

INTERNATIONAL ECONOMIC LAW IN THE ERA OF DATAFICATION

This book addresses the challenges of datafication through the lens of international economic law. We are undergoing a wave of datafication practices. If such practices simply continue to evolve without being examined and repaired along the existing path of development, the same issues will continue to accumulate and will more than likely be amplified. The unprecedented economic and social influence of big tech has served as the catalyst for the concept of “digital sovereignty,” which is rooted in the need to safeguard regulatory autonomy in a datafied world. The current wave of data-driven innovations has placed the policy debates on digital trade and data governance into an even more challenging context. The book’s chapters are connected by the many facets of “data” and systematically explain how international economic law can reduce the perils of datafication instead of increasing them. This title is part of the Flip it Open Programme and may also be available Open Access. Check our website Cambridge Core for details.

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Processes of economic regionalisation and globalisation have intensified over the last decades, accompanied by increases in the regulation of international trade and economics at the levels of international, regional and national laws. At the same time, significant challenges have arisen with respect to economic liberalization, rule-based systems of trade and investment, and their political and social impacts. The subject matter of this series is international economic law, in this contemporary context. Its core is the regulation of international trade, investment, finance and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labour, environment and culture, as well as sustainable development. These areas are horizontally interconnected and vertically linked at the international, regional and national levels. The series also includes works on governance, dealing with the structure and operation of international organisations related to the field of international economic law, and the way they interact with other subjects of international and national law. The series aims to include excellent legal doctrinal treatises, as well as cutting-edge interdisciplinary works that engage law and the social sciences and humanities.

INTERNATIONAL ECONOMIC LAW IN THE ERA OF DATAFICATION

SHIN-YI PENG

National Tsing Hua University



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To my Parents

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This book pursues the research question of how we should consider the trend of datafication – under which most dimensions of our lives are being transformed into data to create value – through the lens of international economic law. My initial intention was to provide a book-length treatment with a holistic assessment of the WTO Joint Initiative on E-commerce. But it soon became clear that what really interested me was the broader question of the interplay between datafication and international trade agreements. Having studied international trade law and digital technology governance for more than twenty years, I believe this is an optimal time to map out the dynamic questions posed by the data-driven economy and corresponding regulatory approaches with a fresh eye, and to capture the emerging shape of global trade governance in a datafied world. This book can therefore be seen as the accumulation and culmination of my enduring research interests in the interface between the digital revolution, national regulations, and international economic legal order. The framing of this book – the chapters of which are connected by the many facets of “data” – allows me to bring these various angles together in a more coherent context, which journal articles and book chapters cannot achieve.

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Parts of Chapters 1 and 5 were first published by Oxford University Press as “The Uneasy Interplay between Digital Inequality and International Economic Law” (2022) 33(1) *European Journal of International Law* 205–235. The valuable insights provided by Joseph Weiler and Chantal Thomas through the EJIL Symposium on Inequalities and International Law have guided me in carefully reflecting upon the topic. Parts of Chapter 2 were first published by Cambridge University Press as “Digital Economy and National Security: Contextualizing Cybersecurity-Related Exceptions” (2023) 117 *AJIL Unbound* 122. The feedback from the reviewers of the AJIL Unbound Symposium on Digital Trade – notably, Anne van Aaken and Mira Burri – was most thoughtful and helpful. Additionally, some parts of this book draw upon but substantially modify and extend materials in my previously published articles. These articles include “Private Cybersecurity Standards? Cyberspace Governance, Multistakeholderism, and the (Ir)relevance of the TBT Regime” and “Renegotiate the WTO Commitments? Technological Change and Treaty Interpretation,” published in *Cornell International Law Journal*; “The Legality of Data Residency Requirements: How Can the Trans-Pacific Partnership Help?” and “GATS and the Over-the-Top Services: A Legal Outlook,” published in the *Journal of World Trade*; and “Digital Trade,” published in the *Oxford Handbook of International Trade Law*. I am grateful to the editors and reviewers of these articles for their comments, which have led me to reframe, refine, and more fully develop the arguments presented in this book.

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