

INDUSTRIAL POLICY AND THE WORLD TRADE ORGANIZATION

The severe global financial crisis of 2008 could not be overcome without government interventions through industrial policy. This timely book analyzes industrial policy from the perspectives of trade law and economics under the WTO system. The author expertly examines both general tools of protecting and supporting domestic producers and specific topics like special economic zones, localization, greening measures, and creative economy. In addition to legal texts and jurisprudence, this book extensively utilizes other WTO materials to show what is actually discussed in WTO meetings and forums on relevant issues. Where applicable, the author advances practical recommendations for “right” or “optimal” industrial policy in certain contexts based on trade rules, case law, and some countries’ real experiences. The author concludes this work with some thoughts on concrete actions to be taken at the WTO and national levels and in academic circles in order to better tackle industrial policy issues.

SHERZOD SHADIKHODJAEV is a Professor at the KDI School of Public Policy and Management. He obtained his LLB (with honors) from the University of World Economy and Diplomacy (Uzbekistan), and LLM and PhD in Law from Korea University. Previously, he worked for Korea Institute for International Economic Policy as a research fellow. He has done extensive academic and policy research in international economic law. His book *Retaliation in the WTO Dispute Settlement System* was published in 2009. His articles have been published in globally recognized journals, including *American Journal of International Law*, *Chinese Journal of International Law*, *Journal of International Economic Law*, *World Trade Review*, and *Journal of World Trade*.

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INDUSTRIAL POLICY AND
THE WORLD TRADE
ORGANIZATION

Between Legal Constraints and Flexibilities

SHERZOD SHADIKHODJAEV
KDI School of Public Policy and Management



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*To my Parents, Dinara, Asilakhon, Shodiyakhon, and
Kadriyakhon*

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FOREWORD

In a couple of his publications, Paul Krugman has made the point that everyday life has not changed much since the 1970s. Indeed, it is the Industrial Revolution and its aftermath that shortened distances and made the world a bit more flat. We have yet to come to grips with the digital revolution (which some count as one, and some as two, distinct events). We have not seen much change in everyday life either. And yet change there is.

The digital revolution is a challenge for specific policies as it is for democracy itself. The questions it poses range from its impact on economic policy (What are the limits of automated production? What does it mean for employment policies? How does it affect the digital divide?) to pure moral if not moral/philosophical questions (What should our attitude toward artificial intelligence be? Can the object be “smarter” than the subject? Who controls the object?).

From domestic economic policy to trade is, of course, a short walk. Indeed, the liberalization of movement of factors of production has had as consequence the breakup of silos behind which national economic policies worked. The digital economy cuts across all issues discussed in both the multilateral system (the World Trade Organization or “WTO”), as well as (and even more so) free trade areas, where homogeneity of players and concerns helps advance faster and further the thinking about these issues. It also poses a formidable challenge to the institutional relevance of the multilateral regime. Its responsiveness to business concerns exacerbated by the emergence of digital economy is emerging as the key to its continuous policy-relevance. As time passes by, societal, development, and environmental concerns might weigh in as well.

Alas, so far, the signs do not lend to optimism. The WTO does not seem capable of absorbing challenges of more modest dimensions, as it grapples with its inability to provide the forum that will tame regulatory barriers at the multilateral level. Even if we accept that the current crisis

is idiosyncratic, and due to extraordinary circumstances, the shaping of the multilateral agenda is a far cry from the challenges posed by the digital economy.

This book is a timely and wonderful contribution aiming to bridge the gap between the two. The author, a renowned expert in international trade, has managed to come up with a comprehensive and yet coherent inventory of the questions that the trading regime should be asking. As Voltaire used to say, what matters is to ask each time the right questions. If that much can be achieved, then the right answers will naturally arrive sooner or later.

This book does go one step beyond Voltaire's premise, and provides a roadmap that the WTO can only at its peril ignore. In my view, this volume is compulsory reading for the policy-maker and the researcher alike, and will illuminate the thinking of students of the multilateral trading regime as it is coming of age.

Petros C. Mavroidis

*Edwin B. Parker Professor of Law at Columbia Law School,
New York City*

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Inspiration for this book comes from my experience of teaching to graduate students and advising government officials. At Korea Development Institute (KDI) School of Public Policy and Management, I give lectures on “Industrial Policy and International Trade Regulation,” among other things. This course has drawn a tremendous interest, as many students from different countries come from the public sector dealing with trade and industry. Moreover, I have occasionally advised government officials on trade law and policy issues. Through these interactions, the students and officials have shown a keen interest in the relationship between industrial policy and multilateral trade rules, the topic which I chose to address in this book.

This book would not have seen the light of day without the help of many people. First of all, I would like to thank my parents for having raised me to what I am and encouraging me in all stages of my life. I am thankful to my wife and my daughters for their constant love, support, and patience during this writing. I also appreciate the support of my brothers and parents-in-law.

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My special thanks go to Professor Petros C. Mavroidis – a world authority on international trade and economic law – for kindly agreeing to write a foreword for this book despite his busy schedule. I also thank Professor Julia Ya Qin – another great scholar – for her feedback and endorsement for this book.

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<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, p. 515
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ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
BOP	balance of payment
BTA	border tax adjustment
CJEU	Court of Justice of the European Union
CPC	Central Product Classification
DOC	Department of Commerce (United States)
DSU	Dispute Settlement Understanding
DVD	digital video disc
EC	European Communities
EU	European Union
FDI	foreign direct investment
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GPA	Government Procurement Agreement
GSP	generalized system of preferences
HS	Harmonized System
ICT	information and communications technology
ILO	International Labor Organization
IPR	intellectual property right
ISO	International Standardization Organization
IT	information technology
LCR	local content requirement
LDC	least-developed country
MEA	multilateral environmental agreement
MERCOSUR	Southern Common Market
MFN	most-favored nation
NPR-PPMs	non-product-related processes and production methods
OECD	Organization for Economic Cooperation and Development
PPMs	processes and production methods
R&D	research and development

RTA	regional trade agreement
SCM	subsidies and countervailing measures
SME	small and medium enterprise
SPS	sanitary and phytosanitary
STC	specific trade concern
TBT	technical barriers to trade
TPP	Trans-Pacific Partnership
TPR	trade policy review
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMs	trade-related investment measures
TRIPS	trade-related aspects of intellectual property rights
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific, and Cultural Organization
US	United States
VAT	value-added tax
VCLT	Vienna Convention on the Law of Treaties
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization