

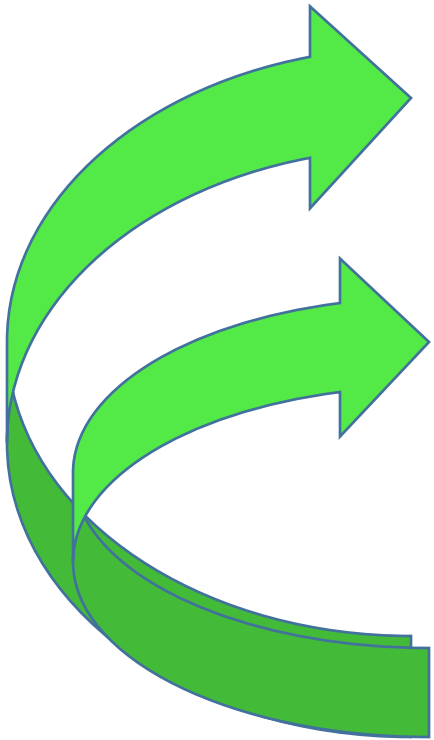
National Industrial Policies: Trade and Global Governance



Mark Wu
Harvard University
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The Quandry

(which Geneva has yet to discuss or tackle . . .)



- **What to do about an outdated SCM Agreement?**
 - Ill-suited for limiting Chinese-style industrial policy
 - Triggering industrial policy race (“If you can’t beat them, join them”)
- **What to do about controversial (“bad?”) jurisprudence?**
 - *E.g.*, DS437, etc. → Public body
- **How to resolve disagreement over national security exception**
 - Growing resort to GATT Art. XXI / GATS Art. XIVbis to justify industrial policy & economic statecraft responses to others’ policies
 - Hot conflicts make exception even more important

(At Least) Two Views of the National Security Exception Will Persist

Article XXI

Security Exceptions

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

**Narrow
Interpretation
of Self-Judging**

**Broad
Interpretation
of Self-Judging**

Three Key Assumptions:

- 1. In this time of geopolitical uncertainty & hot conflicts, a grand bargain is not possible on overall rules reform**
 - At best, plurilateral agreements among a sub-set of WTO Members will serve as the vehicle to update certain rules.
- 2. Neither camp is likely to compromise with the other on how the self-judging element of the national security exception is to be interpreted.**
- 3. Those who favor a broad interpretation of the self-judging element are unlikely to acquiesce to a contrary ruling of WTO jurists (and constrain their national security actions).**

Right to Development Demands Further Contribute to Multilateral Paralysis

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Where are We Headed?

Typology of Trade & Global Governance

Interface Rules

Limited bargains among divergent economic systems – includes notification & monitoring

Expressive Statements

Proclamations by governance institutions, lacking in meaningful enforcement authority

Norm Shaping Agreements

Open plurilateral agreements among “like-minded” states, enticing others to join in order to gain “critical mass”

Security Internationalism

Closed agreements among security partners, designed to promote stronger ties & strengthen threat resilience