
ARTIFICIAL INTELLIGENCE, FOREIGN INVESTMENT AND INTERNATIONAL ECONOMIC LAW: EMERGING REGULATORY CHALLENGES

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ABSTRACT

The rapid expansion of AI-related foreign direct investment in data centres, semiconductor manufacturing, cloud infrastructure, advanced computing, digital platforms and research-intensive enterprises has created emerging challenges for international economic law. Simultaneously, states are adopting AI regulations, data-governance requirements, export controls, technology-transfer measures and investment-screening mechanisms, creating tensions between investment protection and regulatory autonomy. This paper examines the evolving relationship between AI, FDI and international economic law, focusing on principles such as fair and equitable treatment, national treatment, most-favoured-nation treatment, expropriation and the right to regulate, alongside relevant WTO and digital-trade disciplines. It argues that although existing international economic law can address several AI-related disputes, its rules were largely developed before the emergence of the contemporary AI economy. Regulatory fragmentation, cross-border data flows, intellectual property, algorithmic transparency, national security, technology transfer and unequal digital capabilities create uncertainty for both investors and host states. The paper proposes a coordinated framework based on transparency, proportionality, regulatory interoperability, investment facilitation and preservation of legitimate public-policy space. It concludes that international economic law should balance technological innovation and investment protection with sovereign regulatory autonomy, responsible investment and inclusive digital development.

Keywords: Artificial Intelligence; Foreign Direct Investment; International Economic Law; International Investment Agreements; WTO; Digital Trade; Data Governance; Developing Countries.

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1. Introduction

Artificial intelligence has moved from being primarily a technological subject to becoming a central issue of economic governance. AI systems increasingly influence the location of production, the allocation of capital, the provision of services, the organisation of supply chains and the competitive strategies of multinational enterprises. It includes semiconductor fabrication, high-performance computing, cloud infrastructure, telecommunications networks, data centres, robotics, autonomous systems, financial technology, healthcare technologies and research facilities. The investment dimension is therefore inseparable from the broader transformation of the international economy.³

The scale of this transformation is already visible in global investment patterns. UN Trade and Development reported that global FDI rose in 2025, while investment became increasingly concentrated in capital-intensive and technology-driven projects. Data centres alone accounted for more than one-fifth of global greenfield project values in 2025, with announced investment exceeding USD 270 billion, driven substantially by demand associated with AI infrastructure and digital networks. Such developments demonstrate that AI is becoming an object of international investment policy rather than merely a subject of technology policy. At the same time, the distribution of digital investment remains uneven, raising questions concerning development, technological dependence and access to productive capabilities.⁴

The central problem is therefore not simply whether AI requires new legislation. The more difficult question is how existing international economic law should respond when AI-related investments are affected by regulatory measures designed to protect legitimate public interests. A host state may, for example, require a foreign AI company to conduct risk assessments, preserve certain records, provide transparency concerning high-risk systems, localise specified data, undergo security review or submit to investment screening. The investor may regard the measure as discriminatory, disproportionate or economically damaging. The state, however, may consider it essential for public security, privacy, competition or fundamental rights.⁵

This paper examines that tension. It argues that AI exposes a structural gap between investment rules developed around relatively identifiable physical assets and a digital economy in which

³ UNCTAD, World Investment Report 2026 (2026).

⁴ UNCTAD, World Investment Report 2025: International Investment in the Digital Economy (2025).

⁵ UNCTAD, Artificial Intelligence for Investment Promotion, IPA Observer 16 (2026).

value is distributed across data, algorithms, cloud infrastructure, intellectual property, computing capacity and intangible networks. The objective is not to argue that every AI-related measure requires a new international treaty. Rather, the paper seeks to identify where existing disciplines can be interpreted and reformed to provide greater predictability while preserving the legitimate regulatory autonomy of states. It also considers the particular implications for developing economies, which need both foreign technology and policy space to develop domestic capabilities.⁶

2. AI and the Changing Nature of Foreign Investment

Foreign investment in the AI economy differs from traditional FDI in several important respects. Traditional investment often involved factories, natural resources, transport infrastructure or physical commercial establishments whose location and ownership could be relatively easily identified. AI investment can instead depend on intangible assets and distributed infrastructure. A single AI service may involve data collected in one jurisdiction, model development in another, cloud computing in a third, semiconductor inputs from several countries and customers located worldwide. The legal and economic identity of the investment is therefore increasingly dispersed.⁷

Investment treaties generally define protected investments broadly, often covering enterprises, shares, claims to money, intellectual property, licences, contractual rights and other assets. Such definitions can potentially encompass AI-related assets. Yet the economic significance of data, algorithms, model weights, computing capacity and training infrastructure is not always clear within traditional categories. The question whether a particular dataset, algorithmic capability or contractual access right constitutes a protected investment may become relevant when a regulatory measure substantially affects its economic value.⁸

AI also changes the motivation for investment location. Firms may choose host states on the basis of access to electricity, high-speed networks, skilled workers, research ecosystems, data availability, tax incentives, semiconductor supply chains and regulatory predictability. This makes regulatory quality itself an investment determinant. A state with a coherent and predictable AI framework may attract investment even if its regulation is relatively demanding,

⁶ OECD, Investment Policy Framework for Digital Transformation (2026).

⁷ WTO, World Trade Report 2025: Making Trade and AI Work Together to the Benefit of All (2025).

⁸ Regulation (EU) 2024/1689 (Artificial Intelligence Act), arts. 1–2 (2024).

whereas fragmented or unpredictable regulation may discourage investment.⁹

Recent investment trends underline the concentration problem. UNCTAD has observed that digital-economy investment is growing rapidly but remains highly concentrated. Developing countries receive a comparatively small share of greenfield digital investment, while a large proportion of projects in the Global South is concentrated in a limited number of economies. The resulting digital divide has a direct international investment dimension. Countries without reliable electricity, broadband connectivity, data infrastructure, skilled personnel and research capacity may struggle to attract AI-related investment even when they offer generous investment incentives.

This tension is particularly acute for semiconductors, advanced computing, cloud infrastructure and large-scale data centres. The same investment that contributes to economic development may also generate national-security concerns because AI infrastructure can have strategic applications and may involve sensitive personal or governmental data.

The contemporary investment regime is consequently moving toward a more selective approach. Investment promotion increasingly operates alongside investment screening. Governments seek foreign capital, but they are less willing to treat all forms of foreign investment as economically equivalent. Strategic sectors may be subject to enhanced review, ownership restrictions or conditions designed to protect national security and technological sovereignty. This shift creates a central question for international economic law: how can states distinguish legitimate security regulation from protectionist discrimination?

3. International Investment Law and AI Regulation

International investment law provides a potential legal framework for disputes arising from AI regulation, but its application raises novel questions. The most relevant treaty standards are fair and equitable treatment, full protection and security, national treatment, most-favoured-nation treatment and protection against unlawful expropriation. Modern treaties increasingly contain exceptions, regulatory carve-outs and more precise definitions intended to preserve the state's right to regulate.¹⁰

⁹ WTO, General Agreement on Trade in Services, art. XIV (1994).

¹⁰ WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights, arts. 7–8, 10, 27–29, 39 (1994).

The fair and equitable treatment standard is particularly significant because investors may challenge sudden, inconsistent or arbitrary changes to an AI regulatory framework. An investor that enters a host state under a particular regulatory environment could argue that a subsequent regulatory change frustrated legitimate expectations. Yet international investment law does not generally guarantee a frozen regulatory environment. States must be able to respond to technological risks and changing social conditions. The appropriate question should therefore be whether the state acted transparently, non-arbitrarily and consistently with legitimate public objectives rather than whether the investor's original commercial expectations were permanently preserved.¹¹

The concept of expropriation presents another challenge. AI regulation can reduce the economic value of an investment without transferring ownership or physically taking property. Requirements relating to data governance, model testing, cybersecurity or restrictions on the use of sensitive technologies may impose substantial costs. An investor might argue that the cumulative effect amounts to indirect expropriation. International investment jurisprudence, however, generally distinguishes legitimate regulation from compensable expropriation by considering factors such as the severity of the economic impact, the character of the governmental measure and the extent to which the investor's expectations were reasonably protected.

If every regulatory adaptation created substantial compensation exposure, states could become reluctant to regulate emerging technologies. This would undermine public welfare and create what has been described as a regulatory chill.

The national-treatment principle may also become important. Suppose a host state imposes enhanced compliance requirements on foreign AI enterprises but exempts domestic enterprises providing comparable services. Such differentiation may raise questions of discriminatory treatment. At the same time, governments may legitimately distinguish between firms according to objective factors such as system risk, market power, data sensitivity or national-security exposure. The legality of a measure should therefore depend on its design and application rather than on the simple fact that foreign investors are affected.

Investment treaties also interact with the concept of regulatory autonomy. Contemporary treaty

¹¹ OECD, Investment and National Security (2026).

practice increasingly recognises that governments retain the authority to pursue legitimate public objectives. UNCTAD's recent work on investment-agreement reform shows a movement toward more balanced treaties, including provisions concerning sustainable development, investment facilitation, exceptions and more carefully defined investor protections. This development is important for AI because future treaties can expressly clarify the relationship between investment protection and technology regulation.

A particularly important reform would be the inclusion of explicit provisions protecting non-discriminatory, proportionate AI regulation adopted for legitimate public purposes. Such provisions should not create a blanket immunity for states. Instead, they could establish a structured assessment of necessity, evidence, proportionality, procedural fairness and non-discrimination. This would provide investors with predictability while preserving the host state's capacity to address technological risks.

4. WTO Law, Digital Trade and Artificial Intelligence

AI is also a trade issue. Cloud services, software, data analytics, financial technology and digital platforms can all involve international trade in services. WTO disciplines therefore remain relevant even where the immediate policy concern is AI regulation.¹²

The GATS is particularly important because many AI services are supplied through cross-border digital channels or through commercial presence. Its general principles, including most-favoured-nation treatment and commitments in specific sectors, can constrain discriminatory measures. At the same time, Article XIV provides general exceptions for specified public-policy objectives, including public morals, public order and the protection of human, animal or plant life or health, subject to the conditions contained in the provision. These disciplines demonstrate the basic architecture of international economic law: trade liberalisation is important, but it is not absolute.¹³

An algorithmic transparency requirement can therefore simultaneously implicate trade, investment, intellectual property, privacy and competition.¹⁴

¹² UNCTAD, *The Reform of International Investment Agreements: State of Play* (2025).

¹³ UNCITRAL, *Toolkit on Prevention and Mitigation of International Investment Disputes* (2025).

¹⁴ Vera Korzun, *The Right to Regulate in Investor-State Arbitration: Slicing and Dicing Regulatory Carve-Outs*, 50 *Vanderbilt Journal of Transnational Law* 355 (2021).

TRIPS is similarly relevant. AI depends heavily on intellectual property, including software, patents, trade secrets, copyright and semiconductor-related technologies. The TRIPS Agreement recognises the importance of technological innovation and transfer while allowing members a degree of regulatory flexibility. Its provisions concerning computer programs, data compilations, patents, undisclosed information and enforcement may all become relevant to AI ecosystems. However, the international legal status of AI-generated outputs and the ownership of inventions produced with significant AI assistance remain areas in which domestic laws and international practice continue to develop.¹⁵

The interaction between AI regulation and trade may become more complicated as states impose measures designed to protect national security. Export controls on advanced computing technologies, restrictions on sensitive semiconductor investment and controls on access to high-performance computing can affect both trade and investment. The WTO security exceptions provide legal space for certain measures, but reliance on security exceptions also raises concerns about predictability and the possibility of economic protectionism being presented as security regulation.

The WTO's recent work recognises that AI could substantially increase global trade and economic output, while warning that unequal digital infrastructure, skills and capabilities could distribute the benefits unevenly. The international legal challenge is therefore not simply to prevent protectionism. It is also to ensure that developing countries can participate meaningfully in AI-enabled trade and investment. International economic law should facilitate access to digital infrastructure and technology while allowing states to address genuine risks.

5. Regulatory Fragmentation and the Extraterritorial Problem

One of the most immediate challenges for international investors is regulatory fragmentation. Different jurisdictions may classify AI risks differently, impose different documentation requirements and apply different rules to data, model governance, transparency and liability. For multinational enterprises, compliance costs can become substantial because a single AI product may need to satisfy several regulatory regimes.¹⁶

¹⁵ WTO, *Through the Looking Glass: Artificial Intelligence, International Trade, and Economic Growth in the Long Run*, Staff Working Paper ERSD-2025-09 (2025).

¹⁶ UNCTAD, *Global Investment Trends Monitor* No. 50 (2026).

The European Union's Artificial Intelligence Act illustrates the emergence of comprehensive, risk-based AI regulation. The Act establishes prohibitions for certain AI practices, obligations for high-risk systems, transparency requirements and governance mechanisms. Its scope extends in specified circumstances to providers located outside the European Union, including where AI outputs are used in the Union. This creates an important extraterritorial dimension. A foreign investor can therefore be affected by European AI rules without establishing its principal business in Europe.

From an international economic-law perspective, extraterritorial regulation raises two concerns. First, it can increase the cost of supplying digital services across borders. Second, it can encourage regulatory diffusion, because multinational enterprises may adopt a single global compliance model rather than maintaining separate technical systems for each market.

The concern is whether states coordinate sufficiently to avoid unnecessary duplication and whether regulatory requirements are transparent, proportionate and interoperable. Mutual recognition and equivalence mechanisms could reduce unnecessary barriers while allowing jurisdictions to retain different substantive levels of protection.

The concept of regulatory interoperability is therefore more promising than complete harmonisation. Harmonisation may be politically unrealistic because states differ in constitutional structures, economic priorities and perceptions of risk. Interoperability, by contrast, permits different systems to recognise common principles and compatible compliance outcomes. International economic agreements could support this approach by encouraging transparency, consultation, regulatory cooperation and recognition of equivalent safeguards.

For investors, regulatory fragmentation is not merely a compliance issue. It can affect investment decisions themselves. If regulatory uncertainty is high, firms may delay investment, locate research activities elsewhere or restrict services to jurisdictions where compliance costs are manageable. Developing countries may be especially vulnerable because they lack the administrative resources required to develop complex AI frameworks or negotiate reciprocal arrangements.

International organisations therefore have an important role in capacity-building. Investment facilitation should not be limited to faster approvals. It should also include regulatory guidance, technical assistance, digital infrastructure development and access to international expertise.

6. National Security, Investment Screening and Strategic AI Assets

AI has intensified the national-security dimension of foreign investment. Advanced chips, cloud computing, data centres, quantum technologies, cybersecurity tools and foundation models may have both civilian and strategic applications. Governments increasingly view control over such assets as a component of economic and technological security.¹⁷

From an international economic-law perspective, investment screening creates a tension between market openness and sovereign security interests. An investor may argue that rejection of a transaction is discriminatory or inconsistent with treaty commitments. A state may respond that the transaction creates a genuine national-security risk. International investment agreements increasingly address this problem through security exceptions, exclusions from the scope of treaty protection and clearer definitions of covered investments.¹⁸

Screening systems should satisfy basic principles of legality, necessity, proportionality, transparency and procedural fairness. Governments should identify the categories of technology or data that justify review rather than relying on vague descriptions of strategic importance. Decisions should be based on evidence, and investors should receive reasons where national-security considerations permit disclosure.

AI investment screening should also distinguish between ownership and operational control. A foreign investment in a data centre may not create the same risk as foreign control over sensitive government datasets. Similarly, investment in general-purpose AI research may present different risks from investment in advanced computing infrastructure used for strategic applications. A risk-based approach is therefore more compatible with international investment principles than a categorical restriction on foreign capital.

There is also a development dimension. Excessively restrictive screening can reduce investment in countries that need external capital to develop digital infrastructure. At the same time, unrestricted acquisition of critical assets may create long-term technological dependency. International economic law should therefore encourage transparent and targeted screening while supporting investment in non-sensitive digital infrastructure, skills and innovation.

¹⁷ (Organisation for Economic Co-operation and Development [OECD], 2009, 2025)

¹⁸ (OECD, 2009, 2025)

The emerging international consensus appears to favour selective openness. UNCTAD reports that investment policy measures increasingly target strategic sectors while governments continue to seek foreign investment. This reflects a broader transformation from an assumption of universal investment liberalisation toward managed openness. AI is likely to accelerate this trend.¹⁹

7. Intellectual Property, Data and Technology Transfer

AI investment is inseparable from intellectual property and data. The competitive value of an AI enterprise may lie less in physical property than in proprietary models, algorithms, datasets, patents, trade secrets, software and organisational knowledge. International investment law can protect these assets, but stronger protection may also create tensions with domestic policies aimed at technology transfer and local capacity-building.²⁰

TRIPS recognises both the protection of intellectual property and the importance of technological innovation and dissemination. Article 7 identifies technology transfer and social and economic welfare as elements of the objectives of intellectual-property protection, while Article 8 recognises a degree of policy space for public-interest measures consistent with the Agreement. These provisions are important in considering how international rules can support AI development without converting intellectual-property protection into a barrier to technological diffusion.

Data raises a different problem. Unlike patents or copyrights, data may not have a single, universally accepted property status. A dataset may contain personal information, confidential business information, public-sector information or material protected by intellectual property. Cross-border data flows are consequently governed by multiple legal interests. An AI investor may require international data transfers for model training or service delivery, while the host state may impose restrictions to protect privacy, cybersecurity or sovereignty.²¹

Technology-transfer requirements are similarly complex. A host state may seek local training, research collaboration, employment or knowledge transfer as conditions of investment. Such measures can support development but may also conflict with international obligations or

¹⁹ (UNCTAD, 2026)

²⁰ (WTO, n.d.; UNCTAD, 2025)

²¹ (WTO, 2025)

discourage high-value investment if they are coercive or discriminatory. A more sustainable approach would rely on voluntary, market-based technology partnerships, public incentives and investment facilitation rather than rigid transfer mandates.²²

AI therefore illustrates why intellectual-property and investment policy cannot be considered separately. Excessive fragmentation may discourage investment, while excessive protection may prevent the diffusion of technological capabilities. International economic law should seek a balance in which innovation is rewarded but development opportunities are not systematically concentrated in a small number of economies.²³

8. Developing Countries and the Global AI Investment Divide

The regulatory debate must take account of the unequal distribution of AI capabilities. Developing countries face a structural disadvantage because AI investment requires substantial infrastructure, electricity, skilled labour, computing capacity, research institutions and access to capital. UNCTAD has highlighted the concentration of digital-economy investment and the limited participation of many developing economies in greenfield digital projects.

However, the developmental benefits of investment are not automatic. Data centres may generate large capital flows but relatively limited employment. A software investment may rely primarily on foreign intellectual property while creating few local research capabilities. Governments therefore need investment policies that distinguish between capital inflows and productive capacity-building.

International economic law can support this objective through investment facilitation, capacity-building and carefully designed development-oriented provisions. Investment agreements should preserve the ability of states to adopt non-discriminatory measures supporting skills development, research collaboration, competition and public digital infrastructure. They should also encourage responsible business conduct and transparency in AI-related investments. Developing countries should participate more actively in the formation of international AI and digital-trade rules. If standards are developed primarily by technologically advanced economies, compliance costs may become barriers to entry for smaller firms and developing-country markets. International rule-making should therefore include technical assistance,

²² (WTO, n.d.; UNCTAD, 2026)

²³ (WTO, n.d.; UNCTAD, 2025)

transitional periods where appropriate and differentiated capacity-building rather than simply requiring weaker economies to replicate complex regulatory structures.

India provides an instructive policy context because it seeks to attract digital investment while developing domestic technological capabilities. For countries pursuing similar strategies, the objective should be to combine investment openness with domestic innovation. International agreements should not prevent legitimate industrial, research or digital-infrastructure policies, provided that such policies are transparent and consistent with applicable commitments.

The emerging AI investment divide also has implications for sustainable development. Concentration of AI infrastructure in a small number of countries may increase economic productivity in those jurisdictions while leaving others dependent on foreign platforms and imported computing capacity. A more inclusive international economic order should therefore facilitate investment in digital infrastructure across developing economies, particularly reliable electricity, broadband, cloud capacity, semiconductor ecosystems and technical education.

9. Towards a Coherent International Regulatory Framework

The regulatory challenges identified above suggest that a completely new body of international AI law is neither immediately necessary nor sufficient. A more realistic approach would be to strengthen coordination among investment, trade, intellectual-property and digital-governance regimes.²⁴

First, future investment treaties should contain clearer provisions on the right to regulate. They should expressly recognise legitimate measures concerning AI safety, privacy, cybersecurity, competition, consumer protection, public health and national security, provided that such measures are non-discriminatory, evidence-based and proportionate. This would reduce uncertainty for both investors and states.

Third, international economic agreements should promote regulatory interoperability. States should exchange information concerning AI standards, recognise equivalent compliance mechanisms where appropriate and establish consultation procedures before introducing measures likely to create significant barriers to cross-border digital services or investment. This

²⁴ (UNCTAD, 2025)

would not require identical laws.²⁵

Fourth, dispute-settlement mechanisms should become more sensitive to technological and public-policy complexity. Investment tribunals dealing with AI-related disputes may need expert evidence concerning algorithms, data architecture, cybersecurity, model training and technological standards. Procedural rules should facilitate technical expertise while maintaining transparency and due process. The growing use of mediation and dispute-prevention mechanisms in international investment law may also be particularly valuable because governments and technology companies often have continuing relationships that make negotiated solutions preferable to lengthy arbitration.²⁶

Fifth, international institutions should strengthen capacity-building for developing economies. WTO, UNCTAD and other international organisations can contribute to policy development, investment facilitation and technical assistance. The objective should be to ensure that AI regulation does not become a new source of exclusion from global investment.²⁷

10. Conclusion

Artificial intelligence is reshaping the conditions under which international investment and trade take place. The growth of AI infrastructure, data centres, advanced computing and digital services demonstrates that AI is becoming a major determinant of global investment patterns. At the same time, governments are responding to concerns concerning privacy, cybersecurity, competition, intellectual property, national security and fundamental rights.

These developments expose limitations in an international economic legal order largely designed before the emergence of the contemporary digital economy. Traditional investment standards remain relevant, but their application to AI raises difficult questions concerning intangible assets, regulatory change, legitimate expectations, indirect expropriation and discriminatory treatment. WTO disciplines likewise remain important, but AI regulation increasingly crosses conventional boundaries between goods, services, intellectual property, data and investment.

The appropriate response should not be to subordinate public regulation to investor protection,

²⁵ (UNCTAD, 2024, 2025)

²⁶ (United Nations Commission on International Trade Law [UNCITRAL], 2023, 2025)

²⁷ (UNCTAD, 2025; WTO, 2025)

nor to permit governments unlimited discretion under the language of national security. The objective should be a more coherent system in which investment protection and regulatory autonomy operate together. Future treaties should clarify the right to regulate, strengthen proportionality and transparency, and provide targeted safeguards for AI-related public-interest measures. Regulatory cooperation should focus on interoperability rather than unrealistic global uniformity. Investment screening should be risk-based and procedurally fair. Developing countries should receive greater support to attract productive AI investment and build domestic capabilities.

The future of international economic law will therefore depend on whether it can move beyond the traditional binary of liberalisation versus restriction. AI requires a framework of responsible openness: one that recognises the economic value of cross-border investment and technological innovation while preserving the capacity of states to protect public interests and pursue development. If international economic law succeeds in achieving that balance, AI can become not merely a source of economic concentration and regulatory conflict, but a platform for broader and more inclusive international development.

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