

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

TRADE GOVERNANCE IN THE DIGITAL AGE

The development of new digital technologies has resulted in significant transformations in daily life, from the arrival of online shopping to more fundamental changes in the ways we work and communicate. Many of these changes raise questions that transcend market access and liberalisation and demand cooperation and coherent regulatory design. International trade regulation has hitherto not reacted in a forward-looking manner to the digital revolution; particularly at the multilateral level, legal engineering has yielded few tangible results.

This book examines whether WTO laws possess the necessary flexibility and resilience to accommodate the changes brought about by burgeoning digital trade. By revealing both the potential and the limitations of the WTO framework, it provides a broad picture of the interaction between digital technologies and trade regulation; links the often disconnected discourses of international trade law, intellectual property and cyberlaw; and explores discrete problems in different domains of global trade regulation.

MIRA BURRI is a Senior Research Fellow at the World Trade Institute and Lecturer in International Media Law at the University of Bern, Switzerland.

THOMAS COTTIER is Professor of European and International Economic Law at the University of Bern, Switzerland. He is Managing Director of both the World Trade Institute and the Institute of European and International Economic Law.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

TRADE GOVERNANCE IN THE DIGITAL AGE

World Trade Forum

Edited by

MIRA BURRI AND THOMAS COTTIER



Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9781107022430

© Cambridge University Press 2012

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2012

Printed in the United States of America

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloguing in Publication data

Trade governance in the digital age : World Trade Forum / edited by
Mira Burri and Thomas Cottier.

pages cm

Edited contributions from the World Trade Forum 2010.

Includes bibliographical references and index.

ISBN 978-1-107-02243-0

1. Foreign trade regulation
2. Corporate governance.
3. International law.
4. World Trade Organization.
5. Electronic commerce – Law and legislation.
6. General Agreement on Tariffs and Trade (Organization) I. Burri, Mira,
editor of compilation. II. Cottier, Thomas, editor of compilation.

III. World Trade Forum (14th : 2010 : Berne, Switzerland)

K3943.T71 2012

382'.92–dc23 2012003070

ISBN 978-1-107-02243-0 Hardback

Cambridge University Press has no responsibility for the persistence or
accuracy of URLs for external or third-party Internet Web sites referred to in
this publication and does not guarantee that any content on such Web sites is,
or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

CONTENTS

<i>List of tables and figures</i>	page viii
<i>List of contributors</i>	ix
<i>Preface</i>	xxi
<i>List of abbreviations</i>	xxiii

1. Introduction: Digital technologies and international trade regulation 1
MIRA BURRI AND THOMAS COTTIER
PART I Conceptualising trade 2.0
2. Principles for trade 2.0 17
ANUPAM CHANDER
3. Global information law: Some systemic thoughts 45
CHRISTIAN TIETJE
PART II Old and new buzzwords in the digital trade discourse
4. Convergence: A buzzword to remain? 65
DAVID LUFF
5. Network neutrality: The global dimension 91
PIERRE LAROCHE
6. Fostering innovation and trade in the global information society: The different facets and roles of interoperability 123
URS GASSER AND JOHN PALFREY

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

vi

CONTENTS

PART III The state of play in trade and trade regulation: Prospects for change

7. GATS classification issues for information and communication technology services 157
LEE TUTHILL AND MARTIN ROY
8. Towards coherent rules for digital trade: Building on efforts in multilateral versus preferential trade negotiations 179
SACHA WUNSCH-VINCENT AND ARNO HOLD
9. Better regulation for digital markets: A new look at the Reference Paper 222
ROHAN KARIYAWASAM
10. Googling for the trade–human rights nexus in China: Can the WTO help? 247
HENRY GAO
11. The puzzling interaction of trade and public morals in the digital era 276
PANAGIOTIS DELIMATIS

PART IV The impact of digital technologies on the global intellectual property regime

12. TRIPS encounters the Internet: An analogue treaty in a digital age, or the first trade 2.0 agreement? 299
ANTONY TAUBMAN
13. Country clubs, empiricism, blogs and innovation: The future of international intellectual property norm making in the wake of ACTA 323
DANIEL GERVAIS
14. New forms of governance for digital orphans: Copyright litigation, licences and legal information 344
JEREMY DE BEER

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

CONTENTS

vii

**PART V Digital technologies, intellectual
property and development**

15. From consensus to controversy: The WIPO Internet
Treaties and lessons for intellectual property
norm setting in the digital age 367
AHMED ABDEL LATIF
16. The global digital divide as impeded access to content 396
MIRA BURRI
17. Harnessing information and communication
technologies for development: The trade-related
technical assistance perspective 421
MARTIN LABBÉ
18. Making use of e-mentoring to support innovative
entrepreneurs in Africa 433
PHILIPP AERNI AND DOMINIK RÜEGGER
- Index* 455

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

TABLES AND FIGURES

Tables

5.1. Overview of network neutrality concerns and regulatory responses in the United States and the European Union	<i>page</i> 119
7.1. The classification of audiovisual services according to the W/120	168
8.1. Performance of the WTO versus preferential trade deals on digital trade issues as raised in the WTO Work Programme on E-commerce	186
8.2. Plurilateral requests and cross-border trade in electronic services	191
8.3. Provisions of e-commerce chapters in bilateral trade agreements	195
8.4. Deep e-commerce regulatory issues in selected preferential trade agreements	197
8.5. The U.S. and EU templates for liberalising digital trade	198
8.6. Deep e-commerce integration rules in preferential trade agreements	206
8.7. Provisions relevant to digital trade in IPR chapters of PTAs	210
8.8. Inclusion of IPR provisions relating to digital trade in the examined twenty-six PTAs	212
15.1. Developing countries and LDCs parties to the WIPO Internet Treaties	369
16.1. World Internet usage and population statistics	399

Figures

9.1. The layered-policy model	226
-------------------------------	-----

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

CONTRIBUTORS

AHMED ABDEL LATIF

International Centre for Trade and Sustainable Development

Ahmed Abdel Latif is an Egyptian career diplomat who has taken an active part in global debates and processes on intellectual property, public policy and development. Since 2007, he has been Programme Manager for Intellectual Property and Technology at the International Centre for Trade and Sustainable Development (ICTSD). He previously worked at the Permanent Mission of Egypt to the United Nations and the World Trade Organization (WTO) in Geneva (2000–2004), where he was a delegate to the TRIPS Council and to the World Intellectual Property Organization (WIPO), as well as coordinator of the African Group at WIPO (2004). In this context, Mr Abdel Latif was closely involved with the launch of the WIPO Development Agenda initiative and the Access to Knowledge (A2K) movement. He holds an LLM in Public International Law (London School of Economics and Political Science, University of London), a BA in Political Science (American University in Cairo) and the Diplôme of the Institut d'Etudes Politiques de Paris (Sciences Po Paris).

PHILIPP AERNI

World Trade Institute

Philipp Aerni graduated with a degree in geography and economics from the University of Zurich and received his PhD from the Institute of Agricultural Economics at the Swiss Federal Institute of Technology (ETH) Zurich. He continued his postdoctoral research at Harvard University and the Institute for Comparative and International Studies at ETH Zurich. His main research interest is innovation for development. Apart from his current work at the World Trade Institute in Bern, Philipp is a co-founder and acting Managing Director of the African Technology Development Forum in Geneva and teaches a course in science, technology and public policy at ETH Zurich.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

x

LIST OF CONTRIBUTORS

MIRA BURRI

World Trade Institute

Mira Burri is Senior Research Fellow at the Swiss National Centre of Competence in Research (NCCR): Trade Regulation and Lecturer in International Media Law at the University of Bern. Her present research focuses on the interaction between digital technologies and the law, in particular on shaping new media and cultural policies. Mira Burri is the author of *EC Electronic Communications and Competition Law* (2007) and co-editor of *Free Trade versus Cultural Diversity* (2004), *Digital Rights Management: The End of Collecting Societies?* (2005), as well as more recently, *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* (2008) and *Governance of Digital Game Environments and Cultural Diversity* (2010). Mira is a member of the editorial board of the *International Journal of Communications Law and Policy* and of the *International Journal of Cultural Property*, as well as a rapporteur to the UK Economic and Social Research Council. Mira has acted as a consultant to the European Parliament on cultural diversity matters.

ANUPAM CHANDER

University of California, Davis

Anupam Chander is a leading scholar of globalisation and digitisation and professor at UC Davis. He has been a Visiting Professor at Yale Law School, the University of Chicago Law School, Stanford Law School and Cornell Law School. Among his publications is *Securing Privacy in the Internet Age* (co-edited with Lauren Gelman and Margaret Jane Radin, 2008) and *The Electronic Silk Road* (forthcoming). He has published articles in the *Yale Law Journal*, the *University of Chicago Law Review*, the *California Law Review* and the *NYU Law Review*. His writing has received honours from the Association of American Law Schools and has been recognised by the Stanford-Yale Junior Faculty Forum. A graduate of Harvard College and Yale Law School, he clerked for Chief Judge Jon O. Newman of the Second Circuit Court of Appeals and Judge William A. Norris of the Ninth Circuit Court of Appeals. He practiced law in New York and Hong Kong with Cleary, Gottlieb, Steen and Hamilton, representing foreign sovereigns in international financial transactions.

THOMAS COTTIER

World Trade Institute

Thomas Cottier, Managing Director of the World Trade Institute, is Professor of European and International Economic Law at the University

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xi

of Bern and Director of the Institute of European and International Economic Law. He leads the Swiss national research programme on trade law and policy (NCCR Trade Regulation). He was a Visiting Professor at the Graduate Institute, Geneva, and currently teaches at the Europa Institut Saarbrücken, Germany, and at Wuhan University, China. Professor Cottier has a long-standing involvement in GATT/WTO activities. He served on the Swiss negotiating team of the Uruguay Round from 1986 to 1993, first as chief negotiator on dispute settlement and subsidies for Switzerland and subsequently as chief negotiator on TRIPS. He held several positions in the Swiss External Economic Affairs Department and was the Deputy-Director General of the Swiss Intellectual Property Office. In addition to his conceptual work in the fields of services and intellectual property and legal counselling, he has served as a member or chair of several GATT and WTO panels.

JEREMY DE BEER

University of Ottawa

Jeremy de Beer is a Law Professor at the University of Ottawa, specialising in technology and intellectual property law. Educated at the Universities of Oxford and Saskatchewan, he practised law with the Department of Justice, as counsel to the Copyright Board, after clerking at Canada's Federal Court of Appeal and working at the law firm of Macleod Dixon LLP. Professor de Beer teaches, among other things, seminars on global intellectual property policy and interdisciplinary studies of digital music. His research impacts on policy debates and practical behaviour around intellectual property in high-technology sectors from Internet communications to life sciences. He is an active consultant for law firms, creator groups, technology firms, government departments, think tanks and international organisations.

PANAGIOTIS DELIMATIS

Tilburg University

Panagiotis Delimatis is Associate Professor of Law at Tilburg University, the Netherlands. Panagiotis has held positions with the WTO Appellate Body Secretariat, UNCTAD and the International Centre for Sports Studies in Neuchâtel, and has taught WTO law, the law of the EU internal market and EU external relations at several European universities. His fields of interest include the regulation of international trade, trade in services in particular, as well as EU law. His main fields of research include regulatory diversity in services, regulatory reform and principles of good governance in the goods and services domain and the effects of domestic

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xii

LIST OF CONTRIBUTORS

regulatory structures on factor mobility. Panagiotis regularly advises governments and undertakes projects relating to international trade and participation of developing countries. Panagiotis has published extensively on EU and international trade law issues. He is the author of *International Trade in Services and Domestic Regulations – Necessity, Transparency, and Regulatory Diversity* (2007). He has also contributed chapters to various edited volumes and has published articles in peer-reviewed journals, including the *Journal of International Economic Law*, the *European Journal of International Law* and the *World Trade Review*.

HENRY GAO

Singapore Management University

Henry Gao is a tenured Law Professor at Singapore Management University. With law degrees from China, the United Kingdom and the United States, Henry started his professional career in Geneva as the first Chinese lawyer at the WTO Secretariat with stints at the Appellate Body Secretariat and the Trade in Services Division. Before moving to Singapore in late 2007, he taught law at the University of Hong Kong, where he was also the Deputy Director of the East Asian International Economic Law and Policy Programme. A frequent commentator in international media such as the *Wall Street Journal*, CNN and Bloomberg, Henry has also been invited to speak at major international conferences around the world. In addition to regular lectures at all three universities in Singapore, he has taught trade law elsewhere in Asia and beyond, including at the Academy of International Trade and Investment Law in Macau and the Master in International Economic Law and Policy (IELPO) programme in Barcelona. Henry edited the book *China's Participation in the WTO* (2005) and has published many articles in academic journals including the *Journal of International Economic Law* and the *Journal of World Trade*. His current research focuses on the interaction between China's trade policy and WTO rules, as well as WTO dispute settlement, trade in services and free trade agreements.

URS GASSER

Harvard University

Urs Gasser is the Executive Director of the Berkman Center for Internet and Society. Before joining the Berkman Center in this capacity, he was Associate Professor of Law at the University of St. Gallen, where he led the Research Center for Information Law as Faculty Director. Gasser's

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xiii

research and teaching focus on information law and policy and the interaction between law and innovation. Current research projects – several of them in collaboration with leading research institutions in the United States, Europe and Asia – explore policy and educational challenges for the future generation of digital natives, the regulation of digital media and technology (with emphasis on IP law), ICT interoperability, the institutional settings for fostering entrepreneurship, and the law's impact on innovation and risk in the ICT space. Urs Gasser has published and edited six books and has written more than sixty articles in books, law reviews and professional journals. He is the co-author (with John Palfrey) of *Born Digital: Understanding the First Generation of Digital Natives* (2008), which is being translated into ten languages, including Chinese and Russian.

DANIEL GERVAIS

Vanderbilt University

Daniel Gervais focuses on international intellectual property law, having spent ten years researching and addressing policy issues on behalf of the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the International Confederation of Societies of Authors and Composers (CISAC) and Copyright Clearance Center (CCC) before entering the academy. Before joining Vanderbilt Law School in 2008, Professor Gervais was Acting Dean of the Common Law Section at the University of Ottawa. Professor Gervais practised law in Montreal from 1985 to 1990 as an associate with Clark Woods and later as a partner with the technology law firm BCF. From 1990 to 1991, he was a consultant and legal officer with the WTO, where he was actively involved in the negotiations of the TRIPS Agreement. In 1992, he joined WIPO and was promoted the following year to Head of the Copyright Projects section, where he prepared WIPO studies and international meetings on the impact of digital technology on copyright and neighbouring rights. In 1995, Professor Gervais joined CISAC as Assistant Secretary General, and in 1997 he moved to the United States to become Director of International Relations at CCC, the largest reprographic rights organisation in the world. He chaired the sectoral work on culture, communications and information at the Canadian Commission for UNESCO. Professor Gervais currently serves as a panellist at the WIPO Arbitration and Mediation Centre. He has been a Visiting Professor at the Universities of Grenoble, Montpellier Nantes, and Haifa and at the University of Puerto Rico, and a Visiting Scholar at Stanford Law School.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xiv

LIST OF CONTRIBUTORS

He is a Visiting Lecturer at the University of Amsterdam and has lectured at the Institute of European Studies of Macau. He was the 2004 Trilateral Distinguished Scholar at Michigan State University. He received an Early Researcher Award from Ontario, Canada's Ministry of Research and Innovation, the only law professor in the province to receive the award in that round. He currently serves as editor-in-chief of the peer-reviewed *Journal of World Intellectual Property*.

ARNO HOLD

Swiss Federal Institute of Intellectual Property

Arno Hold studied political science and international law at the Universities of Bern, Zurich and Bologna and is a graduate of the World Trade Institute's MILE programme. He currently works as Coordinator for International Cooperation Projects at the Swiss Federal Institute of Intellectual Property. His previous professional experience includes positions as a Project Officer at a research centre in Geneva, a business development consultant in Singapore and a research assistant at the Institute for Public International and Foreign Constitutional Law of the University of Zurich. Mr Hold has given lectures at the South-Western University of Finance and Economics in Chengdu and has completed internships, inter alia, at the UN Headquarters in New York and at the Strategic Leadership Training Section of the Swiss Federal Chancellery. Within the NCCR Trade Regulation, Mr Hold pursues a PhD focusing on the relationship between intellectual property rights, foreign direct investment and economic development.

ROHAN KARIYAWASAM

Cardiff University

Rohan Kariyawasam is Professor of Law at Cardiff University. Prior to taking up this post, he was at the University of Essex and a member of the Human Rights Centre and Director of their programme in Information Technology, Media and E-Commerce Law. He has worked as a consultant for both the media and communications departments at Clifford Chance, the media law department at Field Fisher Waterhouse, and as an external consultant to the United Kingdom's Department for International Development, Cable and Wireless and the Office of Telecommunications (now OFCOM). He qualified as a solicitor with DentonWildeSapte. Prior to law, Rohan trained as a telecommunications engineer with Marconi Underwater Systems and worked in brand management with

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

XV

Unilever and McGraw-Hill. Rohan studied at Harvard Law School as a Berkman Fellow, the University of Kent at Canterbury, the University of Geneva, the College of Law in London and the Centre for Commercial Law Studies at Queen Mary University of London. He is a past recipient of a Fulbright Scholarship to Harvard. In 2011, he was awarded an MC Fellowship by the British Academy to research net neutrality and privacy. Rohan is the founding trustee of the Rahula Trust (<http://www.rahula-trust.org>), which provides sponsorship to academically gifted children living in poverty in the developing world, and is a Fellow of the Royal Society of Arts. His research involves the intersection of trade, technology, IP and development. He has completed research looking at the role of fair trade, ethical labels and the WTO for the United Kingdom's Arts and Humanities Research Council, to be published in *The Processes and Practices of Fair Trade: Trust, Ethics and Governance* (edited by Janet Dine and Brigitte Granville, forthcoming). Rohan is editor of *Chinese Intellectual Property and Technology Laws* (2011) and *Indian Intellectual Property and Technology Laws* (forthcoming).

MARTIN LABBÉ

International Trade Centre

Martin Labbé is an Adviser on Internet marketing and digital networks at the International Trade Centre (ITC). He works on Information and Communication Technologies for Development (ICT4D) related projects and publications (see e.g. <http://www.tradeinsounds.org>). Prior to joining ITC, Martin worked at the French Trade Commission as chief ICT analyst, in London.

PIERRE LAROUCHE

Tilburg University

Pierre Larouche is Professor of Competition Law at Tilburg University and Vice-Director of the Tilburg Law and Economics Center (TILEC), as well as Professor at the College of Europe (Bruges). Before starting his academic career in 1996 at the University of Maastricht, he clerked at the Supreme Court of Canada (1991–1992) and practised law for three years in the EU law unit of Stibbe Simont Monahan Duhot in Brussels. His teaching and research interests include competition law, telecommunications law, media law, basic EU law and the common European law of torts. He is one of the chief editors of the *Journal of Network Industries*. He has been a Guest Professor at McGill University (2002) and the National University

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xvi

LIST OF CONTRIBUTORS

of Singapore (2004). In 2009–2010, Larouche was a Searle Visiting Fellow at Northwestern University.

DAVID LUFF

Appleton Luff

David Luff is an international trade lawyer, founding partner at the law firm Appleton Luff with offices in Brussels, Geneva, São Paulo, Singapore, Warsaw and Washington, DC. He has been practising international trade law at both the EU and WTO levels for twenty years. He is in charge of major trade remedies and competition cases and works on projects dealing with technical barriers to trade, customs rules, WTO dispute settlement, regional integration and market access actions. He has been advising multinational companies and governments in the sectors of financial, postal and telecommunications services; textiles and clothing; steel; chemicals and sugar, bananas, dairy products, and fruits and vegetables. He advised several governments on WTO implementation and trade negotiations issues and held missions in more than thirty-five developing countries. He has also been advising several countries on cross-sectoral strategies to take advantage of international trade rules and on the means to adjust to the challenges posed by multilateral trade negotiations. He has also advised the governments of two countries in their WTO accession. Luff is also Professor of International Trade Law at the University of Liege and at the College of Europe. He has published several articles in international reviews on subjects related to WTO law and has held visiting appointments in India, China, Vietnam, Switzerland and Italy. He has trained trade officials of the EU, FYR Macedonia, Montenegro, Kazakhstan, Ukraine, Uzbekistan, West African countries, and China on WTO law and trade policy. David Luff is the author of *Le droit de l'Organisation mondiale du commerce. Analyse critique* (2004), which provides a comprehensive analysis of WTO law and jurisprudence.

JOHN PALFREY

Harvard University

John Palfrey is Henry N. Ess III Professor of Law and Vice Dean for Library and Information Resources at Harvard Law School. He is the co-author of several books, including *Born Digital: Understanding the First Generation of Digital Natives* (2008) and *Access Denied: The Practice and Politics of Internet Filtering* (2008). His research and teaching focus on Internet law, intellectual property and international law. He practised

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xvii

intellectual property and corporate law at the law firm of Ropes and Gray. He is a Faculty Co-Director of the Berkman Center for Internet and Society at Harvard University. He is also a Venture Executive at Highland Capital Partners and serves on the board of several technology companies and non-profit organisations. Palfrey served as a special assistant at the U.S. Environmental Protection Agency during the Clinton administration. He is a graduate of Harvard College, the University of Cambridge, and Harvard Law School. He writes a blog at <http://blogs.law.harvard.edu/palfrey/>.

MARTIN ROY

World Trade Organization

Martin Roy is Counsellor in the Trade in Services Division of the WTO Secretariat. He has published on trade and political economy issues in a number of journals and is the co-editor of the recent book *Opening Markets for Trade in Services: Countries and Sectors in WTO and Bilateral Negotiations* (2008). He holds a PhD from Johns Hopkins University's School of Advanced International Studies. Before joining the WTO in 2002, he worked on trade negotiations and investment issues for the Canadian Department of Finance.

DOMINIK RÜEGGER

ETH Zurich

Dominik Rügger is pursuing a master's degree in computer science at the Swiss Federal Institute of Technology (ETH) in Zurich. Since March 2010, he has been working with Philipp Aerni on the use of Web technologies for supporting entrepreneurship in Africa at the World Trade Institute in Bern. He previously interned and worked with Web technologies in the banking sector.

ANTONY TAUBMAN

World Trade Organization

Antony Taubman is Director of the Intellectual Property Division of the World Trade Organization, with responsibility for intellectual property, competition and government procurement. From 2002 to 2009, he was Director of the Global Intellectual Property Issues Division, including both the Traditional Knowledge Division and Life Sciences Programme, of the World Intellectual Property Organization, which covered a wide

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xviii

LIST OF CONTRIBUTORS

range of programmes on intellectual property and genetic resources, traditional knowledge and folklore, the life sciences and related global issues including the environment, climate change, human rights, food security, bioethics and indigenous issues. Taubman conducted research and taught international intellectual property law at the Australian Centre for Intellectual Property in Agriculture and as a faculty member of the Australian National University School of Law; he has also held several academic teaching appointments. From 1998 to 2001, he was Director of the International Intellectual Property Section of the Australian Department of Foreign Affairs and Trade and in that capacity was engaged in multi-lateral and bilateral negotiations on intellectual property issues, domestic policy development, regional cooperation, and TRIPS dispute settlement. Before that, he worked as an Australian diplomat, dealing with disarmament policy and serving in Geneva, Tehran and the Hague; earlier, he practised as a patent and trademark attorney in Melbourne.

CHRISTIAN TIETJE

Martin-Luther-University Halle-Wittenberg

Dr Christian Tietje is Professor (tenured) for European Law and International Economic Law, Director of the Institute for Economic Law and Director of the Transnational Economic Law Research Center (TELC) at the Faculty of Law at Martin-Luther-University Halle-Wittenberg, Germany. His primary research interests lie in the areas of EU foreign commercial policy law and international economic law (world trade law and investment protection and arbitration). Tietje received his legal education at the universities of Kiel, Paris V, and University of Michigan Law School, Ann Arbor. He holds two German law degrees with distinction from 1993–1998, was awarded the degree of Master of Laws with distinction in 1995 and received his Dr jur (PhD) with distinction in 1997 and his Dr jur habil in 2000. He has published several books and more than 100 articles, mostly on international economic law. Moreover, he has advised governments, international and non-governmental organisations, business associations and multinational companies in the aforementioned areas. He has been appointed legal expert in several investment arbitrations; is leading a working group of the investment law committee of the German branch of the International Law Association (ILA) dealing with the relationship of international investment law and general public international law; and is a member of the ILA Study Group on the Role of Soft Law Instruments in International Investment Law.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

xix

LEE TUTHILL

World Trade Organization

Lee Tuthill works in the Secretariat of the WTO on administration of the General Agreement on Trade in Services. Her portfolio covers trade in telecommunications and computer services as well as services-related aspects of electronic commerce and IT-enabled trade. She was Secretary to the Group on Basic Telecommunications that negotiated on market opening in the sector from 1994 to 1997. Following this, Ms Tuthill was Secretary to the dispute settlement panel for the first-ever GATS case: a dispute on telecommunications between the United States and Mexico. She represents the WTO at relevant activities of the ITU, OECD, WSIS, and various regional organisations. During her tenure at WTO, Ms Tuthill has worked closely with many governments on ICT trade and regulatory issues.

SACHA WUNSCH-VINCENT

World Intellectual Property Organization

Sacha Wunsch-Vincent is Senior Economic Officer with the Chief Economist of the World Intellectual Property Organization (WIPO) in Geneva and a member of the MILE faculty of the World Trade Institute. Before joining WIPO, he was an economist at the OECD Directorate for Science, Technology, and Industry for seven years, most recently as co-leader of the OECD's Innovation Strategy. Before joining the OECD, he was the Swiss National Science Foundation Fellow at the Berkeley Center for Law and Technology (University of California, Berkeley) and at the Peterson Institute for International Economics. He served as economist at the UN International Trade Centre (UNCTAD/WTO) and as adviser to organisations such as the World Bank, the World Economic Forum, and the UN Information Communication Technology Task Force, mostly on matters relating to innovation, information technology and international trade (especially the GATS). He holds a master's degree in international economics from the University of Maastricht and a PhD in economics from the University of St. Gallen. He teaches international economics at Sciences Po Paris and the World Bank Institute.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

P R E F A C E

The World Trade Forum has existed since 1997 and has, year after year, established itself as the meeting hub for academia, policy makers, international organisations, and civil society representatives to discuss the new and unsettled questions of the global trading system and to look for future-oriented solutions. In 2010, the fourteenth World Trade Forum, held, as tradition goes, at the World Trade Institute in Bern, took up a particularly thorny topic that challenges not only trade regulation but also many other areas, and essentially all levels of governance.

Embracing the amazing advances in digital technologies, specifically the Internet's wide spread, its deep impact on the economy and continuing integration into the social and cultural fabric of society, a group of outstanding experts gathered together to ask whether international economic law, as created in the analogue/offline era, is capable of facing the reality of digital trade. The answers given and recommendations made differed, but all agreed that both swift responses and apt regulatory design are badly needed.

This book is the result of the contributions to the World Trade Forum, albeit now in a more distilled and succinct form. Needless to say, the volume is only the end product of an exceptional cooperative effort and would not have been possible without the dedicated input of many outstanding people. Particular thanks are owed to the conference participants for their intellectually stimulating presentations and excellent texts, and to those who spurred the debates by acting as discussants. We would like in this context to express our gratitude to Carsten Fink, Rohan Kariyawasam, John Palfrey, Amy Porges, Cyrill Rigamonti, Pierre Sauvé, Rolf Weber, and Sacha Wunsch-Vincent. It is only through the collaborative work of all participants that we could meet the challenge of linking the previously disconnected discourses of international trade, intellectual property and cyberlaw with all their specific and often overly technical issues in an attempt to offer a meaningful, forward-looking analysis of trade governance in the digital age.

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xxii

PREFACE

We thank the Ecoscientia Foundation for its continued support of the World Trade Forum. We are grateful to the Swiss National Science Foundation as some of the papers emanate from the NCCR Trade Regulation. We also wish to thank Margrit Vetter and Gaby Hofer for the smooth organisation of yet another event and for making everyone feel welcome. This volume would not have been possible without the dedicated work of Susan Kaplan in reviewing the manuscripts. Finally, our heartfelt thanks are owed to Finola O’Sullivan and her excellent team at Cambridge University Press for their unfailing support and strong commitment to the World Trade Forum series.

Mira Burri and Thomas Cottier

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

ABBREVIATIONS

AANZFTA	ASEAN–Australia–New Zealand Free Trade Area
ABTS	Agreement on Basic Telecommunications Services
ACP	African, Caribbean and Pacific Group of States
ACTA	Anti-Counterfeiting Trade Agreement
ADP	automatic data processing
ADSL	asymmetric digital subscriber line
AGRA	Alliance for a Green Revolution in Africa
AIDS	acquired immunodeficiency syndrome
APEC	Asia-Pacific Economic Cooperation
API	application programming interface
ASEAN	Association of Southeast Asian Nations
ATM	asynchronous transfer mode
B2B	business-to-business
B2C	business-to-consumer
BEREC	Body of European Regulators for Electronic Communications
BOP	balance of payments
BSAC	British Screen Advisory Council
BTA	Basic Agreement on Telecommunications
CAFTA-DR	Dominican Republic–Central America Free Trade Agreement
ccTLD	country-code top-level domain
CEPT	European Conference of Postal and Telecommunications Administrations
CERN	Conseil Européen pour la Recherche Nucléaire; European Organization for Nuclear Research
CISG	Convention on the International Sale of Goods
CPC	UN Central Product Classification
CTS	Council for Trade in Services
DDA	Doha Development Agenda
DMCA	Digital Millennium Copyright Act
DoJ	U.S. Department of Justice
DPI	deep packet inspection
DRM	digital rights management
DSL	digital subscriber line

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xxiv

LIST OF ABBREVIATIONS

DTH	direct-to-home (satellite services)
EAC	East African Community
ECJ	The Court of Justice of the European Union
ECN	Electronic Communications Network
ECOSOC	UN Economic and Social Council
ECS	Electronic Communications Service
EDI	electronic data interchange
EFF	Electronic Frontier Foundation
EFTA	European Free Trade Association
EIFL	Electronic Information for Libraries
ETO	Electronic Trade Opportunities
EU	European Union
EUCD	European Union Copyright Directive
FCC	Federal Communications Commission
FDI	foreign direct investment
FLOSS	free/libre open source software
FPDs	flat panel display devices
FOCAC	Forum Africa–China Cooperation
FTA	free trade agreement
FTC	Federal Trade Commission
FTTH	fibre to the home
FTTK	fibre to the kerb
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
HFC	hybrid fibre-coaxial
HIV/AIDS	human immunodeficiency virus/acquired immunodeficiency syndrome
HLEG	High Level Expert Group
HS	Harmonized Commodity Description and Coding System
HTTP	hypertext transfer protocol
IaaS	(cloud) infrastructure as a service
ICANN	Internet Corporation for Assigned Names and Numbers
ICC	International Chamber of Commerce
ICT	information and communication technology
ICT4D	information and communication technologies for development
IEC	International Electrotechnical Commission
IEL	international economic law
IFC	International Finance Corporation
IFLA	International Federation of Libraries and Archives
IFRS	International Financial Reporting Standards
IGOs	inter-governmental organisations

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

LIST OF ABBREVIATIONS

xxv

IIPA	International Intellectual Property Alliance
ILM	International Legal Materials
IMF	International Monetary Fund
IoT	Internet of Things
IP	intellectual property
IPRs	intellectual property rights
IPTV	Internet protocol television
ISDN	Integrated Services Digital Network
ISO	International Organization for Standardization
ISP	Internet service provider
IT	information technology
ITA	Information Technology Agreement
ITC	International Trade Centre
ITU	International Telecommunication Union
IXPs	Internet exchange points
LDC	least-developed country
LECS	local exchange carriers
LLU	local loop unbundling
MFMs	multifunctional digital machines
MFN	most favoured nation
MVNO	mobile virtual network operator
NAFTA	North American Free Trade Agreement
NCA	national competition authority
NGN	next-generation network
NPRM	notice of proposed rulemaking
NRA	national regulatory authority
NT	national treatment
NWICO	New World Information and Communication Order
OECD	Organisation for Economic Co-operation and Development
OSAA	Office of the Special Advisor for Africa
P2P	peer-to-peer (networking)
PaaS	(cloud) platform as a service
PLMN	public land mobile network
PSTN	public switched telephone network
PTA	preferential trade agreement
QoS	quality of service
RFID	radio frequency identification
RMI	rights management information
SaaS	software as a service
SEC	U.S. Securities and Exchange Commission
SMEs	small and medium-sized enterprises
SMP	significant market power

Cambridge University Press

978-1-107-02243-0 - Trade Governance in the Digital Age: World Trade Forum

Edited by Mira Burri and Thomas Cottier

Frontmatter

[More information](#)

xxvi

LIST OF ABBREVIATIONS

STBCs	set-top boxes which have a communication function
TBT	WTO Agreement on Technical Barriers to Trade
TCP/IP	transmission control protocol/Internet protocol
TFEU	Treaty on the Functioning of the European Union
TPMs	technological protection measures
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
TRTA	trade-related technical assistance
UDRP	Uniform Domain Name Dispute Resolution Policy
UN	United Nations
UNCID	Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission
UNCITRAL	United Nations Commission on International Trade Law
UNCOPUOS	United Nations Committee on the Peaceful Uses of Outer Space
UNCTAD	United Nations Conference on Trade and Development
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
USTR	United States Trade Representative
VCLT	Vienna Convention on the Law of Treaties
VoIP	voice over Internet protocol
VPNs	virtual private networks
VSAT	very small aperture terminal
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WSIS	World Summit on the Information Society
WTO	World Trade Organization
WTPF	World Trade Point Federation