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DIGITAL TRADE GOVERNANCE BEYOND THE WTO: REGULATORY FRAGMENTATION, DIGITAL SOVEREIGNTY AND THE FUTURE OF E-COMMERCE LAW

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ABSTRACT | 摘要 | RESUMEN

The emergence of digital trade is dramatically changing how international commerce is conducted today. However, current digital trade governance remains anchored in an outdated World Trade Organization (WTO) framework largely designed for a pre-digital trade era. This governance structure has been unable to respond effectively to emerging issues in digital trade. Simultaneously, states and regional blocs are developing divergent regulatory models that reflect their sovereign digital interests and generate significant governance fragmentation. Using the doctrinal method alongside a comparative approach, this paper examines the deficiencies in current WTO-centered digital trade governance models and argues that the governance system is evolving from traditional multilateral trade structures toward hybrid, sovereignty-driven systems involving multiple actors. The paper advocates a reconceptualized framework capable of balancing digital integration, regulatory sovereignty, innovation, and effective global governance coordination in an evolving digital economy.

Keywords:

digital trade governance,
digital sovereignty,
regulatory
fragmentation,
e-commerce law,
cross-border data
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1. INTRODUCTION

Something fundamentally new and complex is happening in the manner in which we conduct cross-border trade. While it is without doubt that trade has migrated to the internet, something far more profound than this migration is occurring universally. The structure of the global economy is now based on data, as the core element of wealth creation. [12] Every cross-border payment, cloud-based business application, algorithmically facilitated marketplace, and digital service delivered across borders, represents a node in the vast digital infrastructure that has evolved to support global trade. Digital trade is currently viewed as an important component of the world's economy. [11] Mwange et al. (2026) asserted that the impact of digital technologies on international business is creating new pathways for competitive advantage and global economic integration through digital trade. Businesses use their digital infrastructure to sell products, provide services, make payment transactions, retain customer information, and communicate with customers in many countries at once. Cross-border transactions are increasingly moving from cargo ships to data flows, as the major vehicle of movement of economic value across national boundaries. [13]

Digital trade has evolved over time from its initial limited reference to as online retail, into the dominant model of contemporary international trade that it stands for today. [11] Presently, it includes e-commerce (the buying and selling of goods and services over the internet), cross-border movement of data, digital infrastructure, cloud computing systems, algorithmic service providers, streaming services, online educational content, digital advertising, fintech platforms, AI-based commercial systems, and other platform-related economic activity that support such transactions. [38] In this regard, digital trade represents not only the purchase and sale of products, but also the broader digital ecosystems through which commercial values are created, processed, and delivered on a global basis. [45] Effective governance is necessary to create common standards internationally, promote competitive equality among nations, protect consumers internationally, and facilitate the free flow of digital information across borders. [13] However, while this necessity exists, developing a coherent multilateral framework for governing digital trade has proven extremely challenging.

Lateef (2025) asserts that most of the existing international trade governance structures have remained tied to legal constructs originally developed to govern traditional forms of commerce. According to Aaken (2023), these governance frameworks are ill-equipped and lack the required institutional capacity

to deal with the realities of a digitally facilitated economic system. [12] Chen (2025) explained that the World Trade Organization (WTO) was established to provide a forum for regulating trade in physical goods and conventional services located within the territory of an economically independent nation-state. Clearly, the WTO did not anticipate the emergence of digital trade, including cross-border data flows, AI-facilitated commerce, cloud services, cybersecurity, and digital taxation. [24] According to Rehman (2025), most of these components or aspects of digital trade presently exist outside the scope of existing multilateral trade rules or continue to thrive under a state of legal uncertainty and varied interpretations among states and other stakeholders. According to Zhang & Gong (2023), the differing understanding, applications, and approaches towards digital trade governance have resulted in an array of fragmented regulatory systems that exist beyond centralized WTO Agreements. States and regional blocs are pursuing digital sovereignty by asserting control over digital infrastructure and data flows. The disconnection between the regulatory standards applicable to traditional commerce and those applicable to digital commerce constitutes one of the greatest challenges confronting international economic law today.

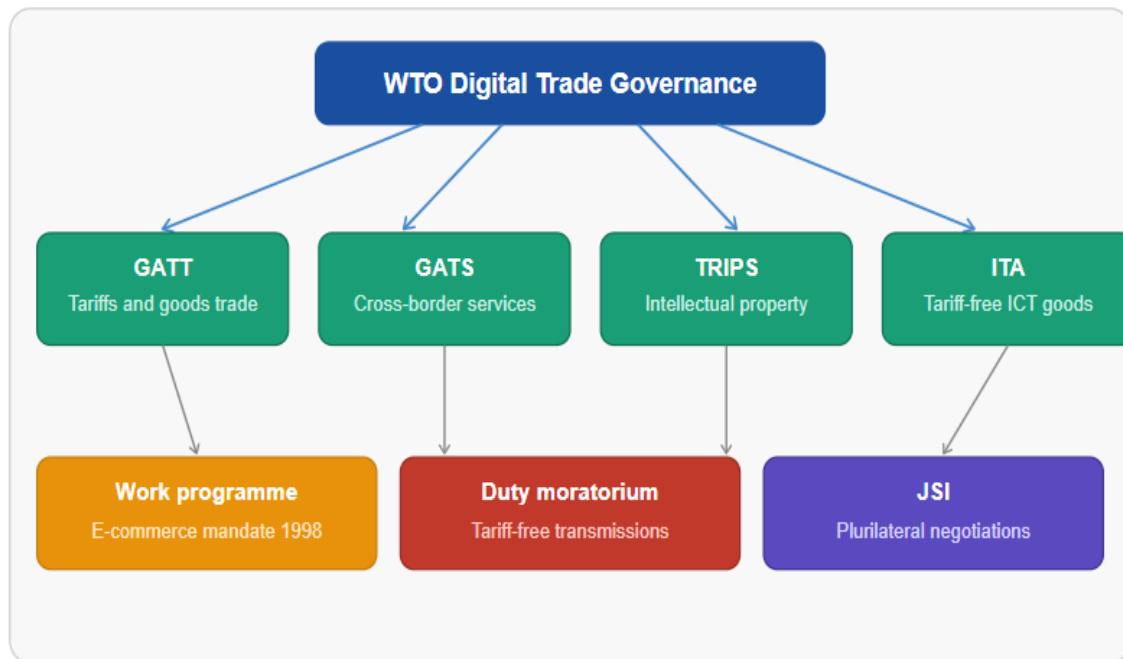
A considerable body of research has focused on WTO e-commerce negotiations, digital trade liberalization and the institutional impediments to multilateral governance. Burri (2021), highlights the development of the WTO and preferential trade agreement regimes. The work is based on the WTO multilateral system as the sole normative framework. This study disputes this approach by presenting that fragmentation is not a departure from the multilateral order, but is instead the structural replacement for it. Mitchell & Mishra (2021), advocate for the establishment of clear multilateral rules. This study modifies this recommendation by demonstrating that the WTO's consensus-based organizational structure is unable to produce the legally-binding commitments required for the effective regulation of digital trade. Rather than treating digital sovereignty as a distinct analytical construct, Chander & Sun (2022) and Pohle et al., (2024), conceptualize digital sovereignty as a discrete analytical phenomenon rather than as the primary driver of regulatory fragmentation, which this study advances. In addition to examining how trade agreements could reduce the adverse impacts of fragmentation, Deane et al. (2024) maintain the current multilateral regime as the basis of their normative horizon, rather than advocating for the reconceptualization proposed by this study. Similarly, Meltzer (2019) views regulatory divergence as an issue to be resolved within the existing multilateral regime, rather than as a new form of structural governance condition, which this study proposes. Most extant research on digital trade still views it primarily through the scope of multilateral trade liberalization rather than as a fragmented governance order comprising multiple active players.

In response to the gaps identified above, this study will re-conceptualize digital trade governance, as a plural and fragmented order that has already been established. The study therefore makes a transition from diagnosis to the development of a specific institutional structure that incorporates binding instruments, specialized regulatory bodies, and platforms accreditation frameworks. This reform should be capable of balancing the elements of global digital integration, national regulatory sovereignty and international governance coordination. Thus, the study aims to critically evaluate the limitations associated with WTO governance of digital trade and propose an improved framework for future global e-commerce regulation that balances global integration through digitization, regulatory sovereignty, and transnational coordination between stakeholders. This study has important policy significance. Since states, regional institutions, international organizations, and digital platforms increasingly create global e-commerce opportunities, there is an increasing demand for models of governance capable of managing innovation, global economic integration, cybersecurity risks, regulatory autonomy, and protection of individual rights in a digitally connected world.

2. METHODOLOGY

This study employs a doctrinal research methodology, supplemented by structured comparative legal analysis. The doctrinal component of the methodology consists of a systematic identification, interpretation, and critical analysis of primary legal sources related to digital trade. As shown in Figure 1, the sources include GATT, GATS, TRIPS, ITA, WTO Work Programme on Electronic Commerce, WTO Moratorium on Customs Duties on Electronic Transmissions, Joint Statement Initiative on E-Commerce. The doctrinal analysis will proceed in three sequential steps: Identifying the normative content of each instrument, then a critical evaluation of the interpretive and structural limitations of each instrument when applied to cross-border data flows, AI-driven commerce, platform governance, cybersecurity, and digital taxation and the positioning of these limitations within the broader governance architecture, in order to illustrate how their accumulation produces a multilateral governance vacuum.

Figure 1: WTO Digital Trade Governance



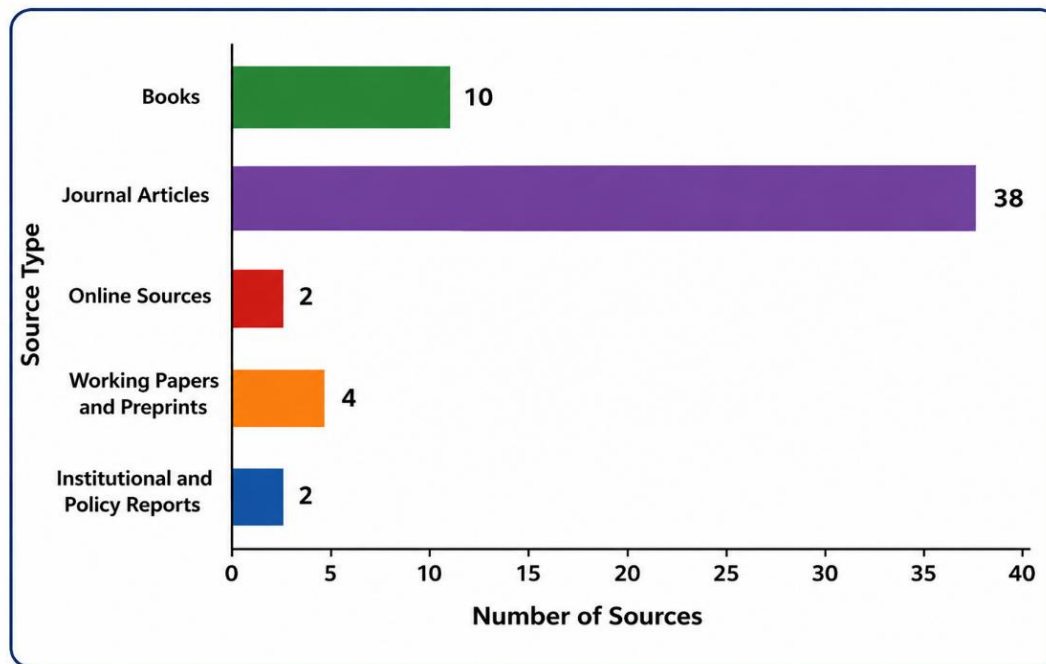
Sources: Authors' own compilation and design, based on data obtained from WTO instruments like GATT, GATS, TRIPS, ITA, WTO Work Programme on Electronic Commerce, WTO Moratorium on Customs Duties on Electronic Transmissions, Joint Statement Initiative on E-Commerce and from (Burri, 2021), (Chen, 2025) and (Kersan-Skabic, 2021).

The comparative aspect examines three regulatory models that are representative of the dominant approaches to digital trade governance. The models include the European Union, the United States, and China. These three models are not just representing the major structurally incompatible approaches to digital trade governance, but are also generating regulatory fragmentation internationally. In using this comparative approach, the study identifies how each jurisdiction addresses issues relating to the governance of digital trade, while mapping out where the points of incompatibility exist between each jurisdiction. Developing economy perspectives were included, especially as it relates to the issue of customs duty, Moratorium and JSI negotiations.

Secondary materials were identified using structured searches on HeinOnline, JSTOR, Google Scholar, SSRN, Westlaw, and the WTO document system. These materials include peer-reviewed journal articles, books, Internet Article, Institutional and Policy Reports, Working Papers on WTO and digital

trade governance. Keyword combinations used includes, digital trade governance, WTO e-commerce, regulatory fragmentation, digital sovereignty, cross-border data flows, and platform regulation.

Figure 2: Distribution of Secondary Research Sources



Sources: Authors' own classification and count of secondary sources based on structured searches on HeinOnline, JSTOR, Google Scholar, SSRN, Westlaw, and WTO documents.

Secondary materials selected for inclusion met one or more of the three selection criteria below: the material has direct relevance to the subject matter of digital trade governance and its WTO dimensions, the material is published in a peer-reviewed academic journal, a reputable academic press or an authoritative institutional source, and the material was published during the time frame of 2018-2026. Older foundational works have been included as they have been referenced by authors in recent literature as authoritative. Materials which address governance issues arising from digital technologies but do not engage with the trade law dimension, and those which address WTO law without reference to digital trade issues, have been excluded from primary analysis but have been consulted for their use in providing context to this study when appropriate.

Using both a doctrinal and comparative analysis allows the research to showcase the deficiency of the current WTO-based governing frameworks in regulating digital trade and reconceptualization of the digital trade governance framework based upon norms that are institutionally feasible.

3. RESULTS AND DISCUSSION

3.1 WTO and the Evolution of Digital Trade Governance

The establishment of today's global trade system could be said to have occurred at an early point in history when the majority of international trade depended on the physical transportation of products from one country to another. In the post-World War II era, governments were attempting to create a set of rules that would be able to promote free trade, reduce tariff levels, and prevent protectionist economic policies that have historically caused conflict around the globe. [31] According to Rehman (2025), this effort resulted in the formation of the General Agreement on Tariffs and Trade (GATT) in 1947. As globalization has expanded in recent years, coupled with the increasingly complex growth of international economic relationships among nations, GATT evolved into the World Trade Organization (WTO) in 1995, as a trading system aimed at trade liberalization. [23] Although described as ancient and outdated, GATT is still the starting point of this discussion because it laid the very foundation of our present digital trade.

The General Agreement on Tariffs and Trade (GATT) was made in 1947 with the aim of eliminating protectionist measures and promoting economic cooperation. [31] Article I of GATT sets forth the Most-Favored Nation Treatment obligation, wherein WTO members agree to treat their fellow WTO members equally in terms of trade advantages. Article III articulates the National Treatment principle, which prohibits discrimination between imported products and domestically manufactured products. Then, Article II addresses tariff bindings and the resulting market access commitments made by WTO members regarding their traded goods. [18] Together, these measures create a non-discrimination regime for international trade in physical commodities. Emphasis should be placed on the term "physical commodities" because it immediately presents a classificatory problem with regard to digital trade. The drafters of GATT in 1947, perhaps, 'unintentionally,' accounted for digital trade, but with certain fundamental limitations. Article I and III of GATT, ostensibly and theoretically, apply to "digitally ordered" goods, with the intention that they can move across borders without discriminatory tariffs, thereby preventing states from favoring domestic digital products over foreign equivalents. While this is acknowledged, Chen (2025) extrapolates that it presents some critical restrictions as regards electronically

transmitted products. In this light, Abdelrehim, Khan and Soomro support that GATT was negotiated at a time when electronically transmitted products had not come into existence, and there lies the challenge. [2] For instance, when software, movies, music, or video games are shipped to consumers physically, through a CD, DVD, etc., then GATT's "goods" structure applies directly. Their importation is subject to tariffs under Article II, and the goods are likewise subject to the national treatment constraints imposed by Article III. But when this same content is transmitted electronically, when it is either downloaded, streamed, or otherwise made available through a cloud-based application, there exists considerable uncertainty regarding applicable law. This issue of how to classify digitally traded products into either goods or services is yet to be resolved.

The General Agreement on Trade in Services (GATS) agreed in 1994, is one of the most significant WTO Agreements influencing contemporary digital trade. It is to be noted that GATS address trade in services as opposed to GATT, which addresses trade in goods. Article I:2 of GATS outlines four different methods of trade in services. Mode 1 pertains to cross-border service supply. Given the fact that many online services are provided electronically without having to transport consumers or suppliers across borders, this mode seems quite applicable to digitally facilitated commerce. [47] However, this is not exactly the case. GATS relies on specific commitments made by members under Articles XVI (Market Access) and XVII (National Treatment), which vary significantly depending on country and sector. These commitments were made before the rise of digital services. This means that many of them exclude or ambiguously cover such concepts as cloud computing, digital infrastructure services, online platforms or data processing. [9] This creates uneven regulatory coverage. Some digital services fall within binding commitments, while other services remain unregulated or are subject to wide-ranging limitations. Applying GATS to modern digital commerce and emerging digital models continues to be quite difficult. [27] According to Słok-Wódkowska & Czarny (2026), many digital platforms provide multiple forms of service, including advertising, payment systems, cloud storage, data analysis, delivery of entertainment content and AI-assisted commercial operations. Service classifications presently utilized by the WTO do not take into account technologically integrated ecosystems such as those referenced above. There is considerable legal ambiguity associated with classifying digitally-supplied services under the GATS framework.

Perhaps, a cursory look at the WTO's dispute settlement jurisprudence can demonstrate how classifying digital trade through pre-digital frameworks is a limiting constraint on legal classification in

digital trade. In the United States – Gambling (DS285), the WTO Appellate body decision confirmed that electronically delivered services fall within GATS Mode 1 cross-border supply, establishing that digital services can, in principle, trigger binding market access and national treatment obligations under Articles XVI and XVII. This decision also demonstrated the structural limitation of the system by confirming that GATS obligations only apply where specific commitments have been made by a member. [20] However, the schedules were drafted almost thirty years ago and did not contemplate services provided through cloud computing, platform intermediaries, AI-driven service platforms, etc. Therefore, creating arbitrary coverage gaps. Similarly, in China - Audiovisual Products (DS363), the Appellate Body determined that GATT and GATS obligations can be applied simultaneously to the same measure. However, it failed to determine whether the transmission of content through digital means constitutes trade in goods, services or both. This ambiguity is exacerbated dramatically when applied to streaming and digital content distribution. [7] Collectively, these decisions represent the most sophisticated engagement by the WTO system with the classification of digital trade. They also help in illustrating why this system cannot provide coherent governance for contemporary digital commerce.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) creates minimum standards for IP protection within the context of the WTO framework. Within the digital economy, TRIPS assumes a unique role due to the ability of digital technologies to reproduce, distribute and transmit copyrighted works, software, audiovisual content and digital products across borders at rapid speeds. [50] Article 9 of TRIPS addresses substantive provisions of the Berne Convention with respect to copyrights. Articles 41-61 require WTO members to ensure that effective procedures and remedies are available against IP infringement. Both articles assume great importance in digital commerce contexts that are characterized by digital piracy, unauthorized streaming and platform-based diffusion of protected content. Recent technological advancements have, however, demonstrated numerous limitations inherent in TRIPS. [21] Specifically, TRIPS was drafted prior to the advent of social media platforms, generative AI, algorithmic commerce, large-scale digital content ecosystems, etc. This era is what Hashimy (2025) referred to as Industry 6.0, and which, according to him, is marked by AI and quantum technologies. Therefore, TRIPS is rooted in traditional human inventorship and authorship, offering limited guidance relative to platform liability, AI-generated works, automated copyright enforcement systems and algorithmic monetization systems.[46] Also, the advancements in technology have made it easier to infringe copyrights globally using digital means. It is possible today for copyrighted material to be simultaneously uploaded, disseminated and consumed across multiple jurisdictions through

technologically facilitated systems that transcend traditional territorial bounds. This has further challenged long-standing assumptions about territorial enforcement of IP rights under TRIPS. [22]

The Information Technology Agreement (ITA), negotiated in 1996 under the auspices of the WTO, sought to enhance technological development through the elimination of tariffs on a wide array of information technology products. [26] Participating members are committed to eliminating customs duties on products such as computers, semiconductors, telecommunication equipment, hardware related to software and other technological products. ITA played a significant role in developing the global infrastructure required for digital communications by lowering costs for technological products needed for accessing the Internet, cloud systems, telecommunications and digital commercial activity. From this perspective, ITA promoted indirect growth of e-commerce and digitally facilitated trade. Nonetheless, ITA represents limits in early digital trade governance frameworks because it focuses on tariffs on hardware products rather than the data-driven and platform-based economy currently driving digitally facilitated commerce. [30] Moreover, it is only applied to its limited signatories; therefore, most WTO members do not fall under its provisions.

Recognizing the growing importance of e-commerce, WTO members endorsed the Work Programme on Electronic Commerce through the adoption of the Declaration on Global Electronic Commerce in 1998. [14] Under this declaration, several WTO bodies were instructed to study trade issues that arise from electronic commerce within the scope of existing WTO agreements. [26] Despite its expansive mandate, its program has yielded relatively few concrete legal results. One main reason for this lies in the increasing divide between developed and developing countries with regard to digital trade governance. Developed nations tend to advocate greater freedom for cross-border digitally facilitated commerce. In contrast, many developing countries stress concerns about digitally dependent economies, unequal levels of technological sophistication, domestic industrialization possibilities and national regulatory capacity. [36] This disagreement, along with the consensus-based nature of WTO negotiations, contributes to institutional stagnation within the multilateral digital trade governance.

Another major outcome from the WTO E-Commerce Work Programme is the Moratorium on Customs Duties on Electronic Transmissions. With this Moratorium, WTO members have agreed not to impose customs duties on electronically transmitted products such as software downloads, digital media, online audiovisual content, and other electronically transmitted products. According to Agrawal & Mishra (2022), the purpose behind moratorium is to facilitate unencumbered digital trade through prevention of

tariff barriers being imposed on electronically delivered content. But despite its notable intentions, it has generated increasing controversy, particularly among Global South nations who believe that permanent prohibition on imposing customs duties on electronically transmitted products could damage domestic industrialization plans and limit potential sources for revenue for governments. They further assert that benefits derived from tariff-free digital trade will disproportionately benefit large technology firms located in developed economies.[4]

The lack of progress by the multilateral Work Program led 71 WTO member states to launch the Joint Statement initiative (JSI) on e-commerce in 2017, with the objective of moving forward the negotiation of an enforceable agreement. [26] In late 2022, the parties reached agreement on almost all provisions of a preliminary draft agreement. [36] Topics considered in JSI include paperless trading and newly emerged policy issues. [33] Proponents consider JSI as a practical approach for overcoming the institutional limitations hindering the WTO framework, by allowing willing members to negotiate more flexible rules in rapidly evolving, digitally facilitated commerce markets. However, critics argue that JSI may decrease the legitimacy of the WTO's multilateral structure by diminishing the negotiating power of developing countries. Critics also suggest that JSI places emphasis on advancing digital liberalization while neglecting the advancement of digitally facilitated sovereignty, data localization, cybersecurity regulation, and domestic policy discretion. [36] Also, issues related to market access and permanent moratorium remain unresolved due to diverging philosophies among the countries. Thus, criticisms surrounding JSI reflect challenges facing the balance between openness in digitally facilitated commerce and national regulatory authority within increasingly fragmented global digital commerce regimes.

It can be deduced that the WTO framework is a cornerstone of international trade in the digital economy. These frameworks help in promoting non-discriminatory treatment and provide a means to ensure fair access to markets and protection of intellectual property rights. These factors have been instrumental in establishing an environment that allows stable development of international digital commerce. However, the WTO faces two significant institutional impediments. Firstly, its decision-making process relies on achieving consensus among member countries, which results in long delays in responding to new issues as they arise, especially those related to rapid technological advancements such as artificial intelligence (AI), governance of online platforms, and digital taxation. Secondly, the increasing fragmentation of digital governance outside of the WTO raises concerns regarding whether national regulatory and sovereign interests will be prioritized over the principles of free trade liberalization

embodied by the WTO. Ultimately, the current WTO frameworks have provided a foundation for international digital governance, but they lack the flexibility to evolve at a rate consistent with developments within the digital economy. There is therefore a need for alternative, adaptable forms of digital governance.

3.2. Regulatory Fragmentation, Digital Sovereignty, and the Challenges of Contemporary Digital Trade Governance

Issues related to regulatory fragmentation, digital sovereignty, and the challenges associated with contemporary digital trade governance are presented in this section. This discussion is important because in recent years, the governance of global digital trade has shifted toward a fragmented, multi-layered regulatory environment, instead of a centralized multilateral system. As earlier stated, during the post-Cold War era, the World Trade Organization (WTO) became the primary organizational framework for the governance of international trade. However, earlier discussions in this study have shown that the rapid expansion of digital technologies, data-driven markets, platform economies and artificial intelligence have showcased many structural limitations in the ability of the WTO-based governance framework to deal with the changing trading system.[41] States and regional organizations are developing independent digital trade regulatory frameworks to govern business transactions outside of the traditional multilateral systems. Therefore, today's digital trade governance does not occur through a single worldwide accepted framework. Rather, it occurs through overlapping and competing regulatory systems. [24] A cursory look at different jurisdictions points to this fragmented, multi-layered regulatory environment.

The European Union (EU) digital trade regulatory model, which evolved progressively since 1995, is centered around individuals' rights to protect their privacy, provide consumers with rights in the digital marketplace, hold technology platforms accountable, and ensure that the EU maintains democratic oversight over its regulatory decisions.[6] In the USA, since the dot-com boom of the 1990s, the country has been following a market-based model in digital governance. [44] The US emphasizes innovation, expansion of technologies across borders, cross-border data flow, and limited private sector governance. In general, the US prefers less regulatory intervention and provides support for open digital markets using both bilateral and multilateral trade agreements.[48] For China, in recent years, the government established a state-based digital sovereignty model that focuses on maintaining cyber sovereignty, localizing data, regulating cybersecurity, and maintaining tight state control over all digital platforms and technological systems. [8] China's central government exercises extensive control over what can be posted

online, AI systems use, and all elements of digital infrastructure. This is part of their larger national security strategy for achieving technological independence. [37] Presently, whether in the Global South or North, many countries are developing their own ‘country-fitted’ digital trade regulatory framework and this is posing a huge challenge to the WTO digital trade governance system.

Indeed, through the adoption of digital sovereignty, even countries that are generally classified as developing, emerging, or less industrialized are making efforts to develop adequate regulatory capacity for international digital trade. In this regard, the Brazilian regulatory trajectory becomes particularly instructive. The Brazilian system cannot be seen as an example of the US liberal marketplace or a China-style sovereignty-based model. It can best be viewed as a good example of an emerging market model of digital sovereignty. One that is asserting meaningful control of its data and digital infrastructure while also seeking to participate in the global digital trade network. The Marco Civil da Internet (Law 12.965/2014), created a rights-based approach to digital governance. This included provisions that are related to data localization. [15] The Marco Civil da Internet promotes the idea of digital sovereignty and reflects it as a legitimate form of democratic governance. This serves as a response to issues related to infrastructure dependency and foreign surveillance. A similar regulatory example can also be seen in the Lei Geral de Proteção de Dados Pessoais, or LGDP, (Law 13.709/2018). This law provides certain restrictions related to international data transfers. It, however, generates trade frictions when used in conjunction with Brazil’s GATS commitments. This remains legally unaddressed.[16] In addition to Brazil, there are other examples of countries in Latin America, such as Chile and Mexico, where their national laws and regulations regarding domestic data protection are conflicting with their obligations under free-trade agreements, including the CPTPP and bilateral agreements. All these create fragmentation, which poses a huge challenge to the WTO digital trade framework.

Another major issue is digital sovereignty. Borgogno & Zangrandi (2024), explain that most recently, States are seeking greater control over major aspects of their digital systems operating within their respective jurisdictions. To Rehman (2025), this trend is rooted in a growing belief that unrestrained globalization of digital commerce will harm national security, economic autonomy, democratic accountability, and domestic regulatory authority. In this light, countries like China and Russia are increasingly advocating for regulations designed to protect these critical infrastructure assets and reduce reliance on foreign technological systems. Currently, some of these states require specific types of data to remain inside their respective borders through the use of data localization measures, while others prohibit

foreign entities from accessing sensitive information pertaining to their citizens, financial systems, or government agencies.[37] Related to this are issues of data privacy, data transfers, surveillance, cybersecurity, digital rights, etc. Jurisdictions increasingly employ differing approaches toward regulating these aspects of the digital world. [47] For instance, while the European Union employs very strict standards regarding privacy and data protection, under its General Data Protection Regulation (GDPR) [28], other jurisdictions like the US, employ more commercially favorable approaches toward data governance. These differences create conflicts regarding permitted cross-border data transfers and regulatory compatibility.[11]

Another hallmark issue pertaining to modern digital trade governance is the increased regulatory influence being exercised by transnational digital platforms. Major companies like Amazon, Google, Alibaba, Meta, TikTok, Apple, etc., are no longer simply acting as participants in global e-commerce. [33] They are now major governance actors, helping to define the rules governing how digital commerce operates around the globe. [28] Platforms use algorithms, platform policies, automated moderation systems, and technical architecture designs to determine market access, visibility on search engines, advertising allocation, and pricing strategies. [42] All these affect billions of end-users. And there are hundreds or even thousands of such businesses operating globally. Since platforms are simultaneously operating transnationally across numerous jurisdictions, the question is: who governs them? They often operate outside of formal state authority in many instances, especially in developing countries. This raises several issues pertaining to accountability, transparency, competition, and democratic oversight for digital trade.

Additionally, Artificial Intelligence (AI) poses a significant challenge to digital trade governance. AI is becoming an increasingly common driver for e-commerce. AI systems now drive a wide variety of aspects of digital trade, ranging from advertising, purchasing logistics, recommendation systems, financial transactions, fraud detection, and automated purchasing decisions, for many companies and millions of end-users globally. [51] Similarly, algorithmic systems are driving how digital markets function by controlling visibility, search results, content distribution, and platform engagement. However, few governance frameworks exist for regulating AI-driven commerce globally. [11] WTO has not expressly provided for this. Also, more issues surround transparency, explainability, and accountability in the use of AI. Also, notwithstanding rapid growth in the size, value, and activity around global digital trade, participation remains extremely unequal among nations, states, and economies.[49] Large inequalities

continue to exist in terms of access to internet connectivity, digital infrastructure, and technological capabilities among nations. Developing countries rely extensively on foreign-built, designed, bought, and maintained digital infrastructure.

Finally, and most fundamental is the issue of enforcement. While WTO agreements like GATT, GATS, TRIPS, and ITA contain provisions that are legally binding, none of them were created for modern digital trade issues. Instead, all were designed for traditional international trade in goods, services, and intellectual property at the time prior to the development of large scale transnational digital platforms, AI, algorithms and cross-border data flow. In contrast, other WTO initiatives dealing with digital trade, like the Work Programme on Electronic Commerce, the Moratorium and the JSI, remain primarily non-binding soft-law agreements. [11] Therefore, there exists an enormous institutional enforcement challenge in the global digital trade regulation. Moreover, the lack of coordination among national enforcement agencies complicates this issue. For example, the EU uses regulations such as the GDPR to enforce digital trade rules globally. Conversely, the US relies on industry-led enforcement by using platform self-regulation as an effective mechanism. Lastly, China utilizes state oversight to enforce digital trade rules and emphasizes data sovereignty and cybersecurity. Therefore, while the WTO provides a foundation of global principles regarding digital trade, enforcement mechanisms remain fragmented and inadequate. [39] This highlights the need for harmonized flexible global enforcement mechanisms.

3.3. Reconceptualizing Global Digital Trade Governance Beyond WTO-Centered Frameworks

There exist significant shortcomings in the applications of WTO digital trade governance models. Although the WTO still plays an important role in international economic law, the legal architecture of the WTO was established for trade in tangible products and territorially defined services. They are not clearly meant for cross-border data flows, cloud-based systems, artificial intelligence, and algorithmically facilitated transactions that currently drive global e-commerce. [41] Therefore, we need to reconceptualize the framework governing the global digital trade system. It is imperative that we move from traditional WTO-centered trade liberalization models toward a plural and interdependent governance system that includes the stakeholders that are involved in the process. This requires creating a singular and integrated governance structure that addresses all of these issues.

Any proposed reform must as a matter of importance, consider a multi-layered hybrid governance system. At the moment and from our observations, it is nearly impossible for digital trade governance to function solely through centralized multilateral institutions. This is because, as earlier shown, digital trade governance presently involves so many different stakeholders like states, regional organizations, international institutions, digital platforms, and private technological actors. Together, they address issues related to data governance, cybersecurity, AI regulation, platform accountability, and digital rights. Thus, there can no longer be a singularly centralized multilateral body governing all aspects and layers of digital trade. To create effective digital trade governance frameworks, therefore, all aspects and stakeholders in the digital trade governance must be coordinated. In this regard, a hybrid form of digital trade governance becomes particularly relevant. This polycentric framework will create a layered model of authority. It should therefore be based on a combination of formal international legal standards, national/regional principles, private standards and best practice guidelines by industries and multi-stakeholders. [47]

Additionally, this hybrid model must be sufficiently flexible to allow for changes in procedures. There should be provisions for continuous reviews of regulations necessary to respond rapidly to developments in technology. Furthermore, this model of digital trade governance should, while aiming at international coordination, also consider the need to preserve the ability of nations to exercise sovereignty over their own regulatory affairs. [19] Achieving complete legal uniformity is unrealistic since each nation possesses unique political systems, developmental priorities, and cultural norms. At the same time, excessive fragmentation generates significant compliance costs, creates legal uncertainty, and weakens opportunities for cross-national cooperation.[1] Therefore, future governance systems must pursue harmony in the absence of uniformity by establishing common standards for all aspects of digital trade.

There is also a need for institutional coordination. Due to the diversity and interdependence of digital trade governance, no single institution can provide an effective response to the challenges presented by digital trade. [1] Therefore, a reformed framework must promote increased collaboration among existing institutions like the WTO, OECD, WIPO, UNCTAD, as well as regional organizations like the EU and ASEAN. This is aimed at eliminating duplication and promoting greater coherence in governance. Moreover, broader participation by stakeholders (both public and private) is essential. National and private stakeholders like Google, Amazon, Meta, Alibaba, etc., should also be carried along. Also, future governance frameworks must establish higher international standards for accountability, transparency, competition, and digital rights protection of platforms. In this light, the use of emerging technologies like

AI in digital trades, especially by big companies, should be regulated. Jones (2023), supports the view and need for the establishment of more formal guidelines that enable proactive regulatory responses to emerging technologies.

Then, on the issue of cross-border enforcement, it must be recommended that the WTO should create binding and enforceable digital trade frameworks. Also, it is reiterated that the traditional territorial system of jurisdiction faces difficulties in enforcing commerce that occurs simultaneously across multiple territories. Therefore, future frameworks must include new forms of harmonized transnational enforcement regimes as well as specialized digital dispute resolution mechanisms. [5] This should include an online and AI-supported dispute resolution system, alongside sufficient transparency and human oversight. Despite growing demand for access to the internet, data infrastructure, and regulatory capacity, many low-income countries face significant barriers in accessing these resources. Therefore, future governance systems should support digital industrialization, data center development, and institutional capacity building, while addressing concerns about data colonialism and dependence on technology. [9] Most importantly, there is also a strong need for future governance to remain focused on humanity, thereby ensuring digital rights, privacy, democratic accountability and fair representation for all people, while facilitating innovation and economic growth.

4. CONCLUSION

The accelerated growth in digitization has significantly changed the way that global trade takes place. The exchange of data across borders, the use of artificial intelligence (AI) by corporate entities, the utilization of cloud computing as a means to store and process information, and the growing presence of algorithmically based business models are all new elements of global commerce. All these could not have been envisioned when the World Trade Organization (WTO) was established about 30 years ago. Although it still plays an important role in the system of international economic governance, the WTO's current framework for both regulation and governance is finding it increasingly difficult to deal with the rapidly changing nature of modern-day digital commerce. The study has demonstrated that there is a trend toward decentralized or fragmented forms of regulation concerning global digital trade. This form of regulation is developing away from centralized forms of multilateral regulation, toward pluralistic forms of governance. As such, states are creating different methods of regulating data governance, cybersecurity, accountability among digital platforms, digital taxation, and AI regulations based on their respective national objectives, interests, and other factors. Therefore, regulatory fragmentation and digital

sovereignty are increasingly playing major roles in defining the path forward for global e-commerce law. This study concludes by suggesting that any future governance frameworks related to digital trade governance should seek to develop more flexible and coordinated systems involving all stakeholders, rather than focusing solely on trade liberalization models. Ultimately, effective global e-commerce governance will depend on striking a balance between innovation, digital integration, regulatory autonomy, accountability, and digital justice in an increasingly digitally integrated but also fragmented world.

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GOBERNANZA DEL COMERCIO DIGITAL MÁS ALLÁ DE LA OMC: FRAGMENTACIÓN REGULATORIA, SOBERANÍA DIGITAL Y EL FUTURO DEL DERECHO DEL COMERCIO ELECTRÓNICO

RESUMEN

El surgimiento del comercio digital está transformando radicalmente la forma en que se lleva a cabo el comercio internacional en la actualidad. Sin embargo, la gobernanza actual del comercio digital sigue anclada en un marco obsoleto de la Organización Mundial del Comercio (OMC), diseñado en gran medida para una era anterior al comercio digital. Dicha estructura de gobernanza no ha logrado responder eficazmente a las cuestiones emergentes en este ámbito. Paralelamente, los Estados y los bloques regionales están desarrollando modelos regulatorios divergentes que reflejan sus intereses soberanos en materia digital y generan una significativa fragmentación de la gobernanza. Mediante el método doctrinal y un enfoque comparado, este trabajo examina las deficiencias de los modelos actuales de gobernanza del comercio digital centrados en la OMC y sostiene que el sistema está evolucionando desde las estructuras comerciales multilaterales tradicionales hacia sistemas híbridos, impulsados por la soberanía y con la participación de múltiples actores. El artículo aboga por un marco reconceptualizado capaz de equilibrar la integración digital, la soberanía regulatoria, la innovación y una coordinación eficaz de la gobernanza global en una economía digital en constante evolución.

Palabras clave: gobernanza del comercio digital, soberanía digital, fragmentación regulatoria, derecho del comercio electrónico, gobernanza de datos transfronterizos

WTO之外的数字贸易治理：监管碎片化、数字主权与电子商务法的未来

摘要

数字贸易的兴起正在深刻改变当今国际贸易的运作方式。然而，现行的数字贸易治理体系仍植根于世界贸易组织（WTO）过时的框架之中，而该框架主要针对的是数字贸易时代之前的环境。这一治理结构已无法有效应对数字贸易中涌现的新问题。与此同时，各国及区域集团正制定各异的监管模式，以体现其数字主权利益，从而导致了显著的治理碎片化。本文结合法学教义分析与比较研究方法，剖析了当前以WTO为核心的数字贸易治理模式的缺陷，并指出治理体系正从传统的各种多边贸易结构，向涉及多方主体的、混合型且由主权驱动的体系演变。文章主张构建一个经重新构想的框架，以便在不断演变的数字经济中，实现数字一体化、监管主权、创新与有效全球治理协调之间的平衡。

关键词：数字贸易治理、数字主权、监管碎片化、电子商务法、跨境数据治理