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FROM RIPPLES TO WAVES: RETHINKING THE MULTILATERAL TRADING SYSTEM

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I. INTRODUCTION

With Issue 16.1 of Trade, Law *and* Development, we are excited to present to you—our Special Issue on the theme “**Navigating the Murky Waters of Economic Treaties in International Trade.**” This theme was the labour of the efforts of the entire editorial board, since the lengthy discussion that led to its choosing.

The Multilateral Trading System is still suffering from the egregious failure of the Doha Rounds — members of the World Trade Organization (WTO) were unable to agree on revising trade rules despite the fact that the negotiations for the same went on for more than a decade. Why did this happen? WTO Negotiations follow the system of ‘single undertaking’ nothing is agreed until everything is agreed. This means that every single item being negotiated about, is part of the whole and an indivisible package. It can be said that the presence of the single undertaking rule is severely counterintuitive: international trade and commerce takes place in an

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extremely dynamic and ever-changing environment. Thus, achieving an absolute consensus is, essentially, impossible and impractical. The ramifications of the same are damaging — the world is losing out on the growth and development that revised and refined trade rules would have resulted in.

Economic treaties are agreements between two or more countries that are designed to promote economic cooperation and integration. They can cover a wide range of topics, such as trade, investment, financial services, and intellectual property. Economic treaties can be bilateral (between two countries) or regional (between three or more countries). For the purpose of this theme, the scope of economic treaties includes Free Trade Agreements (FTAs), Preferential Trade Agreements (PTAs), Regional Trade Agreements (RTAs), Bilateral Investment Treaties (BITs), etc.

The relevance of focusing on these treaties in the context of a special issue of this journal cannot be overstated. In today's globalised world, they play a crucial role in shaping international trade relations and legal frameworks. These agreements have significant implications for both domestic and international trade law, and they are key drivers of economic integration and globalisation. These economic treaties have evolved to become major instruments of international trade regulation. They are becoming increasingly diverse in terms of coverage, scope, and objectives. These agreements can encompass various aspects of trade, such as tariffs, non-tariff barriers, investment, intellectual property, and labour standards. Analysing the dynamic nature of these agreements is essential for understanding their impact on global trade law. Each agreement has its own unique provisions and conditions, making it important to examine their legal intricacies in the context of international trade law. They can influence trade flows, investment patterns, and economic development. Additionally, they often serve as tools of diplomatic and geopolitical strategy.

In recent months, the United States has recalibrated its trade policy, adopting protectionist measures that reflect its commitment to domestic industry. The reimposition of tariffs on foreign steel and aluminum, coupled with the suspension of the 'de minimis' rule for Chinese parcels, signals a renewed focus on economic security. Simultaneously, a revised approach to U.S.-China relations prioritises trade imbalances and business restrictions over cooperative engagements, marking a significant shift in international economic diplomacy.

Geopolitical realignments continue to reshape global trade strategies. The evolving dynamics between the U.S., Russia, and China are influencing European economic autonomy and supply chain resilience. As major economies embrace 'friend-shoring'—prioritising trade with allied nations—the world is witnessing a move away from multilateral free trade towards more regionalised economic blocs. Such

shifts display the need for new treaty frameworks that balance economic interdependence with national security concerns.

Environmental policies, too, are exerting a profound influence on trade negotiations. The European Union's recalibration of climate accounting regulations reflects a delicate balancing act between environmental ambitions and economic competitiveness. Meanwhile, the green transition has heightened global competition for critical minerals, compelling nations to rethink resource dependencies and trade partnerships. In this context, economic treaties are increasingly incorporating sustainability provisions, reflecting the intersection of environmental stewardship and global commerce.

India, as a key player in the global trade landscape, has embraced a dynamic Foreign Trade Policy designed to enhance its economic standing. By facilitating trade settlements in Indian Rupees and streamlining export promotion mechanisms, India's evolving policy framework exemplifies the strategic recalibration necessary to thrive in an era of economic uncertainty. This special issue offers an in-depth exploration of these transformative trends, bringing together leading authors to examine the evolving role of economic treaties.

Trade, Law *and* Development has always provided a forum for the exchange of ideas and constructive debates on leading issues in the sphere of the Multilateral Trading System. In the Special Issue 14.1, the journal focused on crucial issues revolving around the WTO and the Multilateral Trading System. This time, to continue with our determined approach of addressing the most contemporary and crucial issues pertaining to the Multilateral Trading System, we study the Multilateral Trading System from a different, unique lens. We invite our readers to engage with these discussions, gaining insights that will inform the future of global economic governance.

II. CONTENTS OF THE ISSUE

This special issue explores the evolving landscape of economic treaties, addressing key challenges and emerging trends shaping global trade and investment governance. It critically examines the reform of international investment dispute mechanisms, particularly from the perspective of developing economies, while also highlighting the growing significance of South-South arbitration frameworks. The role of technology in trade enforcement is another focal point, with discussions on how artificial intelligence can enhance compliance with sustainable development commitments. Shifting geopolitical dynamics are also assessed, particularly in the context of strategic trade policy adjustments and regional realignments. The intersection of economic treaties with pressing global issues—such as renewable energy transitions and the digitalisation of trade—further highlights the complexity

of contemporary trade agreements. Additionally, this issue offers reflections on international economic law through the lens of specific jurisdictions, providing valuable insights into their evolving roles within the broader trade architecture. By engaging with these critical themes, this collection contributes to a deeper understanding of the intricate and often contested nature of economic treaties in today's world.

We kickstart the Issue with Aishwarya Alla and Samriddhi Guha's article, which presents a Third World Approaches to International Law (TWAIL) critique of the European Commission's proposal for a Multilateral Investment Court (MIC). The authors examine how the MIC, despite its objective to enhance transparency, consistency, and impartiality in investor-state dispute settlement (ISDS), entrenches systemic barriers for developing economies. The article begins with an overview of the ISDS reform debate under United Nations Commission on International Trade Law (UNCITRAL) Working Group III, highlighting the MIC's two-tiered adjudicatory structure with state-appointed judges. It then delves into TWAIL perspectives, arguing that the MIC perpetuates European dominance over the global investment regime, reinforcing asymmetries between developed and developing states. The authors critically assess the MIC's procedural and substantive limitations, particularly its failure to address historical power imbalances in international economic governance. Further, the article explores how the MIC's design risks replicating existing biases in ISDS, with structural constraints limiting the participation and agency of Global South nations. The authors argue that the MIC's procedural innovations, such as appellate review and standing judicial appointments, may strengthen rule harmonisation but do little to counter the political and economic marginalisation of developing states. The article reinforces the need for a more inclusive and decentralised reform process, advocating for alternatives that empower developing economies within the international investment law framework. The editorial team assisting Ms. Alla & Guha for this article consisted of Shambhavi Uniyal, Bianca Bhardwaj, and Aaryan Bagrecha.

Further, Dr. James J. Nedumpara chronicles the shift in India's approach to negotiating trade agreements post-2020, especially after exiting the Regional Comprehensive Economic Partnership Agreement (RCEP). The article examines India's concerns with the Look East policy, particularly regarding China's rise, and emphasises the importance of developing domestic resilience for more ambitious trade agreements. It argues that India must reconsider its positions on trade and non-trade issues to engage in meaningful agreements with advanced countries while preserving necessary policy space. The article begins by introducing the RCEP and India's unique economic landscape, characterised by both advanced technological sectors and traditional small-scale industries. It then delves into India's pre-pandemic trade policies, its relationship with China, and the reasons for withdrawing from the RCEP. The author critically assesses India's new approach towards FTAs

in the post-pandemic era, including its response to China's geopolitical influence. Further, the article explores India's efforts to construct a resilient economy through initiatives like Aatma Nirbhar Bharat, aimed at self-reliance and reducing import dependence. The article concludes by highlighting the need for a shift in trade policy to achieve ambitious export targets and build stronger relationships with the West while transforming relationships with East Asian countries into mutually beneficial partnerships. It acknowledges the influence of China's manufacturing prowess on India's FTA strategy and discusses the determinants guiding India's approach post-RCEP. The editorial team assisting Dr. Nedumpara for this article consisted of Alka Nanda Mahapatra, Yug Gandhi, and Anshita Tiwari.

By creating barriers, they disproportionately affect smaller economies and challenge multilateral trade frameworks like the WTO's Covered Agreements, which were never designed to handle digital trade complexities. This has pushed many nations toward regional and plurilateral agreements, raising concerns about growing knowledge gaps between developed and developing countries. To address these challenges, the author explores digital sovereignty as an alternative, advocating for capacity-building and technical training rather than restrictive measures. The article calls for clearer, more transparent regulations and suggests adapting WTO rules to better reflect the realities of digital trade. It argues that proportionality and necessity tests, common in WTO jurisprudence, could help balance state interests with free trade principles. The author suggests rethinking traditional legal concepts like territoriality and embracing digital governance to create a more inclusive and sustainable global digital economy. The editorial team assisting Mr. Moreno for this article consisted of Samiksha Lohia, Manvi Goyal, and Ruth Sarah Abraham.

Mr. Rishabha Meena and Mr. Advait Rao explore the challenges faced by renewable energy policies under WTO law, and the role of FTAs in promoting renewable energy. The authors argue that while renewable energy is essential in combatting climate change, the WTO's current framework often hinders its development due to a lack of appropriate rules to govern renewable energy subsidies and support measures. The WTO's "source-neutral" approach treats renewable and non-renewable energy equally, ignoring the environmental benefits of renewables and the negative externalities of fossil fuels. This has led to disputes over feed-in-tariffs, which are seen as trade-distorting. The article analyses how FTAs address renewable energy, noting that while some, particularly those involving the EU, include standalone chapters on energy and renewable energy, others address the issue indirectly through environmental or sustainable development provisions. However, FTAs often lack enforceable commitments and fail to resolve core issues like local content requirements. The authors conclude by calling for reforms in WTO rules to better accommodate renewable energy subsidies, suggesting either a separate agreement for renewable energy or environmental exceptions in the Agreement on Subsidies and Countervailing Measures. They emphasise the need for a global,

coordinated approach to renewable energy policies to effectively address the climate crisis. The editorial team assisting Mr. Meena & Rao consisted of Ishaan Pant, Y. Leela Krishna Reddy, and Annette Sara Abraham.

Our next article by Mr. T. M. Chiến discusses the evolving landscape of international trade law, in light of AI's use in Sustainable Development Commitments in FTAs. It begins by examining the rapid expansion of digital economies and the corresponding legal challenges that arise in balancing trade liberalization with national security and consumer protection. A key focus of the article is the debate surrounding data governance and cross-border data flows. The author highlights the growing concerns among nations regarding data sovereignty, privacy, and cybersecurity, which have led to regulatory divergence. The author discusses key international agreements and frameworks, such as the WTO and regional trade pacts, that attempt to harmonise digital trade rules while accommodating domestic interests.

The article further delves into the role of digital services and e-commerce in shaping contemporary trade relations. By analysing recent trade disputes and negotiations, Mr. Chiến features the tensions between developed and developing nations in accessing digital markets and infrastructure. The author argues that equitable digital trade policies must consider economic disparities and technological capabilities. The author advocates for a balanced approach to digital trade regulation—one that fosters innovation and economic growth while ensuring compliance with human rights and security standards. The article accentuates the necessity of international cooperation in crafting adaptable and inclusive digital trade policies. The editorial team assisting Mr. Chiến for this article consisted of Ishaan Pant, Sonali P. Raju, and Divya Chidambaram.

Ms. Julia Sochacka, in her note, examines how the concept of coloniality influences South-South investment arbitration. The author describes 'coloniality' as the lasting influence of the hierarchical structures from colonial times, which still dominate and shape global investment through their knowledge and legal frameworks. In the traditional investment system, capital-exporting states from the Global North hold disproportionate power, leaving the Global South in a subordinate position. The article explores whether these colonial power imbalances persist even when investment disputes occur solely between Southern states. A claim is made that the ISDS system contributes to these inequalities, favoring investors over host states. Further, the author critiques the dominance of Western arbitrators, legal frameworks, and institutional biases that perpetuate these imbalances, even within South-South disputes. To address this issue, the author advocates for the regionalization of investment arbitration. It is argued that shifting dispute resolution to regional arbitration centers could decolonise investment law, allowing for greater consideration of local legal traditions, economic needs, and sustainability concerns.

The author emphasises that this would be a step toward balancing the playing field and reducing the colonial legacy embedded in international investment law. The editorial team assisting Ms. Sochacka for this note consisted of Alka Nanda Mahapatra, Ansh Sethi, and Raghunandan N.

Lastly, we have Dr Guiliu Luo's review of the book "Hong Kong as an Actor in International Economic Law: by Julien Chaisse." It provides a critical overview of how the book examines Hong Kong's role in international economic governance. First, there is a discussion on the book's exploration of Hong Kong's unilateral policies, emphasising its low taxes, free-market system, and independent foreign exchange controls, which distinguish it from Mainland China. Then the author reviews Dr. Chaisse's analysis of Hong Kong's bilateral economic relations, particularly its free trade and investment agreements with partners such as New Zealand and Association of Southeast Asian Nations, as well as the challenges posed by the revocation of its Special Trading Status with the United States. On multilateralism, Luo highlights Hong Kong's participation in institutions like the WTO, ICSID, and UNCITRAL particularly in global dispute resolution and investment law. A key focus of the review is the book's discussion of Hong Kong's evolving relationship with China, especially how the "One Country, Two Systems" framework influences its foreign investment law. She also examines the book's treatment of the WTO's Origin Marking Requirement ruling and Hong Kong's economic rivalry with Singapore. Luo praises Chaisse's comprehensive approach, noting its depth in addressing trade, investment, and taxation issues. Luo concludes that the book is a valuable resource for scholars and policymakers seeking insight into Hong Kong's place in international economic law. The editorial team assisting Dr. Luo for this article consisted of Shambhavi Uniyal, Yug Gandhi, and Anshita Tiwari.

III. WHAT COMES NEXT?

The publication of this issue is a significant milestone for the Trade, Law and Development, a journey that was filled with both challenges and achievements. From the technical setbacks of our previous website becoming non-functional, necessitating a temporary solution on WordPress, to its eventual full restoration, our journey has been anything but linear. As Editors-in-Chief, we stepped into our roles with immense passion and gratitude for this journal, which has been both a source of learning and inspiration for us. We took the responsibility of addressing structural and editorial challenges while ensuring the seamless publication of this issue. In retrospect we are filled with immense gratitude for the steadfast support and guidance of our Chief Editor, Prof. (Dr.) Bipin Kumar and the unwavering dedication of our Editorial board.

As we move forward, our vision is to enhance the journal's editorial processes, fostering greater transparency and efficiency in our internal operations. We are committed to upholding the highest standards of academic rigor, ensuring that each submission undergoes a meticulous review process that not only maintains the integrity of the journal but also offers authors an enriching intellectual engagement.

Since its inception, Trade, Law *and* Development has remained a cornerstone in its mission to provide a platform for scholars, practitioners, and policymakers, particularly from developing countries, to share their perspectives on pressing issues in trade and investment law. Our Special Issue 16.2 continues to fulfil the same mission featuring a diverse range of voices that contribute meaningfully to contemporary discourse in the field.

We take immense pride in being an Open Access journal, with all our issues freely available on [tradelawdevelopment\[dot\]com](http://tradelawdevelopment.com). In addition to our digital presence, we also publish in print and would be delighted to ship copies to interested readers.¹

Lastly, following in the footsteps of our predecessors carrying forward their dedication towards the journal's growth as a leading platform for critical engagement, fostering meaningful discourse, and shaping the global conversation on trade and investment law.

IV. ACKNOWLEDGEMENTS & CONCLUSION

Trade, Law *and* Development continues to uphold its legacy as one of the most respected and influential trade law journals worldwide. This achievement would not have been possible without the unwavering support and encouragement from numerous individuals and institutions who believe in our mission of fostering critical discourse on international trade and economic law. As we present this special issue, it is only fitting that we express our deepest gratitude to those who have played pivotal roles in our journey thus far.

The Journal owes much of its continued success to the strong institutional support from National Law University, Jodhpur. First and foremost, we extend our heartfelt thanks to our patron, the Honourable Vice Chancellor, Prof. (Dr.) Harpreet Kaur, for her unwavering support and visionary leadership. Her commitment to academic excellence and encouragement of scholarly pursuits has created an environment where intellectual curiosity and rigorous research thrive.

We are equally grateful to Dr. Sunita Pankaj, the Registrar of the University, for her invaluable administrative assistance and for ensuring that all our logistical needs and

¹ For more enquiries, you may reach out to us on [editors\[at\]tradelawdevelopment.com](mailto:editors[at]tradelawdevelopment.com).

necessary approvals are met with efficiency and grace. Without her steadfast support, many of our endeavours would not have been realized.

Additionally, our sincere thanks go to Mr. Vinod D., the Head Librarian of the University, whose dedication has been instrumental in maintaining the integrity and accountability of our subscription database. His meticulous management has ensured that our Journal reaches its readers promptly and seamlessly. The encouragement and promotional support from the university administration have been invaluable in helping us retain our esteemed position in the academic community.

The guiding hand of dedicated faculty has been fundamental to the Journal's success. We owe an immense debt of gratitude to Prof. (Dr.) Bipin Kumar, the Chief Editor of the Journal. His unwavering support and insightful guidance for the Journal's financial and administrative needs have empowered us to operate independently and effectively. Dr. Kumar's trust in our vision and his willingness to provide strategic counsel have played a pivotal role in ensuring the Journal's continued excellence and relevance in the field of trade law. His approach to leadership has not only provided us with the necessary resources but has also inspired us to innovate and challenge conventional perspectives. It is this spirit of academic freedom and intellectual independence that distinguishes the Journal as a pioneering voice in trade law scholarship.

The Journal stands tall today on the strong foundation laid by those who came before us. We humbly acknowledge that our achievements are built upon the hard work, dedication, and vision of our predecessors. The wisdom and experience passed down by former editors have been invaluable, providing us with a blueprint for success and inspiring us to uphold the standards they set. Our Consulting Editors have been a constant source of guidance and motivation, offering their expertise and mentorship to the current Board. Their continued involvement has ensured that the Journal remains intellectually rigorous and relevant. We extend special thanks to Mr. Manu Sanan, Mr. Ali Amerjee, and Mr. Shashank Kumar, whose generosity and timely intervention ensured the continuity of the Journal's digital presence by facilitating the necessary domain renewal payments. Their commitment to the Journal exemplifies the spirit of community and solidarity that has always been the hallmark of Trade, Law *and* Development.

No publication can achieve excellence without the hard work and dedication of its editorial team. At the heart of Trade, Law *and* Development are the editors on the Board, whose passion, perseverance, and meticulous attention to detail have ensured that each issue upholds the highest standards of academic integrity and scholarly value. Their commitment to producing a journal that challenges conventional thinking and fosters critical discourse is commendable. Despite the challenges of

tight deadlines and rigorous peer-review processes, the editorial team has worked tirelessly to bring this issue to fruition. Their teamwork, resilience, and dedication to maintaining the Journal's legacy are deeply appreciated. They are the unsung heroes whose efforts ensure that the Journal remains a trusted platform for global thought leadership in trade law. We would like to especially thank Ms. Nandini Tripathi, our Technical Editor, for designing the new website of the Journal.

As we continue to navigate the complex and ever-evolving landscape of international trade and economic law, we remain committed to fostering critical discussions that contribute to the development of just and equitable global trade systems. With the continued support of our patrons, mentors, predecessors, and dedicated editorial team, we are confident that Trade Law *and* Development will not only retain its esteemed position but also pave the way for new and impactful scholarly contributions. To all our supporters, contributors, and readers, we extend our heartfelt gratitude. It is your belief in our vision that motivates us to strive for excellence with every issue. As we move forward, we do so with a sense of purpose and responsibility to continue the legacy of Trade, Law and Development as a beacon of scholarly inquiry and thought leadership in the field of international trade law.