BOOK REVIEWS

Emerging Powers and the World Trading System: The Past and Future of International Economic Law
by Gregory Shaffer
Cambridge University Press, 2021

Attention to policies, laws, regulations, and practices of emerging powers, such as Brazil, China, and India, abounds as their influence over global governance is increasingly felt. So do discussions over the puzzling disenchantment of the United States with the very international economic order (characterized by the World Trade Organization) it built.[1] But Gregory Shaffer, a world-renowned legal realist, stands out by offering an exceptionally in-depth, comprehensive, and pragmatic diagnosis of the rise of the emerging powers and the impacts they bring about in his new book *Emerging Powers and the World Trading System*. Shaffer convincingly addresses the key question – '[h]ow has the international trade and broader economic legal order changed since the WTO's creation because of Brazil's, India's, and China's rise and their development of trade law capacity?' (p. 9) and resolves the paradox of why the United States 'now calls into question the trade law system it created, while emerging economies that long criticized that system for its bias in favor of US interests defend it' (p. viii).

The book has nine chapters, organized into three parts. Part I lays down the foundation by first introducing the book's purpose, context, and organization (Chapter 1). Chapter 2 describes the analytical framework that focuses on changes in five dimensions – law, institutions, professions, networks, and practices – within countries and at the international level simultaneously, and key concepts such as the theory of trade law capacity. Chapter 3 then identifies four challenges – technical capacity, financial resources, political and economic repercussions from powerful states, and internal governance obstacles – that countries face in developing trade law capacity.

Part II – the core of the book – systematically applies the analytical framework of transnational legal ordering and trade law capacity theory and examines Brazil (Chapter 4), India (Chapter 5), and China (Chapters 6 and 7). It documents how the three emerging powers have transformed themselves – in response to the WTO – through changes in profession, institutions, professionals, networks, and practices, and how they now seek to impact the WTO and the global trading system.

The chapter on Brazil (Chapter 4) surveys how it became the first emerging economy to build the legal capacity to seriously challenge the US and EU at the WTO and created models that India and China later borrowed. Shaffer and his co-author Michelle Ratton Sanchez Badin detail

---

[1]Contrast with J.T. Gathii and S. Puig (2022) 'The West and the Unravelling of the Economic World Order: Thoughts from a Global South Perspective', in David L. Sloss (ed.). *Is the International Legal Order Unraveling?* Oxford University Press (stating that 'The unraveling of the rules-based post-World War II order at the current moment [the US's determination to undermine multilateral institutions that do not play by its rules] is not surprising for countries of the Global South').

reorganizations of the Brazilian government and highlight the critical role of the private sector in shoring up domestic legal capacity and assisting the government in WTO litigation and negotiations. Public–private partnerships enabled the spread/dissemination of expertise among government officials through a specialized WTO dispute settlement division in the Ministry of Foreign Affairs, the Brazilian WTO mission in Geneva and an internship program within it, and a private sector consisting of trade associations, law firms, economic consultants, academia, and think tanks. This knowledge loop has been key in shaping Brazil's negotiation proposals and litigation strategy in WTO disputes in which Brazil has challenged the US and EU. It has also enhanced Brazil's domestic expertise and produced a WTO Director General. Brazil also used trade law capacity to pursue its development goals and broaden policy space in international policy discussions. Brazil advanced intellectual property rights (IPRs) reform to provide stronger protection for domestic industries while loosening protection for pharmaceutical patents under the compulsory licensing mechanism concerning public health. Responding to controversial investment dispute decisions, Brazil also formulated a model investment treaty that focuses on investment facilitation and dispute avoidance – i.e., the Brazilian model – and worked to disseminate that model treaty at the WTO and through a web of preferential trade and investment agreements, including Mercosur. Shaffer and co-author persuasively show how Brazil, through public–private partnerships, emerged as a leader in shaping the transnational economic legal order because of its early investments in building trade law capacity.

Chapter 5, co-authored by Shaffer and James Nedumpara and Aseema Sinha, discusses India's transformation to a new developmental state model driven by the government and elite. It also addresses the important role of the WTO and the United Nations Conference on Trade and Development (UNCTAD) and the Advisory Centre on WTO Law (ACWL). Institutionally, India adopted reforms to enhance coordination between the Ministry of Commerce and Industry (MCI) and its WTO mission in Geneva. Legislatively, to protect its interests, India revised its trade remedy laws and laws regarding IPR protection of patents and traditional knowledge. To develop and advance its trade strategy, India transformed its state–business relations by establishing expertise–dissemination channels between government and lawyers (who are often foreign-educated), academia (economists and legal scholars), business associations, government-sponsored think tanks, and civil society. India, also, formed an internship program based on Brazil's model to diffuse trade law capacity between law schools, private Indian lawyers, international law firms, and government-affiliated think tanks, thereby creating expertise in indigenous trade law. Equipped with trade law capacity, India advocated (with Brazil, China, and other developing countries) for more protection for its agricultural sector, blocked the joint EU–US proposal on agriculture, and (in contrast to Brazil and China) opposed broadening IPR protection and initiatives on investment facilitation and e-commerce at the WTO. However, at the WTO, India led negotiations that produced the Doha Declaration on TRIPS and Public Health and pushed for liberalization in services trade, in which it has a comparative advantage. Assisted by the ACWL and its internal trade law expertise, India successfully challenged the US and EU's trade remedy measures and the practice of 'zeroing' shaping WTO jurisprudence. It also strategically used the WTO dispute settlement mechanism to further its industrial policies and to protect its sensitive industries, much to the disappointment of the United States. As its trade law capacity grew, India advanced its interests by exporting its new model investment treaty, which is highly protective of state regulatory and judicial sovereignty and limits protection for investors. This chapter thus conclusively shows how trade law capacity has assisted India in shaping the transnational legal order.

Part II concludes with two chapters (nearly 100 pages jointly) dedicated to China because of its huge impact ('greatest' in Shaffer and co-author Henry Gao's own words) on the trade regime. Shaffer and Gao assess the transnational legal ordering's effects on China (Chapter 6) before examining how China recursively affects the transnational legal order (Chapter 7).

Chapter 6 starts by recounting the political and institutional challenges that China faced when joining the WTO. It reminds us of the sweeping institutional and legislative changes that China agreed to undertake to join the WTO: agreeing to/implementing deep tariff cuts to levels much lower than those of both Brazil and India, liberalizing services trade, disciplining its state-led economy, ensuring fair competition, enhancing IPR protection, establishing independent judicial and administrative review mechanisms, foregoing export taxes, subjecting itself to treatment as a 'nonmarket economy' for a 15-year period, and revising and cleaning up over 3,000 laws and regulations at both central and local government levels. Shaffer and Gao contend that WTO accession served as a catalyst for reformers within China.

Chapter 6 then details how China built and disseminated trade law capacity through a government-led model, e.g., government-sponsored WTO-related training to educate officials (including bringing officials to Geneva to observe WTO dispute proceedings), judges, scholars, lawyers, and the public on WTO laws. Institutionally, China reorganized central and municipal government agencies, formed 'WTO Centers' at the provincial level (though these later faded), and established government- and university-affiliated think tanks. China reformed legal education and brought scholars to the WTO in Geneva to observe legal proceedings. Like Brazil and India, by hiring both foreign and Chinese law firms to work on WTO cases, China cultivated a trade law profession that contributed to the transformation of China's legal culture. Switching from defense to offense, China successfully challenged US trade remedies at the WTO as it gained trade law capacity while revising and implementing its own trade remedy laws to protect its domestic industry, spurring US discontent. China also learned and used traditional WTO negotiating principles of reciprocity and Special and Differential Treatment in WTO negotiations to protect its policy space and state-led development model, and to coalesce with developing countries, challenging US dominance.

Chapter 7 then examines China's 'dramatic moves in shaping the international economic legal order' (p. 221) through the 'state-led, infrastructure-based development model' (p. 224) and 'a new vision of placing itself at the center of the transnational legal ordering' (p. 222). Shaffer and Gao contend that China's practices mimic, but repurpose existing Western models, using the Belt and Road Initiative (BRI) to exemplify the China Model. Shaffer and Gao consider the China Model as a decentralized economic governance model (an open model contrary to the US and EU club model) involving webs of finance, trade, and investment initiatives grounded in soft law like memoranda of understanding and private law contracts, while formal treaties play a background and complementary ordering role. Unlike the Western model, China uses laws to create close ties rather than to change other states' domestic institutions, thus not involving deep integration of norms. However, values are espoused when terms such as 'mutual respect', 'win-win development', and 'harmony' are used as part of a 'community of shared destiny'. Through the BRI, China's export standards potentially challenge US and EU dominance in standard setting; it refines its legal prowess by establishing the China International Commercial Court under the Supreme People's Court, and specialized IP courts and tribunals, and it strengthens its financial influence through the formation of Asian Infrastructure Investment Bank and New Development Bank. In formal trade and investment agreements, China puts more emphasis on policy space and national sovereignty than the US and EU, but China remains reluctant to transformational reform of the existing legal framework, *inter alia*, investment laws, unlike Brazil and India. When promulgating indigenous innovation policies, China learns from developed countries, e.g., Germany ('Industry 4.0' project) and the United States ('Industrial Internet' initiative). But advanced countries remain concerned over these innovation policies and their implementation. Such external concerns can be catalytic to China's further reform as it adjusts and adapts. Shaffer and Gao conclude Chapter 7 by predicting that the future of global economic governance will be 'a decentralized ecology of coexisting and competing transnational institutions' (p. 268).

Through concrete examples, Part II shows the strikingly similar path Brazil, India, and China followed to develop trade law capacity despite significant and sometimes stark differences in their political systems, institutions, the roles of the public and private sectors, their legal systems, and cultures. All three faced enormous domestic challenges (institutional and political) and historical baggage, and yet, they were able to overcome these through government-led transformation and private participation. All three were at first 'rule takers' under the General Agreement on Tariffs and Trade (GATT) and the WTO (examples of catalytic events include *Brazil–Aircraft* (*Embraer*) and *Brazil–Patent Protection* against Brazil and *India–Quantitative Restrictions*, *India–Patents*, and *White Industries* against India)[2], then became 'rule shakers,' and now strive to be 'rule makers' (e.g., BRI). Part II also reveals how the three used trade law capacity to manage complicated trade relationships among themselves, e.g., Brazil's WTO complaints against China and India, and Brazil and India's absence from BRI. Shaffer and co-authors thus clearly demonstrate the dual impacts of transnational legal ordering on emerging economies: it equips them to defend domestic policy goals internationally, while pursuing policy changes and experimentation domestically.

Part III diagnoses the United States' disenchantment (Chapter 8) – the result of above-discussed changes on incumbents – and offers advice for going forward (Chapter 9). The source of the United States' disenchantment with the WTO, explains Shaffer, is its frustration with the constraints placed on it by emerging powers, especially China. Such frustration, coupled with the general rhetorical shift in US trade policy and widening domestic social and political divisions, generates competing narratives about trade and investment (though all have a nationalist color), and has prompted the US to develop a strategic response to this 'emerging power shock' that is quite different than the EU's approach that emphasizes multilateralism and preservation of the WTO. Evaluating the high stakes implicated in the US–China rivalry, Shaffer offers 'a multilateral framework that accommodates a diversity of models, with variation in response to domestic preferences, development contexts, and experimental strategies' (p. 291) to properly manage the interface of domestic policies, which requires a restoration of the critical role of the WTO's dispute settlement mechanism. Shaffer thus answers the key question of book, that '[i]t is the mismatch between the US vision of the WTO and what it came to be, combined with a structural change in economic competitiveness and power, which spurred the United States to undermine the authoritativeness of the WTO and initiate new competitive lawmaking through bilateral and regional trade negotiations' (p. 308). Shaffer concludes the book by calling for collaboration.

Shaffer's book – enlightening and resounding – comes at a critical time when faith in multilateral governance is waning, while at the same time the urgency to tackle global challenges such as climate change and health crises is high. Through a socio-legal analytic framework, Shaffer reflects on and broadens our understanding of international governance, addresses the legitimacy of international law, and highlights its inherent fragility and dynamism, contributing to theorizing the interface between global governance and national law. Shaffer pointedly reminds us that the current trade and economic system must not be taken for granted, as new orders that can disrupt and unsettle the current one will eventually emerge. Critically, to successfully navigate through current challenges, the role of states in mediating between market liberalization and other development goals must be re-evaluated regularly as relations between states evolve. This book is a must-read. It offers a prelude to the future of a dynamic governance model where other emerging economies such as South Africa and the African continent states, and

---

[2]*Brazil – Export Financing Programme for Aircraft*, WT/DS46/AB/R (adopted 20 August 1999); *Brazil – Measures Affecting Patent Protection*, WT/DS199 (settlement notified 19 July 2001); *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R (circulated 6 April 1999); *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WT/DS50/AB/R (adopted 16 January 1998); *White Industries Australia Limited* v. *The Republic of India*, Final Award, UNCITRAL (30 November 2011).

Southeast Asian countries rise to power. It also provides a roadmap for the smooth management of these geopolitical shifts when they occur.

JINGYUAN (JOEY) ZHOU
Assistant Researcher
The School of Law Chongqing University
Email: *joeyzhoulaw@cqu.edu.cn*

Artificial Intelligence and International Economic Law
by Shin-yi Peng, Ching-Fu Lin, and Thomas Streinz
Cambridge University Press, 2021

In an age where today's cutting-edge technologies quickly become obsolete, *Artificial Intelligence and International Economic Law* discusses the legal challenges related to the introduction of artificial intelligence (AI) technologies. Published in October 2021, this edited collection comprises 17 chapters divided into five parts. Each part of the book explores a different aspect of the use of AI systems and considers the resulting regulatory challenges in international economic law. AI technologies constitute complex sociotechnical systems involving humans, machines, algorithms, and data, and their deployment raises legal questions across a wide range of domains including, but not limited to, data protection and privacy law, antidiscrimination law, intellectual property law, and tort law.

Overall, the book offers a broad analysis of the regulatory challenges that AI will pose to the International Economic Law (IEL) framework and provides excellent guidance for lawyers, practitioners, policymakers, and academics that wish to understand the intricacies behind the adoption of AI applications in an ever-increasing number of personal and professional domains.

1. A Diversity of Perspectives

The book brings together a vast array of experts in the field of IEL and new technologies. The editors have been fortunate in being able to secure contributors from different academic, professional, and geographical backgrounds so as to be able to offer a broad range of views. To provide a few examples, *Artificial Intelligence and International Economic Law* contains contributions from Henry Gao, Associate Professor of Law at the Singapore Management University, Aik Hoe Lim, Director of the Trade and Environment Division at the World Trade Organization, Neha Mishra, Lecturer at the Australian National University, and Rolf H. Weber, Professor for International Business and Economic Law at the University of Zurich.

This edited collection is the result of cooperation between three distinguished academics, Shin-yi Peng, Ching-Fu Lin, and Thomas Streinz who brought together most of the contributors in a workshop in Chinese Taipei in the fall of 2019. This workshop was part of the activities organized by the Society of International Economic Law's (SIEL's) Asian International Economic Law Network (AIELN). It took place during the sixth biennial conference, entitled, 'International Trade Regime for the Data-Driven Economy: How Will Artificial Intelligence Transform