

EDITORIAL

Amogh Pareek & Gautami Govindrajan, *In Sickness and In Health: Navigating Trade in a Post-Pandemic World*

ARTICLES

Antony Taubman, *Framing a Multilateral Trade and Innovation Agenda to Advance the Sustainable Development Goals: The Intellectual Property Dimension*

Rafael Leal-Arcas et al., *Of International Trade, Climate Change, Investment and a Prosperous Future*

Julia Ya Qin, *WTO Reform: Multilateral Control over Unilateral Retaliation — Lessons from the US-China Trade War*

Indira Carr, *Preventing Corruption in the Public Sector and the Principal-Agent-Client Model: Whither Integrity?*

Andrew D. Mitchell & Dean Merriman, *Indonesia's WTO Challenge to the European Union's Renewable Energy Directive: Palm Oil & Indirect Land-Use Change*

Donatella Alessandrini, *The Time that Binds the 'Trade-Development' Nexus in International Economic Law*

Delroy S. Beckford, *National Treatment in the WTO: Abandoning Regulatory Purpose or Reinvigorating it?*

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Trade, Law *and* Development

Amogh Pareek & Gautami Govindrajan,
*In Sickness and In Health: Navigating
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IN SICKNESS AND IN HEALTH: NAVIGATING TRADE IN A POST-PANDEMIC WORLD

AMOGH PAREEK* & GAUTAMI GOVINDRAJAN**

TABLE OF CONTENTS

- I. INTRODUCTION
- II. CONTENTS OF THE ISSUE
- III. LOOKING FORWARD: WHAT COMES NEXT?
- IV. ACKNOWLEDGEMENTS & CONCLUSION

I. INTRODUCTION

We are absolutely delighted to bring to you Issue 12.2 of *Trade, Law and Development*! This Winter 2020 Issue is also a General Issue, which gave us considerable leeway in exploring a plethora of relevant debates in international economic law. To this end, we have tried to include articles covering a diverse range of issues: from reform in the World Trade Organization (WTO) following the trade war between the United States of America (US) and China, to evaluating the role of climate clubs in addressing the problem of climate change.

The outbreak of the COVID-19 pandemic has changed life as we know it drastically: every sector has faced massive disruption due to the spread of the virus and accompanying lockdowns. The “new normal” has replaced business as usual as the world struggles to adjust to the crisis. Trade is no exception: a significant plunge in both, trade in goods, and trade in services was seen at the beginning of the pandemic; along with rollbacks in foreign investment. The pandemic has also exposed existing structural inequalities more starkly, with developing and least developed countries facing the brunt of its economic and social impacts with much

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more force than developed countries. This has renewed debates about the fundamental weaknesses of globalisation, bringing to the fore questions about the sustainability of this structure. It has also exacerbated existing gender disparities.

With less than a decade to go before the 2030 Sustainable Development Goals (SDG) deadline, there has been a clarion call for reform in order to remedy these deep-rooted issues. Further, the role of the WTO in helping economies navigate these choppy waters remains to be seen. The organisation has been the subject of increasing concern due to structural problems which have left it in disarray. Nigeria's Ngozi Okonjo-Iweala, the next Director General of the WTO, has expressed the critical need for reform within the organisation. It will be interesting to see how the new leadership will go about these reforms; and it will certainly be heartening to see a woman at the helm of the WTO for the first time since its inception.

However, there seems to be light at the end of the tunnel. With the arrival of vaccines for the virus, the end of the pandemic seems to be in sight. It remains to be seen how the world will adjust to a post-pandemic world, and how much of the "new normal" will remain as the norm. The boom in digital trade and e-commerce, for example, is here to stay; and disruptions in this sector will likely shape the course of trade in the future. At this juncture, it is also pertinent to evaluate how trade can be a powerful tool in rebuilding and helping economies navigate the wreckage pandemic has left in its wake. The interface between trade and development has been a closely-scrutinised issue over the decades, and it is hoped that trade will help facilitate global economic recovery after the pandemic.

The international trade landscape over the past few years has been rife with protectionist policies and the heightened tensions of trade wars. Trump's aggressive trade policies were a matter of considerable debate and concern over the course of his tumultuous term in office. Joe Biden's victory in the US presidential elections is a harbinger of change, and it is hoped that under his administration, there will be a significant de-escalation of trade tensions. Another significant disruptor in the geopolitical space is the finalisation of trade terms between the European Union (EU) and the United Kingdom (UK) in Brexit negotiations. While on one hand, there is relief at the avoidance of a no-deal Brexit; on the other hand, a lot of uncertainty remains: be it on the issue of fisheries, data protection, or the contentious "level playing field" terms. Therefore, it seems likely that Brexit will continue to be a source of much debate and discussion.

There is no doubt that 2020 has been a year characterised by volatility and uncertainty. At the advent of 2021, there seems to be hope on the horizon, with the world slowly healing from the ravages of the COVID-19 pandemic, and heightened tensions in the geopolitical arena. It is this message of hope for the

future we would like to carry into our next year of the Journal. We have all grown and learnt from the struggles the past year has thrown our way, and we hope to use these lessons to deliver our very best to our readers.

II. CONTENTS OF THE ISSUE

For this General Issue, we have tried to include stimulating discussions on a myriad of pressing international trade issues, such as the regulation of environmental concerns through trade measures, the fight against corruption, the vital role of innovation, the interlinkages between trade and development, as well as a re-evaluation of aspects of National Treatment jurisprudence in international trade law.

The first article of this Issue is written by Mr. Antony Taubman, and explores the intricate interlinkages between innovation, intellectual property (IP) systems, and multilateral trade, in light of the SDGs. The importance of innovation cannot be overstated, especially in a world reeling under the effects of the COVID-19 pandemic. This article explores the significance of IP systems in fostering the development of innovation. Mr. Taubman adeptly analyses a variety of programmes and initiatives that have been undertaken to foster innovation by developing robust IP policy. Through this incisive article, he argues for a more inclusive innovation policy in order to better fulfil SDG objectives. He expertly navigates the volatile waters of recent times to provide valuable insights into measures adopted in order to tackle the COVID-19 pandemic thus far. The editorial team assisting Mr. Taubman in this article consisted of Sukanya Viswanathan, Swikruti Nayak and Maulik Khurana.

Professor Rafael Leal-Arcas and his colleagues have contributed the next article in this Issue. This article takes on a burning issue in international trade discourse: tackling the behemoth of climate change within the multilateral trading system. The authors begin by tracing the relationship between globalisation, international trade and climate change: while globalisation has resulted in the birth of several multilateral instruments to mitigate climate change within the international trade regime, questions of accountability and enforceability have marred their effectiveness. In light of the inefficiencies of instruments such as the Paris Agreement, climate clubs are posited as a viable means of mitigating climate change within the multilateral trading system. The authors explore the nuances of this setup, with a special focus on the benefits of this arrangement. The article goes on to examine investment agreements entered into by the EU through the lens of sustainable development, in order to evaluate their performance in addressing climate change issues. In particular, the recently-concluded EU-Vietnam Free Trade Agreement is analysed in depth to hold EU's performance in accounting for

sustainable development in its investment agreements, to the flame. While the world's performance in fighting climate change has been severely lacking, the article ends with a call to action to reverse the damage, while it is still possible. The editorial team for this article comprised Abhinav Srivastav, Nishant Sharma and Vidhi Damani.

The trade war between the two largest economies of the world, i.e., the US and China has been a topic of much deliberation since 2018. Surprisingly however, there has been little discussion about the WTO's inability to attenuate the situation. Professor Julia Ya Qin expounds upon this deficiency in the WTO's legal design and proposes procedural reforms in the form of intervention by the Director-General and amendment to the DSU or improvement in its enforceability. In doing so, she also assails the legality of unilateral retaliation by Member countries and builds a case for improving multilateral control over such retaliation. The editorial team for this article comprised Abilash Viswanathan, Malaika Shivalkar and Nidhi Lakhota.

The next article, by Professor Indira Carr, is another reflection of the diverse range of areas which are encapsulated within the broader field of international economic law. Professor Carr discusses the role of the United Nations Convention against Corruption (UNCAC) in removing corruption by promoting integrity in the public sector driven by the principal-agent-client model. She questions the efficacy of the mechanisms adopted by UNCAC in combating corruption, and with the help of hypothetical illustrations, highlights how the integrity of an official can be compromised by competing demands. The overarching focus of the article lies on the impact of corruption and the lack of effective combat mechanisms on the economy. The editorial team assisting Professor Carr in this article consisted of Ayushi Singh, Sukanya Viswanathan, Pranav Karwa and Anushka Mathur.

The next article, by Professor Andrew Mitchell and Mr. Dean Merriman, addresses the controversy surrounding the European Union's Renewable Energy Directive. The authors map out the likelihood of the measures passing the touchstone of standards laid down under the General Agreement on Tariffs and Trade (GATT) 1994, as well as the Agreement on Technical Barriers to Trade (TBT Agreement). With an increasing focus on the overlaps between international environmental law and obligations under the WTO, this article provides a timely and relevant analysis of the ramifications of the dispute, and the potential Panel ruling on the same. The authors provide a comprehensive overview of the measures at dispute, and provide a clear understanding of the complex issues involved. The regulation of environmental issues through trade measures is a hotly contested phenomenon, and it is likely that this dispute will steer the discussion in this area into uncharted waters. This article provides a beacon of clarity in the face of this uncertainty, guiding readers through the nuances of the dispute with expert precision. The

authors were assisted by an editorial team comprising Tania Gupta, Swikruti Nayak and Ria Chaudhary.

In the next article, Professor Donatella Alessandrini stimulates an interesting discussion about the emergence of the nexus between trade and development. She argues that contrary to popular belief, the link between trade and development has a much older history than just the immediate post-war period. Her article presents an alternative lens to look at the story of trade and development, which helps one understand the perils of accepting economic rationality as a universal truth. Moreover, impresses upon the reader the importance of not limiting the possibility of experimenting with different socio-economic models that might be more desirable than the current ones. The editorial team assisting the author comprised Ayushi Singh, Suvam Kumar, Aastha Asthana and Jahnavi Srivastava.

In our next article, Dr. Delroy Beckford presents a crisp analysis of the relevance of regulatory purpose in the interpretation of provisions relating to National Treatment. He analyses Article III:2 and III:4 of GATT 1994 to counter the extremist view which suggests that regulatory purpose has become irrelevant due to the abandonment of the 'aims and effects' test. Further, on the basis of the Appellate Body's interpretation of Article III:2 (fiscal measures) and III:4 (non-fiscal measures), he argues that the Appellate Body uses an interpretive approach and identifies different bases for ascertaining 'purpose', which thereby suggests that regulatory purpose still remains relevant. The editorial team that worked on Dr. Beckford's article comprised Sahil Verma, Rashmi John and Ananya Awasthi.

III. LOOKING FORWARD: WHAT COMES NEXT?

As a journal based in India, we are conscious of the representation (or lack thereof) of authors from developing countries in the international research community. Over the years, TL&D has tried to promote the discussion of a variety of perspectives, and provide an accessible forum for the exchange of ideas surrounding world trade. For instance, our previous General Issue 11.2 brought together a collection of articles focusing on development and developing countries.

Taking this initiative a step further, we believe that developing countries should not just remain an object of academic research but should be active participants in it. To this end, we have also made a conscious effort to solicit articles from authors coming from a diverse range of backgrounds, so as to make the scholarship we publish more reflective of the inclusive culture we wish to promote. Consequently, we are proud to be announcing our diversity statistics for Issue 12.2.

Since we were appointed as the Editors-in-Chief, the Journal received fifty-five unsolicited submissions till the deadline, i.e., August 15, 2020. Seven out of these were Valid Submissions¹ – three coming from authors based in Developing Countries while four from authors based in Developed Countries. Our acceptance rate for the former was 33% as against our overall acceptance rate for Valid Submissions which was 42.8%.

Over the last few years, various Boards have undertaken to enhance the Journal's online presence to stay relevant in the changing times. The preceding Editors-in-Chief have previously discussed the updating of our Wikipedia page with the latest information about the Journal. Keeping in line with the same initiative, we have revived our social media handles, including our Twitter handle,² which had been defunct for the last three years.

Additionally, recognising the need to connect better with our social media followers, we have been posting periodical updates about recent developments in trade and economic law. These have not only led to a surge in our engagement rate, but have attracted many new followers. More importantly, we're happy to be contributing towards generating more interest in the field of international trade, a subject we so dearly love.

IV. ACKNOWLEDGEMENTS & CONCLUSION

Trade, Law *and* Development is fortunate enough to have strong support from several quarters, which has helped us retain our position as one of the best trade law journals in the world. First and foremost, we would like to thank our patron, the Honourable Vice Chancellor of National Law University, Jodhpur, for her unwavering support. We are also grateful to Mr. Sohan Lal Sharma, the Registrar of the University, for providing us invaluable administrative assistance, and helping us with all our requests and necessary approvals. We would also like to thank the Head Librarian of the University, Mr. Vinod D., for helping us manage our database of subscribers and the accountability of our subscriptions. Our Journal has benefited immensely from the encouragement and promotion from our university administration.

Next, we would like to express our gratitude to Dr. Rosmy Joan, the faculty-in-charge of our Journal. She has been the Journal's Rock of Gibraltar, and has

¹ For the purpose of these statistics, a Valid Submission is one that: (i) falls within the subject matter of the Journal; (ii) is of adequate length (between 6500 - 20000 words); (iii) is received within the deadline, i.e., on or before August 15, 2020; (iv) has not been solicited by the Journal; and (v) the author details for which are verifiable.

² @TradeLawDev, TWITTER, <https://www.twitter.com/tradelawdev>.

helped us navigate this tumultuous year with patience and strength. Dr. Joan has been our first port of call in times of crisis, and has always guided us to the best course of action. Her tireless efforts have ensured that we have always had the financial and administrative support needed to function effectively. We owe her an immense debt of gratitude for trusting us enough to give us independence in operating the Journal, and for her invaluable advice and assistance.

We must acknowledge that the Journal has risen to success only on the shoulders of our predecessors, and we have been fortunate enough to benefit from their wisdom and experience. Our Consulting Editors have been a constant source of guidance and inspiration to our Board, and we are extremely grateful to them. We would like to especially thank Mr. Manu Sanan and Mr. Shashank Kumar, who very graciously came forward to help us in ensuring that the Journal's website remains intact, by making the necessary domain renewal payments.

The past year has been unnervingly difficult for students and professionals alike. However, despite the unprecedented challenges posed due to the nation-wide lockdown, the Journal's activities and functioning have remained as effective as ever. From conducting online orientation sessions for the new Editorial Board members to coordinating with the university administration and third-parties, we are proud to have adapted to tackle these challenges and utmost credit for the same is due to the Board of Editors.

Not only have our editors shown tremendous commitment towards their editorial duties, but have often stepped up to help us Editors-in-Chief during crises and in other times of need. We are immensely thankful, especially to the Senior Board, for the myriad ways in which they have contributed to the successful publication of this Issue — right from helping us in soliciting and finalising this brilliant collection of articles to helping us navigate our way through difficult situations. The members of the Board have gone above and beyond in their duty towards the Journal, and we express our gratitude to them for their commitment. Further, we would be remiss if we do not commend the enthusiasm and initiative shown by our Associate Editors and Copy Editors in assisting with various undertakings of the Journal, such as those mentioned above.

We are also pleased to announce that preparations for our next Issue, 13.1, are in full swing. The Summer 2021 Special Issue will be on the Theme, "*Trade and Technology: Rebooting Global Trade for the Digital Millennium*", which will revolve around the issues and debates surrounding the increasing digitisation of trade as we know it. We look forward to reading and working on this exciting area of law.

This Issue, like every other before it, has been a labour of love for the entire Editorial Board. We hope you enjoy reading it as much as we enjoyed working on it!