

Industrial Policy, National Security, and the Perilous Plight of the WTO

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The establishment of the WTO in 1995 marked the apex of neoliberalism which restricts the use of industrial policies. More than one decade later, the world witnessed the rise of industrial policies in response to the 2008 financial crisis. The more vehement resurgence of industrial policies came toward the end of the 2010s when the US started to use significant interventionist economic tools for geopolitical and geoeconomic purposes. National security has been the most cited justification for the US's recent industrial policies which contravene its early neoliberal assertion. The ripple effect of the US's recent moves spread to other countries which also refer to national security more frequently in the designing of industrial policies. The neoliberal international economic order, represented by the WTO is backsliding with the erosion of expansive use of industrial policies, particularly those related to national security. Petros C. Mavroidis, Edwin B. Parker Professor of Foreign and Comparative Law from Columbia Law School, provides a comprehensive and deep discussion on this cutting-edge issue and elevates our understanding to a new high level.

The book, which is built on the earlier works Mavroidis co-authored with others (Mavroidis and Sapir, 2021; Hoekman *et al.*, 2023; Pinchis-Paulsen *et al.*, 2024), systematically examines the matrix of industrial policy, national security and WTO rules. Mavroidis intellectually travels across the disciplinary boundaries of economics, law and international relations, and carefully guides the audience to explore the multiple dimensions of the WTO that is inadequate to address sensitive trade-distortive measures in the current turbulent era. While many WTO reformers are striving for the revival of the Appellate Body, whose abeyance since 2018 damages WTO's judicial function substantially, Mavroidis pointedly argues that even if the WTO Appellate Body is restored, it could not address the issue of national security given that the relevant WTO rules are outdated. He perceptively notes that sensitive cases regarding national security concern should not be subjected to adjudication. Mavroidis suggests that to lift the WTO out of the perilous plight in the matrix of industrial policy and national security, concrete reform steps such as the revamp of SCM and the new agreement on export license should be pursued.

The book is consisted of an introduction part and six chapters. The introduction part provides the background understanding for the question "How the Return to Industrial Policy Threatens to Undermine the WTO". It briefly explains how the rise of industrial policy (particularly in the semiconductor sector), trade fragmentation and decoupling weaken the WTO, with a focus on the "Trade and Security Nexus/Spiral" (p.7). Chapter 1 scrutinizes the historical 1986 Semiconductor Arrangement between the US and Japan which sheds light on the contemporary semiconductor rivalry among the US, China, and other economies.



Chapter 2 focuses on the contemporary semiconductor policies against the backdrop of globalization. It analyzes subsidies adopted by major semiconductor producers such as the US and China, as well as export controls in the US. Chapter 2 also discusses how the semiconductor becomes an issue in the global value chain and how to solve it in strategic ways, this paves the way for the discussion of the issue under the WTO legal framework in the next Chapter. Chapter 3 examines major rules of the WTO that are relevant to industrial policy and national security, including import and export restrictions, subsidies, and specifically, GATT Article XXI which is titled “national security”. Chapter 4 critically reviews the insufficiency of existing trade rules in addressing industrial policy and national security and sharply points out the three major problems: “The SCM is outdated and unfit for purpose, the disciplining of export restrictions is wanting, the regulation of national security is ill-equipped to deal with modern concerns.” (p. 204). Chapter 5 discusses “The WTO Kindleberger- Trap” (p. 205) in which the US is not willing to lead and China does not have the capacity to lead. It explores the rivalry between the US and China and proposes that the EU should play a bigger role in reinvigorating the multilateral engine. Chapter 6 indicates the direction of future reform under the WTO framework in response to the problems identified in Chapter 4, including removing national security disputes from adjudication and establishing a “Committee on National Security” to address them, streamlining the SCM agreement and GATT Article XXI to leave more policy space for members, introducing new agreements on export licensing and semiconductor sector. Chapter 7 emphasizes the imperative of the WTO reform and calls for the immediate action.

Scholarship regarding national security and WTO rules abounds in recent years, including Mavroidis’ own earlier works. This book stands out as a masterpiece which travels from the past to the present and dives deep into the disciplines of economics, law and international relations to meticulously depict every aspect of the issue. Even for an audience who had not peeked into the issue before, the book, which paints a panorama, may enhance his/her understanding from ground-level to roof-level. The book has three outstanding features in my view. First, the book traces the history thoroughly to equip the audience with a background understanding to better comprehend the issue in the contemporary era. For example, the discussion of industrial policy and national security in the GATT era, the exhaustive introduction of the 1986 Semiconductor Arrangement between the US and Japan which falls outside the scope of the GATT, carefully guides the audience on a historical trip and enables the audience to better understand the national security concern today. When discussing GATT Article XXI regarding national security, the book examines all cases related to the provision, including adjudicated and non-adjudicated cases, as well as non-panel practices, in both the GATT and WTO era. The extensive intellectual travel to the past in the book sheds ample light on the present.

Second, the book engages in a deep and wide discussion in not only the law discipline, but also economics and international relations. As a prestigious law professor, Mavroidis skillfully discusses the text, context and case law of relevant WTO rules, such as GATT Article XXI exception of national security, Article XI relating to export restrictions, and subsidy rules in SCM agreement. He also aptly diagnoses the problems of the WTO as a trade lawyer, pointing out the backwardness of the relevant rules that are ill-suited for the contemporary world. In discussions relating to other disciplines, Mavroidis also shows professionalism as a rigorous scholar. For example, Mavroidis shows the audience both sides of a coin by diving deep into economic studies for or against industrial policy. Throughout the book, statistics figures are frequently employed to support economic conclusions whenever necessary. Mavroidis also engages in a sophisticated discussion of the US–China rivalry in the global governance by extensively analyzing studies in international relations

and politics. The multi-disciplinary approach makes the book a comprehensive and convincing piece that widely appeals to lawyers, economists, political scientists and other scholars.

Third, the book also bears empirical and practical value with extensive policy analysis, it incorporates rich discussion of the industrial strategies and policies in the real world across different countries. For example, the book reviews subsidy policy on semiconductor in the US and other economies including China, the EU, Japan, Korea and Taiwan. The book also discusses the US's export restrictions on semiconductor products in the global value chain. Apart from the argument of national security in the WTO context, the book discusses national security in the investment context, examining relevant policies in countries such as the US, the EU, India and China. In the broader context, the book also involves discussion on the power politics of the US and China in global governance. The extensive policy analysis sketches a policy map in the real world and consolidates the theoretical arguments.

Mavroidis worries that the WTO will be of less relevance to world trade issues if it fails to "address the two elephants in the room" (p. 20). The WTO seems to face a dim future given that the two elephants, the US and China, are unable to solve their issues in the WTO. In addition, the US has less and less interest in the multilateral trade system and intends to squeeze benefit from bilateral trade talks. Nevertheless, the global value chain, which has been steadily established in the past two decades, is unlikely to be crushed by these setbacks. My opinion is that the WTO, although is less functional than before, will still be the foundation for the world trade community except for the US. It is routine for the US to retreat from or not even join international treaties or international organizations from the beginning when the US's interests are not realized. For instance, the United Nations Convention on the Law of the Sea still plays a substantial role in addressing maritime issues without the US's participation. One proof of the resilience of the WTO is that, after the US crippled the Appellate body, some WTO members established the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in 2020 to substitute the Appellate Body. Up to now, the MPIA functions well without the US. The future scenario may be that the WTO still plays a fundamental role in the global trade among WTO members in spite of the US's minimum participation.

China has realized leapfrog development since its accession to the WTO. This economic success was largely achieved by the continued use of industrial policy, which has been indispensable for late comers to catch up with advanced economies but contradicts with neoliberalism. Chang, the famous development economist, revealed that in the history all developed countries used interventionist trade and industrial policies in their catch-up stage (Chang, 2003). China is no exceptional to this historical experience, but it has been more careful in implementing industrial policies given the constraints of WTO rules in the contemporary era. This begot the US's constant allegation of China's violation of the WTO's liberal spirit. According to Hopewell, the US's criticism in fact reflects its strategic narratives to paint the US as a "liberal hegemon seeking to uphold free-market capitalism against the illiberal state capitalism of China" (Hopewell, 2021, p. 51). Similarly, Coulter opines that, "while America may be (outwardly) ideologically pro-market, its government has rarely been reluctant to intervene, and frequently does so very successfully." (Coulter, 2023, p. 69). The US's intervention in the market is especially prominent in recent years, with the government providing huge amount subsidies to high technology industries such as semiconductor, electric vehicle, and renewable energy. From the perspective of development, not only developing countries need policy space to realize economic catchup, developed countries like the US seems also need policy space for the purpose of re-development. The implementation of industrial policy under the cloak of national security

may not be a good choice, but it at least protects the dignity of the WTO rules without fundamentally defying trade liberalization. Therefore, Mavroidis realistically suggests more policy space for WTO members and favors political solution of industrial policy regarding national security over judicial solution. Building upon professionalism and pragmatism, Mavroidis' book definitely worths reading for both academics and practitioners in the field of global trade governance.

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