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Ipsiata Gupta & Radhika Parthasarathy,  
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LOOKING TO THE FUTURE – DEVELOPMENT IN A  
CHANGING WORLD

**IPSIATA GUPTA\* & RADHIKA PARTHASARATHY\*\***

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**I. INTRODUCTION**

It brings us immense pleasure to bring to you Issue 11.2 of the Trade, Law *and* Development Journal, which in addition to being our Winter Issue, is also our General Issue. While our General Issues are usually on a non-specific subject, we wished to bring to the fore articles with a focus on development and developing countries. Thus, the vision for this Issue was to bring together a bouquet of articles that cover subjects of international economic law from the development hubs of the world. We are pleased that this Issue covers the nuances of Korean Free Trade Agreements (FTAs) and goes all the way to Latin-American Bilateral Investment Treaties (BITs). We wanted to bring to our readers literature from different parts of the world to present a holistic update of trade and development.

The development of international economic law has been dynamic these past few years. From issues that have compromised the dispute settlement mechanism at the World Trade Organization (WTO) level to new debates that have gone ahead to establish how versatile the field of international trade law is. From questions of

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\*Editor-in-Chief, Trade, Law *and* Development; Candidate 2020, B.B.A., LL.B. (International Trade and Investment Law Hons.), National Law University, Jodhpur, India. The author may be contacted at ipsiata.gupta[at]tradelawdevelopment.com

\*\*Editor-in-Chief, Trade, Law *and* Development; Candidate 2020, B.A., LL.B. (Business Law Hons.), National Law University, Jodhpur, India. The author may be contacted at radhika.parthasarathy[at]tradelawdevelopment.com

labour, environment, e-commerce among others, we are constantly pushing the boundaries of the legal discussions around trade law. The scope for legal analysis does not limit itself to the multilateral level – there is profound progress currently underway at the regional and domestic levels as well. The question of development becomes multi-faceted in light of these issues. It becomes one that would have to balance growth interests at a domestic, regional and global level. The UNCTAD Report on Trade and Development<sup>1</sup> for the year 2019 identifies hyper-globalisation among other social, political and financial factors that is looking to spearhead the upcoming decade. Therefore, it has been our endeavour to analyse crucial questions of international trade law and bring to you this Issue.

As a journal that is based out of India and at the end of our 11<sup>th</sup> running year, we take pride in curating literature that focuses on that which is otherwise not engaged with contemporarily. Our last General Issue (Issue 10.2) brought to you several articles that discussed the big issues of trade such as the US-China Trade War. To balance that interest, we now have a collection of literature that focuses on the intricacies that a Central Asian industry would face while acceding to the WTO among other such topics. If knowledge and discourse dissemination are the objects of any Journal, we understand that this needs to happen at a macro as well as micro level. The relevance of being a Journal based out of India is with respect to our neutral alignment. The Journal refrains itself from taking a political stance on any issue and limits itself to legal and academic arguments that have been made by luminaries from a local as well as global perspective. As a result, the editorial team deals with conflicting literature arguments and topics to bring a spectrum of information to the readers. We sincerely hope that those reading this Issue are exposed to diverse ideas and perspectives that are engaging and that more importantly provide an impetus for more thought and curiosity.

At the onset we would like to thank the Authors for their contributions – this year we received interesting submissions that engaged us as an editorial team. As a student-edited journal, we take our editorial work as a learning experience and we are grateful to all the authors who made this experience enriching for us.

## II. CONTENTS OF THE ISSUE

We have long since published articles on monumental issues in trade and international economic laws. However, we have also realised that our Journal has not actively captured and captivated smaller and niche economies. Thus, our aim with this Issue was to ensure that we seek and receive submissions that cover the

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<sup>1</sup>Report by the Secretariat of the United Nations Conference on Trade and Development, *Trade and Development Report 2019: Financing a Global Green New Deal*, U.N. Doc. UNCTAD/TDR/2019 (Sept. 25, 2019), [https://unctad.org/en/PublicationsLibrary/tdr2019\\_en.pdf](https://unctad.org/en/PublicationsLibrary/tdr2019_en.pdf).

economic landscape at a global scale and put forth issues from the powerful as well as developing economies. We are pleased to announce that we have achieved this aim in this Issue. This Issue sees and analyses the contours in Uzbekistan's automobile industry, while also analysing China's role in developing the Latin American and Caribbean (LAC) region. It also assesses Korea's FTAs, while assessing the role of sustainable development in trade. Further, looking to the future, this issue also discusses the role of the United States-Mexico-Canada Agreement (USMCA) on data and electronic trade.

This Issue begins with a guest editorial from the Deputy Director General of the WTO – Mr. Yonov Frederick Agah. His article discusses the role of development in trade relations. The WTO is a multilateral platform that provides development incentives to all its Members. As our guest editorial, this article contextualises this Issue by its focus on developmental politics. DDG Agah has astutely shared with us the vision for initiatives such as Aid for Trade right from its inception to the way it is expected to help developing countries. We are very grateful to him for this editorial because it adds two important things to this Issue – *one*, it adds to the theme of development from the perspective of the largest multilateral trading platform. *Two*, with its focus on issues such as gender diversity and community growth, it presents a more diversified idea of development that is not restricted to economic growth.

The first article of this Issue is written by Ambassador Vs Seshadari and it sheds some light on the Trade Rules in Korea's FTAs. This perspective is unique when we try to understand the general discourse on international trade law subjects. We see that a lot of academic literature does not analyse the nuances of several regional and bilateral trade agreements. It was our intention to bring to you a meticulous study of the trade patterns of a developing country in the East. Ambassador Seshadari has finely balanced statistical data with legal observations to map the patterns in the Korean FTAs. Through his keen analysis we are also able to note the trading patterns of countries such as China, India and Japan. The degree of complexity in the FTAs that cover several important subjects such as labour, competition and investment are highlighted through this article. As an editorial team, it was enlightening for us to note the way the Rules of Origin are designed across Korean FTAs. We see the balance of trading powers between a developing and developed countries and their impact on the way the trade rules are drafted. This article provides a riveting and nuanced analysis of trade rules in from the trading prowess of a developing country.

Our next article by Professor Leal-Arcas and his colleagues brings to us a more evolved concept of development. Yet in this evolution we notice that new ideas still find their roots in fundamental concepts of law. This article similarly bridges the gap between Rule of Law and sustainable trade. He holds to the flame, two traditional multilateral institutions – the European Union and the WTO – and

discusses needs of environmentally conscious trade initiatives taken by them. The crux of his paper rests on the premise that with international consensus and once the supremacy of certain laws can be established, we will perhaps have a higher chance at ensuring sustainable trade practices. As an advocate of a rule-based trading system – Leal-Arcas makes a result-oriented case. He identifies primary stakeholders, not as nations but as citizens, and delves into the dangers of continued inaction. His argument is backed solidly by economic evidence, investment strategies and an action plan that is targeted to reduce fossil fuel consumption. This article is optimistic, empowering and provides a solution-oriented analysis on how we can reduce fossil fuel consumption by relying on a tenet as fundamental as the Rule of Law.

The next article is written by Professor Joshua P. Meltzer. As an editorial team we are frequently amazed by the depth of international trade. In our several years on this Board we have rarely come across an instance where the scope of international economic law was limited. Thus, this article brings to you a new age regional agreement (i.e., The USMCA) that futuristically also includes digital trade in its ambit, and analyses how the trade rules under this agreement regulate data flows while covering the scope with respect to relevant topics such as e-commerce, digital services trade and cybersecurity. This article is impressive owing to the degree of technical expertise that is offered by the author. The author discusses the various regulatory practices of the countries under this regional trade agreement and the scope of international data regulation. In this light, he discusses Vietnam, China and Iran's data regulation policies that seek to restrict access to the internet and regulate online content and their data localisation measures and protectionist regimes. Consequently, he discusses how such regulations could affect business and trade by increasing compliance costs for exports, a prime example of this being the General Data Protection Regulation. These regulations, he concludes, are in violation of WTO trade rules and must be replaced to ensure smooth transition and flow of data. However, in this regard, the WTO rules need to be updated to allow for a better framework for digital trade and services. Another truly fascinating aspect that this article covers is the perspective of all three stakeholders – the government, the business and the consumer. This article is niche in every sense and offers a detailed account of how data originates, how the digital market and resultant digital trade works and the degree of regulation that is preferred in this arena.

Our collection of articles makes an interesting segue to Central Asia. At the helm of its observations Alisher Umirdinov and Vajilon Turakulov draw attention to a fledging WTO member – Uzbekistan. It is interesting to note the kind of changes that a country makes when it decides to join the bastion of free global trade (i.e., the WTO). From the economy opening up, to changes in the domestic regime that are observed, the countries are impacted as they prepare for competition from incoming exports. One real dimension of such a preparation is that the

government tries to disinvest from certain markets – and this article has its lens on the automobile industry. This industry, as we understand, is a source of pride and opportunity for Uzbekistan and is changing its structure to evolve towards a freer trade regime. Our authors adeptly compare the domestic policy changes required in Uzbekistan with the changes that were implemented in countries such as China, Russia and Kazakhstan when they acceded to the WTO. This article in all is a unique perspective of international trade law as it observes the incentives and changes that drive a nation (quite literally in this case!) into a global trade regime.

The Global North has always held a dominant position in investment and trade concerns and has been the bearer of economic needs for developing countries (DCs) and least-developed countries (LDCs). However, the past decade has seen a sharp shift in this global dynamic with the resurgence of China and India as predominant investors in DCs and LDCs. This has led to the rise of the Global South as a competitor to the North's dominance. This has been succinctly analysed from China's perspective by Professor Jesse Liss, of Rutgers University, Newark, USA. China's rising investments in the Latin American and Caribbean Regions, amounting to nearly US \$150 billion in 2017, have been perceived as the driving factor behind a new South-South form of cooperation. However, Professor Liss proposes an alternate argument as he believes that China's BITs do not include investment promotion measures, labour and environmental standards or sustainable development goals, thus showing a lack of commitment to promoting a cohesive and all-rounded form of investing. The other issue, he states, is due to the lack of public, private and academic institutions in both regions that can interact with each other in a wholesome manner.

While discussing the Global North, it would be remiss if we do not mention the United States. While one of the largest players in global economy and investments, the US, currently is blocking the entire functioning of the WTO due to the Trump presidency. This is precisely what Mr. Michael Goodyear seeks to address in his article, while assessing measures to protect the WTO and the Dispute Settlement Body (DSB). Such measures could include increasing reporting requirements, retaliations (such as carousel, cross and collective) and injunctions, and a probable repeat violator policy that could be enforced. The rise of such powerful anti-WTO voices could lead to drastic violations of international trade law and thus, he suggests that a repeat violator policy would be the most ideal in this scenario as it is directly calibrated to risk and could be directly implemented by the DSB.

Finally, to conclude this issue, Mr. Alec Dawson makes a case for the use of renewable energy to safeguard the planet, in light of the WTO's Safeguard Rules and whether emerging renewables markets pose new challenges for the international safeguards regime. His assessment is based off the November 2017 United States' International Trade Commission report on Crystalline Silicon Photovoltaic Cells, which determined that "serious injury" was being caused to

domestic producers by imports of solar cells and how the international safeguard regime may be challenged in the coming few years. He concludes by stating that the need for more renewable energy could be accommodated in the current safeguards regime by narrowing the understanding of what constitutes “unforeseen circumstances” to only include sudden supply shocks leading to increases in imports into a country.

### III. DELVING INTO THE FUTURE

Maintaining relevancy is one of the most crucial facets to be considered while running a journal. While we have always prided ourselves for maintaining pristine quality in the articles we publish, due to our ever-growing base of contributors, we also realise that we need to look to the future to grow and diversify.

With the advent of digitisation and social media, we realised that we were falling behind other journals due to our lack of visibility and our website that has seen its share of troubles in recent times. In this regard, we realised that we needed to make certain upgrades, and immediately, at that. Consequently, we have since updated our Wikipedia page with latest information about our Journal, which is further linked to our website and the Issues hosted therein. We are also currently in the process of customising and updating our website. Further, we have decided to limit the number of print copies that we publish in order to maintain more sustainable publication practices that minimise the use of paper and ink.

Additionally, we found that being indexed on more online databases ensures our reach to a more global audience. This also makes accessibility easier for those who wish to read our Journal. Consequently, apart from being listed on websites such as HeinOnline and Westlaw, we are also indexed on Manupatra, SCC Online and are currently pursuing indexing and publication opportunities with JGate Licensing, Lexis Nexis, Scopus, and other similar databases of repute.

Finally, in celebration of a decade of publication, we are happy to have introduced a series of news updates by means of which we seek to bring about recent developments in trade law, vis-à-vis our publications, to the general populace through social media. By this, we hope to break down what may seem as complicated issues in trade law, into general parlance, while also bolstering our Journal’s relevancy in the field of international trade and economic law.

### IV. ACKNOWLEDGEMENTS AND CONCLUSION

As is true with every organisation, there are certain entities without whom we would not be arguably one of the best journals in the world. At the outset, we would like to thank our Patron, Prof. Dr. Poonam Saxena, the honourable Vice Chancellor of National Law University, Jodhpur, for granting all our requests and constantly supporting and promoting us.



Next, our heartfelt gratitude is extended to Mr. Sohan Lal Sharma, the Registrar of our University. His patience and indulgence of all our requests, furthered by his administrative support and logistical assistance, has ensured that our Journal is published and circulated far and wide appropriately. We would also like to thank Mr. Vinod D, the Head Librarian at the University who has made it possible for us to ensure smooth transition and accountability of our subscriptions. We further thank Mr. Vinod D and the library staff for ensuring constant access to all students to various commentaries and databases, which leads to their scholastic enlistment in trade and economic laws.

We would, next, like to thank our biggest pillar of support, Dr. Rosmy Joan, Assistant Professor at our University, but more importantly, the faculty-in-charge of our Journal. Come rain or sunshine, Dr. Joan has supported the Board and has fought our battles like her own. Through her concerted efforts with the University, the Board has been granted financial and logistical support as and when necessitated. As Editors-in-Chief, our first recourse in case of an emergency or a crisis has been Dr. Joan, who has always provided us with a patient ear and has guided us to the most logical solution. Thus, a large reason of this Board's success can rightfully be credited to Dr. Joan.

Our Board has always ensured close contact with editors of the past. In this regard, our Consulting Editors have gone a great way to ensure smooth functioning of the Board. A special mention is extended to Mr. Ali Amerjee and Mr. Manu Sanan for helping us in our times of need an indulging all our queries.

No Board of Editors can truly function without a hard-working, dedicated and efficient editorial board. Our editors have ensured that any delays from our end would be minimised and have admirably worked on shorter deadlines and/or multiple articles during the course of this Issue. After a requisite mid-semester reconstitution, we are proud to announce that we have, indeed, attained the most hard-working and dedicated Board one could have asked for. Not only have our Student Editors done exceedingly well at their editorial tasks, but they have also gone above and beyond their mandate by enabling us to undertake new ventures in the Journal's name (as mentioned earlier) and contributing to maintaining the Journal's appeal.

Finally, we are pleased to announce that preparations for the next Issue 12.1 are well underway. Our Summer Issue is the *Special Issue on Trade in Services* and more particularly, seeks to analyse where the legal framework for trade in services is the need of the hour. Submissions for the same are invited until March 15, 2020. We are pleased to also announce that a fair number of widely known authors in the domain of trade law have graciously accepted our invitation to write for our Special Issue.

The last eight months have consisted of gruelling work, managing our academic, curriculars and ensuring that we gracefully continue the legacy of TL&D bestowed upon us by the past Board of Editors. The Journal has given us so much to be thankful for – a family, new friends, a sense of achievement, research into and knowledge of trade law – and we thank our previous Editors-in-Chief, Dr. Joan and our Student Editors for reposing their faith in us and being patient with us. We only hope to make our readers and contributors proud and that we have done justice to our role and our duty to the Journal.