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Trade, Law *and* Development

Chathurya Srinivasan, Priyanshu
Shrivastava, and Simran Bherwani,

Foreword

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FOREWORD

CHATHURYA SRINIVASAN,* PRIYANSHU SHRIVASTAVA, SIMRAN BHERWANI†**

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I. INTRODUCTION

Every year, the Board publishes two issues. A summer issue, which is a General Issue covering various aspects of international economic law; and a winter issue, which covers views of various authors on a particular theme. The theme is chosen through a transparent and democratic process.

Over the years, this Journal has become a platform for scholars, practitioners, and policymakers to engage in a rigorous and thought-provoking dialogue on the intersections of international trade law and development. This Issue features a diverse set of articles that cover a wide range of topics related to carbon markets, environment and trade law, rules on state-owned entities, human rights, and dispute settlement mechanism.

II. CONTENTS OF THE ISSUE

We kickstart the Issue with our first article by Professor Rafael Leal-Arcas et al. In this article, Rafael Leal-Arcas analyses the legal and policy linkages between carbon markets, international trade law and climate finance. He explains how carbon pricing

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tools, such as border carbon adjustments and emissions trading systems, aim to reduce carbon leakage and enhance climate ambition. However, these instruments may raise concerns under WTO rules, particularly the principles of non-discrimination and most-favoured-nation treatment.

The article discusses the legal uncertainty around these measures and whether environmental exceptions under WTO law can be used to justify them. It also considers the risk of trade distortions and unequal impacts on developing countries, who may lack the capacity to adapt or compete under new climate-based trade measures. The authors argue that carbon markets can be made WTO-compatible if they are carefully designed, transparent and fair. They call for stronger international coordination, more inclusive rule-making, and the use of climate finance to support developing countries. The article concludes that integrating trade, environmental protection and finance is essential to making carbon pricing both effective and equitable. The editorial team for this article comprised Samiksha Lohia, Y. Leela Krishna Reddy, and Raghunandan N.

Further, in the next article, Pallavi Arora examines the World Trade Organization (WTO) rules on state-owned enterprises (SOEs) and the broader challenge of balancing fair competition with institutional diversity. While recent reform efforts, including those incorporated in agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), call for competitive neutrality to discipline SOEs, the article argues that the WTO's existing ownership-neutral approach provides a more effective and flexible framework. Rooted in the principles of non-discrimination, market access, and subsidy regulation, this approach is better suited to accommodate the diverse economic models of WTO members without compromising the integrity of global trade rules.

A key focus of the paper is the definition of 'public body' under the WTO's subsidy rules. The article supports the Appellate Body's governmental authority test as a context-sensitive standard that reflects different state-market relationships. The article also proposes the introduction of a non-exhaustive list of indicators to assess governmental authority, in an effort to improve clarity and ensure consistency in its application. It further examines how the WTO addresses monopoly rights and regulatory advantages granted to SOEs, concluding that existing legal disciplines already offer effective tools to manage competition distortions. The paper also examines China's WTO-plus obligations under its accession protocol, and how these commitments offer sufficient scope to regulate Chinese SOEs without the need for competitive neutrality-based reforms. It concludes by calling for targeted refinements to the WTO's current rules, rather than adopting prescriptive new disciplines, in order to preserve institutional diversity while upholding fair competition. The editorial team for this article comprised Alka Mahapatra, Manvi Goyal, and Annette Abraham.

In the next article, Professor Mira Burri examines the overlooked section of human rights in the ever-evolving field of trade law. By focusing on recent bilateral and regional trade agreements such as the CPTPP, USMCA and Digital Economy Agreements (DEAs), this article outlines how provisions on cross-border data flows, source code protection, and digital product non-discrimination play a role in reshaping domestic regulatory regimes. The author highlights that these rules, though economically driven, have drastic implications for human rights, particularly the right to privacy which has garnered attention in policy and academic debates, this article also draws attention to how other fundamental rights such as freedom of expression and the right to development remain largely overlooked.

With a detailed legal analysis, the article critiques the opaque and fragmented development of digital trade law, pointing out that it creates a false hierarchy by overemphasizing data protection but sidelining other fundamental freedoms and therefore risks creating an imbalance hierarchy of rights. In order to move beyond privacy, the author invites legal scholars, policymakers, and human rights advocates to engage more deeply in the digital trade discourse. The conclusion calls for transparency, stakeholder participation and also advocates for a rights-based approach to digital trade governance wherein human dignity is protected alongside economic interests. The editorial team assisting the author consisted of Shambhavi Uniyal, Bianca Bhardwaj, and Divya Chidambaram.

The next article by Yifan LI examines how *amicus curiae* briefs can strengthen democracy in the Dispute Settlement Mechanism (DSM) of the World Trade Organization (WTO). The author introduces the discussion by pointing out the WTO's 'democratic deficit', which has been made worse by the Doha Round negotiations' deadlock and the Appellate Body's paralysis since 2020. The paper makes a distinction between 'external democracy', which involves greater public involvement, and 'internal democracy', which involves equal participation among WTO members. He illustrates how WTO adjudicators have acknowledged the legal foundation for *amicus curiae* submissions through case analyses like US — Shrimp and EC — Asbestos, but they handle them cautiously, frequently declaring them to be 'unnecessary' or 'of no assistance'. The main paradox is that, although *amicus curiae* can support external democracy by giving civil society — including non-state actors and marginalized voices — a forum, they can also weaken internal democracy by raising procedural costs, which disproportionately affect developing nations with little funding. Concerns regarding equitable representation are raised by empirical studies that show that well-funded Global North organisations dominate participation.

He suggests reforms like increasing the WTO Secretariat's expert capacity, improving the services provided by the Advisory Centre on WTO Law,

implementing Special and Differential Treatment (SDT) provisions for developing members, and making use of already-existing DSM mechanisms like party comments and panels' information-seeking authority. The paper comes to the conclusion that *amicus curiae* can only aid in the democratisation of DSM if systemic disparities are addressed through institutional and procedural reforms. The editorial team for this article comprised Ishaan Pant, Akanksha Samantray, and Abir Balia.

Lastly, Robert Wolfe and Peter Ungphakorn trace the central governance challenge facing the World Trade Organisation (WTO): its reliance on the consensus-based decision-making model. While the model ensures that all members regardless of size or power have a say; it has also become a major obstacle to reform and effective functioning, especially as geopolitical tensions rise and major economies act unilaterally.

The authors argue that consensus, though often idealised, is frequently abused. Powerful countries like the United States, have used institutional rules to paralyse dispute settlement, notably by blocking appointments to the Appellate Body, effectively suspending WTO adjudication. Meanwhile, developing countries such as India have vetoed decisions, even procedural ones, to push unrelated demands. Such strategic blocking by both large and small countries undermines trust and momentum within the organisation. Members have now started exploring ways to bypass the consensus rule, including 'plurilateral' agreements negotiated among smaller groups of willing countries. These initiatives, while innovative, raise transparency and legitimacy concerns and still face hurdles when formal recognition by the full membership is required.

The article dives into the potential solutions like promoting a culture of responsible consensus, improving transparency and accountability for those who block decisions, and creating space for deliberative dialogue. A recent 2024 ambassadorial retreat offered ideas for reform, yet political will remains lacking. Ultimately, it is concluded that the WTO is 'on the rocks' and cannot function unless members find 'a consensus on consensus' a shared understanding of how to balance inclusivity with decisiveness in a multipolar trading world. The editorial team for this article comprised Alka Mahapatra, Ansh Sethi, and Anshita Tiwari.

III. ACKNOWLEDGEMENTS

The Journal has been fortunate for having support from various quarters. We would like to extend our gratitude to our patron, Prof. (Dr.) Harpreet Kaur, the Honourable Vice Chancellor of National Law University, Jodhpur for her constant support. We would like to thank the Registrar who has been instrumental in ensuring administrative approvals for the Journal are processed in a timely and efficient manner. 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. Bipin Kumar, the Faculty-in-Charge of the Journal. Dr. Kumar has been a cornerstone of the Journal's continued success by providing unwavering strength and support. He has always ensured we had the requisite financial and administrative support we needed to function effectively.

We are extremely thankful to our Consulting Editors, who have been pillars of support to the Journal. They have helped us navigate a plethora of challenges that come with managing a journal. We have benefitted immensely from their advice and recommendations.

Finally, thanks are due to the editors on the Board, who have worked tirelessly to ensure that this issue sees the light of the day.

IV. CONCLUSION

The publication of this Issue also marks the end of our tenure as members of the Editorial Board. Having been associated with the Journal for over four years has been an incredibly rewarding experience for us. Admittedly, managing the Journal and dealing with the myriad challenges that come with it was not easy and constantly kept us on our toes to keep up with the lofty standards that the Journal has maintained.

However, this was also the activity which helped us learn the most and allowed us to be a part of this incredible community. We are now passing the baton of Editors-in-Chief to Alka Mahapatra and Samiksha Lohia, all of whom have been tremendous editors on our Board. We are also pleased to announce the appointment of Bianca Bhardwaj as the Managing Editor and Yug Gandhi as the Executive Editor. We are confident that these Editors will keep up the stellar work that they have done so far, to take the Journal to new heights and for that, they have our best wishes!

On this note, we sign off and thank everyone who has made it such a wonderful experience for us!