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Post-Doctoral Research Project

Competition, Conflict and Cooperation between Judicial Bodies of the International Trade Regime

Broadly speaking, this research project aims at analysing the complex relationship between European and Global level of trade governance regime, which are increasingly interwoven to manage economic globalisation (Snyder, 1999). Economic globalisation is essentially a form of global market integration, which should be understood as a reconstruction process of the market as well as the polity. Globalisation and governance are mutually constitutive phenomena, as the global market integration is surprisingly fragile and requires an adequate institutional foundation in order to move forward. Due to its special focus to the relationship between the EU and WTO, the research would be optimally placed in Geneva, also making use of the expertise at the IEUG.

Background and Research Problem

Currently, we are witnessing a shift in the patterns of global governance, as International Politics has become increasingly institutionalised since the end of the Cold War. State-centred approaches to problem-solving are increasingly complemented by novel institutional arrangements, which emerged at the intersection of two broader trends in world politics. On the one hand, issue-bounded regimes, defined as “implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of International Relations” (Krasner, 1983: 2), have proliferated and clustered around new and old International Organizations, which have as a consequence become increasingly interlinked (Young, 1996). On the other hand, the legal mechanisms of these institutional arrangements have also gained enforcement capacity in terms of precision, obligation, and delegation (Abbott, Keohane, Moravcsik, Slaughter, Snidal, 2000: 417), linked to the issue of judicialization of International Relations (Kingsbury, 1999).

In short, these trends amount to the transition from state-centred International Politics towards more heterogeneous global governance. A fragmented institutional architecture for global governance is being put in place, at differential degrees according to the issue area.

This trend is particularly striking in the International Trade Regime and its legal mechanisms, which have experienced the institutional transition from GATT to WTO, and the development of regional trade arrangements (EU & NAFTA), embedded within the latter (Weiler, 1999). Firstly, there is a propensity towards policy immobilism, because of the growing number of parties at the table and heterogeneity of interests at play. Secondly, the role of judicial bodies in policy development is increasingly prominent. In fact, the existence of compulsory implementation mechanisms, having a judicial or quasi-judicial form, is an increasingly common feature of trade arrangements (McCall Smith, 2000: 137).

The role of jurisdictions or quasi-judicial mechanisms in such a pattern of governance is quite important as demonstrated by the highly volatile judicial links between the European Court of Justice and the appellate body of the WTO Dispute Settlement Understanding (Antoniadis, 2007). The existent judicial implementation mechanisms appear to be the focus point for all actors keen on developing a coherent regulatory governance framework (C-93/02 P, *Biret International*). This interaction is at the root of the process through which multilateral and regional institutions get related to each other and encompassed by a common set of evolving global norms (De Burca&Scott, 2001).

Research Outline

In the light of the aforementioned theoretical framework, this research project aims at exploring the interaction between regional organizations and WTO, from the angle of their jurisdictional bodies involved in the common pursuit of managing economic globalization through law. The departing premise of this research project is the recognition that during the 1990s both the WTO and EU have refined their compulsory implementation mechanisms for their own rules through a judicialization of the compliance phase. This development tended to favour the emergence of a more coherent regulatory regime, allowing for the completion of negotiated agreements by jurisprudential ways. In other words, the institutional design plays a role in favouring regulatory patterns, even if it creates potential problems of coordination and coherence between global and regional levels.

In this perspective, the aim of this research project is twofold. Firstly, it seeks to demonstrate empirically to what extent judicial interaction has become an important parameter of trade governance at the global and European levels. Two results of the interaction between regional and multilateral level need to be analysed in depth. On the one hand, WTO standards have changed the direction of European integration as they have progressively been invoked against the EU and national rules of its State members (Alter&Meunier, 2005). On the other hand, the creation of the WTO legal regime has helped to consolidate EU system of governance (Knodt, 2004) and opened an important avenue through which European norms can take root at the global level (Laidi, 2005).

Secondly, this research project seeks to investigate the underlying social mechanisms of inter-judicial interactions. The research will illustrate how judicial bodies have been trying to solve some of the systemic incongruities of their relationship by intruding into each other's legal orders. Due to their different jurisdictions, procedures and different rules of conflict resolution, national and international judges often interpret international trade law from different judicial viewpoints, in the framework of conflicting 'constitutional' perspectives.

Finally, it will show that, despite their rather turbulent relationship, the judicial bodies and their judges are in the process of setting up a common framework of coexistence, which, in turn, has allowed them to build a transnational and pluralistic space of normative dialogue (Tiny, 2005). In fact, the fragmented nature of national and international legal and dispute settlement regimes, and the formalistic nature of the customary international law rules on treaty interpretation and conflicts of laws, offer little guidance on how national and international judges should respond to the proliferation of competing jurisdictions and the resultant incentives for forum shopping and rule shopping by governments and non-governmental actors in international economic law.