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# Trade, Law *and* Development

Vol. 13, No. 1

2021

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## Published by

The Registrar, National Law University, Jodhpur

ISSN : 0976-2329 | eISSN : 0975-3346

## SHIFTING SANDS: TAKING STOCK OF AN EXTRAORDINARY YEAR

AMOGH PAREEK\* & GAUTAMI GOVINDRAJAN\*\*

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### I. INTRODUCTION

The publication of an Issue always gives us a chance to reflect on the months that have been dedicated to getting it ready for publication. The last few months have been an extremely difficult period for people across the world, and at the outset, we hope that our readers are safe and well.

Every year, the Board undertakes to select a theme for the Special Issue. The democratised process of theme selection begins by inviting individual proposals from each Editor on the Board. The criteria that the Editors take into consideration are the relevance of the theme, availability of authors, the scope of the theme and lastly, the contemporaneity of the idea. After all the proposals are made, we conduct a transparent voting process, where each Editor votes for a particular theme and cites reasons for their choice. The Editors are encouraged to participate actively in the discussion process, and this discussion helps everyone make an informed choice while voting for a theme. The proposal getting the most votes is then announced as the theme for the Special Issue. This year, the Board voted overwhelmingly in favour of basing the Special Issue on the interface of

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trade and technology. Consequently, the month-long process finally culminated in “*Trade and Technology: Rebooting Global Trade for the Digital Millennium*” being finalised as the theme for the Special Issue 13.1. We are pleased to present to you the thirteenth edition of our Special Issue!

The past few decades have been characterised by an explosion of developments in the digital space. The rapid advancement of technological innovation has ushered in what many refer to as the Fourth Industrial Revolution. Trade as we know it is rapidly evolving to keep pace with, and reap the benefits of, the digital revolution. The spread of the COVID-19 pandemic has only made this topic even more ripe for academic discussion, and the Board is excited to be at the forefront of such discussion. We hope our readers enjoy reading this Special Issue as much as we enjoyed putting it together!

## II. CONTENTS OF THE ISSUE

We kick off the Special Issue with an article by Dr. Mira Burri, who explores the interfaces between emerging technologies and their assimilation into the global trade law framework. She analyses the existing legal framework under the World Trade Organization and then the role of FTAs as regulatory responses to the challenges posed by the digital transformation. In order to do the same, she places her focus several models of digital trade regulation, namely: the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP), the United States Mexico Canada Agreement (USMCA), the Digital Economy Partnership Agreement (DEPA), and the newer templates of the European Union (EU). She finally presents her thoughts on the adequacy of the existing legal framework with respect to the data-driven economy and points out the deficiencies therein. The editorial team assisting Dr. Burri consisted of Ayushi Singh, Malaika Shivalkar and Ananya Awasthi.

In the next article, Professor James Nedumpara stimulates an interesting discussion about the tax-related challenges posed by the digital economy, such as those concerning the notion of physical ‘permanent establishment’ or tangible locational nexus. The discussion also entails the debate surrounding adoption of the digital service tax vis-a-vis imposing unilateral trade actions, particularly Section 301 of the United States Trade Act, 1974. He concludes by examining the cooperative efforts at the Organisation for Economic Co-operation and Development in finding a multilateral solution to this problem. Professor Nedumpara was offered both editorial and research assistance by Swikruti Nayak and Anushka Mathur.

The development of the internet has been touted as a means of conducting business that could greatly benefit enterprises, including Micro, Small and Medium-Sized Enterprises (MSMEs). However, several MSMEs, especially those in developing countries, face several hurdles, which have hindered their participation in international trade. Mr. Craig Atkinson and Mr. Nicolás Schubert examine Chile's efforts to gear the application of ICTs towards greater accessibility in commercial policies. This path-breaking article analyses Chile's contribution to the emerging phenomenon of an "Internet of Rules". It examines the Chilean pilot programme for trade, and how such initiatives align with the economy's development strategies. Mr. Atkinson and Mr. Schubert were assisted by the following editors: Sahil Verma, Rashmi John, and Jahnvi Srivastava.

One of the most significant developments in the digital sphere has been innovation surrounding Artificial Intelligence (AI). Considering the significant impact AI can have on the economy, it is no surprise that several nations are now in a race in the quest for AI dominance. This has spawned heated discussion and negotiations on what regulation of AI should look like. Professor Gagliani's article discusses the approach that the WIPO and the WTO have adopted in this arena, and delineates the differences between these two models, as well as areas where these governance models converge. The article provides a holistic analysis of what principles the governance of such dynamic technology should enshrine, and some of the unique challenges that regulators will face. The editorial team for this article consisted of Tania Gupta, Aastha Asthana, and Nidhi Lakhota.

In our final article, Ms. Marta Soprana writes about the rather underexplored Digital Economy Partnership Agreement (DEPA), which is the first stand-alone, monothematic trade agreement exclusively dedicated to measures affecting trade in the digital economy. She not only discusses the coverage of the DEPA and its limitations, but analyses the DEPA vis-a-vis five PTAs that were negotiated and concluded in the last five years, namely: (i) the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP); (ii) the EU-Japan Economic Partnership Agreement (EU-Japan EPA); (iii) the United States-Mexico-Canada Agreement (USMCA); (iv) the Digital Economy Agreement between Australia and Singapore (DEA); and (v) the Regional Comprehensive Economic Partnership (RCEP). The significance of Ms. Soprana's article is only compounded by the dearth of literature on the subject. The editorial team assisting Ms. Soprana comprised of Anjali Sasikumar, Swikruti Nayak and Akshita Saxena.

### **III. RECENT DEVELOPMENTS**

The range of hardships that come with managing an academic journal is often underestimated and overlooked. A prominent issue that the Board has had to

perennially deal with is the upkeep and maintenance of the Journal's website. A few years ago, the website had suffered a virus attack which nearly wiped out all data from the servers. In March 2021, the hosting platform withdrew support for the older versions of PHP, which formed the bulk of the back-end code of the TL&D website as it existed then. This led to a complete shut-down of the website, thereby resulting in inaccessibility of data. While the ultimate challenge was to get a fully functional website designed from scratch, the more immediate obstacle before the Board was to put in place an interim solution to ensure accessibility of data.

It is here that we must applaud the efforts of Abilash Viswanathan, our Technical Editor, whose swift actions culminated in a free, Wordpress based website containing all the important announcements and archive of the recent Issues of the Journal. We would also be remiss not to acknowledge the efforts of Rashmi John, who helped Abilash in completing the mammoth task in time.

With great excitement, we would also like to share that the project of designing a new website has finally been commissioned by the University. Given the fact that the website is being overhauled for the first time since the inception of the Journal, the significance of this development cannot be overstated. We must also thank our Consulting Editors, especially Mr. Shashank Kumar, Mr. Manu Sanan and Mr. Ali Amerjee, who have not only guided us through this peculiar challenge, but have also been generous and obliging enough to make the necessary payments towards the upkeep of the website. We are also thankful to the Accounts department of our University for swiftly reimbursing all of the said payments.

Moreover, we are happy to announce that work for our next General Issue, 13.2, is in full swing! We have been fortunate enough to have received some wonderful articles, and are excited to publish the Issue this winter.

#### **IV. ACKNOWLEDGEMENTS AND CONCLUSION**

The Journal is fortunate to have immense amounts of support from all quarters. To paraphrase the common adage, it does indeed take a village to ensure the Journal runs smoothly. We would like to extend our gratitude to our patron, the Honourable Vice Chancellor of National Law University, Jodhpur for her constant support.

Additionally, this year also saw a change in the administration of our University. Mr. Sohan Lal Sharma, who had long served as the Registrar, bid farewell to our University. In his place, we would like to heartily welcome Mrs. Neha Giri, who was appointed as the new Registrar of National Law University, Jodhpur. Mrs. Giri has been instrumental in ensuring administrative approvals for the Journal are

processed in a timely and efficient manner. As the Registrar, she was also at the helm of commissioning the work of the Journal's new website, for which she has our wholehearted gratitude. We are certain that our relationship with her will only grow ever stronger. We would also like to thank the Head Librarian of the University, Mr. Vinod D., for his invaluable assistance in managing our database of subscribers, and in helping us maintain the accountability of our subscriptions.

We would be remiss if we did not express our heartfelt gratitude to Dr. Rosmy Joan, the Faculty-in-Charge of the Journal. Dr. Joan has been a cornerstone of the Journal's continued success by providing unwavering strength and support, even in these uncertain and tumultuous times. She has fought the Journal's battles as her own, and has always ensured we had the requisite financial and administrative support we needed to function effectively.

One of the things that makes Trade, Law *and* Development so special is the community of incredibly talented and supportive alumni who have not only provided a firm foundation for the Journal's success, but also continue to assist the Journal's growth with their guidance. We are extremely thankful to our Consulting Editors, who have been pillars of support to the Journal. We have benefitted immensely from their advice and recommendations, and thank them for the same.

Last but certainly not the least, we are extremely grateful to the stellar members of the Editorial Board of the Journal. The last year has been challenging in so many different ways, but our editors have continued to inspire us with their hard work and commitment. Publishing an Issue of the Journal is a task that requires immense amounts of dedication in the best of times, let alone in the middle of a worldwide pandemic. Our Board has handled the unique tribulations that have come with working on this Issue with strength and grace, and we are thankful to them for their continued diligence. It is through their continued excellence that we have been able to produce an Issue we can be proud of. We are particularly grateful to our Senior Content Editor, Ayushi Singh, and our Managing Editor, Sahil Verma, for their zeal and assistance.

The pandemic has taken a heavy toll on all of us. As Editors-in-Chief, we have tried to balance the demands of the Journal with the difficulties our editors have been facing. Understanding that the well-being of our editors is of paramount importance, we have endeavoured to ensure that our editors feel supported through tough times.

As the academic year comes to a close, it is time for me, Gautami, to bid adieu to the Journal. Trade, Law *and* Development has been a fixture of my life at law school for the past four years, and has taught me lessons and values that I will treasure for the rest of my life. The wonderful community of editors has inspired

me and helped me grow, both personally and professionally; and I will always be thankful for my time with the Journal. Serving as Editor-in-Chief for the past year has been a true honour, and I thank the Board of Editors, Dr. Joan, the Consulting Editors, and the University, for this opportunity, and for their faith in me. I only hope I have justified this faith, and that I have done enough to build on the Journal's success! Saying my goodbyes to this Journal is made easier knowing that it is being left in very capable hands. Amogh, who I have been lucky to have as my partner for the past year, and who has been a stellar Editor-in-Chief, will be continuing in the position for the coming year as well. He will be joined at the helm by Sahil Verma, who has been an incomparable Managing Editor. They will be assisted by Sukanya Vishwanathan, Abilash Vishwanathan, and Aastha Asthana; who will be taking on the roles of Senior Content Editor, Executive Editor, and Managing Editor respectively, for the next year. I am confident that the excellent Board for the coming two Issues will fulfil their duties diligently, and take the Journal to new heights.