



## Jean Monnet Centre of Excellence – Tensions at the Fringes of the EU – regaining the Union's purpose

### Sustainable development in Trade Agreements: EU and Post-Brexit UK Perspectives – Summary report

Queen's University Belfast, School of Law  
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This seminar was organized by the Jean Monnet Centre of Excellence (JMCE) at the School of Law, Queen's University Belfast, as part of Stream 2 of the TREUP project (EU external trade relations and constitutional values –on a collision course?). Led by Dr. Billy Melo-Araujo and Dr. Federico Lupo-Pasini (Queen's University Belfast) this event aimed to provide law, political science and international relations scholars with the opportunity to explore and discuss various issues surrounding the interaction between trade liberalisation and sustainable development in the framework of EU trade agreements.

Introduced by Dr. Melo-Araujo, the seminar was structured around two thematic panel sessions.

The **first panel**, on “Sustainable Development in EU FTAs: Assessing the repercussions of Opinion 2/15 and Brexit”, included presentations by **I-Ju Chen** (University of Birmingham); **Prof. Marc Bungenberg** and **Angshuman Hazarika** (Saarland University); and **Dr. Billy Melo-Araujo** (Queen's University Belfast).

**I-Ju Chen** addressed the implications of CJEU Opinion 2/15 -on the EU-Singapore FTA- for the future integration of sustainable development in the new generation of FTAs. In her presentation, she provided an analysis of key issues of trade and sustainable development arising from this Opinion as well as a discussion of EUFSTA evaluation in relation to environmental protection and labour rights protection. In her presentation, three main implications were identified: First, that the CCP (Common Commercial Policy) is to be conducted in the context of the principles and objectives of EU's external action; second, that the EU is to carry out its



commitments for sustainable development through trade and, finally, that “sustainable development in trade” primarily relate to commercial policy instruments. The paper concluded with a few reflections of the challenges and opportunities presented by Brexit.



**Angshuman Hazarika** evaluated the structure of a possible chapter on trade and sustainable development in future EU trade negotiations with the UK after Brexit. Drawing on the chapters on trade and sustainable development of other EU trade agreements and the Opinion of the CJEU on the EU-Singapore FTA, the paper described the broad contours of the chapter as well as discussing the possibilities which can emerge from such

negotiations. He concluded that, despite current uncertainty (without a clear structure of a UK-EU trade agreement yet in sight) the ongoing negotiations present a unique opportunity for designing a trade agreement with ambitious sustainable development provisions, owing to the existing similarity of legislations on the subject and a common existing trade policy in the form of the present Common Commercial Policy.

**Dr. Billy Melo-Araujo** opened his presentation with an overview of the stated aims of the trade and sustainable development (TSD) chapters, distinguishing between value-based and competitive-advantage arguments. He then described current EU FTA practice, highlighting the lack of hard enforcement mechanisms as well as the lack of conditionality. The main core of his presentation was, however, an assessment of the effectiveness of those chapters. Here, he identified four issues, namely: a) a trend towards no-implementation, b) deficiencies in cooperation frameworks, c) civil society’s view of the lack of enforcement mechanisms and conditionality as a flaw and d) EU trading partner’s view of TSD chapters as a “price to pay” to sign the agreement. He concluded that, while in their present form TSD chapters are little more than a “veneer”, a recent 2017 Commission discussion paper on their reform (which set out two alternative proposals) may be a step in the right direction, although these should not necessarily be regarded as being mutually exclusive.



The **second panel**, entitled “Sustainable Development in EU trade Policy – Looking beyond FTAs” included presentations by **Dr. Ilaria Espa** (World Trade Institute), **Cees Verburg** (University of Groningen) and **Dr. Federico Lupo-Pasini** (Queen’s University Belfast).



**Cees Verburg's** presentation, on sustainable development and investment protection in EU trade agreements, had an analytical focus on the EU Energy Charter Treaty (ECT). Since the ECT is the only FTA with investor-State dispute settlements (ISDS) in force to which the EU is a contracting party, there is a question as to whether this works to undermine or else support sustainable development. In

addressing this question, the ECT was compared with the CETA with regards to the right to regulate, fair and equitable treatment, and ISDS. He concluded that, based on legislation passed over the past 19 years, the ECT may not undermine the EU's and Member States' ability to legislate in pursuit of sustainable development and also pointed to some lessons to be learned from CETA such as, for example, that more narrowly defined standards, while enhancing legal certainty, also raises the threshold of liability.

**Dr. Ilaria Espa** examined the promotion of renewable energy in the Energy Union Strategy, placing a special focus on the electricity sector. While the EU has overachieved 2020 sustainable development targets regarding energy efficiency and renewable energy there is a need for reform towards harmonisation, and some steps are already being taken in this direction. Thus, the main goal of the renewable promotion policy is to strive towards a higher integration of the sector in the EU as evidenced by the replacement of Member State targets by EU-wide targets. Achieving this goal, however, requires more coordination among Member States as well as an enhanced cross-border ability of trade in electricity. In sum, a process of 'Europeanisation' is needed in two distinct steps: a) Europeanisation of renewables support and b) Europeanisation of public support. She concluded that the EU is resolved to improve the system in a cost-effective way, that there is a powerful economic argument for it and that the tentative for reform goes in the right direction.

**Dr. Federico Lupo-Pasini** argued that the EU-China investment agreement on sustainability has no impact on sustainability. He thus contends with the literature on the subject which claims that investment agreement promotes sustainability (through transparency, participation and increased scrutiny).

