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International Conference

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TRANSPARENCY VS CONFIDENTIALITY IN INTERNATIONAL ECONOMIC LAW: LOOKING FOR AN APPROPRIATE BALANCE

Friday 20 November 2015
Ravenna, School of Law - Via Oberdan 1

With the sponsorship

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Participation is free for academics and students but registration is required due to space constraints. Please, send an email to register by 16 November to Dr Carla Rossi (Fondazione Flaminia) at the following email address: crossi@fondazioneflaminia.it

CONCEPT NOTE

Transparency has firmly acquired a role of key concept and *in statu nascendi* principle in international relations and for the international community. It is clearly perceived and considered as a positive value, more and more relevant for the appropriate administration of the public good, and the definition, interpretation and application of international law, deeply associated with legitimacy, accountability, participatory democracy and good governance.

The debate on the importance of transparency has been constantly gaining a prominent place in international economic law (IEL), as WTO law, investment law and regional trade agreements are more and more relevant for non-trade values, that are inextricably linked with free trade and investments' protection within the model of sustainable development nowadays universally promoted by States, International Organizations, NGOs, the business community and, more generally, civil society.

However, the need for confidentiality keeps being raised and considered by governmental and intergovernmental actors and, in particular, the business community. Governmental actors argue they try to keep a room for maneuver; business actors have concerns that a full disclosure of information can have negative impact and even completely ruin their business, and plead therefore for limiting transparency and keeping confidential certain proceedings.

The Conference on "Transparency vs Confidentiality in International Economic Law: Looking for an Appropriate Balance" aims at presenting the state of the art of the transparency v. confidentiality debate with specific reference to IEL. It has thus been organized by the scientific committee an ad hoc call for papers which has gathered scholars from all over the world conducting researches on this topic, together with practitioners having to face every day the ever growing demand for transparency and the still present request for confidentiality.

PROGRAMME OF THE CONFERENCE

Friday, 20 November 2015

h. 9:00
Welcome Addresses

Giovanni Luchetti, Director, Department of Legal Sciences, *Alma Mater Studiorum* - Università di Bologna

Nicoletta Sarti, President, School of Law, *Alma Mater Studiorum* - Università di Bologna

Francesca Curi, Responsible for the Legal Studies, Ravenna Campus, *Alma Mater Studiorum* - Università di Bologna

Michele Lupoi, Coordinator, Law Studies Degree, School of Law, Ravenna Campus, *Alma Mater Studiorum* - Università di Bologna

h. 9:15
Presentation of the Conference

Peter Tobias-Stoll (University of Göttingen), *Elisa Baroncini* (*Alma Mater Studiorum* - Università di Bologna), *Marina Trunk-Fedorova* (St. Petersburg State University)

Introductory Remarks
Minister Plenipotentiary *Andrea Tiriticco*, Head of the Department for Legal Affairs, Diplomatic Disputes and International Agreements of the Italian Ministry of Foreign Affairs and International Cooperation

Attila Tanzi, Department of Legal Sciences and School of Law, *Alma Mater Studiorum* - Università di Bologna

Roberto Macrì, Director General, Cooperativa Muratori Cementisti Ravenna

h. 9.45 - 11:00
I Session - Transparency v. Confidentiality in IEL International Negotiations

Chair: *Alessandra Zanobetti*, *Alma Mater Studiorum* - Università di Bologna

Transparency in the Process and Provisions of Free Trade Agreements: Finding the balance between opposing interests, *Alberto Alemanno,* HEC Paris and NYU School of Law, *Marianna Karttunen*, European University Institute

Harmonizing Trade Treaties, *Phoenix Cai*, University of Denver Sturm College of Law

Transparency in Trade in Services Agreement : one word for different concepts*, Elisa Ruozzi* Università degli Studi di Torino

The Position of the Italian Ministry of Foreign Affairs, *Paolo V. Tonini*, Italian Ministry of Foreign Affairs

Discussant: *Giovanna Adinolfi*, Università di Milano

h. 11:00 - 11:30
Coffee Break

h. 11:30 - 12:45
II Session - Transparency v. Confidentiality in the Activities of IEL International Organizations

Chair: *Pietro Manzini*, *Alma Mater Studiorum* - Università di Bologna

Internal Transparency Deficits and the WTO's Old-Boy's Club: Discussing Developing Countries' Meaningful Participation in the WTO, *Maria Panezi,* Centre for International Governance Innovation, Waterloo Ontario

Eurasian Economic Union: Building A Wall or Opening New Prospects?, *Ilya Lifshits,* Russian Foreign Trade Academy*, Daria Boklan,* Russian Foreign Trade Academy

Always on the Side of the Egg? - The Ambivalent Standing of Civil Society Organizations under Preferential Trade Agreements, *Jia Xu,* Georg-August-Universität Göttingen

Discussant: *Klaus Blank*, European Commission

Discussion

h. 12:45: 14:00
Lunch Break

h. 14: – 16:15
III Session - Transparency v. Confidentiality in IEL Arbitration and Judicial Proceedings

Part One - The General Framework and the Problems to Face

Chair: *Peter Tobias-Stoll*, Georg-August-Universität Göttingen

Putting Transparency in Historical Perspective: From the Commercial Arbitration Paradigm to the Public Law Paradigm in Investment Treaty Arbitration, *Panayotis M. Protopsaltis,* Centre for American Legal Studies, Birmingham City Universit

Bocca della Verità: Between Transparency and Confidentiality and International Investment Law, *Marcin Menkes,* Warsaw School of Economics

Transparency in Investor-State Arbitration: From the UNCITRAL Rules to the Mauritius Convention, *James Fry*, University of Hong Kong

Transparency, Democracy and Power in Investment Treaty Arbitration, *Valentina Vadi,* Lancaster University Law School

Part Two - Regional Approaches to the Issue and Some Specific Situations

Chair: *Marina Trunk-Fedorova*, St. Petersburg State University

The EU Agenda Towards Greater Transparency: A Model to Be Followed?, *Maria Laura Marceddu*, King's College London

The Puzzle of Legitimacy for International Investment Disputes: The Principle of Transparency in South America, *Jose Gustavo Prieto Muñoz*, Università di Verona

Why Are We so Afraid of "Contractual Transparency"? The Case of International Investment Contracts, *Gabriele Ruscalla*, Counsel, ICC International Court of Arbitration

Discussion

h. 16:15 – 16:40
Coffee Break

h. 16:40 – 18:00
IV Session - Transparency v. Confidentiality in Parliamentary Discussions concerning IEL Negotiations on Treaty Law and Soft Law

Chair: *Elisa Baroncini*, Alma Mater Studiorum - Università di Bologna

Lost in Negotiation: Political Accountability and the TTIP, *Corrado Caruso, Marta Morvillo*, *Alma Mater Studiorum* - Università di Bologna

Influence of the National Parliament of the EU Member States on Trade Negotiations, *Magdalena Słok-Wódkowska,* Faculty of Law and Administration, University of Warsaw

The Penny-Wise and Pound-foolish Deal? How the Issue of Transparency Tainted the Cross-Strait Service Trade Pack, *Wendy Wan-Chun HO*, Soochow University Law School, Taipei Taiwan

Discussant: Ruta Zarnauskaite, European Commission - DG Trade

Discussion

h. 18:00 - 18:30
Conclusions

Ernst-Ulrich Petersmann, Emeritus, European University Institute

ABSTRACTS & SHORT BIOS OF THE SPEAKERS

The Transparency and Corruption Dimensions of 'New Generation' Trade Agreements (Alberto Alemanno, Marianna Karttunen)

This paper examines first the corruption risks posed by a new emerging category of trade agreements, such as the controversial TTIP and TPP, and second the potential benefits these trade agreements could bring to avoid corruption. The aim is to identify areas of concern as well as opportunities for further action.

The structure of the paper follows the timeline of a typical trade negotiation. It explores the different phases leading up to the conclusion of a trade agreement, from the political decision to launch negotiations until the ratification of its final text. For each stage it examines the current level of transparency so as to identify the most pressing risks of corruption. It then builds a case for the inclusion of dedicated provisions aimed at turning these new trade agreements into essential tools for fighting corruption.

Among the many 'new generation' trade agreements currently or recently negotiated, the most contentious appear the **Transatlantic Trade and Investment Partnership** (TTIP)[1] – a bilateral trade agreement between the EU and the US –, the **Transpacific-Partnership** (TPP) – a plurilateral agreement between 12 States[2] –, and the **Comprehensive, Economic and Trade Agreement** (CETA) between Canada and the EU[3]. The Ministers of the 12 negotiating parties to the TPP reached an agreement on 5th October 2015[4], and the text of the CETA was published in September 2014[5].

While this paper focuses predominantly on CETA, TTIP and TPP, its insights apply also to future agreements. Its aim is to set a minimum benchmark for transparent and inclusive negotiations and define best practices for a robust transparency and anti-corruption framework in trade agreements. To ensure transparent negotiations, it puts forward three major recommendations. First, negotiating countries must undertake transparent impact assessment studies and public consultations to explain the rationale of future trade negotiations in the eyes of the general public. Second, countries must agree on a common transparency policy during the negotiations. This aims at offering an equivalent level of transparency and guaranteeing an appropriate communication with all interested stakeholders and public institutions throughout the negotiation process. When it comes to the operation of the agreement, this paper identifies more ambitious provisions to tackle

[1] TTIP is still under negotiation. Its 11th negotiating round took place on 19th – 23rd October, 2015.

[2] Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam. The TPP originated in the Trans-Pacific Strategic Economic Partnership (P4) Agreement, which entered into force between Brunei, Chile, New Zealand and Singapore in 2006. In November 2011, the Leaders of Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States issued a statement in the context of the APEC Leaders meeting outlining the main features of the TPP. Canada and Mexico joined the negotiations in December 2012, and Japan in July 2013. For further details on the negotiating history of the TPP, see http://beehive.govt.nz/sites/all/files/TPP_Leaders_Statement.pdf , http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/index.php and http://www.globalresearch.ca/the-origins-and-evolution-of-the-trans-pacific-partnership-tpp/5357495

[3] Other major agreements include Tripartite Free Trade Agreement (TFTA), which was signed between 26 countries, parties to Common Market for Easter and Southern Africa (COMESA), Eastern African Community (EAC), South African Development Community (SADC), signed in Egypt 10 June 2015. Bilateral FTAs are also being negotiated between EU and Japan, EU and Mexico, US and China, US and India, as well as the Pacific Alliance in Latin America between Chile, Colombia, Mexico and Peru. At the multilateral level, the WTO Members have been negotiating since 2001 a set of new issues to be agreed upon by the entire Membership. For a list of issues covered by the Doha Round, see https://www.wto.org/english/tratop_e/dda_e/dohasubjects_e.htm

[4] The text is now submitted to the respective national authorities in order to obtain ratification and entry into force of the agreement.

[5] The contracting parties announced an agreement on the text, but the agreement is currently being reviewed and translated, before being sent to the EU Council for authorization for signature. The Canadian and European Parliaments will only then be asked to ratify the Agreement, and if necessary also all 28 EU Member States.

transparency and anti-corruption. Those should improve transparency not only between parties to each individual agreement but, more generally, within the multilateral trading system as a whole. To this end, the authors argue in favour of the inclusion of strong and horizontal anti-corruption standards in all new generation trade agreements, be they bilateral or regional in nature.

Alberto Alemanno is Jean Monnet Professor of Law at *Ecole des Hautes Etudes Commerciales* (HEC) Paris and Global Clinical Professor at New York University School of Law. Alberto's research focuses on the role of evidence and public input in policymaking and adjudication. Due to his commitment to bridge the gap between academic research and policy action, he is the co-founder of TheGoodLobby of an innovative skill-based matching organization connecting people with expertise and knowledge with civil society organizations that need them. Originally from Italy, Alemanno is a graduate of the College of Europe and Harvard Law School. He holds a PhD in International Law and Economics from Bocconi University. Prior to entering academia fully time, he clerked at the Court of Justice of the European Union, worked as a Teaching Assistant at the College of Europe in Bruges and qualified as an attorney at law in New York. Alberto was named 2015 Young Global Leader by the World Economic Forum.

Marianna Karttunen is a PhD Researcher at the European University Institute, working on regulatory transparency in the World Trade Organisation (WTO). In the context of her research she has interned at the WTO Trade and Environment division working on Technical Barriers to Trade. Previously, Marianna Karttunen worked at the General Secretariat of the Organisation for Economic Cooperation and Development (OECD) (2011-2013) and studied at University of Panthéon-Assas, 2005-2010, where she graduated with a Masters in Public in International Law.

Harmonizing Trade Treaties (Phoenix Cai)

This article posits a new taxonomy and theoretical framework for assessing international trade treaties, both within the context of the existing multilateral WTO system and bilateral or regional preferential trade agreements like the EU/US Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TTP). The latest generation of "hybrid" trade treaties, such as the TTIP, no longer follows the strict traditional division between resolution or benchmark treaties. Rather, due to the strong presence of global administration law and regulatory harmonization mechanisms, trade treaties are now "shape-shifters", switching between benchmark (or effort/aspirational) and resolution (or benchmark/ enforceable) within the same treaty regime. This is not happening only in the context of new trade treaty negotiations, but also at the institutional level of the WTO. To date, however, this trend has received little explicit scholarly attention. This article argues that trade treaties now move seamlessly among the four quadrants created by the horizontal axis of resolution vs. effort treaties, and the vertical axis of deep (benchmark) and effort (shallow) treaties. Movement is now possible between all four quadrants largely as a result of four significant developments: (1) a bilateral flow of information, with corporations and other stake-holders playing an influential role throughout all stages of trade negotiations; (2) harmonization and standardization movements that both set and inform substantive standards under trade treaties; (3) an emerging new methodology of trade negotiations that increasingly blurs public-private boundaries; and (4) the emergence of a global administrative law regime that emphasizes transparency, predictability and regulatory harmonization. In the TTIP negotiations, we see examples of all four mechanisms at play in, respectively, the EU/US stakeholder meetings, the establishment of unitary certification processes based on agreed ISO and other generally

accepted international standards, information-sharing exchange mechanisms involving private actors, and the regulatory cooperation in areas like sharing of scientific assessments in drug research. At the WTO level, we see many of the same mechanisms at play in the importance of international standardization bodies, new trends in dispute settlement, trade facilitation and harmonization initiatives and the emphasis on public-private cooperation.
Lastly, this article explores the normative implications of these four new developments. The new taxonomy leads one to the realization that trade treaties are not static at all, but may morph over time. Another important implication is that international standard setting organizations, such as the International Organization of Standardization, play an increasingly significant role in the development of trade norms. Full participation by corporations, civil society, and public-private collaboration in these organization leads to greater chance of treaty success. Thirdly, a possibility for accelerated legal transplantation and convergence emerges as a direct result of these mechanisms. Fourthly, the increasing use of industrial self-policing through standardization and harmonization mechanisms shifts focus away from dispute settlement and allows room to incorporate diverse soft-law approaches as part of the trade policy toolbox. Lastly, understanding these mechanisms is critical in legal education, as we must train the next generation of scholars, practitioners, civil society leaders, lawyers, and government officials to employ these new tools in a balanced and thoughtful way.

Phoenix Cai, Associate Professor and Director, Roche LLM in Int'l Business Transactions, received her B.A. in Italian and International Relations from Washington University in St. Louis and her J.D. from University of California Berkeley School of Law, where she was a member of the California Law Review and Order of the Coif. Prior to joining the faculty at the College of Law, Prof. Cai was a corporate associate with the law firms of Morrison & Foerster, LLP (San Francisco) and Skadden, Arps, Slate, Meagher and Flom LLP (Chicago), specializing in both domestic and international mergers and acquisitions, banking, finance and securities law. Prof. Cai is the founding director of the Roche LLM in International Business Transactions, an intensive and experiential graduate program geared at training both U.S. and foreign lawyers in private transactional law. Prof. Cai teaches Property, International Law, International Trade, International Sales, and Drafting and Negotiation in an International Business Context. Prof. Cai is a native of Xiamen, China and is fluent in a number of languages. Prof. Cai's scholarship focuses on international economic law, WTO dispute resolution, and Chinese law and economics.

Transparency in Trade in Services Agreement: One Word for Different Concepts (Elisa Ruozzi)

Transparency is an overarching principle of the negotiations taking place with the aim to reach an Agreement on Trade in Services within the WTO. The Guidelines and procedures for the negotiations on trade in services adopted in 2001 clearly establish that "Negotiations shall be transparent and open to all Members and acceding States", leading some Member States to talk about the so-called "FIT principle", imposing full participation, inclusiveness and transparency. Negotiations in the Trade Sector have been subject to frequent criticisms relating to these elements, often treated as a single idea. The aim of the paper is to analyse the different issues arisen in this context, considering whether a more precise distinction between transparency, inclusiveness and openness of the multilateral trading system could be recommendable.
The lack of transparency in the services negotiations has been, first of all, associated to the very technique used in order to liberalize the sector which, not being a formula approach, is not as detailed as modalities used in the other Doha pillars, and cannot therefore achieve a

similar level of transparency and predictability of outcome. These aspects, though uncontroversial, are directly related to the immaterial nature of services, whose liberalization cannot be merely expressed in terms of tariff cuts but implies a qualitative aspect.
A distinct issue concerns, in a more general way, transparency of WTO negotiations vis-à-vis civil society, unable to influence Members' offers and requests or to be informed about negotiations (at least before they have reached a certain stage). However, on one side, this aspect is more a constitutive feature of the WTO as an international organization than a specificity of the services negotiations and, on the other, it is contingent on the existence of national or regional regulations guaranteeing access to information to citizens.
On the other side, transparency has strongly been called into question in relation to the possibility to pursue negotiations on a plurilateral basis. Several Members (especially developing countries) explicitly declared not to support plurilateral negotiations on the basis of the assumption that these latter would undermine the multilateral trading system and would prevent negotiations to be carried out in an inclusive and transparent manner. However, first of all, such an attitude clashes with the fact that plurilateral negotiations are explicitly mentioned by the Hong Kong Declaration as a modality to be adopted beside the multilateral one, and that they have been recently (and successfully) used in order to renegotiate the Agreement on Government Procurement and to reach the conclusion of the Information Technology Agreement. Secondly, this criticism seems to associate three different concepts which, in reality, should be kept distinct : the scope of the benefits trade negotiations can produce for the members of the multilateral trading system; the multilateral or plurilateral nature of the process; the modalities of negotiations among members that decide to take part to an agreement. The first aspect basically depends on the decision whether to reserve the benefits stemming from the agreement to the original negotiating members or to spread them through the use of the MFN. The second issue is related to the number of WTO members taking part to the agreement (all members or a subsector of them). Finally, transparency in negotiations among members is linked to the modalities States use in their mutual relations and communications.
It is therefore submitted that a debate about transparency in the context of the Trade in Services Agreement should be able to distinguish the different aspects linked to this concept, in order to improve the quality of the negotiating process and to avoid an arbitrary exclusion of a modality (plurilateral negotiations) which could yield good results in such a complex sector as the one concerning services.

Elisa Ruozzi 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 Ruozzi 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.
In 2004 she got her Master's Degree in International Economic Law at the Sorbonne University. 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.

Paolo V. Tonini, Secretary of Legation, Deputy Head of Office and Deputy Head of the Secretariat at the Department for Legal Affairs, Diplomatic Disputes and International Agreements of the Ministry of Foreign Affairs and International Cooperation. He joined the Diplomatic Service in 2014. In 2013 he graduated with honours at the Bologna University and King's College of London School of Law, completing a double degree program. He holds an LL.M. in law of international finance and he is Associate of King's College. Formerly Trainee Advisor at the Permanent Mission of Italy to the United Nations, Fifth Committee UNGA, and for three years head of the West Point Security Confrence - European Delegation.

Internal Transparency Deficits and the WTO's Old-Boy's Club: Discussing Developing Countries' Meaningful Participation in the WTO (Maria Panezi)

Internal transparency refers to decision-making deficits of developing countries and underutilization of adjudicatory processes by developing countries in the WTO. It highlights the significance of trust in the WTO institutional processes, such as negotiations, decision-making, dispute settlement and trade monitoring that the representatives of member states should have in order for the WTO system to function productively.

During the forty or so years of the GATT era, trade tariffs were negotiated among member states behind closed doors. The GATT was not just an Agreement but an intergovernmental organization, whose exclusive mandate was the reduction of cross-border trade tariffs (extending progressively to a number of other trade barriers). The main economic rationale behind the GATT was that collectively its members could lower the artificial price distorting mechanisms that are tariffs, reduce domestic protectionism and thus make trade more prolific and profitable for their countries. The prevalent structure of negotiations during the GATT years, from 1947 to 1995 was one of concentric circles of confidential negotiations: in the center were the GATT's top players: the US, the EC, Japan, and Canada. Sometimes other strong external trade performers or major importers joined them but that circle never looked very different than an old-boys' club. The negotiations among the few powerful continued to take place after the creation of the WTO and developing countries continued to be confronted with prefabricated take-it-or-leave it agreements.

In this paper I argue that the marginalization of developing states during WTO meetings and the marginalization of development needs in international trade are linked. Internal transparency issues are a direct result of the confidentiality of smaller groups' negotiations. Developing countries have traditionally been excluded from discussing the needs of their economies in the WTO: many of their industries cannot sustain the pressure of extensive liberalization and competition in global markets. The political, legal and economic position of developing and least-developed countries in the GATT and the WTO has not improved at all from their participation in the world trading regime.

Developing countries were promised by joining the GATT and the WTO *de minimis* to be included as equals in the organization's organs and processes and to be able to better, through free trade, their peoples' living conditions. Instead of benefiting from comparative advantage, their domestic markets have in some cases plummeted to extinction. This decline was greatly exacerbated by globalization. Not being heard, and not being taken seriously resulted instead in the adoption of "Band-Aid" frameworks such as the GSP and the Enabling Clause, and agreements with insignificant stature or restricted to single products like the ones adopted for Least Developed Countries during the Bali Ministerial. Therefore, the incomplete nature of development rules is coupled to a more systemic reluctance in the WTO to question the ideological foundations of the world trading system. This is evidenced *inter alia* by the wording of Paragraph 10 of the Doha Ministerial Declaration, which is replete with disclaimers and qualifiers that negate the severity of the development issue. The

"Green Room" practices and the failure to create a development-friendly normative agenda are having mutual spillovers onto one another.
This paper will discuss the context and the rules related to internal transparency. The first part of the paper will begin the conversation of development outside the world trading system and provide an overview of the history of development in order to show that this lack of consideration for development needs is a more systemic issue in international affairs. In the second part, I will discuss the history of development and the legal parameters of development in the GATT and the WTO. The third part will link the conclusions from the first two parts to the notion of internal transparency. More specifically, I will first examine how development is a complicated concept that encompasses a series of considerations and a plethora of diverse national interests. International administrations and global governance more generally has been struggling to form a proper development agenda. However, I will argue that it will never be possible to include developing needs in multilateral trade negotiations without ending the powerful group negotiations and the exclusion of developing countries from the dialogue.
As I conclude, the growing frustration of developing countries emerged long before the creation of the WTO, and is not limited to being left out of the "Green Room," or not having large enough delegations to fully engage in tariff negotiations. Developing countries have voiced concerns of their interests being side-stepped throughout the history of the GATT and as a result, periodically the GATT member states and later the WTO member states have taken steps to rectify the problem. However, such steps are first, too few and too late, and second, they are introduced on an exceptional basis and not through a proper development-oriented dialogue.

Maria Panezi is a Post-Doctoral Fellow at the Centre for International Governance Innovation located in Waterloo Ontario. She holds a Ph.D. in Law from Osgoode Hall Law School, where she was a Nathanson Fellow and a Comparative Law and Political Economy Fellow. Her doctoral dissertation is entitled "Through the Looking Glass: Transparency in the WTO". She received her first law degree from Athens University in Greece where she has been called to the Athens Bar. She has published articles on issues related to Public International Law and was a W. C. Langley Scholar of International Legal Studies at New York University School of Law where she received her LL.M. She has been an adjunct professor at Osgoode Hall Law School and has taught Ethical Lawyering in a Global Community as well as Law and Economics, for which she received the Ian Green Award for Teaching Excellence. She has also been a visiting scholar at Harvard Law School and the Fletcher School of Law and Diplomacy.

Eurasian Economic Union: Building A Wall or Opening New Prospects? (Ilya Lifshits, Daria Boklan)

Transparency principle in the activities of organizations of economic integration has a vital role and core significance since states delegate to such organizations their sovereign powers. Legal instruments of such organizations are often accompanied by supremacy and direct effect and this mere fact imposes on its institutions a special responsibility. These legal instruments have an evident deficiency of democratic legitimacy so far as bodies of people representation have a limited participation in decision making process or are not involved at all. Meanwhile organizations' institutes usually have broad powers to affect human rights. These attributes grant to transparency principle a particular importance, implementation of this principle is in majority of cases a pre-condition of civil society effective control over organization, its accountability, and ultimately good governance.

Eurasian Economic Union (EAEU) is a newly created regional IEL international organization. The Treaty on the EAEU between Belarus, Kazakhstan and Russia entered into

force on the 1st of January 2015. Armenia and Kirgizia have already joined the EAEU. Its objective is to foster economic cooperation between post-soviet states, to manage a custom union and to create single economic space on the territory of its members. The list of EAEU institutions does not comprise a body of people representation neither inter-parliamentary organ has been established to the date. All the bodies are either states' leaders (presidents) council (Supreme Eurasian Economic Council – Supreme Council) or Intergovernmental Council. An EAEU executive arm - Eurasian Economic Commission – is designed as two chambers organ where the upper chamber (the Council of the Commission) consists of deputy chairmen of the members' governments; officials of the lower chamber (the Collegium of the Commission) are appointed by the Supreme Council on the 4-year term. Judges of the EAEU Court are also appointed by Supreme Council. Thus, several questions arise: is the EAEU a purely intergovernmental organization, focused solely on trade issues or could it be a real union which can support the idea of accountability, good governance and rule of law? What is the role of transparency principle in building of such institution?

Our research tends to classify all activities of the Eurasian Economic Union into three groups assuming different levels of transparency: full transparency, limited transparency, confidentiality. We tried to establish criteria which could be implemented for such classification. For instance, if actions of the Union affects rights and obligations of private persons and/or refer to financial activities and/or relate to judicial activities, the process of results of such activities shall be absolutely transparent. It's blatantly clear also that all legal instruments having direct effect shall be also transparent and refer to the first group. Public consultation before adoption of such instruments and transparent process of collecting and processing of opinions of various stakeholders can apparently add legitimacy to legislative process.

Activities of the EAEU executive arm – Eurasian Economic Commission should be transparent in majority of spheres, for instance in stuff recruiting, day-to-day work; reports on every sphere of competence should be published on regular basis.

Overlapping of different regimes of transparency: national, regional and international – requires a clear mechanism of possible contradictions resolution. Four out of five EAEU countries are WTO members. For the time being provisions of the WTO Treaties have a priority over international agreements between EAEU states, meanwhile in cannot be excluded that in future EAEU, like European Communities 50 years ago, will try to establish a notion of autonomy of 'Eurasian legal order'.

Another question which authors tend to address in the research is interaction of member-states constitutional traditions with power execution principles in the EAEU. Is the strength of the chain determined by its weakest link? Or in contrary is it possible to harmonize transparency rules on the basis of the best relevant standards in the EAEU or even best global standards? Authors believe that positive answer is feasible and give an example of the securities markets disclosure system in Kazakhstan Republic which has been taken as a sample for other member states.

Daria Boklan graduated from Moscow State Law Academy in 1999 (honors diploma) and was awarded PhD degree in 2008 from Institute of State and Law of Russian Academy of Science. Her PhD thesis analyzed the issue of Transboundary environmental harm. She has published more than forty articles and two books in the arias of international environmental law and international economic law. Currently she is an associate professor in the Russian Foreign Trade Academy (RFTA) and Moscow State University. She has taken part in working group which elaborated a draft of Treaty on Eurasian Economic Union, created in 2011 by Eurasian Economic Commission, an executive arm of the Customs Union of Belarus, Kazakhstan and Russia. At present time she is on a doctorate program. Her doctoral research examines interconnection between international environmental law and international economic law.

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Always on the Side of the Egg[6]? The Ambivalent Standing of Civil Society Organizations under Preferential Trade Agreements (Jia Xu)

To achieve external transparency by means of the participation of civil society organizations, international trade organizations - WTO and divergent preferential trade agreements (hereinafter as 'PTAs') - have been embracing the notion of civil society and increasingly recognizing the significance of participation of civil society organizations under their mechanisms. On the multilateral level, civil society organizations have been able to resort to the WTO for access to documents, ministerial meetings, and to submit *amicus curiae* briefs to the WTO dispute settlement. On the regional or bilateral level, the proliferation of PTAs has strengthened the possibility of participation of civil society organizations within the regime of PTAs. New generation of EU PTAs, for instance, were equipped with a rather comprehensive mechanism that contains a domestic advisory group which promotes dialogue between civil society organizations and their own government; simultaneously, a civil society forum, which enables dialogue between civil society and both of the PTA parties. Similar organs could be observed under various other PTAs. Under these mechanisms, instead of granting direct access to information to the public/individual, civil society organizations hold dialogues with the government and have access to the information. In that context, civil society organizations are expected to represent the public, mandated also to circulate relevant information to the public and help them to understand, in other words, achieve the transparency via the civil society organizations.
Nevertheless, this striking constellation should not be neglected: In the civil society forum, although the government may have delivered the civil society organizations certain information, the civil society is bound to keep it confidential. In this respect, how should civil society organizations bring about transparency as they were expected to? Or could they safeguard the information from the public disclosure? The commentators at large merely advocate the importance of civil society organizations' participation to improve transparency under PTAs; nevertheless, the following question shall be answered beforehand: Under the current system, when facing this sort of dilemma, between transparency and confidentiality, between the government and the public/individual, by whose side should and could the civil society organizations stand?

[6] 'Always on the side of the egg' is a speech addressed by Haruki Murakami when accepting Jerusalem prize for the Freedom of the Individual in Society in Jerusalem, 2009. In this speech, Mr. Murakami stated that between a high, solid wall and an egg that breaks against it, he would always stand on the side of the egg. Here the egg represents the individual as a whole, and the wall stands for the 'system' in a broad sense. *See also*: http://www.haaretz.com/life/arts-leisure/always-on-the-side-of-the-egg-1.270371 last visit: September 30th, 2015.

Moreover, the lack of clear identification of the status of civil society organizations under current PTA mechanisms leaves a great gap for possible governmental manipulation; for instance, NGOs might be *de facto* governmental organizations or at least heavily influenced by the government. When facing the choice between promoting transparency and safeguarding the information from public disclosure, some of them would actually sit at the same bench with the government, other than the public/individual. So far, the UN Economic and Social Council (hereinafter as 'ECOSOC') has undertaken first steps to classify the qualified NGOs that could attain a consultative status; still, this action doesn't suffice. Furthermore, given some of the rules of the resolution of ECOSOC concerning the Consultative relationship between the United Nations and non-governmental organizations, the standing of civil society organizations might even be misleading.
By examining the current PTAs and UN ECOSOC mechanism in greater depth, this paper illuminates the problems raised above. It seeks to identify the possibilities to resolve the conflict of the competing legitimate interests of transparency and confidentiality in the course of the participation of civil society organizations under PTAs.

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Putting Transparency in Historical Perspective: From the Commercial Arbitration Paradigm to the Public Law Paradigm in Investment Treaty Arbitration (Panayotis M. Protopsaltis)

The area of investment treaty arbitration offers particular room for analysis in the light of the contractual and sovereignty costs theory. In fact, reducing unanticipated sovereign costs incurred by States subscribing to investment treaty arbitration may explain both the rationale and the timing of introduction of measures to ensure transparency and rights of participation of non-disputing stakeholders in investment treaty arbitration procedings. In our attempt to identify the forces that have triggered the introduction of these measures we examine first the shaping factors that explain the traditional confidentiality of investment treaty arbitration, and then the changes that have occurred and that may explain the current trend towards transparency and stakeholders' participation. We argue that the spectacular increase of arbitral awards restricting States' sovereignty along with the creation of a *de facto* rule of precedent by arbitral tribunals that are now performing a law-making function traditionally reserved to States as well as the absence of strong accountability mechanisms of arbitral tribunals led States to abandon the traditional commercial law paradigm for the new public law paradigm in investment treaty arbitration which provides for transparency and stakeholders' participation in arbitral proceedings. States established a checks and balances mechanism that influences the decision-making process of arbitral tribunals through public scrutiny and non-disputing stakeholders' participation in order to restrict the ever-increasing power of arbitral tribunals and to reinforce their own role in investment treaty arbitration.

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Bocca della Verità: Between Transparency and Confidentiality and International Investment Law (Marcin Menkes)

The principle of transparency as applied to International Investment Law cuts across various layers of this normative order, compelling to inquire about true reasons for calling it out. Transparency of public actions relates to the apparent problem of public/private nature of IIL. Even though I argue that this conflict not only is artificial, but similar debates in other fields of public international law have been long concluded, demons thus awoken cannot be ignored. Accordingly, it is necessary to ask, what are the legitimacy basis of IIL, and what should be the appropriate response to popular backlash against investment arbitration, partly due to confidentiality of arbitration (or such a perception). In that light I address the issue of transparency, trying to understand reasons to allow greater access of third parties and goals which it is supposed to serve. I believe that transparency may turn against its proponent, when invoked for wrong reasons.

Dr. Marcin Menkes obtained his legal degrees at Warsaw University, Université Paul Cézanne Aix-Marseille 3 and Jagiellonian University. He also completed Ph.D. studies in economics at Warsaw School of Economics. He is an author of over sixty publications (including two monographs and a commentary), mostly in the fields of international economic law and global governance. Currently working as a senior lecturer at the Department of Business Law at the Warsaw School of Economics, and as a co-founder of Law & Economics Advisory Group (LEAG).

Transparency, Democracy and Power in Investment Treaty Arbitration (Valentina Vadi)

In May 2012, the energy company Vattenfall, wholly owned by the Swedish State, filed an investor-state arbitration against Germany at the International Center for the Settlement of Investment Disputes (ICSID) regarding the government's closure in early 2012 of two of the company's nuclear plants. The media reported that while the government had agreed to extend the life of these nuclear power stations in 2010, in the aftermath of the Fukushima events, the two plants were shut down permanently. According to the press, Vattenfall is claiming that Germany's policy reversal has breached the country's legal obligations under the Energy Charter Treaty (ECT) and is asking for 3.5 billion euros for both past and future lost profits. No details have been made public regarding the exact provisions of the Energy Charter Treaty which Vattenfall claims have been infringed. None of the party submissions or orders issued by the Tribunal have been published to date.

As the arbitration filed by Vattenfall is still in an early phase, it is not possible to predict how this case will be decided or whether it will be settled. But the mentioned case epitomizes the tension between investor rights and public welfare objectives and raises a number of questions. Should there be more transparency in investment treaty arbitration? Are arbitral tribunals a suitable forum to adjudicate this type of dispute or, rather, are arbitrators *expropriating* fundamental aspects of environmental governance? Can public and private interests be accommodated adequately in investor–state arbitration? Are democracies moving into a stage of post-democracy where democratic institutions formally continue to exist but the advance of economic globalization is hollowing out processes of democratic engagement? Is democracy more a legacy of the past than part of our future?

Arbitral awards shape the power relationship between the state, on the one hand, and private individuals on the other. Arbitrators determine matters such as the legality of governmental activity, the degree to which individuals should be protected from regulation, and the appropriate role of the state. Critics contend that investment treaty arbitration jeopardises the structured deliberative space for domestic constituencies, insulating foreign investors from adverse judicial proceedings and not giving proper consideration to the preferences and values of the local communities. Because investment disputes are settled using a variety of arbitral rules—not all of which provide for public disclosure of claims—there can be no accurate accounting of all such disputes. That some portion of the iceberg remains hidden from view should be a matter of concern given the public policy implications of such disputes. Not only can lack of transparency impoverish the quality of the decision-making process, but it can also hamper efforts to track investment treaty arbitrations, monitor their frequency, and to assess the policy implications that flow therefrom.

Using the Vattenfall case as a case study, the paper suggests that more transparency in investment treaty arbitration would increase the perceived legitimacy of the dispute settlement mechanism. The paper proceeds as follows. *First*, it briefly highlights the main features of the Vattenfall case. The case has raised much criticism in Germany and beyond for its confidentiality. *Second*, it explores the linkage between transparency, legitimacy and democracy. Transparency has become a key concept in international relations, and is considered to be crucial for legitimate, democratic and good governance. This is even more the case in international investment disputes dealing with the clash between investment protection and non-economic values, such as environmental protection. *Third*, the paper illustrates the state of the art, *i.e.* the various efforts to make investment arbitration more transparent that have been undertaken in various *fora*. In fact, in response to calls from civil society groups, the three parties to the North American Free Trade Agreement (NAFTA), Canada, the United States, and Mexico, have pledged to disclose all NAFTA arbitrations and open future arbitration hearings to the public. Similarly, the ICSID requires public disclosure of dispute proceedings under its auspices, including the registration of all requests for conciliation or arbitration and an indication of the date and method of the termination of each proceeding. Increasingly, arbitral tribunals have allowed public interest groups to present friend of the court (*amicus curiae*) briefs or have access to the arbitral process. These important developments, however, involve the conduct of the proceedings of a limited number of investment disputes. Indeed, the vast majority of existing treaties do not mandate such transparency, which means that some of the proceedings are resolved behind closed doors. The recent adoption of the Mauritius Convention on Transparency may (but does not necessarily) increase the transparency of such disputes. After a critical assessment, the study concludes that more transparency would foster the perceived legitimacy of investment treaty arbitration.

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Ethical Issues (Springer: Heidelberg 2014), and (with Bruno De Witte) of *Culture and International Economic Law* (Routledge: 2015). Valentina Vadi is the author of *Public Health in International Investment Law and Arbitration* (Routledge, Abingdon 2012), *Cultural Heritage in International Investment Law and Arbitration* (Cambridge University Press, 2014) and *Analogies in International Investment Law and Arbitration* (Cambridge University Press, *forthcoming* 2016).

The EU Agenda Towards Greater Transparency: A Model to Be Followed? (Maria Laura Marceddu)

A rising demand for greater transparency and participation has recently characterised international investment arbitral proceedings, which often engage matters of the public interest –i.e. public health, labour and environmental concerns. Therefore, several adjustments have been put forward to redress any potential imbalances, as it is the case of the 2006 ICSID Convention amendments to increase access to documents and allow open hearings and third-parties participation. Following this trend, the quest for more transparency in investment treaty arbitration has also been reflected in certain recent BITs. A step further has been cautiously reached through the 2013 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and the 2014 Mauritius Convention on Transparency.

Complementary to this ongoing process, the EU is developing a consistent line of action towards greater transparency, both at negotiating and procedural levels, aiming to make the EU a strong global force, attractive also to other Countries, with a softer approach towards transparent procedures.

However, are there any adverse effects of increased transparency of arbitral openness? In spite of the presumed benefits of greater transparency, there are also significant pitfalls.

This paper aims to accomplish two main objectives. It firstly elaborates on whether, and the extent to which, the new EU policy-making channels will address the most recurring concerns over transparency. In doing so, this paper will seek to assess whether the EU approach may constitute a model to be followed, the procedural way forward capable of concretely carrying the transparency rules out. Secondly, the paper aims to examine the negative effect increased transparency may have. While transparency of the process of policymaking can bring social acceptance of, public confidence and trust in institutional mechanisms, proposals to open the investment arbitration process and the effects these measures may have upon all interested stakeholders should be carefully taken into account. It is beneficial that awards should be made available to the public, whereas the quest for more transparency for transparency's sake at the pre-awards stage may risk turning out counterproductive.

The EU approach in this regard seems to be consistent at the negotiating phase, loosing accuracy in reshaping the procedural rules.

Maria Laura Marceddu began her PhD at the Dickson Poon School of Law in October 2014, under the academic supervision of Dr. Federico Ortino. Her doctoral research examines the evolution of the emerging European investment policy and the implications it might have on the international investment system. Other research interests include arbitration and International dispute settlement.

She is currently visiting at the Max Planck Institute in Luxembourg, as she has been awarded of a scholarship for foreign scholars.

She hold a BA (*Laurea Triennale)* in Political Sciences and an MA *(Laurea Specialisitica) i*n International Relations (magna cum laude) at LUISS University of Rome, where she was also appointed as a teaching assistant. Whilst there she won numerous academic awards

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Maria Laura has been a member of the 2015 International Graduate Legal Research Conference committee. She has also been appointed as ambassador of the Paris Arbitration Academy.

The Puzzle of Legitimacy for International Investment Disputes: The Principle of Transparency in South America (Jose Gustavo Prieto M.)
Transparency is a rising concern in the current debate of the legitimation of authority of investor-state dispute arbitral mechanism. The response of the international community is the development and further elaboration of the Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration. However, this important instrument has a methodological gap where state consent is a prerequisite of the application of provisions on transparency. In this context, the present article develops a straightforward argument: The principle of transparency is of mandatory application in the legitimate exercise of public authority, in the South American region. Therefore, instruments, such as the Mauritius Convention, only make operational an obligation that already exists for economic governance structures.
In order to develop this idea, the proposed work argues (PART I) that the investor-state arbitration process is not only about the settlement of disputes, but also constitutes an exercise of public authority outside of the state level that needs to undergo a process of legitimation. Furthermore, investment arbitrators have jurisdiction to solve disputes that arise from arbitration clauses contained in a network of International Investment Agreements (IIAs), but they are empowered by substantive norms such as the absolute standards of treatment (e.g. Fair and Equitable Treatment). These standards have a dual nature, first, as criteria of validity that allows arbitrators, while interpreting those clauses, to develop concepts of International Investment Law. Second, as a source of public authority, because they grant arbitrators a legal capacity to assess the legality/illegality of states actions (executive, legislative and judicial branches) and determine costs both reputational and financial, which restricts the competences of States.
The work further argues (PART II) that this complex scenario represents an opportunity rather than a threat for the South American nations. However, it also demands a conceptual jump. This implies leaving behind a type of South American methodological nationalism that seeks to reestablish the once exclusive authority of the nation-state. This conception has a Vattelian vision of the global legal setting, where the remains of the (once relevant) Calvo Doctrine can be found. In addition, the work implies the construction of a legal discourse based on non-hierarchical, and non-supreme common principles for investment that can interact with emerging regimes and their new type of authority. The principle of Transparency is one of those core principles.
The last section (PART III) demonstrates the existence and defines a principle of transparency that is rooted in the normative systems of the South American states, by making a comparative analysis of the fundamental principles in the Constitutions of those countries. It also argues that in the same legal systems of South American countries there is room for coexistence of the obligation of transparency with the one of confidentiality in economic matters.

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Why Are We so Afraid of "Contractual Transparency"? The Case of International Investment Contracts (Gabriele Ruscalla)

The concept of transparency in international investment law is broad and may have three distinct dimensions: 'institutional transparency', 'legislative transparency', and 'procedural transparency'. Investment arbitration academics and practitioners have often focused on the two latter aspects of transparency: the legislative and the procedural ones. However, another kind of transparency concerning a topical element of international investment arbitration is rarely taken into account: 'the contractual transparency'. This is quite surprising, as foreign investment transactions usually start with the negotiation and conclusion of an investment contract between a foreign multinational corporation and the host State. Investment contracts are signed by foreign investors and States to carry out activities in sensitive fields of States' economies, such as oil-and-gas, telecommunication, and extractive industries. Although different from each other, these contracts present common features. First of all, they are 'internationalized': they contain specific provisions -e.g. arbitration clauses and applicable law clauses with reference to international or third laws- that move the transaction away from the domestic jurisdiction and *fora*. Moreover, the host State party to the transaction is usually a developing country whose GDP is often lower that the revenues of the multinational corporation investing on its territory. Then, such contracts are considered to be the first step of an investment activity, then falling within the jurisdiction of arbitral tribunals, if a dispute arises between the parties. Finally, these investment contracts are strictly confidential: aside from a few cases, their negotiation history and their terms are not disclosed to the public.

After a brief introduction on transparency in international investment law, the paper is divided into two main sections.

Section I examines the important role played by international investment contracts in the international investment law regime. In particular, the paper shows how contractual transparency would positively impact on the relation between the foreign investor and the host country. First, it is common knowledge that investment activities and non-commercial values (e.g. environmental protection, public health, and labour standards) are strictly connected. Non-commercial values are protected by several international law instruments as well as by private standards adopted by the business community. Despite these instruments are often non-legally binding, they have become part of the so-called 'transnational public policy' that is more and more playing a relevant role in international arbitration. Many of these instruments require for disclosure of the terms of investment contracts and such position has been confirmed by decisions of international courts in relation to investment projects that might affect the life of local populations. Those instruments and relevant case law are analyzed in detail. Second, the disclosure of an investment contract and its '*travaux préparatoires*' might be an efficient element in the assessment of the legitimate expectations of the parties to the contractual relation. For instance, when an investment dispute arises and it is brought before an arbitral tribunal, even the counsels representing the parties are sometimes unaware of important parts of the contracts -such as amendments and annexes- because the parties want to keep them confidential until the very last phase of the proceedings. If this is valid for the parties' counsels, the situation is not easier for the arbitral tribunals that might be asked to settle the

dispute without a full access to important documents. Doctrine and case law related to this issue are investigated.
Section II discusses the options to make contractual relations more transparent and to balance the interests of the parties involved in the transaction, namely the foreign investor, the host State and, indirectly, the general public. Even if international law rules and principles seem to embrace the concept of 'contractual transparency', a full disclosure of international investment contracts appears to be unreachable. Parties do not want to show they have failed imposing their interests during the contractual negotiations. Also, foreign investors prefer to avoid feeding local populations on materials that could be detrimental to the investment project. Some options to full transparency are considered in this section. First, in some jurisdictions, the validity of an international contract is subject to the scrutiny and ratification of the Parliament. For instance, in Azerbaijan, all production-sharing agreements signed with foreign multinational corporations for exploration and exploitation of oil and gas resources are ratified by the Parliament and enacted as Presidential decrees. In other countries, such as Kazakhstan, any future stability clauses in contracts are subject to parliamentary approval. As a result, contractual discussions become transparent and more democratic. These practices and their efficiency are investigated. Second, some host States have implemented international industry standards in their domestic legislations. This is the case of several West African States where mining contracts and codes are being opened to public scrutiny as part of initiatives such as the Extractive Industries Transparency Initiative. As a result, several legislations on extractive industries have already been amended. Such case studies are reviewed.

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Lost in Negotiation: Political Accountability and the TTIP (Corrado Caruso and Marta Morvillo)
Transparency is a multifunctional concept, as its role changes significantly according to the fields of law to which it is applied, and to the social values underpinning them. In constitutional law, its main task is to promote the democratic accountability of those in power. Transparency in fact fosters the in-put dimension of democratic legitimisation, holding decision-makers accountable for the political choices taken in contrast with the general preferences of their constituents.
However, the high degree of transparency required by a constitutional polity may be structurally in conflict with the confidentiality inherent to international treaties' negotiations, whereby states' strategic interests may be jeopardized by the spread of information. Many Constitutions try to strike a procedural balance between democratic

accountability and the need of confidentiality in international state action, e.g. by requiring parliamentary authorization for certain types of treaties (see art. 80 of the Italian Constitution).
Does this procedural balance hold true or does it collapse when treaty-making is not led by States (pursuing the citizens' general interest) but by a multilayered institutional polity such as the European Union (EU), aimed at fostering efficiency-oriented policies in the conferred competences' areas?
The Transatlantic Trade and Investment Partnership (TTIP) negotiations provide an interesting case study in this respect. Having analysed the role played by the European Parliament and by National parliaments in the TTIP negotiation process, the paper aims at evaluating the attempts to reconcile transparency and democratic accountability on one hand, and confidentiality on the other, in a multilevel system of government. In particular, it assesses how the calls for more transparency have been addressed, and to what extent they have fostered the negotiations' overall accountability. It does so by taking into consideration two different (although connected) institutional levels: European Parliament and European Commission; National parliaments and national executives. National parliaments have in fact proved to be highly attentive towards the TTIP negotiations: the United Kingdom Parliament has produced several reports and carried on debates on the TTIP and its impact on UK's economy and society, the Italian Parliament has heard members of the executive and carried out cognitive surveys, and other Parliaments (namely in France and Germany) have adopted resolutions. Also the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) has showed significant interest in the negotiations. The paper argues that, although the degree of transparency in TTIP negotiations has increased on a supranational level, it has remained quite poor on a national level. An explanation for this asymmetry can only partially be found in the content of the TTIP treaty, involving mainly supranational competences, given its widely acknowledged nature as a "mixed" treaty. What needs to be investigated is then whether the level of transparency of the negotiation procedure has been able to activate the democratic accountability of the main institutional actors involved on both levels considered. In so doing, the paper assumes that a relevant role has been played by the EU institutional design, strongly oriented towards the maximization of specific market-oriented goals in areas where most of the citizens remain politically unaware.

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Influence of the National Parliament of the EU Member States on Trade Negotiations (Magdalena Słok-Wódkowska)
The paper address an issue of parliamentary interest in international trade negotiations with a special focus on the TTIP negotiations process. There is an analyses of all forms of cooperation of national parliaments of the European Union and a debate concerning TTIP that takes place in parliaments. Opinions and positions issued by national parliaments so far will be scanned, comparing them to officially known governments positions as well as national parliaments' competences. The authors will also scan debates and declarations issued by interparliamentary bodies. Equally important are forms of cooperation between national parliaments and European Parliament. It should enable the author to make conclusions on the actual influence of national parliament on a decision-making process and trade negotiations. Can they really make a difference? Is it enough to have European Parliament involved in the process? Are contributions of national parliaments of the EU member states important factor?

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The Penny-Wise and Pound-foolish Deal? How the Issue of Transparency Tainted the Cross-Strait Service Trade Pack (Wendy Wan-Chun HO)
The Cross-Strait Services Trade Agreement (CSSTA) was concluded and signed quietly between Taiwan and China in June 2013 as part of the Economic Cooperation Framework Agreement (ECFA) signed in 2010. The trade pack covers a selected number of service sectors and opens Taiwan's service market to China and vice versa. During the legislatures' firs review process of the service trade pact, Taiwanese ruling party (KMT) tried to pass the trade deal unilaterally without bipartisan agreement in March 17 2014. The hasty ratification of the trade deal in Taiwanese congress and government secrecy had resulted in massive protests. The Sunflower Students Movement erupted and occupied Taiwan's national legislature for twenty-four days. As a result, the government agreed to process new legislation bill on monitoring cross-strait pacts before the controversial service trade accord. The stalled CSSTA ratification process coupled with the "Sunflower Movement" indicate public anxiety against the government's policy toward a closer economic tie with China and the need for transparency during the cross-strait trade negotiations.
This article examines how the lack of transparency during the CSSTA negotiation process jeopardized the economic and political relations between Taiwan and China and its implication for future cross-strait relations. It begins by analyzing the cross-strait trade negotiation process by looking into the involvement of national parliament and general public. It also provides a detailed examination of the implications emerging from the troubled CSSTA to the intense debate of the issue of transparency and confidentiality during international trade negotiations. In this respect, this article presents a valuable case study to clarify the role and the level of national parliaments in the participation of international economic law negotiations.

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