPP and the Admission of Foreign Investments and the Duty on Investors to Comply with Local Law
Dr Jarrod Hepburn (Melbourne Law School): Applicable Law in TPP Investment Disputes
Prof Leon Trakman (University of New South Wales): Standing Panels in Investor-State Arbitration: Challenges and Opportunities

1:45–3:15pm | Room B: Science and Environment (Chair B. Mucurio)
Prof Jacqueline Peel (Melbourne Law School): Science in the TPP
Assoc Prof Margaret Young (Melbourne Law School): The TPP’s Interaction with Existing Multilateral Regimes
Mr James Munro (World Trade Organization) and Ms Elizabeth Sheargold (Melbourne Law School): Climate Change in the TPP

AFTERNOON TEA 3:15–3:45pm

3:45–5:30pm | Room A: Asia-Pacific Perspectives (Chair R. Braddock)
Prof Meredith Kolsky Lewis (SUNY Buffalo Law School and Victoria University of Wellington): The TPP as a Pathway towards Asia-Pacific Integration
Assoc Prof Heng Wang (University of New South Wales): China and the TPP
Prof Jaemin Lee (Seoul National University): Reining in State-Owned Enterprises: A New Scheme of the TPP
Dr Deborah Elms (Asian Trade Centre): TPP: Shifting Up Supply and Value Chains

3:45–5:30pm | Room B: Labour and Health (Chair D. Gantz)
Prof John Howe and Ms Ingrid Landau (Melbourne Law School): Labour Standards Enforcement Within and Beyond Party States Under The Trans-Pacific Partnership: A Case Study of Vietnam
Assoc Prof Joo-Cheong Tham (Melbourne Law School) & Prof Keith Ewing (KCL): Labour Provisions in TPP and TTIP: A Comparison Without a Difference?
Ms Paula O’Brien (Melbourne Law School): Regulating to Reduce Alcohol-related Harm and the TPP

CLOSE 5:30–5:45pm
7pm Dinner for Friday presenters & guests registered for Friday dinner: University House at the Woodward
Abstracts - Thursday

9:15-11:15am  |  Room A
Public Health, Trade and Investment

PHILIP MORRIS v AUSTRALIA
John Atwood

Philip Morris Asia Ltd’s challenge to Australia’s tobacco plain packaging laws under the investor-State dispute settlement (ISDS) provisions of the Australia-Hong Kong BIT marked Australia’s first involvement as a Respondent in ISDS. Mr Atwood will discuss the arbitration, Australia’s defence of Philip Morris Asia Ltd’s challenge, and the consequences of the Tribunal’s December 2015 award in favour of Australia.

THE OVER-REACH OF TRADE AND INVESTMENT
AND ITS IMPLICATIONS FOR NATIONAL SOVEREIGNTY AND THE PUBLIC’S HEALTH
Sharon Friel

Tensions exist between the goals of trade liberalization to pursue economic integration and generate global and national wealth, and the protection and promotion of health and health equity. Health concerns relating to trade agreements have tended to focus on two areas: the protection of multinational intellectual property rights (IPRs) and the implications for access to essential medicines; and the privatization of health care and health-related services. As the scope and depth of trade agreements has expanded over recent decades, two further areas have been receiving greater attention: Investment liberalization and trade agreements’ reach into ‘behind-the-border’ issues affecting domestic policy and regulatory regimes; and trade and investment in health-damaging commodities (particularly tobacco, alcohol, and highly processed foods) and the associated global diffusion of unhealthy lifestyles.

In this paper I will use the example of food-related health to discuss the reach of trade agreements and investors into domestic health policy. The suite of multilateral trade agreements and subsequent bilateral and regional trade agreements, have brought about three important changes to food systems: opening of domestic markets towards international food trade and foreign direct investment; subsequent increased entry of transnational food companies and their global market, and global food advertising. These three changes affect population diets, and raise concerns about undernutrition, obesity and non-communicable diseases, by altering the local availability, nutritional quality, price and desirability of foods.

Underpinned by trade agreements that facilitate greater tariff reductions, encourage foreign investment and enhance intellectual property rights for corporations is leading to increased greater food industry involvement in policy-making. This could lead to industry-influenced changes to domestic policy and regulatory systems. In effect this would weaken the ability of governments to protect public health by, for example, limiting imports and domestic manufacturing of unhealthy foods and drinks.
REGULATORY AUTONOMY TO PREVENT CANCER UNDER AUSTRALIA’S TRADE AND INVESTMENT FRAMEWORK
Jonathan Liberman

The World Trade Organization and investment treaty challenges to Australia’s world-first tobacco plain packaging laws brought the interplay between health, trade and investment laws, policies, norms and values to life for many Australian public health practitioners and academics. In public debate, these legal challenges intersected with the negotiation of the Trans-Pacific Partnership Agreement, which became the primary battleground in Australia for expression of concern about the impacts of international trade and investment agreements, particularly those providing for investor-state-dispute settlement, on public health (and other public interest) regulation. This presentation will discuss the main themes that have been expressed in public debates and academic writing about the relationships between health, trade and investment in these two contexts, and explore different approaches that have been taken to describing the degree of public health policy space, or regulatory autonomy, that Australia has (and that other countries have) as a result of these relationships.

PHILIP MORRIS v URUGUAY
Constantinos Salonidis

In February 2010, Philip Morris commenced an arbitration claim against Uruguay challenging two tobacco control measures under the Bilateral Investment Treaty (BIT) between Uruguay and Switzerland and the ICSID Convention. The measures in question are (a) a requirement that graphic health warnings cover 80% of the front and back of cigarette packs and (b) a Single Presentation Requirement that permitted manufacturers to market only a single variant of each brand. In July 2013, the arbitral tribunal found that it had jurisdiction to decide these claims. The ruling on the merits of these claims, as well as on the merits of an additional claim challenging the conduct of the Uruguayan judiciary vis-à-vis challenges of those measures under domestic law, is currently pending. The aim of my presentation is to provide a brief overview of the case and Philip Morris’ claims, with a particular emphasis on Uruguay’s defenses premised on its sovereign right (and duty) to regulate the tobacco industry to protect public health.
SAFEGUARDING REGULATORY AUTONOMY
IN THE DRAFTING OF INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS
Elizabeth Sheargold

Several disputes regarding domestic health and environmental measures have now arisen in relation to both international trade and investment rules, leading to concern among governments, civil society and academics that international economic agreements could pose an inappropriate threat to domestic policy space. This presentation examines the ways in which these concerns have influenced the drafting of recent preferential trade agreements (PTAs) and international investment agreements (IIAs). Based on a broad survey of PTAs and IIAs concluded since 2010, it provides insight into the different techniques that parties have adopted to safeguard their regulatory autonomy, including the use of carve-outs, redrafting or clarifying substantive obligations, general exceptions clauses and modifications of dispute settlement mechanisms. In relation to the drafting of rules for trade in goods and services, recent PTAs almost universally incorporate or restate obligations from the WTO Agreements, apparently without regard to controversies that have arisen with respect to their interpretation or application. This suggests a widespread acceptance of the approaches taken by the WTO Appellate Body to balancing trade liberalisation with non-trade interests. In contrast, when it comes to drafting investment provisions most countries have noticeably changed their approach in recent years. Twenty-first century IIAs typically include greater detail about the scope of obligations such as fair and equitable treatment and indirect expropriation, incorporate general exceptions and/or affirm the ‘right to regulate’. While these changes in the drafting of IIAs are not insignificant, it is equally notable that states have generally been unwilling to adopt some of the most effective tools for protecting regulatory autonomy – such as constraints on the use of dispute settlement or explicitly carving out certain social policy measures from the scope of IIAs.

PROTECTING REGULATORY AUTONOMY –
THE EVOLUTION OF AUSTRALIA'S TRADE AND INVESTMENT TREATIES
Tania Voon

According to one narrative, Australia’s initial enthusiasm for investor protections has been tempered in recent years, following Philip Morris’ use of ISDS rules to challenge tobacco plain-packaging laws (the first ISDS case against Australia). Yet, this paper suggests that the evolution of Australia’s approach to regulatory autonomy in international economic agreements has not been as straightforward or linear as this description suggests. Exploring the evolution of both international investment law and international trade law in Australia, the paper identifies three distinct generations of Australian bilateral investment treaties (BITs) and preferential trade agreements (PTAs), which reflect varied political and economic contexts. The first generation began in 1983 with the Australia – New Zealand Closer Economic Relations and Trade Agreement (ANZCERTA), continuing throughout the 1990s with the conclusion of 19 BITs. The second generation began in 2003, with the negotiation of the Singapore – Australia Free Trade Agreement, Australia’s first ‘modern’ PTA. The third generation of agreements are those negotiated after the release of the Productivity Commission’s 2010 report, which called into question the potential benefits of PTAs and BITs – and in particular ISDS – for Australia. While concerns about regulatory autonomy have increased within the Australian community in recent years, domestic political shifts have had a major impact on the country’s negotiation of these agreements. Strategies for protecting Australia’s regulatory autonomy in recent PTAs have varied significantly, particularly in relation to ISDS, leading to questions in identifying a principled approach to balancing investors’ interests with state sovereignty.
WHO SHOULD DECIDE?
Anthea Roberts

Who should decide whether a state can adopt a particular regulatory measure without paying compensation? Should it be the unilateral decision of the respondent state? Should it be the joint decision of the home and host states or the unanimous decision of the treaty parties? Or should it be the decision of an arbitral tribunal or investment court? To understand options for protecting regulatory power, we need to understand the different structures that are available for allocating decision-making power and the trade-offs states are faced with in adopting each approach.
THE TRANS-PACIFIC PARTNERSHIP: TRADE SECRETS, COMPUTER CRIMES, AND WHISTLEBLOWERS
Matthew Rimmer

In 2013, WikiLeaks published the draft text of the Trans-Pacific Partnership’s Intellectual Property Chapter. Its Editor-In-Chief, Julian Assange, declared:

“If instituted, the TPP’s IP regime would trample over individual rights and free expression, as well as ride roughshod over the intellectual and creative commons.”

One controversial area deserving of greater attention is the push by the United States Trade Representative for stronger protection of trade secrets across the Pacific Rim.

In its Special 301 Report for 2013, the USTR placed increased emphasis on the need to protect trade secrets, noting:

“Companies in a wide variety of industry sectors – including information and communication technologies, services, biopharmaceuticals, manufacturing, and environmental technologies – rely on the ability to protect their trade secrets and other proprietary information ... The theft of trade secrets and other forms of economic espionage, which results in significant costs to US companies and threatens the economic security of the United States, appears to be escalating. If a company’s trade secrets are stolen, its past investments in research and development, and its future profits, may be lost ... Trade secret theft threatens national security and the US economy, diminishes US prospects around the globe, and puts American jobs at risk.”

With much pressing by the US Chamber of Commerce, the USTR has been alarmed about economic espionage – particularly in respect to hacking by China. Such concerns are apparent in a recent dispute, when the US Department of Justice brought an action against Chinese company Sinovel and three associated individuals for the theft of trade secrets of United States wind technology company AMSC. FBI executive assistant director Richard McFeely said: “The FBI will not stand by and watch the haemorrhage of US intellectual property to foreign countries who seek to gain an unfair advantage for their military and their industries.”

As part of its push for greater powers to enforce intellectual property, the US hopes that further reforms to trade secret protection under the TPP will provide better protection and security for its flagship technology companies.

Article 18.78 of the final text of the TPP addresses trade secrets. Article 18.78.1 provides: ‘In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices. As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.’ Article 18.78.2 provides ‘each Party shall provide for criminal procedures and penalties for one or more of the following: (a) the unauthorised and wilful access to a trade secret held in a computer system; (b) the unauthorised and wilful misappropriation of a trade secret, including by means of a computer system; or (c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.’ Article 18.78.3 provides for possible limitations in respect of the availability of criminal procedures, and the level of penalties available.
This paper will consider the symbolic and practical significance of the text of the TPP on trade secrets. It will examine whether the proposed criminalisation of trade secret law will be effective in addressing concerns about the disclosure of confidential information in the commercial sector. Moreover, it will consider how this regime will apply in respect of the activities of journalists, whistleblowers, and civil society activists - looking at the cases of Glenn Greenwald, Aaron Swartz, and WikiLeaks. This paper will also situate the discussion of the TPP in the context of larger debates in respect of hacking, espionage, and surveillance.

AUSTRALIA AND THE BEANSTALK - THE ILLUSION OF REGULATORY AUTONOMY IN THE NEGOTIATION OF INTELLECTUAL PROPERTY TRADE PROVISIONS
Bruce Hardy

Harmonisation of laws between states tends to reduce transaction costs, but have we paused to consider the overall value of the bargain we have struck in the TPP? The Productivity Commission’s draft report into Intellectual Property suggests that we have not taken an evidence based approach to Australia’s position on IP in preferential trade agreements and that a consequence is that we may have not acted in the national interest.

WHAT ‘GOLD’ STANDARD FOR SERVICES GOVERNANCE: TPP, TiSA OR TTIP?
Ana Maria Palacio

Against the backdrop of the proliferation of mega-regional agreements, it is reasonable and timely to interrogate the added value that these agreements bring to the governance of services. Governance of services exhibits a common tension between (i) the need for flexibility in providing key services as well as the promotion of services trade by way of liberalization and (ii) the contrasting need to ensure the protection of public health, consumers and other public goals in the provision of these services. These tensions are reflected and settled in various ways in these mega-regional deals.

I will compare the recently concluded Trans-Pacific Partnership Agreement (TPP), the Trade in Services Agreement (TiSA), expected to be concluded by the end of 2016, and the Transatlantic Trade and Investment Partnership (TTIP), despite limits on access to information in the last two cases. By reflecting on issues such as membership, depth and breadth of potential and actual commitments, I will assess the capacity of these agreements to become the new gold standard for services. By ‘gold’ standard, I mean that which from an economic and geopolitical point of view has greater potential for the dissemination of its rules in the future, through plurilateral or multilateral means. When possible the institutional arrangements will also be examined in order to assess the extent to which this framework could assist in the implementation, monitoring, and enforcement of the agreements, and more generally to further co-operation among the participating members. I will also provide some exploratory reflections in terms of the balance achieved by those agreements by considering the commitments on liberalisation, domestic regulation, and the available exceptions, carve-outs and protections to the regulatory space of the members in the context of services.
THE FUTURE OF ISDS - THREE DIFFERENT APPROACHES TO INVESTMENT OBLIGATIONS
Kyle Naish

The recent prevalence of mega-regional trade and investment treaties has been accompanied by renewed public discourse on their merits. Particular focus has centred on investment obligations, including investor-State dispute settlement regimes.

Three distinct approaches have emerged in response to both this discourse and increased investor-State dispute settlement litigation worldwide.

The incremental approach, as exemplified by the Trans-Pacific Partnership Agreement, combines clarification of existing obligations under customary international law with procedural protections for States subject to potential claims for regulation in the public interest.

The European approach (found in its Transatlantic Trade and Investment Partnership proposal) is more radical, seeking to solidify investment obligations under a new multinational framework, including a permanent Investment Court and appeals mechanism.

Meanwhile, some developing countries (such as India and South Africa) have proposed to significantly narrow the scope of investment protections while imposing obligations on investors.

This presentation examines some of the key characteristics of the three approaches, and implications for convergence.
REFORMING THE INVESTMENT REGIME:
A VIEW FROM SOUTH AFRICA
Kekeletso Mashigo

The South African Government adopted a new investment policy framework having initiated a review of its international investment policy in 2008. The new investment policy is a product of a comprehensive review of South Africa’s approach to investment protection and involved a wide range of stakeholders, national and international, over a three-year period. The review identified a range of concerns associated with bilateral investment treaties (BITs), notably the broadly drafted standards of protection, the wide-ranging and arbitrary application of investment rules that can unduly constrain policy space, and the risk of investment disputes; and also noted the changed circumstances in the international investment treaty environment. The review led to a decision by the South African Cabinet in 2010 to develop a new investment bill to codify investment protection provisions into domestic law, to terminate BITs and offer partners the possibility of renegotiating their BITs and, to refrain from entering into BITs in the future, unless there are compelling economic and political reasons for doing so. The Promotion of Investment Bill (PIB) was published in 2013 for public comment and was passed by the National Assembly and signed by the President as an Act of Parliament in 2015. The Promotion of Investment Act (PIA) does not introduce any new obstacles to investment. Instead, it seeks to facilitate investment into South Africa by including important investment protection commitments while preserving the right of South Africa to pursue legitimate public policy objectives, strengthening the domestic legal framework for investors, and establishing clear policy guidelines for entering into investment treaties in the future. The objective is to establish more equitable relationships between investors and Government.

SKIPPING THE RULES, OUT OF THE GAME?
THE CASE OF BRAZIL IN THE NEW REGULATORY CONVERGENCE MOMENT
Michelle Ratton Sanchez Badin

Brazil accounts for five regional trade agreements registered before the WTO, and not a single BIT ratified up to this moment. The country is also not engaged in any of the megaregional negotiations for trade and investment. Nonetheless, Brazil holds the 7th position among the largest GDPs in the world (USD 2.3 billion), it has traditionally been one of the five top destinations for FDI, and, in what concerns trade, it has similar figures of Australia, ranging in the 20th positions of larger exporters and importers. Why, though, has Brazil opt to be out of the new trade and investment regulatory convergence? Are there alternative arrangements to that game? My presentation will describe these options in Brazilian policy, as well as some forethoughts about the near future for the country and its international economic insertion.
DEBUNKING THE MYTH OF ‘PARTICULAR MARKET SITUATION’ - UNFINISHED BUSINESS FROM GATT/WTO TO ChAFTA
Weihuan Zhou

The article explores one of the most controversial issues in the negotiations of the China – Australia Free Trade Agreement (ChAFTA) and the bilateral trade activities between China and Australia, namely, the interpretation and application of ‘Particular Market Situation’ (PMS). The issue has been significant on the bilateral level in Australia’s anti-dumping practice against China but is likely to become a problem on the multilateral level under the WTO once the non-market economy assumption (allowed under China’s WTO Accession Protocol) expires after December 2016. The article will trace the GATT/WTO negotiating records for interpretative guidance and the ChAFTA negotiations on antidumping and PMS. It will argue that Australia’s use of PMS in AD investigations is inconsistent with the GATT/WTO negotiating records and jurisprudence and then offer recommendations on how PMS should be interpreted and applied.
AN ISDS APPELLATE MECHANISM: REAL WORLD OR QUIXOTIC IDEAL?
Stephen Bouwhuis

The paper explores ideas for an appellate body for ISDS litigation and the practicalities involved in their implementation. The paper further considers other alternatives which might better address some of the current difficulties associated with ISDS litigation.

COMPARING ISDS POLICY AND POLITICS IN TPP STATES
Luke Nottage

This presentation outlines the TPP investment chapter, especially its Investor-State Dispute Settlement provisions, compared to some past treaty practice in Australia and other Asia-Pacific states. It then considers whether the chapter is likely to be stumbling block for ratification in existing TPP partners (focusing on Australia, New Zealand, Malaysia and Vietnam) and potential further signatories (especially Korea, Thailand and Indonesia).

THE PRACTICALITIES OF LITIGATING AND ARBITRATING INTERNATIONAL ECONOMIC DISPUTES
Hunter Nottage

This session will reflect on the practicalities of litigating and arbitrating international economic disputes. In particular, the challenges and opportunities for both litigants and arbitrators across different international dispute settlement fora.
THE TREATMENT OF (NATIONAL) TAXES IN TAX AND NON-TAX (INTERNATIONAL) AGREEMENTS
Julien Chaisse

Tax treaty law and international investment law prima facie appear to be two different worlds and two separate legal regimes. However, they largely overlap, as evidenced by the rising number of cases brought before investment tribunals related to tax disputes. This paper demonstrates that there is a need for better designed international rules and policies on tax and investment that would make these areas of the law complementary.

In addition to providing an overview of the current international tax regime, the paper identifies the major areas of interaction and overlap, examines tax as a potential barrier to investment and cross-border trade, and addresses a number of practical questions related to this risk. It offers a number of recommendations to help address the future challenges to tax and investment policy.

CONFLUENCE OR CONTRADICTORY: UNDERSTANDING & MANAGING THE CONFLICTING STANDARDS OF THE IMF, WTO AND IIAs ON CAPITAL CONTROLS
Bryan Mercurio

This paper focuses on the recent decision of the International Monetary Fund (IMF) to expand its mandate from ensuring the stability of the international monetary system to include the maintenance of financial stability through an ‘institutional view’ on the regulation of cross-border capital flows. In so doing, the IMF completed a shift away from being an ardent proponent of liberalised capital accounts to endorsing – under certain circumstances – regulation through capital controls (‘capital flow management measures’ (CFMs)). The IMF recognises but does not resolve the sizeable risk of conflict between CFMs contained in an IMF stability/loan program and obligations contained in trade and investment regimes – namely the WTO’s GATS Agreement, bilateral/regional trade agreements and international investment agreements. Simply stated, what the IMF now condones and may require could directly conflict with obligations under the trade/investment regime. This paper addresses this fragmentary aspect of international economic law. It has two aims: First, investigate whether and under what circumstances CFMs conflict with state obligations under the trade and/or investment regime; and second, develop a framework to include safeguards into future trade/investment agreements in order to avoid conflict, and, perhaps more importantly given current trade/investment obligations, address the conflict in existing treaties.

TRANSFERS OF MINERAL RIGHTS - CAN COUNTRIES CAPTURE THE BENEFITS?
Jacky Mandelbaum

Against the backdrop of highly profitable deals between companies transferring rights to projects in the extractive industries, resource rich countries consider how to capture some of the benefits of these deals. Often, these transactions are conducted off-shore, between companies based outside of the host country. The host country may not know of the deal until it is done. Tax treaties entered into by the host country may limit its ability to impose any tax on the transfer, and investors invoke investment treaties to challenge actions by the host country seeking to levy taxes after the event. This presentation will look at the issue of taxing transfers of mineral rights and in particular, indirect transfers of rights, looking at some of the countries that have sought to impose these taxes, the challenges of implementing such a regime and the arbitrations that have been commenced as a result.
THE TPP - AN AUSTRALIAN GOVERNMENT PERSPECTIVE
Tegan Brink

The conclusion of the TPP negotiations in October 2015 after five years of negotiations was an historic achievement, arguably representing the most significant trade deal since the conclusion of the WTO Uruguay Round. Ms Brink will discuss the Australian Government’s objectives in the TPP negotiations – in market access and rules – and assess the outcomes against them. Ms Brink will also address implementation of the TPP, including some of the issues pre-occupying TPP parties as they move to implement and ratify the deal.

INCREASING THE HOST STATE’S REGULATORY FLEXIBILITY UNDER THE TPP INVESTMENT CHAPTER -
US APPROACHES UNDER NAFTA, THE AUSFTA AND THE TPP
David Gantz

Building on the negotiation of U.S. bilateral investment treaties beginning in the early 1980s, U.S. free trade agreements incorporating specific host-state obligations to foreign investors and binding investor-state dispute settlement (ISDS) have been a feature of U.S. trade and investment policy since 1992 (when the NAFTA negotiations were concluded). Presidents Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush and Barack Obama have all endorsed ISDS, despite opposition by many Democratic legislators, organized labor and environmental groups. Yet the content of these investment chapters shows a significant evolution from NAFTA to the Australia—United States FTA (with investor protection but without ISDS) and the Singapore—United States FTA (2003) to the Trans-Pacific Partnership (2015). The changes in the aggregate are driven in significant part by the concerns of civil society and government officials over the dozens of NAFTA investment claims filed against the NAFTA Parties. They also reflect the perceived need for the United States and other host governments to maintain a higher level of regulatory flexibility and discretion, particularly in such areas as protecting the environment and public health. The United States’ Trade Promotion Authority (TPA) legislation enacted in 2002 and 2015 also mirrors these post-NAFTA changes. The newest iteration of the mechanism (Chapter 9 of the TPP) thus affords host governments far more regulatory discretion than earlier agreements such as NAFTA, along with increased transparency, making it more difficult for foreign investors to prevail against host governments with claims of denial of “fair and equitable treatment” and “regulatory takings.” The evolution of U.S. sponsored investment protection provisions into a significantly more host government friendly, regulatory friendly, process, is the principal theme of this paper.
APPLYING PUBLIC CHOICE THEORY TO THE TPP
Simon Lester

Public choice theory shows us how individuals or groups with an interest in particular legislation or regulations can lobby effectively for their preferred outcomes. In this way, interest groups can “capture” government actions that affect them. In the same way, international trade agreements are also subject to capture. These agreements began as mutual tariff-cutting exercises, in which, to a great extent, governments negotiated with each other to undermine the interests of their domestic industries.

With a broad focus on “trade,” however, these agreements presented an opportunity for anyone with some interest in trade to argue for their policy preferences to be included. As a result, trade agreements expanded over the years, and now include obligations related to intellectual property, investor rights, labor and the environment, all of which were brought in at the request of some interest group. Instead of being used to offset the demands (for protectionism) of traditional domestic industries, trade agreements were now pushed towards to new regulations requested by other domestic groups. In the TPP, this expansion has continued. Specific examples include the provisions on market exclusivity for biologic drugs, the tobacco carveout from investor state dispute settlement, and the minimum wage requirement in the labor chapter. With each of these examples, we can see the impact of interest group lobbying.

These illustrations show that, generally speaking, the agenda for today’s trade negotiations is set through balancing out interest group demands (whereas in the past, the default agenda was about reducing tariffs, and interest groups could then try to influence the details). Economic integration is still present as a goal, but it is almost incidental to the process of trying to reach a deal based on satisfying the interest groups involved.
A MARI USQUE AD MARE: REGULATORY SPACE OF FEDERAL AND PROVINCIAL GOVERNMENTS IN CANADA UNDER CETA AND TPP INVESTMENT CHAPTERS
Charles-Emmanuel Côté

This paper purports to assess the impact of CETA and TPP investment chapters on regulatory space of government in Canada. As one of the most experienced developed country with investor-State arbitration, Canada joined these mega-regional negotiations with a clear understanding of what it is ready to commit to. The end result is nevertheless puzzling since the regulatory space left to the federal and provincial governments varies in significant ways from the Atlantic to the Pacific economic areas. CETA and TPP investment chapters will be compared, with past Canadian treaty practice in the backdrop. Key features of the chapters will be thoroughly looked into, regarding their scope, substantive obligations and investor-State arbitration (ISA). Of particular importance is the extent of the right of establishment granted to foreign investors and the carving out of specific policies. Curtailment of MFN, FET and expropriation clauses is also a prominent feature of all new international investment agreements, and CETA and TPP address some of those issues differently. Coverage of provincial measures relating to investment is a typically Canadian issue, due to constitutional reasons, and once again, the two chapters differ greatly in that regard. Various innovations in ISA are also added, compared to past Canadian treaty practice. If TPP is mostly a reproduction of US treaty practice, CETA brings new features in the investor-State arbitration landscape. Given the fact that these mega-regional agreements include countries from which investments will flow into Canada, the impact of ISA itself on regulatory space must be assessed. Finally, the systemic issue of legal articulation between CETA, TPP and past Canadian treaties adds an unprecedented layer of complexity to the matter at hand. It is argued that contradictions in the international obligations of Canada is likely to create confusion both for regulators and arbitrators, while investors might simply make the best of it.

DISCRIMINATION OR LEGITIMATE GOVERNMENT REGULATION? STRIKING A BALANCE IN THE TPP
Richard Braddock

The obligation of National Treatment is a key protection against discrimination of foreign investors. However, the fact that a foreign investor is treated differently or adversely affected by government regulation does not necessarily establish a breach. Tribunals have recognised that National Treatment does not prevent governments from regulating in the public interest, even where this has a detrimental effect on an investment. The key question is how to distinguish between illegitimate discrimination on one hand, and legitimate government regulation on the other. This presentation examines how the TPP seeks to clarify this distinction and provide greater certainty to the government Parties in the context of recent judicial interpretations of National Treatment.
TPP - YET ANOTHER EXAMPLE OF IEL’S COHERENT FRAGMENTATION
Colin Picker

There has been much fanfare over the completion and signing of the latest “mega FTA”, the Transpacific Partnership (“TPP”). The TPP has been hailed as “a once-in-a-lifetime agreement, and a once-in-a-lifetime moment of decision.” This paper is an early attempt to weigh the TPP for originality/novelty. In addition, as yet another TPP there will be concerns about its contribution to the fragmentation of IEL. The TPP is not the first RTA to be attacked as undermining the coherence of IEL – of contributing to its fragmentation. But is this new mega FTA different? Will it be the one to push IEL over the edge into uncontrollable incoherence and complete fragmentation? This paper will argue essentially that the TPP is not all that new and that despite the many bells and whistles and slightly unusual parts, it is just another RTA, albeit a bit bigger and perhaps in some small ways a little newer: that the TPP is Much of a Muchness. Or simply that it is the latest reboot of the typical regional trade agreement (“RTA”): RTA version 7.0). I.e. the TPP may not undermine the coherence of international economic law (“IEL”), even as it may contribute to a “physical” fragmentation of IEL.
11:15am-1pm | Room B
IP & Services

THE TPP AND IP
Kimberlee Weatherall

The intellectual property chapter of the Trans-Pacific Partnership has been, from start to finish of the negotiations, one of the most contentious. In this presentation, Kimberlee Weatherall will explore how the IP chapter should be evaluated: what is the standard we should apply in judging the IP chapter: should we judge it, perhaps: (1) against a ‘free trade’ standard (does it reduce barriers to trade?) (2) an intellectual property standard (does it represent ‘good IP law’, to the extent that we can even make a judgment about what ‘good IP law’ looks like in this context), or (3) perhaps as whether it can be judged as some kind of ‘fair compromise’ of competing national interests. Thinking this through highlights the different standards people apply when talking about the chapter – and how, on occasion, that means that people are talking past each other. A second related issue considered in the paper is how the chapter should be interpreted: it will discuss WTO Panel and scholarly views on how texts like TRIPS should be interpreted and understood, and how the application of Investor-State Dispute Settlement raises real questions about whether the standards for interpretation have changed.

TELECOMMUNICATIONS SERVICES IN THE TPP – WILL THE MOBILE ROAMING PROVISIONS BENEFIT TOURISTS AND TRADERS?
Danny Kotlowitz & Tania Voon

According to Australia’s Minister for Communications, one of the key benefits of the TPP is that it will address the transparency and cost of international mobile roaming, a prospect he describes as “exciting”. The ability of parties to enter into arrangements regarding wholesale roaming services between carriers in their respective countries, the Minister predicts, will “deliver great benefits for both Australian businesses and consumers”. As an unusual example of international sectoral regulation, the TPP roaming provisions deserve closer analysis. What is the likelihood that the TPP’s provisions on international mobile roaming will benefit consumers by lowering roaming rates or increasing transparency about available rates? Will these provisions in turn benefit services industries such as tourism by facilitating international travel for individuals? Will the provisions be implemented in a consistent way across TPP jurisdictions? What new regulatory burden will governments making full use of the new measures impose on domestic telecommunications carriers? The drafting of the roaming provisions in the TPP’s Telecommunications Chapter is complex and precludes easy answers to these questions. This paper examines whether the TPP’s novel take on international mobile roaming is reason to get excited.

NEGATIVE-LIST SCHEDULES OF THE TPP
Peter Gallagher

Negative list schedules of commitments are a prominent characteristic of the Services and Investment Chapters of the proposed TPP agreement. In this short paper I consider the evident benefits, and the less evident shortcomings of negative-list schedules of commitments. I suggest that even superficially ambitious negative-list agreements are difficult to parse and prone to manipulation by interested producers and agencies.
Arbitral tribunals convened under the TPP are directed to apply the TPP itself and ‘applicable rules of international law’. This seemingly straightforward direction raises two questions. Firstly, what role will previous investment agreements concluded between TPP parties, such as the NAFTA, play in investment disputes? In most cases the TPP will not override or replace these earlier, overlapping agreements, leaving scope for complex interactions. Secondly, what is the role for domestic law? The TPP declares the factual relevance of the respondent state’s law in an investment dispute, but remains silent on the law of other jurisdictions (for example, the law of the investor’s home state). Yet situations will inevitably arise in which a TPP tribunal will need to consider such domestic law, creating some uncertainty about a tribunal’s role in these situations. Through an examination of the law applicable in TPP investment disputes, this paper seeks to mark out the TPP’s place in the universe of international and domestic laws relevant to investment disputes.

**THE TPP AND THE ADMISSION OF FOREIGN INVESTMENTS AND THE DUTY ON INVESTORS TO COMPLY WITH LOCAL LAW**

Chester Brown

Host States may seek to regulate foreign direct investment within their territory by imposing requirements in BITs and FTAs relating to the admission of investments, as well as a requirement that investors and their investments comply with host State law, and the Trans-Pacific Partnership also includes some relevant provisions. There is some uncertainty regarding the implication for investors of their failure to comply with such obligations. This presentation will consider the types of provisions that have been included in BITs, FTAs, and the TPP, and then discuss how such provisions have been interpreted and applied in relevant decisions and awards. It poses the question whether the TPP could have provided greater clarity on the role of these provisions given the inconsistent treatment they have been given by arbitral tribunals.

**STANDING PANELS IN INVESTOR-STATE ARBITRATION**

Leon Trakman

The case for establishing standing panels to resolve trade and investment disputes is controversial at best. This is notably the case under the NAFTA in which resort to standing Panels to resolve trade disputes has a lengthy history. Arguments for standing panels include: recognizing state sovereignty in establishing such panels, providing for greater certainty in the appointment’s process, avoiding ad hoc appointments, and encouraging activism in the resolution of disputes. Arguments against standing panels encompass disagreement over the appointment’s process and the risk of producing a slow, cumbersome, and inefficient panel system. This paper will evaluate and contextualize competing arguments for and against standing panels. It will draw from the literature on the subject and on the author’s experience as a sitting NAFTA panelist on public record trade disputes.
SCIENCE IN THE TPP
Jacqueline Peel

In a globalized world of transnational, pervasive and often ‘invisible’ threats to health and the environment, science is essential to our understanding and treatment of risk. Since the conclusion of the Sanitary and Phytosanitary (SPS) Measures Agreement under the World Trade Organization (WTO), international trade and investment agreements have looked to science as a touchstone for determining ‘real’ risks that can form the basis of ‘legitimate’ regulatory measures. The Trans-Pacific Partnership (TPP) continues this trend, placing science and risk analysis at the centre of the agreement’s SPS disciplines. However, the role of science in the TPP is unlikely to be limited simply to SPS measures; there is also potential for science-based understandings of risk and legitimate regulation to extend into other areas of the TPP, such as the mechanisms on investor-state dispute settlement. Drawing on prior research on the use of science under the WTO SPS Agreement and in investor-state environmental arbitrations, this presentation will consider the role and understanding of science envisaged by the TPP and potential consequences for the regulatory autonomy of TPP parties.

THE TPP’S INTERACTION WITH EXISTING MULTILATERAL REGIMES
Margaret Young

Striving for mutually supportive trade and environmental policies is a major challenge for states and international organisations such as the World Trade Organisation (WTO). The Trans-Pacific Partnership (TPP) seeks to promote this objective in several ways. In addition to containing environmental exceptions common to the WTO (where trade restrictions are justified in certain situations), the TPP seeks to promote and enhance existing global environmental regimes. It refers expressly to existing multilateral environment agreements (MEAs) and other international instruments. It incorporates standards from international organisations (such as the Food and Agriculture Organisation (FAO)) and prohibits certain ecologically harmful subsidies. It also provides for dispute settlement or consultative procedures for failures of environmental law enforcement (where such failures affect trade and investment) and seeks to entrench the current environmental commitments of TPP parties so that they will be penalised if they weaken existing rules. The dominance of TPP parties in the global production and consumption of natural resources, including fisheries, raises the stakes of these commitments. Yet as studies of regime interaction remind us, there are a number of important factors that should be met in situations of complex interdependence and pluralist governance. These include institutional coordination, open membership, continuous feedback and reporting, the peer review of rules and practices and the effective participation of a range of non-state actors. This paper evaluates the TPP’s laudable objectives against these factors in order to assess its potential influence as a fragmented set of regional arrangements supporting globally oriented environment regimes.
When it was finally released in November 2015, one aspect of the TPP which drew the attention of the media and civil society was the absence of any mention of ‘climate change’ within its thirty chapters and thousands of pages of text. In spite of this omission, we suggest that the TPP still has important implications for climate change mitigation, relating both to domestic policies and international cooperation. First, the general environmental provisions in the TPP require parties to ‘strive’ for high levels of environmental protection, ensure they do not ‘fail to effectively enforce’ their environmental laws and recognise that it is ‘inappropriate to encourage trade and investment by weakening’ standards. Presumably, greenhouse gas abatement policies would be one of the categories of environmental law that these obligations apply to, and these provisions may therefore have important ramifications for a range of domestic climate change laws. Second, the TPP also recognises the importance of multilateral environmental agreements that the TPP countries are party to, which would include the UNFCCC. Thus, the TPP reaffirms its parties’ commitment under the UNFCCC to undertake meaningful domestic climate action, and this may also extend to the more specific national emissions reduction commitments enshrined in the recent Paris Agreement. Finally, the TPP ‘acknowledge[s] that transition to a low emissions economy requires collective action’, and encourages cooperation on areas such as the development of low-emissions technologies and renewable energy, deforestation, and both market and non-market mechanisms. In addition, the parties have committed to liberalising trade in environmental goods and services, building on their work on this topic in APEC.
THE TPP AS A PATHWAY TO ASIA PACIFIC INTEGRATION
Meredith Kolsky Lewis

There has long been a goal within Asia-Pacific Economic Cooperation (APEC) to achieve economic integration across the Asia-Pacific. This objective is often conceptualized as a Free Trade Area (or Agreement) of the Asia-Pacific, or FTAAP for short. While the FTAAP idea has been around since the 1990s, no organization, country or group of countries has taken a leadership role to advance the idea towards reality. Several possible catalyzing forces have been suggested, including APEC itself, ASEAN, ASEAN + 3 (China, Japan and Korea) and ASEAN + 6 (China, Japan, Korea, India, Australia and New Zealand) - now known as the Regional Comprehensive Economic Partnership (RCEP), but the path forward has remained murky. The Trans-Pacific partnership presents an additional, alternative pathway towards achieving more comprehensive economic integration in the Asia-Pacific. This presentation will examine the prospects for TPP expansion and assess the potential for the TPP or any other grouping to develop into an ultimate FTAAP.

REINING IN STATE-OWNED ENTERPRISES: A NEW SCHEME OF THE TPP
Jaemin Lee

One of the novel issues covered by the Trans-Pacific Partnership (“TPP”) is the regulation of State-Owned Enterprises (“SOEs”). Chapter 17 of the TPP sets forth detailed provisions that regulate the activities of the SOEs and governments’ relationship with their SOEs. As this is the first attempt of this kind, precedents and guidance are hard to find: it is still not entirely clear what each provision actually means and how it is to be applied. At the same time, newly introduced concepts and norms require complex analyses of governmental programs and circumstances in the market. It is hoped that parties to the TPP will be able to achieve further elaboration and provide more information to address these uncertainties and complexities before this mega-FTA is put into effect.

That said, the SOE chapter largely incorporates the concepts and norms of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”). While specific titles and descriptions are different from those used in the SCM Agreement, the main idea and key concepts underlying the chapter generally mirror the said agreement. So, an argument can be made that jurisprudence and precedents of the SCM Agreement may apply to the interpretation and application of the SOE chapter. Basically, this chapter regulates a government’s provision of financial support (called “non-commercial assistance”) for the SOEs, and SOEs’ provision of financial support for other SOEs. As the SCM Agreement aims to regulate a government’s provision of financial assistance to private corporations, the agreement, which still remains applicable within the TPP
framework, and the SOE chapter are complementary: they target different prongs of a government’s relationship with industrial sectors. In that respect, one might think that this new chapter is filling the missing link in the norms of international trade.

At the same time, there are issues that arguably do not necessarily dovetail with the existing framework of the SCM Agreement, which still remains intact and applicable in the TPP. For instance, the TPP SOE chapter is designed to cover not only the goods trade but also services trade, whereas the SCM Agreement covers only subsidization to goods manufacturers. The elements of the SCM Agreement, therefore, are specifically designed to deal with subsidization of the goods trade, which are not necessarily ready to be directly transposed to the services trade. By way of example, the elements of determining “adverse effects” or “injury” may require different standard and guideline when it comes to the services sector.

Likewise, the SOE chapter aims to regulate financial assistance of a government that is not necessarily related to international trade. As a matter of fact, the SOE chapter has its root in the competition chapters in previous FTAs. Regulation of governmental measures that distorts competition in domestic market may not necessarily be the same as distortion of the global trade. They are closely related but arguably not entirely identical.

As a general matter, the relationship between this chapter and the SCM Agreement still remains unclear. As it currently stands, this chapter applies to SOEs independent of and together with the SCM Agreement. In other words, on the one hand SOEs are regulated by the SCM Agreement while, on the other hand, they are subject to the new SOE chapter. Possible conflicts between the two sets of norms concerning a particular SOE is not entirely impossible. By way of example, there are exceptions (i.e., economic emergency exception) in the TPP SOE chapter. Similar exceptions do not exist in the SCM Agreement.

All in all, this new chapter of the TPP sets forth detailed provisions that regulate various activities of SOEs. Given the increasing global attention to the issue of SOEs in international trade, the new chapter of the TPP will provide an important guidance and platform for future discussions. At the same time, the new chapter includes ambiguities and uncertainties that could potentially make full implementation by parties difficult and challenging. There are also provisions that may lead to complex and controversial analyses of market indicia in a way that has not been conducted or tested in the existing SCM Agreement.

TPP: SHIFTING UP SUPPLY AND VALUE CHAINS
Deborah Elms

The Trans-Pacific Partnership (TPP) is likely to have a significant impact on supply or value chains across Asia. While Asia is currently covered in hundreds of bilateral and regional trade agreements, none of the existing deals will have the same level of transformational impact on companies as the TPP. It is not just the reduction in tariffs on close to 90 percent of all goods to zero on the first day of the agreement or the reduction in tariff levels to be mostly duty-free in relatively short order that matters so much. Supply chains increasingly derive 30-70 percent of their total value from services inputs. The TPP immediately opens services and investment to TPP member firms in ways that have simply not been seen before in the region. The trade facilitation elements of the TPP are also critically important to companies. The agreement also contains additional provisions of interest to companies with regional manufacturing and services supply chains, including the opening up of government procurement bidding opportunities, the ability to participate in e-commerce more easily, and some crucial guarantees in backbone telecommunications and financial services. In short, smart firms are already shifting supply chains ahead of TPP entry into force and will reap substantial benefits from doing so in the future.
LABOUR STANDARDS ENFORCEMENT WITHIN AND BEYOND PARTY STATES UNDER THE TRANS-PACIFIC PARTNERSHIP: A CASE STUDY OF VIETNAM
John Howe & Ingrid Landau

In addition to requiring party states to maintain laws which comply with core labour standards, the Labour clause in the TPP provides (Article 19.5) that no party 'shall fail effectively to enforce its labour laws' in a manner affecting trade and investment, save that parties retain 'the right to exercise reasonable enforcement discretion and to make 'bona fide decisions with regard to allocation of enforcement resources' among the core labour standards listed in the Labour clause. The first part of my paper will reflect on what Party states will need to demonstrate in order to meet this enforcement standard.

The second part of the paper will examine the mechanism for enforcement of the labour standards requirements of the Labour clause when there is a dispute over a Party state’s compliance with those standards, including the enforcement expectations. That is, the paper will discuss the likely effectiveness of the TPP dispute resolution process as a transnational regulatory enforcement mechanism.

LABOUR PROVISIONS IN TPP AND TTIP: A COMPARISON WITHOUT A DIFFERENCE?
Joo-Cheong Tham & Keith Ewing

Since the 1990s, there has been an increase in provisions in trade agreements dealing with labour standards. This paper tackles the topic of labour standards and trade agreements by providing an exploratory analysis of Chapter 19 of the Trans-Pacific Partnership Agreement (TPP), its ‘Labour’ chapter.

It provides a conceptual framework for this analysis by identifying four key dimensions of labour provisions in trade agreements: 1) their purposes; 2) the legal nature of the provisions (whether binding or not); 3) the substance of legal obligations imposed; and 4) the institutional processes provided for.

It also summarises two dominant approaches to these provisions, the current European Union and United States approaches. The former can be understood as proposing a broad agenda based on promotional measures while the latter is underpinned by a narrow agenda based on conditional measures.

Drawing upon this analysis, the paper explains how the TPP’s ‘Labour’ chapter largely adopts the current US approach to labour provisions. It then offers a preliminary assessment of the TPP’s ‘Labour’ chapter.
REGULATING TO REDUCE ALCOHOL-RELATED HARM AND THE TPP
Paula O’Brien

It is often argued that trade agreements make it harder to introduce the types of controls on alcohol which are recommended by the World Health Organization as being most likely to reduce harms from the consumption of alcohol. This paper explores whether the TPP inhibits the development and implementation of controls on alcohol, including those related to labelling (such as warning labels and health information), advertising (such as restrictions on the content and placement of alcohol marketing) and licensing (such as when, where and by whom alcohol may be sold). These three regulatory interventions (along with several others) are generally considered effective in reducing alcohol-related harm. The paper also considers whether the TPP adds further restrictions to any found in the WTO Agreements. The analysis in the paper has relevance to the regulation of other health-affecting consumer commodities, including food and tobacco. The goal of the analysis is to determine whether and, if so, how, the TPP may make it more difficult for parties to introduce regulatory measures to limit the burden of harm associated with alcohol.
John Atwood is a lawyer in the Office of International Law, Attorney-General’s Department. He led the Tobacco Litigation Taskforce which was responsible for Australia’s defence in the arbitration brought by Philip Morris Asia Ltd under the Australia-Hong Kong BIT. Prior to joining the Taskforce in 2012 he held a number of senior legal positions in international organisations.
Stephen Bouwhuis is Senior Counsel (International Law) within the Commonwealth Attorney-General’s Department. His previous roles include: Counsel in the WTO Tobacco Plain Packaging dispute; Assistant Secretary of the International Law, Trade and Security Branch in the Attorney-General’s Department; Legal Counsel of the Commonwealth Secretariat in London; and Trade Measures Review Officer for Australia. Stephen has published widely on international law, leadership and management. His academic qualifications include a Masters of Public Administration from the John F. Kennedy School of Government at Harvard and a Masters of International Law from the Australian National University.
Richard Braddock is a founding Partner of Lexbridge Lawyers, the first specialist public international law firm in the Asia-Pacific region. Richard specialises in international trade and investment law.

Before joining Lexbridge, Richard worked as an international lawyer and treaty negotiator for the Australian Government for close to a decade, leading trade and investment law units in the Department of Foreign Affairs and Trade and the Office of International Law.

Richard was a legal advisor and negotiator for most of Australia’s Free Trade Agreement negotiations, including the Trans-Pacific Partnership, and FTAs with China, Japan, Korea, and ASEAN. He acted as lead investment negotiator in the TPP and ASEAN negotiations.

Richard was also a senior member of the legal team which successfully defended the investor-state arbitration claim brought by Philip Morris against Australia’s tobacco plain packaging measure.
Tegan Brink has been the Assistant Secretary of the Goods and Investment Branch at the Department of Foreign Affairs and Trade (DFAT) since April 2015, heading the Branch that led Australia’s participation in the Trans-Pacific Partnership Agreement negotiations. Prior to taking up this role, Ms Brink led the Trade Law Branch at DFAT. Previously, Ms Brink was posted to Australia’s Mission to the WTO and UN in Geneva where she represented Australia in the WTO, WIPO and UNCTAD on intellectual property and trade and development matters. She has also worked as Counsel at the Advisory Centre on WTO Law. Ms Brink has Bachelors of Arts (Government) (Hons) and Laws (Hons) from the University of Sydney and a Masters of Laws from Columbia University in New York, which she attended as a Fulbright Scholar. She has published articles and book chapters on international trade and investment law.
Professor Chester Brown is Professor of International Law and International Arbitration at the Faculty of Law, University of Sydney; a Barrister at 7 Selborne Chambers, Sydney, and an overseas associate of Essex Court Chambers, London, and Maxwell Chambers, Singapore. He teaches and researches in the fields of public international law, international dispute settlement, international arbitration, international investment law, and private international law. He also maintains a practice in these fields, and has been involved as counsel in proceedings before the International Court of Justice, the Iran-United States Claims Tribunal, inter-State and investor-State arbitral tribunals, as well as in international commercial arbitrations.
Julien Chaisse is an award-winning specialist in international economic law with particular expertise in the regulation and economics of foreign investment. His also researches in areas such as WTO law, international taxation and the law of natural resources. As a practitioner he is engaged as an expert, counsel and arbitrator in international dispute settlement. Professor Chaisse currently advises the E15 Task Force on Investment Policy, sponsored jointly by the World Economic Forum (WEF) and the International Center for Trade and Sustainable Development (ICTSD). His most recent publication is ‘International Taxation - Law and Practice in Hong Kong and China’ (The Hague: Wolters Kluwer, 2015).
Charles-Emmanuel Côté is Vice-Dean and Secretary of the Faculty of Law of Université Laval, in Quebec City, where he is also a Full Professor and Co-Director of the Centre for International and Transnational Law (CDIT). He is a Senior Fellow at the Centre for International Governance Innovation (CIGI) and a lawyer called at the Barreau du Québec (1998). Professor Côté holds a doctorate degree in law from McGill University (Dean’s Honour List) (2006). His doctoral dissertation on the participation of private parties to the settlement of international economic disputes was published in Brussels at Bruylant in 2007. It was awarded a special mention from the Jury of the Institute of World Business Law Prize of the International Chamber of Commerce. He previously held a position of constitutional policy advisor at the Executive Council of the Government of Quebec (2002-2006). He was also a researcher at the Centre de droit de la consommation of Université catholique de Louvain in Belgium, where he worked on legislative assistance programmes of the European Commission in Central and Eastern Europe and former USSR countries (1996-2000). Professor Côté teaches public international law, international economic law and constitutional law. His current research focuses on the international legal aspects of federalism and State responsibility in international investment law.
Dr Deborah Elms is Founder and Executive Director of the Asian Trade Centre. She is also a senior fellow in the Singapore Ministry of Trade and Industry’s Trade Academy. Previously, she was head of the Temasek Foundation Centre for Trade & Negotiations (TFCTN) and senior fellow of international political economy at the S. Rajaratnam School of International Studies at Nanyang Technological University, Singapore. Her research interests are negotiations and decision making, and her current research involves the Trans-Pacific Partnership (TPP), Regional Comprehensive Economic Partnership (RCEP), ASEAN Economic Community (AEC) negotiations and global value chains. She has provided consulting on a range of trade issues to governments including the United Arab Emirates, Sri Lanka, Cambodia, Taiwan, and Singapore. Dr. Elms received a PhD in political science from the University of Washington, a MA in international relations from the University of Southern California, and bachelor’s degrees from Boston University.
Sharon Friel is Professor of Health Equity and Director of RegNet School of Regulation and Global Governance, Australian National University. She is also Director of the Menzies Centre for Health Policy ANU. She is a Fellow of the Academy of Social Sciences Australia, an ANU Public Policy Fellow and an Australian Council of Social Services (ACOSS) Policy Advisor. She is Co-Director of the NHMRC Centre for Research Excellence in the Social Determinants of Health Equity. She held an inaugural Australian Research Council Future Fellowship to investigate the interface between health equity, food systems and climate change, based at the National Centre for Epidemiology and Population Health, ANU. Between 2005 and 2008 she was the Head of the Scientific Secretariat (University College London) of the World Health Organisation Commission on Social Determinants of Health. Her current interests are in the political economy of health; policy, governance and regulation in relation to the social determinants of health inequities, including trade and investment, food systems, and climate change.
Peter Gallagher is a trade and public policy specialist with three decades of experience as a senior officer of the Department of Foreign Affairs and Trade specialising in multilateral and bilateral trade negotiation and dispute settlement. Since 1996, Mr Gallagher has consulted in Australia and for a range of international clients on trade and public policy.

Mr Gallagher has authored eight books, published by WTO on WTO law and procedures and on the political economy of WTO membership. In 2013-14 the International Chamber of Commerce (Paris) engaged him to research and write their centennial history.

Peter Gallagher holds a Masters of Public Laws from the Australian National University (1991) and degrees in literature and philosophy from the University of Sydney (1974).
David A. Gantz, AB (Harvard College), JD, JSM (Stanford Law School), is Samuel M. Fegtly Professor at the University of Arizona, James E. Rogers College of Law, where he teaches and writes in the areas of international trade and investment law, regional trade agreements, public international law and international environmental law. He served earlier in the Office of the Legal Adviser, U.S. Department of State and practiced law in Washington, D.C. Gantz is the author or co-author of four books and more than 50 law review articles and book chapters. He has served as a consultant for the UNDP, USAID and the World Bank, among others, and as a panelist under Chapters 11, 19 and 20 of NAFTA. His most recent book is *Liberalizing International Trade after Doha: Multilateral, Plurilateral, Regional and Unilateral Initiatives* (Cambridge University Press, 2013, 2015).
Bruce Hardy is Legal Counsel in Telstra’s Technology, Innovation and Intellectual Property team. Prior to joining Telstra, Bruce worked as Intellectual Property specialist with the global top tier firm, Ashurst and as the Associate to the Honourable Marcia Neave AO in the Victorian Supreme Court of Appeal. Bruce’s practice covers a broad range of contentious and transactional IP work with a focus on the facilitation of large scale innovation, research and development agreements, patent development and cross border negotiation with respect to intellectual property assets. An alumnus of Melbourne Law School, Bruce is also a volunteer solicitor with the National Children’s and Youth Law Centre, the Chair of Theatre Works St Kilda, and the Artistic Director of BottledSnail Productions, the production company for Melbourne’s legal industry.
Jarrod joined Melbourne Law School as a McKenzie Postdoctoral Research Fellow in June 2015. He has previously taught in a range of areas of law at the University of Melbourne, University of Exeter and St Catherine’s College at the University of Oxford.

Jarrod holds the degrees of DPhil, MPhil and BCL from the University of Oxford, as well as first-class honours undergraduate degrees in both law and software engineering at the University of Melbourne. He has been a visiting researcher at the Max Planck Institute for Comparative and International Private Law in Hamburg.

His research interests lie largely in international economic law, international human rights law and public law. His doctoral thesis, under the supervision of Professor Paul Craig at Oxford, focused on the role of domestic law in investment treaty arbitration.
Professor John Howe is Co-Director of the Centre for Employment and Labour Relations Law in the Melbourne Law School. John teaches in the areas of labour and employment law, corporations law and corporate social responsibility. His recent research has been focused on economic governance and labour rights, and regulatory compliance mechanisms in labour law and corporate governance. John was Deputy Dean of the Melbourne Law School from 2013 to 2016, and he was Secretary of the Australian Labour Law Association between 2005 and 2009. He is currently Chair of the Steering Committee of the Labour Law Research Network, and an Editor of the Australian Journal of Labour Law.
Ingrid Landau is a PhD Candidate and Research Fellow in the Centre for Employment and Labour Relations Law and the Institute for International Law and the Humanities at Melbourne Law School. Since graduating with Honours in Asian Studies and Law from the Australian National University in 2006, Ingrid has worked at Melbourne Law School, the Faculty of Business Law and Taxation at Monash University and the Australian Council of Trade Unions. At the ACTU, she provided advice on Australian employment law, international labour standards, human rights and corporate accountability. Ingrid has published in Australian and international journals, and worked as principal researcher on major research projects commissioned by the Fair Work Commission and the International Labour Organisation.
Meredith Kolsky Lewis is Professor of Law and Vice Dean for International and Graduate Programs at the SUNY Buffalo Law School, where she also directs the Cross-Border Legal Studies Center. Lewis joined the SUNY Buffalo Law School faculty in January 2013 from the Victoria University of Wellington Law School, where she maintains an appointment. Her research focuses on international economic law, with a particular emphasis on international trade law, the World Trade Organization and regional trade agreements. Lewis is currently writing a monograph on the Trans-Pacific Partnership, to be published by Cambridge University Press. She is Co-Executive Vice President and a founding member of the Society of International Economic Law.

Lewis received her BA from Northwestern University and her J.D. and MSFS degrees from Georgetown University. Prior to entering academia she practiced international trade and litigation in the Washington, DC and Tokyo offices of Shearman & Sterling LLP.
Danny has worked in communications law since 1995 across several jurisdictions including Australia, the United States, Hong Kong and South Africa. He holds a LLM from the University of Toronto where he was awarded the WCG Howland Graduate Prize for overall best achievement. He also holds BBusSci (Hons) and LLB degrees from the University of Cape Town.

Danny's current practice focuses on competition law, regulation of radiofrequency spectrum, and trade law. His work for Telstra has included obtaining regulatory approval for two successive mergers of Hong Kong's mobile operators, and legal advice in Australia's 2013 and 2015 spectrum auctions. Danny also led Telstra’s work to secure regulatory approval from the US authorities for recent acquisitions, including HSR, FCC and CFIUS consents. His previous research papers include an analysis of the US Trade Representative’s conduct of its Section 1377 process, for the Communications Policy Research Forum in Sydney; and an examination of Australia’s spectrum licensing approach to enabling passenger use of mobiles aboard commercial aircraft, for the Telecommunications Policy Research Conference in Washington D.C.

Prior to joining Telstra's inhouse team, Danny worked in private practice at King & Wood Mallesons in Melbourne and Edward Nathan Sonnenbergs in Johannesburg.
Jaemin Lee (LL.B., LL.M., Ph.D., Seoul National University; LL.M., Georgetown University Law Center; J.D., Boston College Law School). Mr. Jaemin Lee is currently Professor of Law at School of Law, Seoul National University in Seoul, Korea. His major areas of research include international law, international trade law and international investment law. Upon graduation from College of Law, Seoul National University in 1992, he joined the Korean Ministry of Foreign Affairs as a foreign service officer. Afterwards, he served as deputy directors of Treaties Division and North American Trade Division of the ministry. Between 2001 and 2004, he practiced law with Willkie Farr & Gallagher LLP (Washington, D.C. office) as an associate attorney of the firm’s international trade group. Between 2004 and 2013, he taught international law, international investment law and international trade law at School of Law, Hanyang University in Seoul, Korea.
Simon Lester is a trade policy analyst with Cato’s Herbert A. Stiefel Center for Trade Policy Studies. His research focuses on WTO disputes, regional trade agreements, disguised protectionism and the history of international trade law.

Before joining the Cato Institute, he worked for the trade law practice of a Washington, D.C., law firm, and also as a legal affairs officer at the Appellate Body Secretariat of the World Trade Organization. In 2001 he founded the international trade law website WorldTradeLaw.net. He has written a number of law journal articles, which have appeared in such publications as the Stanford Journal of International Law, the George Washington International Law Review and the Journal of World Trade. In addition, he has taught courses on international trade law at American University’s Washington College of Law and the University of Michigan Law School.

He has a JD from Harvard Law School.
Jonathan Liberman is Director of the McCabe Centre for Law and Cancer, a joint initiative of Cancer Council Victoria (CCV) and the Union for International Cancer Control, based at CCV in Melbourne, Australia. The McCabe Centre’s mission is to contribute to the effective use of law for cancer prevention, treatment, supportive care and research globally.

Jonathan is a lawyer with over fifteen years’ experience in legal and policy research, advice, training, capacity building and technical support relating to cancer / NCD prevention and control at both domestic and global levels. Under Jonathan’s leadership, the McCabe Centre has become a WHO Framework Convention on Tobacco Control Knowledge Hub, and established an international legal training program that builds capacity and expertise in the use of law for cancer / NCD prevention and control, particularly in the context of developing coherence between health, trade, investment, human rights and sustainable development.

Jonathan has degrees in Arts and Law (first class honours) and a Master of Public and International Law. He is a Senior Fellow of the Melbourne Law School and a member of the Lancet Oncology Commission on Global Cancer Surgery.
Jacky Mandelbaum is Special Counsel at a leading Australian law firm. Prior to that, Jacky worked for a number of years as a Senior Legal Researcher at the Columbia Center for Sustainable Investment, a joint centre of Columbia Law School and the Earth Institute at Columbia University in New York. Her work focused on international investments in the extractive industries (oil, gas and mining). In particular, she looked at optimising legal frameworks for promoting sustainable development from these investments—with the objective of balancing the country’s interest in capturing the benefit of the resources while remaining competitive. She researched and provided advice in relation to issues concerning environmental regulation, local community development requirements, transparency, fiscal reforms, local content requirements, and allocation rights.
Kekeletso Mashigo is a Director at the Department of Trade and Industry responsible for Multilateral Organisations. She provides technical support for the dti’s participation in the WTO, UNCTAD, OECD, and G20 among others. This includes developing negotiating strategies and policies, overseeing and managing preparation of South Africa’s positions at the various multilateral organisations; and providing advice and policy recommendations on international trade and investment issues. Prior to this she was responsible for South Africa’s trade relations with the European Union (EU), facilitating and overseeing trade and monitoring implementation of the Trade Development Co-operation Agreement (TDCA) between South Africa and the EU.

Prior to joining the DTI she was a Deputy Director at the National Treasury, working as a Tax Policy Legal advisor in the Legal Tax Design Division and involved in various tax projects, including amongst others amendments to South Africa’s tax policies and the Income Tax Act; and legislative oversight in corporate re-organisations & restructurings, cross border financing (hybrid instruments, debt/equity structuring, derivatives, cross-border leasing), transfer pricing, thin capitalisation, withholding tax, international double taxation, double tax agreements & interpretation thereof, and tax avoidance and anti-tax avoidance.

In 2010 she was seconded to the Organisation for Economic Development and Cooperation (OECD) in Paris, France, as a Legal Consultant in the Directorate for Financial and Enterprise Affairs, Investment Division. She was part of the investment team responsible for the Freedom of Investment Roundtables (FOI) and focused on investment policy developments and design and international investment agreements (IIAs).

Ms. Mashigo is an admitted attorney of the High Court of South Africa and holds a Master’s Degree in International Economics and Law (MILE), Master’s Degree in International Trade Law, Higher Diploma in International Tax Law, Higher Diploma in Tax Law and a LLB degree.
Bryan Mercurio is Professor and Vice Chancellor’s Outstanding Fellow of the Faculty of Law at the Chinese University of Hong Kong (CUHK), having served as Associate Dean (Research) from 2010-14. Specializing in international economic law, Professor Mercurio is a leading expert in the intersection between trade law and intellectual property rights. His work also frequently deals with free trade agreements, dispute settlement and increasingly international investment law. Professor Mercurio is the author of one of the most widely used case books on WTO law (Hart Publishing, 2012, 2nd ed, with S. Lester and A. Davies) and editor of the leading collection on bilateral and regional trade agreements (Cambridge University Press, 2nd ed, 2016, with S. Lester and L. Bartels). Prior to relocating to Hong Kong in 2007, Professor Mercurio taught in the faculty of law at the University of New South Wales (UNSW) and as visitor at universities in Australia and North America. He has held visiting positions at a number of institutions in Asia, Europe and the United States and is currently a Professorial Visiting Fellow at UNSW and Senior Fellow at the Melbourne Law School.
Andrew is Professor at Melbourne Law School, Director of the Global Economic Law Network, a member of the Indicative List of Panelists to hear WTO disputes, and a member of the Energy Charter Roster of Panelists. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for States, international organisations and the private sector. Andrew is the recipient of three major current grants from the Australian Research Council and the Australian National Preventive Health Agency. He has published approximately 100 academic books and journal articles and is a Series Editor of the *Oxford University Press International Economic Law Series*, an Editorial Board Member of the *Journal of International Economic Law* and a General Editor on the *Journal of International Dispute Settlement*. He has law degrees from Melbourne, Harvard and Cambridge and is a Barrister and Solicitor of the Supreme Court of Victoria.

Andrew also consults for the private sector and international organisations. For example, he has been engaged by Telstra for a research project on trade and telecommunications issues and by the World Health Organization to advise on issues concerning the Framework Convention on Tobacco Control.
Mr James Munro  
World Trade Organization

James has been with the WTO Secretariat as a Dispute Settlement Lawyer since 2014, working on both panel and appellate proceedings. Before that, James worked as a lawyer for the Australian government in its Office of International Law, focusing primarily on its trade and investment law practice, including as legal adviser on free trade agreement negotiations with Korea, Malaysia, and other regional groupings. James also worked on UN climate negotiations, including as legal adviser on the renegotiation of the Kyoto Protocol. James has recently finalised a PhD (Law) from the University of Melbourne entitled Emissions Trading Schemes under International Economic Law.
Kyle is currently Director of the Investment Law Section in the Office of Trade Negotiations at the Department of Foreign Affairs and Trade. His previous roles included Services Trade and Negotiations and General Litigation and Corporate Law.

Prior to joining the Department, Kyle was a barrister at the Victorian Bar, with a commercial and equity practice in the superior courts. He has also practised as a commercial solicitor for Minter Ellison and Deacons/Norton Rose.
Mr Hunter Nottage
Ministry of Foreign Affairs and Trade, New Zealand

Hunter Nottage - Manager of the Trade Law Unit, Legal Division, New Zealand Ministry of Foreign Affairs and Trade

Hunter is manager of the trade law unit at the Ministry of Foreign Affairs and Trade. Prior to this, he served in the office of the Trade Minister and as a Lead Adviser in the Legal Division. Before working in government, Hunter spent a decade as Counsel at the Advisory Centre on WTO Law based in Geneva. In that capacity, he represented and advised a wide range of emerging economies and their industries on trade matters. He has also worked on economic issues at the Organisation for Economic Cooperation and Development (OECD) in Paris and as a solicitor at Chapman Tripp. Hunter enjoys lecturing on international economic law and has published on the subject, including in the Oxford Handbook on International Trade Law. He holds degrees in economics and law (Honours) from Victoria University as well as a first class Masters degree in law from Cambridge University (Chevening Scholar).
Dr Luke Nottage specialises in international arbitration, contract law, consumer product safety law and corporate governance, with a particular interest in the Asia-Pacific region. He is Professor of Comparative and Transnational Business Law at Sydney Law School, founding Co-Director of the Australian Network for Japanese Law (sydney.edu.au/law/anjel), and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. Luke’s 12 books include *International Arbitration in Australia* (co-edited with Richard Garnett, Federation Press, 2010), *Foreign Investment and Dispute Resolution Law and Practice in Asia* (co-edited with Vivienne Bath, Routledge, 2011) and *ASEAN Product Liability and Consumer Product Safety Law* (co-edited with Sakda Thanitcul, Winyuchon, 2016). Luke is an ACICA Special Associate and founding member of the Rules drafting committee, the Australasian Forum for International Arbitration council’s Japan Representative, and on the panel of arbitrators for the BAC, JCAA, KCAB, KLRCA and SCIA. Luke has also consulted for law firms world-wide, ASEAN, the EC, OECD, UNCTAD, UNDP and the Japanese government, and is Managing Director of Japanese Law Links Pty Ltd (www.japaneselawlinks.com).
Paula O’Brien is a Senior Lecturer at Melbourne Law School. She has a BA/ LLB from The University of Melbourne and an LLM from the University of Cambridge, specialising in international law. Paula researches in the area of health law and public interest law. Her current doctoral research is on alcohol regulation, including the labelling, advertising, pricing and licensing of alcohol as a global commodity. She has also recently published on the international right to health and the phenomenon of privatisation, the global shortage of health workers and its implications for the fulfilment of the right to health, and access to health care for migrant workers and their families in Australia.
Ana María Palacio is a PhD student at the University of Melbourne working on the Pacific Alliance, a regional agreement comprising Chile, Colombia, Mexico and Peru that pursues deep integration. Ms Palacio worked for several years at the Ministry of Trade, Industry and Tourism in Colombia providing legal advice on issues related to technical barriers to trade and services regulation. Moreover, Ms Palacio was part of the government team in several preferential trade agreements negotiated by Colombia and assisted in the implementation of PTAS. Ms Palacio has a Masters of Laws from the University of Melbourne, graduate diplomas in business law from Deakin University and Externado University and a Bachelor of Laws from EAFIT University in Colombia.

Ms Palacio is the editor of the ‘Blog Shaping the Pacific Alliance’, which provides a platform for constructive discussions among different stakeholders on the progress and challenges of this integrations scheme.
Jacqueline Peel is a Professor of Law at the Melbourne Law School, University of Melbourne in Australia where she has taught for the past 14 years. Professor Peel’s expertise lies in the areas of environmental law, climate change law and risk regulation. She has published widely on these topics including six books on *The Precautionary Principle in Practice, Environmental Law: Scientific, Policy and Regulatory Dimensions* (with L. Godden); *Science and Risk Regulation in International Law; Principles of International Environmental Law* (3rd ed, with P. Sands); *Australian Climate Law in Global Context* (with A. Zahar and L. Godden) and *Climate Change Litigation: Regulatory Pathways to a Cleaner Energy Future* (with H. Osofsky). During 2013-2015, Professor Peel was a Visiting Scholar with the Stanford Water in the West program working on topics related to climate change adaptation governance and law reform. She is also one of the current elected co-chairs of the International Environmental Law Interest Group of the American Society of International Law. Prior to taking up an academic position at the Melbourne Law School, Professor Peel served as an intern to Special Rapporteur James Crawford on the UN International Law Commission and practiced as an environmental and natural resources lawyer in Australia. She has a Bachelor of Science and Bachelor of Laws (Hon I) from the University of Queensland, a Master of Laws from NYU and a PhD in Law from the University of Melbourne.
Prior to joining UNSW in 2010, Colin Picker was the Daniel L. Brenner/UMKC Scholar & Professor of Law at the University of Missouri - Kansas City School of Law. He entered academia in 2000, after practicing in the International Group of the Washington, D.C., law firm of Wilmer, Cutler & Pickering. His practice included transnational & trade litigation, international transactions and international congressional policy work. Prior to practice in Washington, he clerked for the Honourable José A. Cabranes of the U.S. Court of Appeals for the Second Circuit.

He has published widely in the areas of International Trade/International Economic Law, International Law and in Comparative Law. He has published in many journals, in America, Europe and Asia. Among other books, he is also a co-author of COMPARATIVE LEGAL TRADITIONS: TEXTS, MATERIALS AND CASES ON WESTERN LAW, 4th Edition (Thomson West) (2014) (with Mary Ann Glendon and Paolo Carozza).

He was one of the founders and was founding Executive Vice President (2008-2014) of the Society of International Economic Law, a global academic organization for international economic law. He has also been active in the International Economic Law Group of the American Society of International Law (Co-Chair 2005-2007), and in the American Society of Comparative Law (a former member of the Executive Council and former Chair of the Young Comparatists Committee).

In furtherance of his work on comparative legal education, he has visited and taught at law schools around the world, including, among many others, in the United States, Russia, China, Israel, and Vietnam. Currently his primary research interests are the role of legal culture in international economic law (the subject of his thesis) and also comparative legal education.
Michelle Ratton Sanchez Badin is a full-time professor, in the associate position, at Getulio Vargas Foundation School of Law in Brazil, and one of the coordinators of the WTO Chair Program in Brazil. She was a consultant for the Mercosur and BID in the past. She held researcher positions at the Brazilian Center of Analysis and Planning, at the Graduate Institute of International Studies and Development (GIISD), in the Hauser Global Law School Program at New York University (2007), and at the School of Law of the University of California, Irvine. Having focused on the International Economic Law field, she was one of the founding members of the Society of International Economic Law (SIEL), she is a current co-director, of the RED-DEI – the International Economic Law Network in Latin America, and currently in charge of the Regional Trade Agreements group of the Brazilian ILA chapter. She was also responsible for launching the ICTSD publication on trade and sustainable development “Pontes” in Brazil, being on the coordination position for several years.
Dr Matthew Rimmer is a Professor in Intellectual Property and Innovation Law at the Faculty of Law, at the Queensland University of Technology (QUT). He is a leader of the QUT Intellectual Property and Innovation Law research program, and a member of the QUT Digital Media Research Centre (QUT DMRC) the QUT Australian Centre for Health Law Research (QUT ACHLR), and the QUT International Law and Global Governance Research Program. Rimmer has published widely on copyright law and information technology, patent law and biotechnology, access to medicines, plain packaging of tobacco products, intellectual property and climate change, and Indigenous Intellectual Property. He is currently working on research on intellectual property, the creative industries, and 3D printing; intellectual property and public health; and intellectual property and trade, looking at the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership, and the Trade in Services Agreement.
Anthea Roberts is a specialist in public international law, investment treaty law and arbitration and comparative international law. She has recently returned to Australia to join the RegNet School of Regulation and Global Governance at the Australian National University. Previously, Anthea held appointments at the London School of Economics and Columbia Law School and spent a year as a Visiting Professor at Harvard Law School. She has served as an arbitrator and an expert witness in international arbitrations. Prior to becoming an academic, Anthea spent five years as an Associate in the International Dispute Resolution Group at Debevoise & Plimpton in New York and London where she represented investors and states in international investment and commercial arbitrations.
Donald is a partner (Herbert Smith Freehills) who practises international law and international arbitration arising from commercial transactions. He specialises in international commercial contracts and transactions, and the mechanisms under international law for allocating country and sovereign risk in investments and cross-border transactions. He also has an emphasis on the public international law aspects of corporate social responsibility and human rights as they apply to businesses.

Donald holds numerous international fellowships and a Master of Laws from New York’s Columbia University. He has written extensively for industry journals and publications, such as the Australian Journal of International Law, the Journal of Contract Law and the Australian Resources and Energy Law Journal. He is an affiliate of the Sydney Centre for International Law, and a member of the Journal of Contract Law’s editorial board. An Adjunct Professor of Law at University of Sydney Law School, Donald teaches international contract law and related subjects.
Constantinos Salonidis is a senior international associate with the International Litigation and Arbitration Practice in Washington, D.C. His practice focuses on international dispute resolution, especially in cases involving the representation of sovereign clients before arbitration panels administered under the ICSID and UNCITRAL and Arbitration Rules. Constantinos also regularly advises sovereign clients on a wide range of public international law issues. Before joining Foley Hoag, Constantinos worked in the Center for Research and Planning of the Greek Ministry of Foreign Affairs and as a Research Fellow in the Center for International and Constitutional Institutions of the Academy of Athens. In 2006, Constantinos was awarded the Diploma in Public International Law of the Hague Academy of International Law. In 2018, he will serve as Director of Studies for Public International Law at the same institution.
Elizabeth Sheargold is a research fellow and PhD candidate with the Global Economic Law Network at Melbourne Law School. Her research considers the relationship between international trade and investment agreements and domestic regulation for public purposes, such as the protection of human health or the environment. Previously, she worked in the Melbourne office of law firm Allens Arthur Robinson (now Allens Linklaters) and as Associate Director of the Center for Climate Change Law at Columbia University in New York. She completed her BA / LLB (Hons) at the University of Melbourne, and her LLM at Columbia University.
Joo-Cheong Tham is an Associate Professor at Melbourne Law School.

His research spans the fields of labour law and public law with his key research areas, the regulation of precarious work and political finance law. He has also undertaken considerable research into counter-terrorism laws. He has published 33 book chapters and refereed articles, edited two collections and produced three monographs including *Money and Politics: The Democracy We Can’t Afford* (2010, UNSW Press).

His research on the regulation of precarious work is currently focussed on the challenges posed by temporary migrant work in Australia, particularly, the precariousness of such work and is being undertaken through an Australian Research Council grant. In the area of political finance, Joo-Cheong is leading an interdisciplinary team on the project, ‘The problems of campaign finance regulation’, which is jointly funded by the New South Wales Electoral Commission and the Melbourne School of Government.

In 2012, Joo-Cheong became the inaugural Director of the Electoral Regulation Research Network. The Network - an initiative sponsored by the New South Wales Electoral Commission, Victorian Electoral Commission and the Melbourne Law School - aims to to foster exchange and discussion amongst academics, electoral commissions and other interested groups on research relating to electoral regulation.
Leon Trakman is Professor of Law and Past Dean of the Faculty of Law at the University of New South Wales. The recipient of a doctorate from Harvard, he is author of 8 books and over 100 articles in international journals. His academic appointments include, amongst others, Distinguished Visiting Professor at the University of California (Davis), Visiting Professor at Wisconsin Law School, Tulane Law School and the University of Cape Town, Professor of Law at Dalhousie University and Bolton Visiting Professor at McGill University. He has served extensively as an international commercial arbitrator, and as a panellist appointed by the US, Canadian and Mexican Governments to decide antidumping, countervailing duty and injury disputes under the NAFTA.
Tania Voon is Professor at Melbourne Law School, The University of Melbourne. She is a former Legal Officer of the Appellate Body Secretariat of the World Trade Organization (WTO) and has previously practised law with Mallesons Stephen Jaques and the Australian Government Solicitor. Tania undertook her Master of Laws at Harvard Law School and her PhD in Law at the University of Cambridge.

Tania has published widely in the areas of public international law and international economic law. She is the author of *Cultural Products and the World Trade Organization* (Cambridge: Cambridge University Press, 2007), Editor of *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement* (Edward Elgar, UK, 2013), and a member of the Indicative List of Governmental and Non-Governmental Panelists for resolving WTO disputes and the Roster of Panelists to assist in the resolution of trade disputes between parties to the Energy Charter Treaty. In 2014 Tania was Senior Emile Noël Fellow at the Jean Monnet Center for International and Regional Economic Law & Justice at New York University School of Law.
Heng Wang is associate professor at the Faculty of Law, the University of New South Wales. Heng has spoken at the WTO Headquarters and nearly 40 universities in America, Europe, and Asia, including Harvard University, University of Pennsylvania, University of Virginia, the LSE, and University of Paris 1. As a visiting professor, he taught at the UNSW, University of Ottawa, Case Western Reserve University, Yokohama National University, and Xiamen University. Besides being a visiting professor at Sant’Anna School of Advanced Studies and University of Cagliari, he conducted research at the WTO Secretariat, and was the Max Weber Fellow at European University Institute. He published widely in journals including the Journal of World Trade and Cornell International Law Journal, and his research has been quoted by scholars such as those from Oxford University and the Max Planck Institute. He was an Executive Council member of the Society of International Economic Law, and is a founding member of the Asian International Economic Law Network, a member of the Asian WTO Research Network, and an executive council member of all three Chinese societies of international economic law or WTO law.
Kimberlee Weatherall is an Associate Professor at the Sydney Law School specialising in intellectual property law. She has published in a range of Australian and international journals, has been invited to speak in the US, Japan, Taiwan, China, the UK, Europe, Singapore, New Zealand among others, and regularly gives expert evidence to Parliamentary and law reform committees. She has been a member of the Law Council of Australia IP Subcommittee since 2006 and has been a member of the Advisory Committee to the ALRC Inquiry into Copyright and the Digital Economy, as well as a member of the Commonwealth Government’s Advisory Council on Intellectual Property. Her current ARC Discovery Project is investigating the rapid development of IP enforcement provisions in bilateral, plurilateral and multilateral trade agreements.
Margaret A. Young (PhD, LLM, LLB, BA Hons) researches and teaches in the fields of public international law, international trade law, climate change law and the law of the sea. She is the author of the prize-winning *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (Cambridge University Press, 2011) and *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012). A former Gates Scholar, she is currently working on a book on forests and climate change.

Dr Margaret Young joined the Faculty in 2009. She was previously the William Charnley Research Fellow in Public International Law at Pembroke College and the Lauterpacht Centre for International Law, University of Cambridge, where she also lectured in Cambridge’s LLM course on WTO law. She has worked at the World Trade Organisation (Appellate Body Secretariat) and the United Nations International Law Commission, is a former associate to the Chief Justice of the Federal Court of Australia, and has practised as a solicitor at a major Australian national law firm.
Dr Weihuan Zhou is a lecturer at UNSW Law and a member of UNSW Law’s China International Business and Economic Law (CIBEL) Initiative. He teaches international economic law, WTO law, Australian contract law and Chinese commercial law. His research covers the laws of the WTO, trade remedies, FTAs, general international economic law, cross-border transactions especially the two-way trade and investment between China and Australia, Chinese commercial law, China’s trade and investment policies and regulations, and China’s integration into the international economic order. Weihuan has published in a number of top international and domestic journals such as the *Journal of International Economic Law*, the *Journal of World Trade*, the *World Trade Review*, the *Manchester Journal of International Economic Law*, and the *Tsinghua China Law Review*. He is a qualified lawyer in Australia and consults for leading Australian law firms on trade remedy and investment matters.
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The Editors of the Melbourne Journal of International Law (‘MJIL’) are pleased to be supporting this conference. In collaboration with GELN, MJIL will be publishing a special issue in 2016 focusing on the legal implications of the Trans-Pacific Partnership. For further information or to obtain a copy of volume 17(2), please contact law-mjil@unimelb.edu.au or visit law.unimelb.edu.au/mjil.
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Venues

Symposium: Woodward Conference Centre
Level 10, Melbourne Law School, The University of Melbourne, 185 Pelham Street Carlton

Thursday dinner*: Karagheusian Room, University House Professors Walk
Professors Walk, The University of Melbourne, Parkville

Friday dinner*: University House at the Woodward
Level 10, Melbourne Law School, The University of Melbourne, 185 Pelham Street Carlton

* Dinner tickets available for purchase (complimentary for presenters on that day).