



China-EU School of Law 中欧法学院

At the China University of Political Science and Law 中国政法大学



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA
DIPARTIMENTO DI SCIENZE GIURIDICHE



SCUOLA DI GIURISPRUDENZA

UNIBO FARB Project: “EU and China towards Smart Development. Strategies and Instruments of Legal and Economic Cooperation”

WORKSHOP
**The EU-China Trade Relations Between Classic Trade
Disputes and Sustainability Issues**
A Legal Analysis

Sala delle Armi, School of Law, *Alma Mater Studiorum* – Università di Bologna

Friday 10 October 2014, h. 9

INTRODUCTORY NOTE TO THE WORKSHOP

Formalised EU-China relations date back to 1975. Over the years, Brussels/Beijing collaboration and exchanges have constantly deepened and widened, so that China, currently the world's second largest economy, is the EU's second largest trading partner while the EU is China's largest trading partner. The bilateral legal framework within which EU and China develop their relations and cooperation is mainly represented by informal instruments, the so called "dialogues", which may be distinguished in three pillars, namely the political dialogues, the economic and sectoral dialogues, and the people-to-people dialogues, reaching the impressive figure, and realizing a remarkable, even if *sui generis*, institutional net, of nearly sixty dialogues. However, in spite of the highly significant efforts dedicated to the EU/China bilateral cooperation, both in terms of human and financial resources, there are still major trade controversies between Brussels and Beijing, which more and more often are interlaced with sustainability issues, like the preservation of natural resources, the fight against climate change, the promotion of clean and renewable energy, and, more generally, the protection of the environment.

One of the aims of this Workshop is to analyze all the major trade disputes between the EU and China, in order to reconstruct their dynamics, and to propose positive win-win outcomes, while also suggesting how the corresponding informal bilateral sectoral dialogues could be improved in order to prevent the triggering of so delicate, costly and time-consuming controversies.

Parallel to the consideration of the EU/China trade disputes, with a particular emphasis on those controversies involving sustainability issues, due attention will be given to the new EU global investment policy and the perspectives for a stand-alone investment agreement with China. In fact, in November 2013, bilateral negotiations between Brussels and Beijing have been launched in order to agree on a common framework of institutional and substantive rules pursuant to which EU and Chinese investments have to be promoted and protected. It is thus necessary to duly explore also this key aspect of the Sino-European relations. In fact, only in this way it will be possible to achieve another aim of this Workshop, i.e. to entirely reconstruct the framework of the EU-China trade relations, while also suggesting the legal principles and institutional tools which should characterize the currently undergoing Brussels/Beijing investment negotiations, so as to achieve a fully shared common text of the future stand-alone investment agreement. Indeed, while trade flows between China and the EU are impressive, with goods and services traded between both partners for a value of € 1 billion every day, the current investment flows are really below the potential of both the economic blocks: in 2011 European companies invested € 17.5 billion in China (i.e. 2% of total FDI abroad), whereas China invested € 2.8 billion in Europe (i.e. 0,4% of total FDI in Europe). Thus, a good and appropriate EU/China investment agreement might highly and significantly strengthen the economic ties between the two economic powers, promoting a greater development, that has to be sustainable, and limiting the dispersion of resources in costly and too long litigation.

PROGRAMME

h. 9, 15 – 9,30

Welcoming Address

Renzo Orlandi, Coordinator of the Law Course and Deputy President of the School of Law, *Alma Mater Studiorum* - University of Bologna

Antonino Rotolo, Deputy Director of the Department of Legal Sciences, Responsible for International Research Programmes, *Alma Mater Studiorum* - University of Bologna

h. 9,30 - 9,45

Introduction to the Conference

Elisa Baroncini, *Alma Mater Studiorum* - University of Bologna

h. 9,45 – 11,00

Panel I – Perspectives for an EU/China International Investment Agreement

Chair: Attila Tanzi, Alma Mater Studiorum - University of Bologna

Elisa Baroncini (*Alma Mater Studiorum* - University of Bologna), The EU Global Investment Policy and China. Perspectives for a Bilateral Stand-Alone Investment Agreement (20')

Pieralberto Mengozzi (*Alma Mater Studiorum* - University of Bologna), The Treaty-Making Power of the European Union and Foreign Investments (20')

Federica Cristani (University of Verona) – Who Bears the Costs in Investor-State/EU Arbitration? An Overview of the New EU Competence in FDI against the Background of the On-Going EU-China Negotiations (20')

h. 11,00 – 11,30 Coffe Break

h. 11,30 – 13,00

Panel II – Trade Liberalization and Climate Change

Chair: Marina Timoteo (Alma Mater Studiorum - University of Bologna)

Wang Lebing (University of International Business and Economics, UIBE) - The Nature of Environment: An EU-China Comparative Perspective (20')

Gong Hongliu (University of International Business and Economics, UIBE) – Green Subsidies and EU-China Disputes in the WTO System (20’)

Coraline Goron (Université Libre de Bruxelles and University of Warwick) - Fighting Climate Change and Fair Trade. Finding the EU’s Interest in the Solar Dispute with China (20’)

h. 13,00 – 14,00 - Lunch

h. 14,00 – 15,30

Panel III - Trade Liberalization and Natural Resources

Chair: Pietro Manzini (Alma Mater Studiorum - University of Bologna)

Ilaria Espa (World Trade Institute, Berne) - International Trade in (Sustainable) Energy Resources and the WTO: Key Challenges in Light of the Strategic Interests of the European Union and China (20’)

Elisa Baroncini (*Alma Mater Studiorum* - University of Bologna), The EU-China WTO Cases Concerning Natural Resources (20’)

Elisa Ruozi (University of Torino) - China and Biofuels: Legal and Policy Issues in the Framework of the WTO System (20’)

h. 15,30 – 16,00 Coffee Break

h. 16,00 – 17,30

Panel IV - Trade Defence Measures in EU-China Relations before the EU Judges in Luxembourg and the WTO Judiciary

Chair: Lucia Serena Rossi (Alma Mater Studiorum - University of Bologna)

Li Juqian (China University of Political Science and Law, CUPL), EU-China Cases on Anti-Dumping in the WTO Dispute Settlement System (20’)

Claudio Dordi (Bocconi University) - Antonella Forganni (EU-Asia Institute of ESSCA - School of Management), The Recent EU Case-Law on EU Anti-Dumping Legislation and the Reforming of the EU Trade Defence Legislation: the Influence of the EU and WTO Case-Law (20’)

Liu Jingjing (Columbia Law School), The Evolving Dispute Resolution Approach, Perceptions and Practices of the Chinese Government and Chinese Economic Operators in International Trade Litigation (20')

Discussion

h. 17,30 – 18,00

Conclusions

Paolo Mengozzi, Advocate General of the Court of Justice of the European Union and Emeritus Professor, *Alma Mater Studiorum* - University of Bologna

Scientific Coordination: Elisa Baroncini (elisa.baroncini@unibo.it)

SHORT BIOS OF SPEAKERS AND CHAIRS

Elisa Baroncini is Associate Professor of International Law at the School of Law of the University of Bologna. She has been Visiting Fellow at the Law Department of the European University Institute in Fiesole, under the supervision of Professor Petros Mavroidis, she is Associate Research Fellow at the Leuven Centre for Global Governance Studies, and Visiting Professor in EU Trade Law at the China-EU School of Law in Beijing. Currently Co-Chair of the ESIL IG on International Economic Law, together with Marion Panizzon and Peter-Tobias Stoll, Elisa holds a cum laude Bologna Law Degree and a PhD in EU Law, both undertaken under the supervision of Prof. Paolo Mengozzi, and beyond International Law, she teaches International Economic Law and EU Law. She has been and is member and supervises various international research projects, writing extensively on International Economic Law and EU Law, and participating as speaker in many international conferences. Her main fields of research include: WTO Law (the TBT Agreement in the WTO dispute settlement system; the consumers' right to information in the WTO system; WTO-plus obligations; China in the WTO dispute settlement system; WTO and climate change issues); transparency in International Economic Law; and the law of EU external relations (EU/China relations; EU/China investment negotiations; the treaty-making power of the European Commission; the European Parliament and international agreements; the delegations of the European Union).

Federica Cristani, Ph.D., is a research scholar in international law at the University of Verona and at the University of Bologna. She defended her doctoral thesis on “Necessity in International Investment Law”. Currently a *Visiting Fellow* at the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Heidelberg - DE) and former *Visiting Scholar* at the Lauterpacht Centre for International Law of the University of Cambridge (UK). She has published a number of articles on international investment arbitration, while also presenting seminars and conferences in Italy and abroad on various topics related to international investment law.

Claudio Dordi is Associate Professor of International Law at Bocconi University, Milan. He received his Ph.D. in 1995 in International Economic Law. From 1995 to 1996 he worked as a consultant for the UNCTAD, Geneva and as a researcher at Bocconi University. Beginning in 1997, he was a faculty member of the Master in International Economic Management (MIEM) of SDA Bocconi where he teaches International Organizations. From 1999 to 2003 he has been lecturer and researcher of international trade law at University of Brescia and lecturer of international institutions at Bocconi University, Milan. In 2000 he has been member of a project of research on “EU-Mercosur” negotiations coordinated by the University of Sciences Po, Paris. He has taught trade in services and investment law in the Master of International Law and Economics (MILE) program at the World Trade Institute (Bern, Switzerland), and in many other European and Latin American Universities (Nicaragua, Brazil, France, Switzerland). In 2002 and 2003 he has been “visiting Professorial Fellow” at the International Economic Law Institute, Georgetown Law School. In 2004 he taught “International economic law” at the University of Canton (China) and from 2005 to 2006 he has been the director of a project financed by the Italian Ministry of Foreign Affairs and aimed at favoring the accession of Vietnam to the World Trade Organization. Since 2005 he is member of the panelists for the EU-Chile FTA Dispute Settlement System. In 2006 he has been appointed by EC Commissioner Peter Mandelson in the EC Group of Experts for the reform of Trade Defence Measures. Since 2007 he has been working as a trade expert for the Multilateral

Trade Project of the EC in Vietnam and since October, 2007, he is an expert for the “beyond the WTO” project of the World Bank and he has member of the APEC project on Dispute Settlement. He participated in the research team aiming at analyzing the WTO DSB reports 2004-2006. Since 2008 he is Technical Assistance Team Leader of the EU-Multilateral Trade Project in Vietnam. Since 2012 he is coordinator of the PhD program in “international law and economics”. He published books on a number of international trade-law related subjects (trade discrimination, Rules of Origin, effect of WTO in internal legal systems and World Trade Organization). He published articles in many European and international journals (e.g. World Trade Review, Journal of International Economic Law, and Journal of World Trade).

Ilaria Espa is a Marie Curie (COFIT) Senior Research Fellow at the World Trade Institute in Bern where she works within the NCCR/WP5 Cluster on “Energy, Trade and Climate Change”. She completed her Ph.D. in International Law and Economics in 2013 at the Department of Legal Studies of Bocconi University. During her Ph.D. studies, she was a Visiting Scholar at the Columbia Law School in 2012 and served as a consultant for the Trade and Environment Division at the WTO. She has published a number of articles on various WTO issues arising out the use of export restrictions and climate change-related trade measures, while also presenting seminars and international conferences on various topics related to WTO law.

Antonella Forganni is research associate at the EU-Asia Institute of ESSCA - School of Management (Ecole supérieure des sciences commerciales d'Angers, France). In ESSCA she is also lecturer in the courses of International Trade and European Integration. She succeeded in the Italian Bar examination and obtained the Ph.D. in International Law and Economics at Bocconi University (Milan, Italy). Thanks to the EU Science and Technology Fellowship she spent two years in China, to approach the Chinese language and culture; she carried out her research at Beijing Normal University. During her career she combined both academic and professional experience, working as legal advisor for industrial federations of large and small exporting companies. Her main fields of research cover the EU-China relations and international trade law issues.

Hongliu Gong, PhD, is the Deputy Dean and Associate Professor of the School of Law at the University of International Business and Economics (UIBE) in China. She received her LL. B. from Southwest University of Political Science and Law, China, and her LL. M. and S. J. D. from Golden Gate University, USA. She has also been a Visiting Scholar at George Washington University, and a Visiting Researcher at Georgetown University Law Center, USA. At the UIBE, Professor GONG’s primary teaching assignments are International Trade Law, WTO Law and Public International Law. Her research lies in the areas of WTO law, International Economic Law and International Dispute Resolution. Her scholarly work has been published in China, the USA and Europe respectively, including a paper having won the 2nd Prize of “2001 Andrew P. Vance Memorial Writing Competition” in the USA. Besides her work as a legal academic, Professor GONG has extensive experience in trade law practice. Prior to joining the faculty at the UIBE, she was the Foreign Law Advisor of Greenberg Traurig, LLP - an international law firm - at its Washington, DC. Offices. In that capacity, she advised US clients in national and multilateral proceedings, in particularly handling the WTO dispute settlement cases. Now Professor GONG is often invited to provide expert and training assistance to various Chinese state agencies in charge of trade and legal issues, i.e. the Ministry of Commerce (MOFCOM).

Coraline Goron is PhD Candidate in the GEM (Globalisation, EU and Multilateralism) Erasmus Mundus PhD School at the Université Libre de Bruxelles (ULB) and the

University of Warwick. Her thesis is a comparative study of the regional climate politics in Europe and China, especially with regard to State-Market relations. She holds a LLM in European, International and Chinese Law from the China-EU School of Law at the CUPL (2012, Beijing, China) and a Master's Degree in European Studies of Institute for European Studies of the ULB (2011, Brussels, Belgium). She is an Associate with the European Institute for Asian Studies (EIAS), where she used to work as Programme Coordinator. She can speak and read Mandarin Chinese. Her professional experience also includes 6 months internship in the Environment and Climate Change section of the EU Delegation in Beijing, as well as several NGO works. Her research interests cover European and Chinese politics and policies, Climate Change, Environmental and Energy Governance, International Political Economy, Regional integration and Free Trade Agreements in Europe and Asia.

Juqian Li, PhD, is Professor of International Law and Associate Dean of the College of International Law of the China University of Political Science and Law (CUPL). He is currently executive director of Beijing International Law Association and executive director of China Institute of Space Law, and also the council-member of Chinese Society of International Law. He has acted as the Council-Member of Space Security Council of the World Economic Forum since 2011. He acted as advisor in the Chinese delegation to the WTO AB hearing of the Rare Earths in Geneva. He was a visiting professor in Korea University and Seoul National University, taught WTO and Chinese Trade Law and Chinese Legal History. He also taught Chinese Trade Law in University of Akureyri in Iceland. He has taught Chinese law to the foreign students in CUPL-Montreal summer school program, CUPL-Exeter summer school program, and supervised Chinese students in the CUPL-Oxford summer school program. His main fields of research include: WTO Law (the WTO dispute settlement mechanism; the anti-dumping cases in the WTO system; the trade and environmental issues in the WTO system; China and East Asia countries in the WTO dispute settlement system); space law (space assets and space security, national space legislation and international treaties). He received LLB degree from Southwest University of Political Science and Law (SWUPL) and LLM and Ph.D. degrees from CUPL.

Jingjing Liu currently is a J.S.D. candidate and the Joseph V. Heffernan Fellow at Columbia Law School. Her research focuses on environmental governance, dispute resolution, and access to justice in China. Prior to attending Columbia Law School's J.S.D. program, Ms. Liu was the associate director of Vermont Law School's U.S.-China Partnership for Environmental Law, a program funded by the United States Agency for International Development and the State Department to advance environmental governance and the rule of law in China. She also taught Chinese law and comparative environmental law research at Vermont Law School as an assistant law professor. She has been invited to present her research or speak on issues related to China's environmental governance and the rule of law at the World Bank, Yale Law School, Yale School of Forestry and Environmental Studies, Harvard Law School, New York State Judicial Institute, and the Woodrow Wilson International Center for Scholars. Ms. Liu received her LLB and LLM degrees from Sun Yat-sen University in Guangzhou, China, and an LLM from Columbia Law School.

Pietro Manzini, PhD in EU law, is full Professor of International law and EU law at the University of Bologna - Department of Legal studies. He served as Legal secretary at the General Court of the European Union, and as Seconded national expert at the Legal Service of European Commission, External relations team. He has been external lawyer for the European Commission before the EU Court of Justice.

Paolo Mengozzi, is Emeritus Professor of the *Alma Mater Studiorum* – University of Bologna, and Advocate General at the Court of Justice of the European Union. He has been judge at the Court of First Instance of the European Communities from March 1998 to May 2006. He is Doctor *Honoris Causa* of the Faculty of Law of the University Carlos III, Madrid. In the past he has been Adjunct Professor at Johns Hopkins University Bologna Center. He has also taught at St. Johns University of New York, the Georgetown University Law Center, Faculty of Law and Political Science of the University of Paris II, Institut Universitaire International Luxembourg, and Georgia University Law School-Athens. His main fields of research are: Union law, International law, Private International law, WTO law.

Pieralberto Mengozzi, PhD, National scientific abilitation obtained in the sector 12 E/1 -International Law and EU Law- from the Italian Ministry for Research and University on 24 January 2014, Adjunct Professor in the School of Economics, Management and Statistic of the Forlì Branch of the University of Bologna. Lectures on European Private Law and European Law in the Postgraduate Programme of “Centro Ricerche e Studi Direzionali” (CERISDI) and in the University of Ferrara, Firenze and Milano. Member of the editorial board of the review *Contratto e impresa/Europa*. Author of two books on Private European Law, one book on the general principles of European Union Law and a fourth one on the EU Member States judges and the judicial protection of the individual rights. He has published several articles on the enhancement by European Law of the position of the weak parties to a juridical relation and on the EU coordination of the economic policies of the Member States.

Lucia Serena Rossi, PhD in EU Law, is Full Professor of European Union Law since 2000 at the University of Bologna. Since May 2014, she is Representative of the Italian Government at the Governing Board of the European Law Academy (ERA). She wrote extensively on EU Law. and among her many scientific and academic commitments there are the following: since 2010, Ad Personam Jean Monnet Chair, European Commission; Director of the International Research Centre on European Law of the University of Bologna (C.I.R.D.E. www.cirde.unibo.it); Coordinator of the Ph.D. in European Law, (Italian-French Programme with the Universities of Bologna, Padova, Ferrara, Modena, Parma, URS-Strasbourg); since 2013 Director master on EU projects and Funds (Master Fondi e Finanziamenti Europei) University of Bologna; Coordinator of the Bertinoro Summer School “The Protection of Fundamental Rights in Europe” (joint programme among King’s College London , URS Strasbourg and University of Bologna); 2011-2013 Member of the Managerial Board of the China Europe School of Law; since 2012 Member of the European Law Institute; Co-founder of the Observatory on Fundamental Rights in Europe (www.europeanrights.eu); Member of the Board of “Il Diritto dell’Unione Europea”(since 1996) “Diritto comunitario e degli Scambi internazionali”(since 1988).

Elisa Ruozi is researcher in international law at the University of Turin, where she teaches European Union and International Environmental Law. Her current research interests are focussed on human rights and the environment, with particular regard to the environmental jurisprudence of international human rights bodies, and on the relationship between the multilateral trading system and the use of renewable sources of energy. Elisa Ruozi obtained her degree in International and Diplomatic Studies at the University of Turin in 2001, with a thesis dealing with the relationship between the WTO, labour issues and environmental problems. She got her Master’s Degree in International Economic Law, at the Sorbonne University in 2004. Finally she got her Ph.D in International Economic Law at the Bocconi University (Milan) in 2006. The Ph.D thesis analysed the WTO

jurisprudence about the necessity and proportionality principles, with particular attention to non-trade issues.

Attila Tanzi, Ph.D., is Chair of International Law at the University of Bologna and Visiting Professor at the Queen Mary University of London. Counsel or arbitrator in various inter-state investment arbitrations, he is currently a Member of the Permanent Court of Arbitration and a Conciliator at the OSCE Court of Conciliation and Arbitration. Chairman of the Legal Board of the UNECE 1992 Convention on Protection and Use of Transboundary Watercourses and International Lakes (2004-2012); Chairman of the Compliance Committee of the UNECE 1999 London Protocol on Water and Health (2007-2010); since 2013 Chairman of the Compliance Committee of the above UNECE 1992 Convention. A legal consultant to the Italian Ministry for foreign affairs (2008-current) and to the Italian Ministry for the Environment (1999-2012). He also advises governments and international organisations on international law issues. He has held numerous academic positions and has published extensively in English, Spanish, French and Italian on State responsibility, foreign investment law, environmental law, the law of international organisations and jurisdictional immunities.

Marina Timoteo graduated in Law with Honors from the University of Macerata, achieving in 1993 a PhD in History and Institutions of Modern and Contemporary Asian and African countries (University of Cagliari), writing a Phd thesis on "History of inheritance law in China". She is Professor of Comparative Private Law, Law of Asian countries and Legal Languages at the University of Bologna. Since 2013 she is Coordinator of the area "Law and Regulations" within the Master in "China/Far East and Europe Business Relations", at the Alma Graduate School. From 2010 to 2012 she was Deputy-dean of the Faculty of Law and since 2009 she is Director of the Confucius Institute at the University of Bologna. Since 2012 she is a member of the Board of Directors of the University of Bologna. In 2006, she was co-founder of the European Association for Chinese Law Studies (ECLS) and in 2008 joined the Board of ECLS. Since 2011 she is associate member of the 'International Academy of Comparative Law. Since 2011 she is member of the Executive Council of the Italian Society for Research in Comparative Law. Since 1998 to 2011 she has taken part both as expert and coordinator in the following projects of the Sino-European cooperation: EU-China Higher Education Cooperation Programme, China-EU School of Law, EU-China IPR2. She is currently co-ordinator, together with Professor Wang Canfa (CUPL), of the two-year project (2012/2014) of "The capacity building of environmental justice and guarding environmental rights in Western China", included as part of the EU-China Environmental Governance Programme, in cooperation with the China's University of Political Sciences and Law. Her research has focused on the topics of the dynamics of modernization of Chinese private law, EU-china cooperation, relations between law and language and the problems of legal translations.

Lebing Wang is Assistant Professor of the School of Law at the University of International Business and Economics (UIBE) in China. He received his LL. B. from Shandong Agriculture University, his LL. M. From China University of Political Science and Law, and PhD. from University of Bologna. At UIBE, Professor Wang's primary teaching are Private Law, including property, contract, tort, and Law and Finance, both for the Chinese and oversea students. His research focus on the areas of Comparative Private law, and the interdisciplinary research on Law and Finance, particularly on financial innovation.