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Generative AI in International Trade Law: Navigating Opportunities and Challenges

Abstract: The subject of this article is an analysis of the impact of generative AI (GenAI) on international trade law, from the perspective of both the threats and the opportunities of integrating GenAI into international trade. It addresses topics including intellectual property law, international trade law principles, information security, trade negotiations, contracts, competition, liability and AI ethics. The authors employ a holistic approach, examining numerous applications of GenAI in international trade. They conclude with how the international legal framework for GenAI may help people navigate challenges and seize opportunities to benefit international trade.

Keywords: generative artificial intelligence, international trade law, intellectual property law, AI regulations, AI standards

Introduction

Trade law has, historically, adapted to technological breakthroughs, dating back to steam power, then electricity and finally digital evolution. Each time, the context in which the law functioned determined the legal norms. For example, the rise of the steam-powered railway industry in the 19th century prompted legal acts such as the USA Interstate Commerce Act of 1887 (Congress of the United States of America,

1887) to safeguard public interests from abuses of private companies' dominant position (Dempsey, 2012). Now, the AI age is not only prompting discussions on how to regulate the possibilities of this growing technology before it becomes too dangerous, but also on how lawyers and other stakeholders in international trade can and should use it (Anwansedo et al., 2024; Bar, 2024).

Generative AI (GenAI), understood as AI able to generate new content like text, images, audio and video, already supports various legal and non-legal processes, from drafting contracts, through managing documents, to optimizing supply chains and decision-making. Even before the ChatGPT era, the ideas about the regulation of AI systems were focused around principles such as transparency, explainability, accountability, safety, privacy and security (Bar, 2025, pp. 25–108; Peng et al., 2021, p. 21). With the popularization of GenAI systems, values like fairness, inclusiveness, the promotion of human values or even human control of technology have started to reflect the needs that might be neglected in the case of uncontrolled development of such systems.

Existing frameworks, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (WTO, 2017b), accepted almost worldwide, have been analysed as to whether and to what extent they apply to AI-generated content (ThankGod, 2023, p. 8). Laws and international agreements prepared in the AI age, such as the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, often already take it into account (Babikov et al., 2024; Council of Europe, 2024a). It should be remembered, however, that this Convention has not yet entered into force (Council of Europe, 2024b).

The needs for regulation come from different stakeholders. Developed countries, for example, tend to standardize cross-border practices, with one of the most illustrative examples being the GDPR and other EU acts that require following EU standards even outside the Union, including when sharing data outside the European Economic Area. Focus on data protection and information security indicates specific needs or preoccupations, such as cyberthreats and the need for uniform protection against them. On the other hand, freedom of expression and information needs a system of checks and balances, with the risks both to society and to individuals, such as misinformation, hallucinations (AI providing incorrect, wrongly generated information) and deepfakes (which not only allow someone to be harassed, but provide more opportunities for cybercriminals, including identity theft and phishing attempts).

In this paper, we provide suggestions about how to strike a fair balance between the risks and the opportunities posed and brought by GenAI to international trade. There are numerous potential risks and mistakes in either underregulating, overregulating or wrongly regulating the use of GenAI and its outcomes. While many see the integration of AI into global trade as an opportunity to enhance efficiency, manage costs and streamline the supply chain (Igbinenikaro & Adewusi, 2024a), others point out an intrinsic ambiguity when law that does not directly address AI is interpreted (Igbinenikaro & Adewusi, 2024b, pp. 492–493). While many states and inter-

national organizations, including the European Union, try to regulate specific aspects of AI, including data flows, data privacy and classification of GenAI outputs (Thank-God, 2023, p. 10), according to a World Economic Forum White Paper (Ahmed et al., 2024, p. 3), too many uncoordinated efforts 'have led to fragmented and divergent requirements that are likely to create cross-border trade frictions and undermine governmental objectives, creating barriers to the use' of GenAI.

1. Generative AI-related principles

The coming of the AI age is the right time to re-examine the foundational principles of international trade law – not to revolutionize them, but to make sure their content and application remains both up to date and future-proof. For instance, the transparency principle enshrined in Article III of the General Agreement on Trade in Services (GATS) (WTO, 2017a), requiring Member States to publish 'all relevant measures of general application which pertain to or affect the operation of this Agreement', while leaving room for the initiative of proactive Member States, might not be enough to serve as a legal requirement to be transparent on the application of GenAI in the context of international trade.

From the perspective of a principle of non-discrimination, we might ask questions about the democratization of access to GenAI tools, which are often seen to have regional restrictions (for example due to AI or privacy law conditions, where higher requirements usually mean less available tools or functions). Other international trade law principles (like fairness, reciprocity, good faith, equity and proportionality) may also be interpreted as applicable, at least partially, to autonomous GenAI systems, the entities providing or distributing them, their users and the content they generate.

If we assume that certain advanced GenAI tools in the hands of one subject of international law might create imbalances or unfair advantage against another, a new question arises as to how law can even address this issue and to what extent it is possible to introduce new legal norms and agreements designed to promote equal chances, or at least reciprocity. The above-mentioned Council of Europe Framework Convention, the Organisation for Economic Co-operation and Development's AI Principles (OECD, 2024), the United Nations Educational, Scientific and Cultural Organization's Recommendation on the Ethics of Artificial Intelligence (UNESCO, 2021), as well as the G7 International Guiding Principles on Artificial Intelligence and on a Code of Conduct for AI Developers (European Commission, 2023a, 2023b, 2023c) and the G20 AI Principles (Ministry of Foreign Affairs of Japan, 2019), provide different principles for different actors. To synthesize them, we observe that the fulfilment of these principles would require them to be applicable to states, other subjects of in-

ternational law, AI developers and deployers, and other stakeholders, as well as businesses and other trade actors.[1]

According to the above-cited frameworks, states should promote responsible AI development, including through legislative and policy frameworks. Both the proposed and already agreed principles typically adopt a risk-based approach, requiring the pre-analysis of various AI threats (typically to human rights and the rule of law) and going through mitigation, monitoring and continuous improvement phases as a standard that should be domestically enforced in state parties to such commitments.[2] Governments are also encouraged to promote fair competition and non-discrimination in AI practices, including through entering into international trade agreements as appropriate.

The principle of transparency would require a clear statement of the logic on which the AI system functions. In a broad understanding (especially referring to either high-risk or high-transparency environments, such as the functioning of important state processes), that would also include disclosing the sources of data on which the AI system has been trained, as well as the process of how it takes decisions or develops outputs.[3] What seems to have the most support is the requirement to disclose that given content is AI-generated – not only post factum, but also in the case of tools or functions where it is not clear if AI is involved (e.g. support chats, helplines, etc.). That would allow recipients not only to be aware of AI involvement, but also to ask questions and make their own verifications and checks so as not to be misled by often experimental models.

On one side we have free information flows, and on the other data protection and security requirements. This is particularly visible in the context of international data transfers and the notion of information sovereignty, particularly important to jurisdictions with a high level of privacy regulations. This is another challenge for international law, as data protection laws vary widely across different states, with the EU sometimes being perceived as overregulating, which might thwart innovation (Nizza, in press, pp. 19–20). In addition, the existing guidance already suggests the potential to go deeper and require alignment with human rights and sustainability goals, supporting rather than replacing human decision-making.[4]

GenAI-supported decision-making in the context of international trade law is not limited to aspects of financial fairness, including the prohibition of anti-compet-

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1   The principles in their current shape would still be too vague to bring harmonization, similarly to human rights law, as described by Karska (2019, pp. 56–57).

2   On the challenges of enforcing the liability of multinational corporations, see for example the considerations by Karska & Karski (2021, pp. 429–430).

3   On logic disclosure and transparency in the context of employment, see for example Méndez & Kurzynoga (2023, p. 209).

4   On threats to human rights from transnational corporations, see for example Karska (2022, pp. 248–249).

itive practices (e.g. unfair pricing or digital monopolies). Considerations of transparency in the supply chain, for example, would go further here, and where relevant might require ensuring the traceability of goods to enable verifications of ethical sourcing. Similarly, considerations of customs and logistics, even if limited in the context of digital products or services, would also entail questions about addressing potential trade barriers and the fair treatment of all traders or service providers. We thus conclude that following international trade law in good faith would contribute not just to a good level of compliance in GenAI usage in the context of decision-making, but also to the fair development of international trade.

2. Imbalances and unfair advantages and how to address them

As illustrated by the 2025 US tariffs crisis, international trade development is decided by the policies of subjects of international law, which are followed by international law to make them dependent upon a binding and clear framework. The same applies to GenAI, where international trade law, irrespective of its source, might help prevent new challenges and address existing ones, such as imbalances or unfair advantages. In this respect, among the sources of imbalances, the priorities to address would be:

– the technical advantages of some international law subjects. The most AI-advanced economies might be able to invest and gain competitive advantage thanks to the benefits of new technologies to economy and trade, such as process automation and optimization, increases in productivity or quality, and increases in cost efficiency.

– the infrastructural capacity of some international law subjects, such as fast internet access, efficient devices and data centres. These might allow AI-driven economies to advance faster, both spreading AI adoption among its public and facilitating more ambitious and customised implementation projects.

– HR and implementation costs. Highly qualified human resources in developed countries are better prepared to implement GenAI, which, along with bigger investment potential in the case of fully fledged implementation projects or the development of so-called middleware or other non-publicly available GenAI models or agents, becomes limited to those who can afford it – increasing their relative ability to innovate and adapt (Ahmed et al., 2024, p. 9).

All of the above may deepen imbalances with less AI-advanced economies, if they do not adopt similar solutions. It might not be possible to completely fix these challenges just through legal norms, as investing in education, training and widely available GenAI tools would require directed policies and agreements (at any level), where AI access would be treated as a common good and a revolution serving everyone, rather than just a tool for gaining competitive advantage. Since for many, these might be two extremes, balancing them might end up focusing on providing every

subject of international law with a fair, equal framework to compete in – and that might be started with a uniform set of principles about AI usage and development.

International organizations such as the World Trade Organization (WTO) may play a pivotal role in advocating policies that help sustainable and equitable technological advancement among its Member States. The quantifiable results of these affirmative initiatives would cover:

– the establishment of local technology ecosystems, such as incubators and technology parks, to support local innovation and engagement in GenAI.
– the modification of trade policies to safeguard local markets from inequitable competition from AI-advanced nations – at least giving them more time to adapt and develop resilience.
– the promotion of open standards and interoperability aimed at assisting AI-developing countries – including by facilitating access to open technologies and infrastructure.

3. Stakeholder analysis and risk–benefit mapping

Implementing GenAI in a way where threats are minimized and opportunities seized requires the cooperation of stakeholders both from the international community and domestic actors. Intergovernmental organizations, non-governmental organizations, states, technology firms, businesses and even end users all have their role to play in shaping not only how GenAI is designed and implemented, but also how and for what purposes its outputs are used. International organizations like the Asia-Pacific Economic Cooperation point out the need to harmonize regulatory frameworks (Igbinenikaro & Adewusi, 2024a, p. 5). However, an interesting point made by Chander (2021, p. 118) is that 'AI might be designed for different environments, nurtured on data from polities that might behave differently. This is a form of the well-known problem that AI trained on, say, a largely white (and male) population, might perform poorly with respect to other populations.' Thus defining who is the stakeholder is not as obvious as it seems, as anyone not included or not appreciated enough might find some biased examples.

The harmonized standards, whatever their shape, should then address the vulnerabilities and risks to values common to all stakeholders and, foremostly, the public policy objectives.[5] Only from this perspective is a precise enough risk–benefit mapping possible, while still subject to cooperation between multiple interest groups.

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5 However, AI regulation or standards would always be limited by the unpredictable nature of international relations, including open or indirect but intentional non-compliance with international legal standards, including in hybrid war and conflict and competition strategies, such as engineered migration. For more on such situations, see for example Kużelewska & Piekutowska (2023).

Ultimately, it is the balancing of regulation with legitimate public policy objectives, such as protecting stakeholders against threats to their rights and freedoms, that has been notified by various countries to the WTO's Technical Barriers to Trade Committee (Fonseca Azevedo, 2024, p. 2).

4. Ethical dimensions and legal dilemmas

Ethical questions about the application of GenAI to international trade not only revolve around biases or discriminatory or dangerous decision-making; more frequently, legal issues will refer to security and intellectual property, including voices about the privileges of technology-owning firms that impede innovation and knowledge distribution (Jones, 2023, p. 6). The World Economic Forum White Paper (Ahmed et al., 2024, p. 3) highlights mistrust due to misinformation as another significant risk.

The legal dilemma arising from the ethical questions is to what extent AI should be regulated to avoid allegations of overregulation bias, including indirectly requiring AI to actually pursue partisan or ideological agendas dressed up as values common to everyone.[6] Ching-Fu Lin (2021, p. 243) states openly that '[a]lgorithms are not objective. Rather, they carry the existing biases and discriminations against minority groups in human society.'[7] This perspective, although not optimistic, might highlight the conclusion that no matter how advanced AI becomes, legal dilemmas will never be answered with one perfect legal framework, but rather with a set of checks and balances, including balances against overregulation itself.[8]

5. GenAI in trade negotiations and contracts

GenAI provides a great amount of value to the conclusion of negotiations and the performance of contract in international trade, such as automated drafting, predictive analytics, translations and even smart contracts, with terms directly embedded in the code (Köksal & Sarel, in press, pp. 101–153). Implementing GenAI further to manage contracts might reduce errors, speed up drafting and highlight potential risks, disputes or inconsistencies to address or negotiate. Even misunderstandings as to the interpretation of contracts may be addressed more efficiently with the help of GenAI.

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6   On the challenges of reaching an international consensus on adopting binding instruments, see for example Karska (2021, p. 483).

7   See also Kleinberg et al. (2018).

8   This applies not only to the topic of this article, but in any context where AI might be used to assist with, or even directly apply, law. On the question of who (machine or human) is the judge determining what is lawful and unlawful, see the chapter by Meyer et al. (2020). See also in this context interesting articles by Kowalski (2024) and Kamiński (2024).

At least two viewpoints regarding the function of GenAI in trade talks and contracts exist. First, in phases where contracts are drafted and concluded, GenAI can both automate and enhance quality at every stage (both conceptually and in negotiations), among other things by drafting, managing, monitoring and updating contracts, including adjusting them to the needs and interests of all stakeholders. That might be subject primarily to the GenAI-related principles discussed above.

Another perspective is GenAI-driven trade, where GenAI tools would be present not as a means to manage contracts, but as a subject matter of or context to those contracts. If the use of GenAI might apply or affect the performance of the contract in any way, it might be worth not only incorporating or transposing specific GenAI-related principles, in the form of obligations between parties, but also covering indemnification clauses, liability allocation or even insurance policy requirements to address risks related to GenAI-driven trade (Igbinenikaro & Adewusi, 2024b, p. 497). That being said, regulation and liability allocation should make GenAI-driven trade even more efficient, allowing for its ordered use within the legal relationship.

6. Intellectual property and creative outputs

GenAI is challenging the longstanding intellectual property (IP) principle of human authorship (Gaffar & Albarashdi, 2024, p. 3). The human-centred approach of international IP law, such as the Berne Convention for the Protection of Literary and Artistic Works (WIPO, 1979), may provide the recently popular interpretation that only human-created works are subject to IP rights and protections, with questions arising about the degree of human contribution to the shape of the final work. This applies also to patents, as demonstrated in the case of Thaler, who was denied protection of his inventions, generated by an AI tool, by US and UK copyright offices.[9] Another dimension is the use of IP-protected works to train or otherwise provide GenAI models with input data. As illustrated by Thomson Reuters v. Ross Intelligence, one entity may successfully claim that the use of copyrighted content for that purpose might constitute a copyright infringement, rather than amounting to fair use (United States District Court for the District of Delaware, 2025).

However, irrespective of these standards, international trade will experience even more AI-generated content.[10] Most trade relations do not involve copyright transfers, and even if they do, detecting and proving violations might not always be straightfor-

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9   See the judgment of Thaler v. Perlmutter (United States Court of Appeals for the District of Columbia Circuit, 2025).

10   Hence discussion on the protection of such content is inevitable. Perhaps one day, extremely creative and individualized AI might even be recognized as somehow unique, though recognition of the rights of AI subjects, similar to artificially created companies, is unlikely. See Karski & Ziemblicki (2021, p. 512).

ward. While some scholars suggest the updating of the notion of authorship as being a significant challenge for policymakers and judicial systems (Gaffar & Albarashdi, 2024, p. 2), we believe that the minimum standard in any international trade relations is transparency and good faith, meaning that GenAI must not be used as an unfair advantage or a tool to violate the purpose of contracts and laws in a more sophisticated way. Where dispute resolution or human intervention plays a role, the parties to international trade relations might choose to use only those GenAI tools that provide functionalities and evidence sufficient to implement the agreed standards.[11]

7. Market regulation and data flows

Next to the above-mentioned need to balance information security and the data protection requirements of certain jurisdictions with the need for a free flow of information, often necessary to even use some of the GenAI tools available in the market (Khan, 2024, p. 107), the use of GenAI might also be significant to the application of other regulations. For example, controlling innovative tools and huge datasets might bring certain subjects into dominant positions, potentially heading towards monopolization and anti-competitive practices. Differences in regulations and the depth of regional AI standards might further complicate these issues, resulting in a fragmentation of the regulatory landscape, which is detrimental to global trade.

As Mariarosaria Comunale and Andrea Manera (2024, p. 46) found in their review of the academic literature and policy actions on AI in the economic context, the challenges can be summarized in three takeaways: (1) 'AI effects are uncertain', (2) 'policy and research are partly disconnected' (literature focuses on employment and productivity,[12] policies are about ethics, bias and security), with regulators avoiding addressing economic issues, and (3) regulations have a lot of differences and 'face difficult trade-offs'. Foremostly, the right angle, meaning understanding the perspectives, needs and interests of all stakeholders, is a necessary condition to strike a fair balance between competing values, both adopting the right international trade policies and regulating AI usage in a way to benefit everyone, rather than impeding progress or providing unnecessary barriers.

Conclusion

In conclusion, tackling the issues discussed throughout this paper with legal flexibility is essential to navigate the opportunities and challenges of GenAI. Our key takeaways on what needs addressing are:

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11   See Gienas (2024).
12   See for example Baran (2024).

- regulatory fragmentation, resulting in overregulation and barriers rather than significantly impacting GenAI use in trade globally (Ahmed et al., 2024, p. 6).[13]
- data privacy and security, including the fact that as of today, most GenAI tool providers do not provide security guarantees, or provide only limited ones (e.g. to business accounts), including not using data input by users for its own purposes without their active consent.
- ethical and bias-related matters, revolving around the principles of fairness, transparency and non-discrimination (all stakeholders may play both positive and negative roles in applying and executing these).
- IP concerns (both the ownership and other legal safeguards of AI-generated content), as well as the protection of human-made copyrighted works against unregulated and nearly undetectable infringements through AI.[14]
- economic disparities, as advanced GenAI can contribute to imbalances and unfair advantages in international trade, with regulators and states reluctant to address the economic perspective.

Regulatory pathways that could help balance the competing interests should be a mix of international cooperation and harmonization efforts (Shaffer, 2021, p. 45), a risk-based approach and specific standards designed to safeguard transparency and accountability, as well as supporting ethical guidelines, certification mechanisms and capacity-building, to not just regulate but provide meaningful impact, and moving GenAI development in a fair and right direction that is beneficial to international trade.

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13   See also remarks on soft law limitations by Karska & Karski (2023, p. 544).
14   Including different approaches in IP law, as illustrated in an article focused on ChatGPT considerations in EU law by Markiewicz (2023, p. 166).

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