threshold differs between various types of taxes and shows that there is a clear-cut ranking in terms of welfare effects, depending on which of the three types of funding of unemployment benefits mentioned above is chosen.

This book is a quality publication, and the author should be congratulated for his useful theoretical research and his talented analysis. Nevertheless, given the rather narrow focus of his study and its technical nature, one can wonder whether a series of specialized articles, rather than a book form, may have been a more appropriate form for the dissemination of this research. While mathematical modeling of trade issues has its uses, one should also admit its limitations. As noted by Professor Wassily Leontief – one of the pioneers of econometrics and the 1973 Nobel Prize winner – 'uncritical enthusiasm for mathematical formulations tends often to conceal the ephemeral content of the argument' (Leontief, 1977). In that sense, the volume is likely to provide limited guidelines for the practitioners of trade policy-making.

Three of the four chapters are clearly written as self-contained academic papers, and no adjustments were made to coordinate the various parts in order to provide the necessary consistency. The reader will also miss a list of abbreviations and an index – an unfortunate omission, since numerous abbreviations and technical concepts are used in the text. Nevertheless, the bibliography included in the volume provides a useful listing of the recent studies on trade and unemployment. In sum, the volume of Dr de Pinto provides a useful reading for theoretical economists interested in trade issues and labor markets.

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Regulation of Foreign Investment: Challenges to International Harmonization

edited by Zdenek Drabek and Petros C. Mavroidis

World Scientific Publishing Company, 2013

Drabek and Mavroidis have compiled an edition that is at once descriptive and prescriptive, addressing the current state of regulation of foreign investment, the ability

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of existing domestic, bilateral and multilateral tools to meet the regulatory challenges faced by foreign investors and host states alike, and the desirability of scaling up and harmonizing the regulatory effort.

The book is an insightful foray into a subject of considerable significance for a broad audience. That said, the editors do the work a disservice by failing to identify clearly the recurring themes that run throughout the work, or to organize the authors' contributions around those themes. Accordingly, in this review, we make our own modest effort to distil, as an organizing principle, the two major themes explored by the book's editors and authors. The first theme involves the identification and evaluation of a number of foreign-investment-related issues that the authors consider to be under-regulated by current rules. The second theme involves an assessment of the degree of fragmentation in foreign investment regulation, followed by a prescriptive assessment of the degree of harmonization the authors consider desirable.

Beginning with the first major theme, the first issue asserted to be under-regulated by foreign investment (and international trade) rules involves labor standards. In Chapter 4,[1] Brown, Deardorff, and Stern catalogue research asserting that trade and investment liberalization alleviates poverty by, *inter alia*, increasing economic growth and equilibrium income, enabling labor, at least at a macro level, to secure a bigger piece of the economic pie, through higher wages and improved working conditions. At the same time, the authors highlight circumstances in which liberalization without the integration of labor standards increases poverty and aggravates poor working conditions by creating a globalised environment in which governments reduce labor standards so as to 'gain a competitive edge'.[2] The authors make a good case for the proposition that, because international trade and investment rules facilitate the very market integration that creates this effect, rule-makers have a particular responsibility to integrate labor standards into those rules. They highlight empirical evidence suggesting that the implementation of labor standards into international rules does not encourage foreign direct investment to flee, and that instead capital is drawn due to the labor market stability that basic labor protections bring.

The second such issue concerns the 'trade-subsidy–investment nexus',[3] or, in other words, the regulation of the effects government subsidies have on international investment and international trade. In Chapter 5,[4] Broude critiques the multilateral rules on subsidies embodied in the WTO Agreement for a singular focus on the distortive effect on government subsidies on international trade, without considering the effects of subsidies on foreign direct investment. The author's premise is that concerns about the effects of subsidies on investment are distinct from concerns about the effects of subsidies on trade, such that rules designed to regulate the latter cannot be effective, and may be counterproductive, in regulating the former. Moreover, Broude critiques the WTO subsidies regime as 'difficult to justify' even when viewed solely from

1 Chapter 4, Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, 'Labor Standards and Human Rights: Implications for International Trade and Investment'.

2 Chapter 4, p. 183.

3 Chapter 5, p. 198.

4 Chapter 5, Tomer Broude, 'Interactions Between Subsidies Regulation and Foreign Investment, and the Primacy of the International Trade Regime'.

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the trade-related objectives it sets out to achieve because it 'only partially … and inchoately' regulates the effects of subsidies on trade, 'without regulating services subsidies'.[5]

Broude's conclusions are incomplete in some respects. While correctly identifying the 'unbridled international competition over foreign direct investment (FDI) that would lead to inefficient over-investment both nationally and at the aggregate international level' as the 'chief systemic concern raised by subsidies in the investment field',[6] Broude incorrectly concludes that WTO subsidies rules disregard the effects of subsidies on FDI. The author is overly dismissive of the WTO prohibition of subsidies contingent on the use of domestic over imported content which, while admittedly incomplete,[7] imposes an important safeguard against the use of subsidies to distort the distribution of FDI. By virtue of this prohibition, governments cannot use subsidies to distort recipients' decisions about sourcing internationally for their supply chains – a limitation that may discourage or control the degree of subsidization.

The third instance of potential under-regulation addressed in the book concerns the interaction of environmental protection and foreign direct investment. In Chapter 6,[8] Firger and Gerrard conclude that the interaction between these two matters is, at present, episodic at best, with environmental protection generally pursued through domestic regulation, and foreign investment regulated largely at the international level, principally through a complex web of international investment agreements. While recognizing the benefits of regulatory harmonization at the international level, the authors also, and refreshingly, acknowledge the benefits of the resulting 'rule diversity' on environmental regulation, above and beyond the benefits of harmonization.[9] Like Brown, Deardorff, and Stern, who explore empirical evidence on the impact of heightened labor standards on foreign investment in Chapter 4, Firger and Gerrard note that heightened environmental regulation can in some instances attract, rather than drive away, foreign investment. Nonetheless, the authors highlight recent, albeit nascent, trends toward modification of international investment agreements to retain policy space for states to pursue environmental objectives without triggering claims of regulatory expropriation, failures of fair and equitable treatment, or discrimination.

The fourth area of potential under-regulation relates to international technology transfer, and the complexities of balancing investment protections that promote such transfer against the need for legitimate regulatory space. In Chapter 7,[10] Maskus emphasizes the importance of technology transfer as a catalyst for economic growth, while questioning whether the complex interface of protections under the TRIPS Agreement, preferential trade agreements, and bilateral investment treaties are effective in encouraging the transfer of technology across borders. Regrettably, the author declines to make a clear case either for or against greater harmonization of the

5 Chapter 5, p. 225.

6 Chapter 5, p. 207.

7 Article III:8(b) of the GATT 1994 expressly permits governments to discriminate by making subsidies available solely to domestic producers.

8 Chapter 6, Daniel M. Firger and Michael B. Gerrard, 'Environmental Protection'.

9 Chapter 6, p. 256.

10 Chapter 7, Keith E. Maskus, 'Technology Transfer: Regulatory Issues and International Investment Agreements'.

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protections afforded to intellectual property rights under these different regimes. Instead, he focuses on the tensions facing developing countries as they adopt increasingly rigorous intellectual property protections in an effort to attract technology flows, and in so doing sacrifice the ability to pursue important social objectives. Interestingly, however, the author suggests that a 'race to the bottom' in this area, if it ever really existed, has been arrested and perhaps reversed due to a major pushback in current negotiations at World Intellectual Property Organization (WIPO) against any further strengthening of global intellectual property rights.[11] Maskus provides an articulate explanation of competing policy priorities in this area, but does not offer any overarching approach to reconcile them.

The fifth instance of potential under-regulation relates to the controversial investment activities of sovereign wealth funds, a number of which the authors note originate from undemocratic governments with poor track records on human rights. In Chapter 8,[12] Barbary and Bortolotti analyze the market performance of companies following investment by sovereign wealth funds, and find that the heightened political risk of authoritarian investor countries has a negative impact on the performance of target companies. They predict that, if unchecked, continued investment by such countries could have systemic consequences, adversely affecting international capital movements and financial integration. This concern leads the authors to advocate a new multilateral regulatory framework, which would be administered by a 'Sovereign Investment Office'.[13] This Office would be charged with setting common rules and enforcing them through the publication of a list evaluating sovereign wealth funds as either 'politically risk-neutral' or requiring action to address human rights and democratic transition at home. While rightly conceding that such a framework is unlikely in the near future, the authors seem to underestimate the challenge of building a consensus around common rules of this kind, which they unapologetically argue should be directed towards political change. The more fundamental question of whether it is desirable for governments – domestic or foreign, democratic or authoritarian – to acquire controlling interests in important sectors of the global economy is left unaddressed. Ultimately, Barbary and Bortolotti's contribution succeeds in identifying an area of real concern, and in highlighting the need for recipient and investor governments alike to engage in these issues without delay.

The sixth instance relates to increasingly common concerns about possible national security threats posed by foreign acquisition. In Chapter 10,[14] Moran offers a useful framework to enable governments assessing proposed foreign acquisitions to separate genuine threats to national security from implausible objections, which are often nothing more than disguised protectionism. The author sets forth a decision-tree for making such assessments based on the application of two tests. The first is a 'criticality test'[15] applied to three categories of potential threat, in each case requiring an analysis

11 Chapter 7, pp. 300–301.

12 Chapter 8, Victoria Barbary and Bernardo Bortolotti, 'Sovereign Wealth Funds and Political Risk: New Challenges in the Regulation of Foreign Investment'.

13 Chapter 8, pp. 337–338.

14 Chapter 10, Theodore H. Moran, 'Foreign Acquisitions and National Security: What Are Genuine Threats? What are Implausible Worries?'.

15 Chapter 10, pp. 382–385.

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of the costs or damages that would result if the threat materialized. The second is a 'plausible threat test',[16] which involves an analysis of whether there are widely available substitutes for the goods and services of the target company in global markets, competitive suppliers in global markets, and low switching costs. The author proposes that this analysis of market control could be informed by well-established guidelines on mergers and acquisitions, such as those applied by the US and EU. Only if a proposed foreign acquisition scores high on both the criticality and plausible threat tests would a country be justified in blocking it. By providing a framework for rigorous analysis of proposed foreign acquisitions through the application of well-accepted market control tests, the author offers a nuanced model for foreign investment review that countries might find acceptable for both inbound and outbound investment. Moran seeks to move the charged debate over foreign acquisitions beyond political posturing to hard economic analysis, and in so doing makes an important contribution to this volume.

The seventh such issue involves the challenges posed by international investment agreements, and in particular the threat of investor-state dispute settlement, to regulatory reform in the public services sector. In Chapter 11,[17] Ortino makes the case that, while investment protections against, *inter alia*, expropriation and failure of fair and equitable treatment make regulatory change in any sector challenging, the challenges are particularly heightened in the public services sphere. Public interest concerns surrounding the provision of public services lead to heavy and complex regulation, with the potential for even small changes to trigger allegations of investment treaty violations. Moreover, given the public interest concerns at stake, regulatory changes in the public services sector are often anything but small, with the record of investment disputes replete with examples of governments reversing privatization of public services in a bid to right perceived wrongs. The result is a series of prominent international investment disputes demonstrating the limits placed on regulatory change in the public services sphere, particularly where governments have afforded both investment liberalization and investment protection in their international investment agreements.

We turn next to the second major theme of the book, in which the authors diagnose current regulatory disciplines as woefully fragmented, and the need for harmonization as critical. The appeal of harmonization for foreign investment is relatively clear; in a message reinforced repeatedly by the authors, above all investment craves stability, and stability comes, in part, from consistent and predictable regulatory treatment across jurisdictions and fora. As previewed by Drabek and Mavroidis in their Introduction, foreign investment is frustrated not by regulation, but rather by the fragmentory nature of regulation.

Across the chapters of the book dedicated to this theme, the authors assess the degree of harmonization in the regulation of foreign investment achieved thus far in at least two senses: at what level of regulation has harmonization been achieved (domestic, regional, or international); and what type of harmonization has been achieved

16 Chapter 10, pp. 385–388.
17 Chapter 11, Federico Ortino, 'Public Services, Investment Liberalization and Protection'.

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(substantive or procedural). At the same time, they consider what the optimal level of harmonization would be.

In Chapter 1,[18] Mavroidis traces the history of the regulation of foreign investment through international trade rules, to explain why we have achieved no comprehensive multilateral agreement on investment protection, and instead continue to hobble along with a patchwork investment rules contained in thousands of bilateral investment treaties and preferential trade agreements.

In Chapter 2,[19] Huerta Goldman engages in a comparative study of the different approaches taken by three Latin American countries – Brazil, Bolivia, and Mexico – to the three possible levels for regulating foreign investment, i.e., domestic law, bilateral investment treaties, and the WTO. While all three domestic legal systems have some protection against discrimination based on nationality, they also contain the Calvo Clause favoring domestic over foreign investment. At the other end of the spectrum, the author correctly highlights the limits of the WTO system in protecting foreign investment, due to the fact that investors have no standing, and that only softer legal remedies are available as compared to bilateral investment treaties. After considering the potential for cross-fertilization between the WTO system and bilateral investment treaties, the author ultimately concludes that bilateral investment treaties hold the greatest promise for encouraging inbound investment and protecting outbound investment as these countries evolve into new globally active investors. Huerta Goldman thus questions the decision by Bolivia to renounce a number of bilateral investment treaties and by Brazil to avoid them altogether, and suggests that these countries should instead consider upgrading domestic investors to foreign treatment so as to resolve the conflict with the Calvo Clause and promote better protection for all.

In Chapter 3,[20] De Meester and Coppens assess whether a current platform, the WTO's GATS, is a viable model for achieving the type of stable and predictable regulatory discipline investment craves. Ultimately, and while emphasizing the important role the GATS plays as a multilateral market opening tool for investment, the authors conclude that the GATS is not an optimal tool. First and foremost, the authors note that the GATS is limited as a model for disciplining investment-related measures by virtue of its scope, which protects investments only to the extent they are made to supply services through a commercial presence in a host country, and only to the extent that the host country has made a specific commitment in the services sector at hand. Moreover, even if the authors overstate somewhat the impotence of GATS disciplines on 'investment-hampering' measures, they accurately observe that the GATS fails to discipline 'investment-attracting' measures. Specifically, the authors make a compelling case that the GATS non-discrimination provisions offer little discipline on distortive investment-attracting measures, such as location subsidies.

In Chapter 9,[21] Hirsh argues that, notwithstanding fragmented substantive rules contained in over 2,600 bilateral investment treaties and the *ad hoc* constitution of

18 Chapter 1, Petros C. Mavroidis, 'Regulation of Investment in the Trade Régime: From ITO to WTO'.

19 Chapter 2, Jorge A. Huerta Goldman, 'Domestic, Regional and Multilateral Investment Liberalization'.

20 Chapter 3, Bart De Meester and Dominic Coppens, 'Mode 3 of the GATS: A Model for Disciplining Measures Affecting Investment Flows?'.

21 Chapter 9, Moshe Hirsch, 'International Tribunals as Agents of Harmonization'.

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arbitral tribunals under these treaties, international investment law today generally represents a coherent and consistent body of law. The author attributes this legal harmonization, in part at least, to the pivotal role played by international investment tribunals. While noting that such tribunals are not bound by any formal doctrine of precedent, the author argues that a *de facto* practice of precedent has emerged, enhancing stability and predictability in this legal sphere. This practice is said to be the result of two main factors – repeat nominations of a small group of individuals to investment tribunals, and the particular sensitivity of this group to the need to develop coherent jurisprudence in order to maintain the legitimacy of the investment arbitral system. This, of course, begs the question of whether legal harmonization achieved through such means is indeed legitimate. But Hirsh is careful to note that this harmonization has its limits. Investment tribunals do not always follow previous decisions, particularly where no consensus has crystallized around new issues. While not mentioned by the author, the highly fact-intensive and treaty-specific nature of many investment disputes also limits the influence of previous case law. Moreover, Hirsh correctly emphasizes that sovereign states continue to play an important role in investment law-making, *inter alia*, by refusing to enforce unacceptable investment awards in domestic legal systems, opposing the nomination of certain arbitrators to future tribunals, issuing interpretative notes, and modifying future investment treaties.

In Chapter 12,[22] Beviglia Zampetti and Brown describe the European Union's evolving experience with investment regulation, from a matter exclusively in the hands of its member States to the conclusion of the Lisbon Treaty and the consequent transfer of negotiating and legislative competence to the European Union itself. While it is too early for the authors to assess whether the concentration of competence over investment regulation into the hands of the European Union will result in a corpus of treaty law that can serve as a model for harmonization at an international level, they clearly hope it will. The authors address the integration, into its most recent partnership and free trade agreements, of disciplines 'to prevent abuses by investors, and to guarantee that investment liberalization does not result in social or environmental harm',[23] which have led to the inclusion of provisions on environmental protection, sustainable development, labor standards, and the like. At the same time, they emphasize that recent EU agreements leave room for governments to preserve industrial policy choices on matters such as subsidization and privatization initiatives.[24] While the authors favor harmonization of investment regulation, their clear preference is to leave time for experience under the Lisbon Treaty to take hold, enabling harmonization in a distinctly EU image.

Finally, in Chapter 13,[25] Drabek rehearses the main arguments in favor of greater harmonization of foreign investment rules, as well as the serious theoretical and practical obstacles to achieving this objective. Arguments in favor of regulatory diversity are considered, but they are essentially analyzed as impediments to harmonization. An unduly pessimistic assessment of the WTO's ability to deliver

22 Chapter 12, Americo Beviglia Zampetti and Colin Brown, 'The EU Approach to Investment'.
23 Chapter 12, p. 428.
24 Chapter 12, p. 428.
25 Chapter 13, Zdenek Drabek, 'Harmonization of Rules on Foreign Investment'.

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effective harmonized rules leads the author to consider possible 'pragmatic solutions' for arriving at a consensus.[26] But these too are found wanting due to the challenges of identifying common ground in any multilateral negotiations involving a large and diverse group of sovereign states. Rigorous cost–benefit analysis of proposed regulatory approaches is posited as one possible solution, but the author ultimately concludes that the practical difficulties of conducting such analysis are at present insurmountable. The reader is thus left to hope that 'better data and a stronger theory will make a difference in the future'.[27]

Taken as a whole, the remarkable collection of papers assembled by Drabek and Mavroidis succeeds both in identifying and explaining in clear terms the most salient questions in the regulation of foreign investment today. Considering the complexity of these questions, it is not surprising that these papers are less successful in offering convincing answers as to the best way forward. The reader will be conscious of a general bias – one which is explicit in the title of this collection – in favor of more regulation and greater international harmonization. Whether or not one shares this perspective, the diversity of themes covered in this book make it essential reading for anyone interested in an accessible overview of the latest developments in the regulation of foreign investment.

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The Great Rebalancing: Trade, Conflict, and the Perilous Road Ahead for the World Economy

by Michael Pettis

Princeton, NJ: Princeton University Press, 2013

Those who believe global trade imbalances were the cause of the great recession will find much to like in *The Great Rebalancing*. The book sets out to demystify global imbalances, explaining their role in the distribution of growth around the world. It succeeds in debunking the myth that surplus countries are virtuous and thrifty, while deficit countries are dissolute and profligate. It explains how instead surpluses and deficits are driven by government policies at home and abroad. It also refutes the prevailing wisdom that the dollar's role as a reserve currency is an exorbitant privilege; rather, it is an exorbitant burden because it puts thousands of US jobs in the hands of dollar reserve hoarders. The book places global imbalances squarely at the center of both the global financial crisis and the Euro crisis, and promotes rebalancing as critical for global growth and stability. It will help an educated reader understand why

26 Chapter 13, p. 480.

27 Chapter 13, p. 481.

28 Messrs. Friedbacher and Roney are partners in the Geneva office of Sidley Austin LLP. The views expressed in this review are those of the authors alone, and do not represent the views of Sidley Austin LLP or any of its clients.

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Regulation of Foreign Investment book. Read reviews from worldâ€™s largest community for readers. The main aim of this book is to assess the importance of ...Â International Tribunals as Agents of Harmonization (Moshe Hirsch). Foreign Acquisitions and National Security: What are Genuine Threats? Whatare Implausible Worries? (Theodore H Moran). Public Services, Investment Liberalization and Protection (Federico Ortino). The EU Approach to Investment (Americo Beviglia Zampetti and Colin Brown). Harmonization of Rules on Foreign Investment (Zdenek Drabek). Readership: Policy makers, negotiators, business councils, NGOs, legal profession (international trade and investment law), economic profession (academics). ...more. Get A Copy. Amazon. Books related to Regulation Of Foreign Investment: Challenges To International Harmonization. Skip this list. More By This Author.Â Report a review. At Kobo, we try to ensure that published reviews do not contain rude or profane language, spoilers, or any of our reviewer's personal information. Would you like us to take another look at this review? No, cancel. Yes, report it. Foreign investment legislation continued to develop in 2019 and FAS Russia is currently developing a new draft law to implement amendments to the Strategic Investments Law. The new draft law provides the option for certain private foreign investors to establish aggregate control over a strategic company, and a special procedure for the issuance of strategic licences.Â One of the main changes in Russia's position on the international scene concerns the creation of the Eurasian Economic Union (EEU). A treaty establishing the EEU was signed on 29 May 2014 by the leaders of Belarus, Kazakhstan and Russia, and came into force on 1 January 2015.Â raising investor awareness of foreign investments regulation; and. Regulation of foreign investment at the international level is scarce. What exists for the most part is regulation of state behaviour towards foreign investment. Hundreds of bilateral and multilateral treaties attempt to regulate that behaviour, either exclusively or in combination with other matters, typically trade relations.Â The bulk of regulations applicable to foreign investment is to be found in domestic legislation and regulations which in many respects apply equally to national investment.Â Only a few of such statutes grant recourse to legal process for challenging the lawfulness of expropriation as well as the. Â©Encyclopedia of Life Support Systems (EOLSS). Saumnpelseccohâ€“aeptoelsrss. International sustainable development law â€“ vol.