

commodity to be exported to developed countries. The recognition of the value of SDT policies is increasingly evident in the negotiations towards a WTO Joint Initiative on E-commerce and has been also observed in some FTAs, highlighting again that Mishra's concrete proposals are in line with current thought in digital trade rulemaking.

Although the contents of the book are superbly well-rounded, there is perhaps an opportunity to deepen the book's analysis by delving into the nexus between global data governance and intellectual property (IP) rights, especially given the author's dedication of a chapter to discussing competition challenges in digital markets. It is noteworthy that IP and competition law represent complementary facets of regulatory mechanisms, both having an impact on market dynamics and the promotion of innovation. IP rights foster innovation and creativity by granting exclusive rights – especially evident in data contexts through copyright and trade secrets. But IP rights can also impede competition in data markets, underscoring the importance of data access and sharing mechanisms, as examined in Mishra's work. Despite this intersection, there is a gap in the digital trade literature analyzing this aspect. However, if one of the objectives of facilitating cross-border data flows is to stimulate innovation, and hence growth, scholarly attention should also be directed towards assessing whether existing IP rules, such as those set out in the TRIPS Agreement or FTAs, align with the progressive landscape of current digital trade rulemaking or if they inadvertently may hinder progress.⁴

Overall, Mishra's book is a much-welcomed scientific analysis of an issue prone to politicization, making it an excellent source for anyone seeking to understand the complexities, but also possibilities, of interfacing global data law with international trade law. Moreover, the book's significance transcends its thorough legal analysis as it presents compelling possibilities that warrant thoughtful consideration in the ongoing discussions surrounding trusted data transfers, for instance, in the context of the G7 and other fora. The book also starts an important conversation on how to operationalize each of the author's proposals, and whether they could in fact deliver the intended benefits – a key aspect since we are far from a harmonious transnational regulatory framework.

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Alan W. Wolff, *Revitalizing the World Trading System*

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Readers of this journal know well that these are difficult times for the World Trade Organization (WTO) – interesting times even, in the words of the old blessing/curse. Of course, many of the problems faced by the WTO are simply the broader problems of the world washing up – not always gently – on the shores of Lac Léman. The WTO cannot solve the broader problems of

⁴See for example, M. Burri and M. Vásquez Callo-Müller (2024) 'Charting the Course: TRIPs-Plus Agreements and the Intersection of Intellectual Property with Digital Trade', *American University Law Review* 73, 101 (forthcoming).

the world. Moreover, as this book clearly explains, due to its nature and structure, at present the WTO struggles to solve even its own problems.

The book is an excellent guide to the situation in which the WTO finds itself, due to both its successes and its failures, and to the ways in which the WTO's capabilities and limitations could be adapted to move beyond the current difficult situation. Both experienced 'insiders' and those with less experience in the WTO system should find this to be an engrossing read.

The author, Alan Wolff, brings almost unparalleled experience in international trade law and politics to the subject. Most recently, Mr Wolff served as Deputy Director-General of the WTO (2017–2021), including a period sharing the responsibilities of the Director-General in the interregnum between the resignation of Director-General Azevêdo and the beginning of Director-General Okonjo-Iweala's term. Previously, Mr Wolff had a long and distinguished career in the private sector, serving as Chairman of the US National Foreign Trade Council (NFTC) and practicing law in major international law firms. He had a distinguished record of government service in the United States, serving in both Democratic and Republican administrations in a variety of roles, including serving as acting head of the US Delegation during the Tokyo Round negotiations. Thus, Mr Wolff has been a constant and very observant participant in the regulation of the multilateral trading system since the 1970s.

The book is divided into six parts, which could be grouped roughly under the headings of past, present, and future. Parts I and II explain the 'past' – the origins and history of the multilateral trading system up to the inception of the WTO. These parts conclude with a very interesting brief history of the WTO as seen through snapshot histories of its biennial Ministerial Conferences, ending with the 12th Ministerial Conference in Geneva in June 2022 (the book was, of course, sent to press before the recent 13th Ministerial Conference in Abu Dhabi in February 2024). The 'present' is covered by Parts III and IV, which contain chapters on the current workings of the WTO and on each of the major substantive issues facing the WTO, such as dispute settlement, agriculture, e-commerce, and development. Finally, Parts V and VI (the conclusion) look to the 'future', laying out Mr Wolff's thoughts on why and how the WTO should be reformed.

He begins with an interesting run through the history of trade, showing the linkages between the evolution of trade and of civilization itself, from before the Bronze Age to the present era. The reason for this is not merely to educate but to lay the ground for a point Mr Wolff returns to in his conclusion. The importance of trade indicates, in his words, that the 'King Canute approach to international trade, calling for the tide of trade to cease to flow, will also fail'. Hence, in Mr Wolff's view, there is a need for international cooperation to be centred in the WTO.

In his chapter on the history of the founding of the multilateral trading system, Mr Wolff praises the role of US Secretary of State, Cordell Hull, whose vision of non-discriminatory trade between nations as promoting peace was a key driver of US trade policy in the 1930s and into the post-Second World War period. Mr Wolff notes, however, that Hull would hardly be happy with the manner in which exceptions have been carved out of the principles of non-discrimination and reciprocity over the years. Nevertheless, both intellectually and generationally, Mr Wolff is a firm believer in the international institutions and order created after World War II.

The two chapters on the core elements of the world trading system and on what Mr Wolff considers the twenty values of that system are excellent reading for anyone interested in understanding the structure and purpose of the multilateral trading system. As he eloquently concludes the first of these chapters, 'the essence of the world trading system is creating a world order acceptable to and supported by its members, who retain in the extreme full sovereignty over their trade but have lent some of this precious commodity to a common endeavor for the benefit of all'. The issue of the extent to which WTO Members remain willing to lend some of their sovereignty to a common endeavor is, of course, a perpetual question in the WTO.

The chapters on the Tokyo and Uruguay Rounds of trade negotiations and the WTO's Ministerial Conferences make interesting reading. The snapshots of the Ministerial Conferences are a clever way to summarize the evolution of the WTO's standing and work

over the past almost thirty years. In particular, Mr Wolff describes the 2nd Ministerial Conference in 1998 (MC2) as ‘in some respects, the apogee’ of the WTO. The number and prominence of the world leaders making statements at the Conference – including Blair, Chretien, Cardoso, Castro, and Clinton – has perhaps not been matched at subsequent Ministerial Conferences. In particular, Mr Wolff focuses on the statement by President Nelson Mandela of South Africa that ‘the building of a multilateral rules-based system is fundamentally correct’, but that the system should not be shaped primarily by the ‘preoccupations and problems of the advanced industrial economies’, Mr Wolff also refers to the linkages between trade and peace made by Tony Blair, in the context of the Good Friday Agreement in Northern Ireland. He considers, however, that the leadership and engagement shown at MC2 has not been matched subsequently.

At several points, Mr Wolff emphasizes the amount of work and diplomacy that takes place on an everyday basis at the WTO, particularly in the chapter entitled ‘A week at the WTO’, which describes in some detail the day-to-day work of the WTO and its various committees. To some readers, this may seem like an excessive focus on minutiae. When the press tends to focus on the WTO’s challenges and failures, however, these descriptions are very useful in showing the extent to which cooperation and discussion on trade problems in the WTO are now deeply ingrained elements of international trade.

Moving towards the future, Mr Wolff describes clinically the challenges he sees facing the WTO – a blocked dispute settlement system; a negotiating function, which, due to the consensus requirement, struggles to make progress; and an inadequate executive function.

On dispute settlement, Mr Wolff supports binding dispute settlement as essential to the health of the rules-based multilateral system. While he notes that it is not essential to have a two-tier system (with an appellate level), he notes that there seems to be a strong preference among most WTO Members for a two-tier system. He is critical of overreach by the Appellate Body, which ‘never found a case that it could not address, and never found a gap in the rules that it could not fill’ and, in his view, lacked an ‘institutional’ viewpoint that would protect the role of dispute settlement in the system. Mr Wolff provides an extensive list of suggestions for reform of the dispute settlement system, many of which build on suggestions from the earlier efforts at reform of dispute settlement, including those led by former WTO Deputy Director-General Alejandro Jara and former New Zealand Ambassador David Walker (some are also reflected in the most recent informal discussions facilitated by Marco Tulio Molina Tejada of Guatemala). One novel suggestion was to have an independent Office of Legal Counsel (OLC) within the WTO that would advise the Director-General and Secretariat on legal issues in disputes and would submit *amicus curiae* briefs to panels). It is not clear whether Members would consider this OLC to be ‘independent’ or whether they would see it as having too much entrenched legal power.

Regarding the negotiating function, Mr Wolff considers that decision making by consensus, either positive or negative, is ‘a large part of the explanation for the WTO’s various predicaments’. He thinks that this needs to be rethought and that: ‘the WTO’s mantra that the institution is “member-driven” must be discarded’. He recognizes that ‘it is obvious that final decisions are to be taken by the WTO’s members, sometimes collectively, and always individually’. Thus, policymakers need to be convinced that investment in the WTO as a regulator of the multilateral trading system is worthwhile. How exactly this is to be achieved remains to be seen.

Mr Wolff is very committed to the WTO’s transparency and trade monitoring functions, which, like the committee work, often go unremarked. He strongly favours expanding these functions, including developments such as counternotifications. In this vein, he also favours a stronger executive function for the WTO Director-General (who, at present, has limited executive authority) and a stronger role for the Secretariat. He notes that little thought was given to these issues during the creation of the WTO. They remain a challenge for the organization. He quotes a statement by the then-Chair of the WTO General Council, Ambassador John Weekes of Canada, which he describes as still relevant today: ‘Active members are essential for the WTO’s success,

but the WTO members also look to the Director General and the Secretariat to provide leadership, assistance and advice. The power of decision must always rest with the members, but the organization needs a secretariat which offers ideas on how to create possible solutions to the many challenges we face.’ In Mr Wolff’s view, this means that the Director-General should be ‘forward-leaning’ and that the Secretariat should not be afraid to be pro-active in seeking common ground on new issues among WTO Members, even if this means getting ahead of the positions of other Members.

Perhaps the best possible praise for this book is that it is simply impossible to do any justice to the breadth and depth of its ideas in the space available for this review. It will become a much-thumbed resource for all discussions on the evolution of the WTO both as an institution and in terms of the substantive issues it considers. It will perhaps also be ultimately reassuring for the WTO’s supporters in these ‘interesting’ times. Mr Wolff concludes optimistically: ‘the WTO is and will remain a place of hope: for the least developed, for the vulnerable, for the conflict-afflicted, for the industrialized, for any country seeking economic advancement for its people – and that is a category that must include all’.

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Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology*

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Anu Bradford, who is Henry L. Moses Professor of Law and International Organizations at Columbia Law School, is probably most well-known for coining the term ‘Brussels Effect’ in her 2020 book of the same name.¹ In the book, she describes and explains how the laws and regulations devised by the European Union (EU) to make its single market operate more effectively also influence the rules that other countries and/or international bodies adopt to govern their markets.

Bradford has now done it again, producing another remarkable book that has received a lot of attention in academia and beyond. For instance, it was recognized as one of the best books of 2023 by *The Financial Times*.

What is perhaps most remarkable about *Digital Empires* is that it brings together and organizes coherently a lot of discussions/debates and issues about business and governments in the so-called ‘digital economy’: e.g., surveillance capitalism, big tech, tech war, AI governance, cyber-security, de-coupling, de-risking, etc. It is all in there!

¹A. Bradford (2020) *The Brussels Effect: How the European Union Rules the World*. Oxford University Press. In fact, she first introduced the term in an article several years before: A. Bradford (2012) ‘The Brussels Effect’, *Northwestern University Law Review* 107(1), 1–68.