The WTO as Major Driver of Sustainable Development and its Reform Process

Progetto UNIBO-MAECI
L'Organizzazione mondiale del commercio quale protagonista dello sviluppo sostenibile nel rilancio del sistema multilaterale

edited by

Elisa Baroncini

with the collaboration of

Alessandra Quarta, Giulia Bortino and Niccolò Lanzoni

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The EU Digital Trade Instruments and the WTO System

Susanna Villani*

Summary: 1. Introduction. – 2. Placing Artificial Intelligence in the EU digital trade strategy. – 3. Regulating Artificial Intelligence through bilateral trade instruments: Digital partnerships and (new) digital trade agreements. – 4. Conclusive remarks: What contribution of the EU digital trade to the multilateral context?

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1. Introduction

In response to the digital transformation and the governance challenges it triggers, the regulatory landscape for digital trade has profoundly changed in the last two decades.[1] In particular, Artificial Intelligence (AI) is widely agreed to be a key element in the development and reshaping of the current and future global economy. [2]

As stressed in the first WTO report on trade and AI released in 2024,[3] the relationship between AI and international trade is defined in two dimensions. On the one hand, AI has the great potential to fundamentally change international trade and business models by reducing costs and logistics and creating new pathways for economies to develop expertise and business efficiency in areas that were out of reach. According to the WTO Director-General "[t]he digital transformation driven by AI is poised not only to boost services trade; it may also create whole new categories of tradable AI-powered goods, from autonomous vehicles to robotics and beyond. If we successfully harness its potential, AI can also support greener trade by optimizing resource use and reducing the carbon footprint of supply chains."[4] On the other hand, the increasing use of AI requires to regulate some sensitive questions related to access to data, intellectual property and copyright, proscriptions against localized storage requirements, and stipulations on source code governance and cybersecurity. Besides, AI poses new ethical, social, and human rights concerns that may require new norms and standards to ensure responsible and trustworthy development and use of AI.

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[1] There is no accepted international definition of digital trade; the main difference with traditional trade in goods and services is the importance of cross-border data flows. In general, trade is considered to be digital if part of the transaction is carried out by digital means. Digital trade is often equated with e-commerce; however, e-commerce, usually defined as the delivery of goods ordered online, is part of the larger category of digital trade. For insights, see M. Burri, A. Chander, *What Are Digital Trade and Digital Trade Law?*, in *AJIL Unbound*, 2023, p. 99 ff.; M. Burri, M. Vásquez Callo-Müller, K. Kugler, *The Evolution of Digital Trade Law: Insights from TAPED*, in *World Trade Review*, 2023, p. 190 ff.

[2] J. Ferencz et al., *Artificial Intelligence and International Trade: Some Preliminary Implications*, OECD, 2022, Available at: https://www.oecd-ilibrary.org/docserver/13212d3e-en.pdf.

[3] World Trade Organization, *Trading with Intelligence: How AI Shapes and is Shaped by International Trade*, 2024.

[4] Ibid., p. 4.

In view of the incorporation of this new technology into an increasing number of goods and services with far-reaching implications for trade, the adoption of new instruments to support (even if indirectly) the regulation of AI in international trade has been examined in the WTO. Of particular note is the moratorium on the imposition of customs duties on electronic transmissions[5] and the conclusion of a plurilateral agreement to facilitate cross-border electronic transactions, reduce barriers to digital trade and promote innovation in e-commerce.[6] According to the text agreed on 26 July 2024, the latter covers digital trade facilitation, cross-border data flows, consumer protection, the facilitation of electronic transactions (e.g. e-signatures, e-contracts) and the protection of software source code. Although such an agreement is noteworthy for regulating digital trade in general terms, controversial issues like AI systems and forced transfer of source code have been excluded from the scope of the agreement.

Despite the achievement of these important milestones, the WTO legal framework is not currently adequate to meet the new challenges posed by AI systems. For this reason, discussions are taking place outside the WTO, in other multilateral and bilateral contexts, of formal or informal nature, on the possibility of converging on common standards to facilitate the introduction of AI systems in trade relations. In this regard, the European Union (EU) is trying to carve out for itself a leading role in defining appropriate instruments to regulate digital and technological trade, including AI systems.

The EU is currently engaged in an internal and external digital transformation, driven by the affirmation of the so-called 'EU technological (or digital) sovereignty.'[7] It reveals the Union's intention to overcome its dependence on foreign subjects and to contribute to the shaping of international rules in the digital/technological domain.[8] This perspective shall then be combined with the paradigm of 'open strategic autonomy': [9] the Union's general intention to make its own decisions and shape its trade strategies to protect and promote core EU interests and values, while achieving broader competitiveness and assertiveness within the international trade law context.[10] In parallel, it is worth recalling that EU primary law requires the Union to promote multilateral solutions to common problems (Article 21 TEU). With specific regard to global trade, it shall contribute to the harmonious development of world trade (Article 206 TFEU) and "encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade" (Article 21(2)(e) TEU).

Against this background, this paper aims to reflect on the exercise of the Union's Common Commercial Policy (CCP) competence to contribute to the international regulation of AI in line with

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[5] The text of the moratorium is available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/MIN98/DEC2.pdf&Open=True.

[6] For insights on the negotiations of the E-commerce agreement, see https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm. For comments, see M. Burri, *A WTO Agreement on Electronic Commerce: An Inquiry into Its Legal Substance and Viability*, in *Georgetown Journal of International Law*, 2023, p. 565 ff.

[7] European Commission, *Shaping Europe's Digital Future*, COM(2020) 67 final, 19 February 2020. For insights, S. Poli, E. Fahey, *The Strengthening of the European Technological Sovereignty and Its Legal Bases in the Treaties*, in *Eurojus.it*, 2022, p. 147 ff.

[8] G. De Gregorio, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society*, Cambridge University Press, 2022.

[9] For insights, Editorial Comments, *Keeping Europeanism at Bay? Strategic Autonomy as a Constitutional Problem*, in *CMLR*, 2022, p. 313 ff.; D. Broeders, F. Cristiano, M. Kaminska, *In Search of Digital Sovereignty and Strategic Autonomy: Normative Power Europe to the Test of Its Geopolitical Ambitions*, in *JCMS*, 2023, p. 1261 ff.; S. Poli, *Reinforcing Europe's Technological Sovereignty Through Trade Measures: The EU and Member States' Shared Sovereignty*, in *European Papers*, 2023, p. 429 ff.; C. Beaucillon, *Strategic Autonomy: A New Identity for the EU as a Global Actor*, in *European Papers*, 2023, p. 417 ff.

[10] E. Fahey, *The European Union as a Digital Trade Actor: the Challenge of Being a Global Leader in Standard-Setting*, in *International Trade Law and Regulation*, 2021.

the EU value-based digital trade agenda, while examining the coherence of this strategy with the primary law requirement of supporting multilateral trade. It also intends to address some reflections on the contribution of the EU's trade instruments to the potential renewal of the WTO legal system in the digital domain.

2. *Placing Artificial Intelligence in the EU digital trade strategy*

The European Commission has declared the years 2020-2030 to be the 'Digital Decade' and set the objective of achieving the digital transformation to empower a more digitally sovereign, resilient, and competitive EU. The strategic Communication on *Shaping Europe's digital future* was further complemented by the 2021 *Digital Compass: the European way for the digital decade*, which sets out the Commission's vision for the EU's digital transition by 2030 and the specific actions it will undertake to aid the creation of safe and secure digital services and markets.

As of the AI, the 2020 *White Paper on Artificial Intelligence*[11] presented by the European Commission outlined a two-pronged strategy. On the one hand, it emphasises the need to promote the Union's competitiveness at global level by stimulating public and private investment in the AI sector and promoting the creation of an innovation-friendly ecosystem, especially in the industrial sector. On the other hand, there is a commitment to the development of a European digital ecosystem based on legality, ethics and robustness (from a technical and social point of view) and able to guarantee, first and foremost, the protection of human dignity, human rights and the other EU founding values set in Article 2 TEU, that ultimately constitute its constitutional identity.[12]

Such a perspective is also projected beyond the Union's territory through the promotion of a rules-based global AI trade. The need to integrate AI systems into the EU trade policy emerged in the 2021 Communication entitled *Trade Policy Review – An Open, Supportive and Assertive Trade Policy*, [13] where the Commission emphasised that the implications of new digital technologies need to be addressed globally through more ambitious global standards and rules. For this reason, "supporting Europe's digital agenda is a priority for EU trade policy."[14] To this end, the Union should pursue the objective of ensuring a leading position in digital trade, while supporting multilateral negotiations to liberalise trade in services in sectors going beyond e-commerce.[15] At the same time, the digital transformation and emergence of AI technologies have an important security and values dimension for the EU and require a carefully calibrated policy approach internally and externally. This implies that the EU digital trade agenda shall be based upon the EU core values.

This perspective of value-based digital trade is further underlined in the *European Declaration on Digital Rights and Principles for the Digital Decade*, jointly adopted by the European Parliament,

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[11] European Commission, *White Paper on Artificial Intelligence. A European approach to excellence and trust*, COM (2020) 65 final, 19 February 2020.

[12] For insights, E. Sciso, R. Baratta, C. Morviducci, *I valori dell'Unione europea e l'azione esterna*, Giappichelli, 2016; P. Mori, *Il primato dei valori comuni dell'Unione europea*, in *DUE*, 2021, p. 73 ff.; L.S. Rossi, *Il valore giuridico dei valori. L'Articolo 2 TUE: relazioni con altre disposizioni del diritto primario dell'UE e rimedi giurisdizionali*, in *Federalismi.it*, 2020; L. D. Spieker, *EU Values Before the Court of Justice*, Oxford University Press, 2023.

[13] European Commission, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(2021) 66 final, 18 February 2021.

[14] For comments, E. Fahey, *The European Union as a Digital Trade Actor: the Challenge of Being a Global Leader in Standard-Setting*, in *International Trade Law and Regulation*, 2021, p. 155 ff.; H. Roberts, J. Cowls, F. Casolari, J. Morley, M. Taddeo, L. Floridi, *Safeguarding European Values with Digital Sovereignty: an Analysis of Statements and Policies*, in *Internet Policy Review*, 2021, p. 1 ff.

[15] COM(2021) 66 final, cit., point 3.2.3.

the Council and the Commission.[16] It calls for the necessary measures to guarantee the values of the Union and the rights recognised in supranational law, both online and offline. The external scope of the Declaration is made explicit in the document itself, which states that "the EU should promote the Declaration in its relations with other international organisations and third countries, *including by reflecting these rights and principles in its trade relations*, with the ambition that the principles guide international partners towards a digital transformation that puts people and their universal human rights at the centre throughout the world" [emphasis added]. Moreover, the document recalls that the responsible development of digital culture can be a driving force for achieving the sustainable development goals of the 2030 Agenda, thus complying with the principle laid down in Article 11 TFEU. In this regard, the Declaration is aligned with the EU trade policy strategy in recognising that digital transformation represents a key enabler of sustainable development, and not only a space of competition and multilateral governance.

In June 2023, the European Council adopted its own *Conclusions on EU digital diplomacy* in which it emphasised the need for a stronger, strategic, coherent and effective supranational policy and action in global digital issues to confirm the Union's commitment in this field.[17] The digital diplomacy described in the conclusions also includes digital and technological trade to strengthen cooperation in and with relevant multilateral and multistakeholder fora by exploring the possibilities of burden-sharing for better coordination on digital issues. Lastly, this approach has been reiterated in the recent Communication on *A Competitiveness Compass for the EU*,[18] where the EU stresses its intention to expand its trade agreements network and ensure greater market access for European companies, while promoting open, rules-based global trade.

In order to achieve this objective, the EU has traditionally adopted a twofold strategy aimed at combining the multilateral and the bilateral approach. On the one hand, the EU is committed in building alliances in international organisations and actively supporting the efforts of the WTO for advancing digital inclusion in trade. On the other hand, it intends to strengthen its relations with *like-minded partners* through digital partnerships and dedicated agreements to advance cooperation in several crucial areas – including AI, secure international connectivity, cybersecurity, digital economy, trusted data flows and standards.

3. Regulating Artificial Intelligence through bilateral trade instruments: Digital partnerships and (new) digital trade agreements

Bilateral cooperation instruments with like-minded partners largely stem from informal forums designed to foster enhanced dialogue. Rather than imposing obligations, these platforms aim to build consensus on a broad range of technical and strategic issues, including AI. Notably, they include high-level dialogues with the United States and several Asian countries, which serve as key reference points in the development of AI and represent major competitors of the EU in this domain.[19]

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[16] European Declaration on Digital Rights and Principles for the Digital Decade, 2023/C 23/01, 23 January 2023. For comments, E. Celeste, *Towards a European Declaration on Digital Rights and Principles: Guidelines for the Digital Decade*, in *dcubrexitinstitute.eu*, 7 February 2022; C. Cocito, P. de Hert, *The transformative nature of the EU Declaration on Digital Rights and Principles: Replacing the old paradigm (normative equivalency of rights)*, in *Computer Law & Security Review*, 2023, p. 1 ff.

[17] Council conclusions approved by the Council at its meeting on 26 June 2023, doc. 11088/23.

[18] European Commission, *A Competitiveness Compass for the EU*, COM(2025) 30 final, 29 January 2025.

[19] Since 2021, the EU-US Trade and Technology Council (TTC) has been responsible for the political settlement of trade-related disputes and for conducting specific dialogues to address key issues related to trade in goods and services. Following the example of the TTC with the United States, the EU-India Trade and Technology Council was launched in 2022 with the aim of intensifying the already consolidating bilateral relationship through the negotiation of a free trade

The Union's regulatory toolbox then is increasingly characterised by far more significant bilateral instruments in terms of scope and potentialities, i.e. the Digital Partnerships and the Digital Trade Agreements.

Digital Partnerships, currently concluded with Japan, the Republic of Korea, Singapore, and Canada, are adopted by the parties to feed into the interpretative framework of existing or future bilateral relations.[20] As explicitly stated in all text versions, "the Digital Partnership is not legally binding and is not intended to supersede national law or international obligations by which the sides are bound. It does not have any financial implications on either side." In fact, they essentially intend to provide a framework for advanced cooperation across the entire spectrum of digital issues, including the development of AI, which is currently not explicitly covered by FTAs. Indeed, if these technologies are part of a traded service, they are at most covered by the rules on cross-border trade in goods and services, which include rules on the transfer of and access to software source codes.

Although the Digital Partnerships do not establish binding obligations, they are explicitly aimed at fostering regulatory alignment in the field of AI. The parties commit to sharing information and coordinating their approaches to AI governance at the international level. In particular, they pledge to work together on practical initiatives that support the development of trustworthy and responsible AI, including within the *Global Partnership on Artificial Intelligence* (GPAI) [21] and other relevant international fora.

One of the most significant aspects of the Digital Partnerships is the focus on identifying standards for the development of AI systems. The parties highlight the importance of converging around common ethical and technical criteria to facilitate trade and lower barriers to market access for AI-driven products and services.[22] As an alternative, they express openness to exploring mutual recognition of conformity assessment procedures and results – an approach that effectively aligns with the principle of mutual recognition of standards, as outlined in the WTO Agreement on Technical Barriers to Trade (TBT).[23]

Starting from these *soft law* instruments, the EU has recently concluded negotiations of self-standing bilateral Digital Trade Agreements (DTAs) with Singapore and Korea, aimed at amending and supplementing the provisions already enshrined in existing bilateral FTAs.[24]

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agreement. For insights, visit the following webpages: https://digital-strategy.ec.europa.eu/en/factpages/eu-us-trade-and-technology-council-2021-2024; https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreement_en

[20] A. Ott, *Informalization of EU Bilateral Instruments: Categorization, Contestation, and Challenges*, in *YEL*, 2020, p. 569 ff. For further information on the Digital Partnerships, please refer to the dedicated page: https://digital-strategy.ec.europa.eu/it/factpages/international-partners.

[21] The *Global Partnership on Artificial Intelligence* (GPAI) is an integrated partnership that brings together OECD Members and GPAI countries to advance an agenda for the implementation of AI to be human-centric, safe and trustworthy, as well as hinged on the principles of the OSCE Recommendation of the Council on Artificial Intelligence, Council at Ministerial Level (22 May 2019).

[22] C. H. Hofmann, *The Integration of Global Standards into the EU as regulatory Union*, Luxemburg, 7 October 2022.

[23] Agreement on Technical Barriers to Trade (TBT Agreement II), 15th April 1994 (1868 UNTS 120, LT/UR/A-1A/10).

[24] Following the conclusion of negotiations with Singapore in July 2024, the European Commission formally requested the authorisation of the Council to proceed with the signing of the aforementioned DTAs on 5 February 2025 (European Commission, Proposal for a Council Decision on the conclusion, on behalf of the Union, of the Digital Trade Agreement between the European Union and the Republic of Singapore COM(2025) 23 final). On 10 March 2025, the EU and the Republic of Korea have concluded the bilateral negotiations. For insights, G. M. Ruotolo, *The EU Data Protection Regime and the Multilateral Trading System: Where Dream and Day Unite*, in *Questions of International Law*, 2018, p. 5 ff.; M. Burri, R. Polanco, *Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset*, in *Journal of International Economic Law*, 2020, p. 187 ff.; D. Collins, M. Geist (eds.), *Research Handbook on Digital Trade*, Edward Elgar, 2023.

In general, the parties are committed to fostering an open, secure, and efficient digital trade environment by removing barriers that may hinder online commerce and by ensuring fair, non-discriminatory treatment for businesses operating in the digital sphere. These agreements address both current digital policy priorities and emerging challenges, such as AI which calls for deeper international cooperation in the digital domain.

Apart from these commitments of a programmatic nature, a noteworthy element is the inclusion of provisions on *Standards, Technical Regulations and Conformity Assessment Procedures,*[25] which, although not explicitly referring to AI systems, are inherently applicable to them. Despite minor differences in wording between the two agreements, the parties consistently commit to promoting international standards in digital trade by supporting cooperation and active participation in global fora. They also acknowledge the value of mechanisms that enable cross-border recognition of conformity assessment results and express a willingness to explore such mechanisms, in line with the principles of the WTO TBT Agreement. Furthermore, the agreements emphasize the importance of joint initiatives in the areas of standards, technical regulations, and conformity assessment. Transparency and the exchange of information are also highlighted as essential elements, with both parties reaffirming their commitment to share relevant data – particularly in emerging areas of the digital economy.

Notwithstanding the considerable cooperation and mutual recognition endeavors in both the DTAs, an 'exception clause' has been included that explicitly applies to the AI systems – in addition to the classical 'right to regulate' clause.[26] The 'exception clause' allows the parties to adopt or maintain measures that restrict or prohibit cross-border data transfers where necessary to achieve a "legitimate public policy objective."[27] The footnotes offer an expansive interpretation of this notion, referencing established exceptions under GATT and GATS – such as those for public security (Article XXI GATT and Article XIV bis GATS), public morals, and the protection of human, animal, or plant life or health (Article XX GATT and Article XIV GATS) – while also extending it to more contemporary concerns. These include public order, social cohesion, online safety, cybersecurity, the promotion of safe and trustworthy artificial intelligence, the fight against disinformation, and other comparable public interest objectives, with explicit consideration of the evolving nature of digital technologies and their related risks.

While the inclusion of such a clause is consistent with WTO principles – which permit trade restrictions via technical regulations only where necessary and proportionate to the risks involved – the breadth of the definition raises important questions. If virtually any digital risk can be framed as a "legitimate public policy objective", the effectiveness of the agreement could be undermined. In practice, this could allow parties considerable leeway to impose discretionary restrictions on cross-border data flows that are essential to the development and deployment of AI systems, potentially limiting the very openness and regulatory alignment the agreements seek to promote.

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[25] Article 22 for the EU-Korea agreement and Article 23 of the EU-Singapore Agreement.

[26] For insights, C. Titi, *The Right to Regulate in International Investment Law*, Nomos, 2014; B. Rigod, *Optimal Regulation and the Law of International Trade: The Interface between the Right to Regulate and WTO Law*, Cambridge University Press, 2015; A. D. Mitchell, *The right to regulate and the interpretation of the WTO Agreement*, in *Journal of International Economic Law*, 2023, p. 462 ff.

[27] Article 5 for the EU-Korea agreement and Article 5 of the EU-Singapore Agreement. For comments on data transfer, S. Yakovleva, *Privacy and Data Protection in the EU- and US-led Post-WTO Free Trade Agreements*, in R. T. Hoffmann, M. Krajewski (eds), *Coherence and Divergence in Services Trade Law*, Springer, 2020, p. 95 ff.; G. M. Ruotolo, *The EU data protection regime and the multilateral trading system: Where dream and day unite*, in *Questions of International Law*, 2018, p. 5 ff.; F. Velli, *The Issue of Data Protection in EU Trade Commitments: Cross-border Data Transfers in GATS and Bilateral Free Trade Agreements*, in *European Papers*, 2019, p. 881 ff.

The Digital Trade Agreements thus intend to give binding force to those commitments of a programmatic nature already introduced in the Digital Partnerships.[28] In this way, as AI is a new area of intervention at the global level, the Union has framed these commitments within the formal EU institutional framework, by resorting to the procedure indicated in Article 218 TFEU. This notwithstanding, it is also evident that the normative strength of the provisions relating to AI remains relatively weak. The choice to characterise DTAs with a 'soft legal register' is striking for two main reasons, from the EU side.

First, it reflects the Union's decision to pursue a promotional, rather than assertive, strategy in advancing its non-trade values in this regulatory domain. This approach appears even more deliberate given that high technical and ethical standards are already expected to be upheld extraterritorially through the recently enacted Regulation (EU) 2024/1689 on Artificial Intelligence (*AI Act*), which entered into force on 1 August 2024.[29] Moreover, the inclusion of the 'exception clause' is functional to balance the commitment for an open digital trade with the need to guarantee its (self-proclaimed) sovereignty[30] against exogenous influences that could undermine human rights, democracy and the rule of law, as the basis of the EU constitutional system.

Second, this regulatory posture must also be understood in light of the Union's broader strategic aim: to foster international trade and promote technological development through a flexible, cooperative model. By privileging soft law instruments and encouraging dialogue over strict regulatory imposition, the EU signals its intent to stimulate deeper international engagement and consensus-building in the governance of AI. While this approach might seem to dilute the normative ambition of the EU, it represents a strategic calibration: binding and far-reaching standards are pursued through internal legislation such as the *AI Act*, while Digital Trade Agreements adopt a more adaptable framework to foster international alignment and trust.

4. Conclusive remarks: What contribution of the EU digital trade to the multilateral context?

The adoption of recent bilateral and plurilateral instruments in the field of digital trade reflects a broader international trend toward regulatory convergence. While containing some precautionary clauses, these agreements play a pivotal role in encouraging the uptake of international standards by trading partners and fostering cooperation among standard-setting bodies. In doing so, they aim to prevent the emergence of technical barriers and facilitate the development of interoperable and trustworthy digital ecosystems.

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[28] R. A. Wessel, *Normative transformations in EU external relations: the phenomenon of 'soft' international agreements*, in *West European Politics*, 2020, p. 72 ff.

[29] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L, 2024/1689, 12.7.2024. According to the *AI Act*, both deployers and suppliers of IA systems established in third countries will have to comply with the obligations laid down here and with the technical and ethical standards set by the European standardisation organisations in order to be able to sell their products and services on the European market. For comments, P. Dunn, G. De Gregorio, *The European Risk-based Approaches: Connecting Constitutional Dots in the Digital Age*, in *CMLR*, 2022, p. 473 ff.; C. Jasserand, *The Future AI Act and Facial Recognition Technologies in Public Spaces*, in *European Data Protection Law Review*, 2023, p. 430 ff.; N. Th Nikolinakos, *EU Policy and Legal Framework for Artificial Intelligence, Robotics and Related Technologies – The AI Act*, Springer, 2023; P. Hacker, *Sustainable AI Regulation*, in *CMLR*, 2024, p. 345 ff.; C. Novelli et al., *AI Risk Assessment: A Scenario-Based, Proportional Methodology for the AI Act*, in *Digital Society*, 2024, p. 1 ff.; C. Necati Pehliva, *Report: The EU Artificial Intelligence (AI) Act: An Introduction*, in *Global Privacy Law Review*, 2024, p. 31 ff. For an overview on the *AI Act*, see F. Ferri (a cura di), *La nuova disciplina UE sull'intelligenza artificiale*, *Quaderni AISDUE*, 2024.

[30] On the emerging broader concept of 'European sovereignty', see S. Barbou des Places, *Taking the Language of "European Sovereignty" Seriously*, in *European Papers*, 2020, p. 287 ff.

This evolving landscape invites deeper reflection on the implications for the multilateral trading system, particularly the WTO which has witnessed a significant slowdown in normative progress.[31] Even aside from geopolitical tensions, WTO Members remain divided on fundamental trade policy issues, and mutual trust is waning. These dynamics have made consensus-based decision-making increasingly unworkable, especially in sensitive and fast-moving areas such as Artificial Intelligence.

Given the disruptive nature of AI and the divergent regulatory preferences among States, it seems increasingly unrealistic to expect traditional WTO processes to produce timely and meaningful outcomes in this field. As such, alternative governance models are emerging – ones based on informal rule-making and consensus among like-minded Members. This shift echoes developments in other international fora, such as the Council of Europe, where flexible coalitions have succeeded in advancing shared regulatory values. In this regard, the WTO could reposition itself not as the exclusive regulator of AI-related trade, but as a platform for promoting common principles on sound regulation, regulatory cooperation, and international standard-setting in the digital domain. [32]

At the same time, the rise of AI also prompts a re-examination of WTO law itself, particularly the general exceptions under the GATT and the GATS. While these provisions – covering public security, morality, health, and environmental protection – were conceived in a different era, they may not be sufficient to address the novel risks posed by AI. Updating or clarifying the scope of these exceptions, especially to prevent abuse or overreach under the guise of 'public morality', could be essential to safeguard both regulatory autonomy and the integrity of the multilateral system. This balance between moral and ethical imperatives and the foundational principles of non-discrimination and market access is one of the most pressing legal challenges in AI-related trade.

In this context, the EU's active engagement in bilateral digital agreements appears as a strategic response to the paralysis of the WTO. Through such instruments, the Union seeks not only to reduce digital trade barriers but also to project its regulatory values and technical standards abroad. However, while these agreements are important tools for advancing EU interests, their proliferation risks contributing to the fragmentation of the international legal landscape in digital trade. As a result, what emerges is a complex, multi-layered regulatory environment, where bilateralism and multilateralism coexist, but not always coherently.

The regulation of AI is still in its early stages and remains fluid. Against this backdrop, the EU will need to reflect carefully on how to reconcile its strategic interests in technological leadership with its foundational legal commitments, including the principles enshrined in Article 21 TFEU.[33] This includes considering how best to align its internal regulatory frameworks, such as the AI Act, with its external trade policy. Ultimately, if the WTO is to remain relevant in the era of AI-driven global commerce, it must not only reinterpret existing rules but also innovate structurally. A renewed multilateral trade framework should be able to accommodate the specificities of AI, providing legal certainty while allowing for regulatory diversity. The future of international trade depends on the ability of global institutions to adapt, cooperate, and embrace change in a way that fosters inclusive, responsible, and sustainable digital transformation.

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[31] M. Burri, R. Polacco, *Digital Trade Provisions in Preferential Trade Agreements. Introducing a New Dataset*, in *Journal of International Economic Law*, 2020, p. 1 ff.

[32] S. J. Evenett, J. Fritz, *Emergent Digital Fragmentation: The Perils of Unilateralism*, CEPR Press, 2022, p. 46; F. De Ville, S. Happersberger, H. Kalimo, *The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments*, in *European Foreign Affairs Review*, 2023, p. 15 ff.

[33] A. Asteriti, *Article 21 TEU and the EU's Common Commercial Policy: A Test of Coherence*, in M. Bungenberg, M. Krajewski, C. Tams, J. P. Terhechte, A. R. Ziegler (eds), *European Yearbook of International Economic Law*, Springer, 2017, p. 111 ff.; M. Manchin, L. Puccio, A. B. Yildirim (eds), *Coherence of the European Union Trade Policy with Its Non-Trade Objectives*, Cambridge University Press, 2023, p. 236 ff.; G. Kübek, I. Mancini, *EU Trade Policy between Constitutional Openness and Strategic Autonomy*, in *European Constitutional Law Review*, 2023, p. 518 ff.