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ECONOMIC LAW

# The WTO and Infant Industry Promotion in Developing Countries

Perspectives on the Chinese Large Civil  
Aircraft Industry

Juan He



# The WTO and Infant Industry Promotion in Developing Countries

The charter of the World Trade Organization (WTO) sets the tone that sustainable trade and economic development dominates multilateral trade negotiation and specific working agreements. This book examines the novel challenge for developing countries to upgrade and optimize their industrial structure and trade composition by stimulating genuinely innovative and competitive industrial strength. The book specifically explores the issue of infant industry promotion under the legal framework of the WTO treaties and case law. Taking the regulatory measures and incentives China has used to build up a large civil aircraft supplier, the book evaluates the key trade agreements relevant to infant industry promotional policies and practices, such as product regulations and standards under the 'Agreement on Technical Barriers to Trade', and export promotion policies under the 'Agreement on Subsidies and Countervailing Measures'.

Juan He argues that the regulatory room prescribed by the multilateral trade rules of the WTO does not allow adequate space for developing countries to encourage new and technologically advanced areas of production and trade. She concludes by suggesting ways in which WTO rules could be modified to help enable developing countries' industrialization. In doing so, the book highlights a need to investigate how localized and international policy trends can be reconciled and enhanced towards the common goal of development.

The book will be of great interest to scholars and students of international trade law, Chinese studies, international political economy, and of great use to government agencies responsible for internal trade and industrial policy decisions.

**Juan He** is Assistant Professor of Law in the Guanghua Law School at Zhejiang University in China. Her current research interests lie in the areas of international trade law, international environmental law and WTO dispute resolution. She has published several peer-reviewed articles with a Chinese focus.

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**Juan He**

First published 2015  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

and by Routledge  
711 Third Avenue, New York, NY 10017

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

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*British Library Cataloguing in Publication Data*

A catalogue record for this book is available from the British Library

*Library of Congress Cataloging-in-Publication Data*

He, Juan, 1984–

The WTO and infant industry promotion in developing countries : perspectives on the Chinese large civil aircraft industry / Juan He.  
pages cm

Includes bibliographical references and index.

ISBN 978-1-138-01955-3 (hbk : alk. paper) – ISBN 978-1-315-76783-3 (ebk : alk. paper) 1. World Trade Organization–Developing countries.

2. General Agreement on Tariffs and Trade (Organization) 3. Foreign trade regulation. 4. Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) I. Title.

K4610.H4 2015

382'.63–dc23

2014014162

ISBN: 978-1-138-01955-3 (hbk)

ISBN: 978-1-315-76783-3 (ebk)

Typeset in Baskerville  
by Cenveo Publisher Services

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# Foreword

The gap between developed and developing countries is widening in the world. The objectives embedded in the preamble of GATT and WTO are to promote world economic development, to raise standards of living and social welfare, to ensure sustainable development and to take into account developing economies' needs and concerns at different levels of economic development. To achieve these goals, the GATT/WTO apply non-discrimination principles including most-favoured-nation treatment and national treatment; lowering tariff and non-tariff barriers; general elimination of quantitative restrictions; promoting fair trade through anti-dumping and subsidy countervailing measures; transparency; special and differential treatment to developing economies; and multilateral dispute settlement. For a long time, developed economies have used all kinds of trade policies to promote their industrial development and enhance their world trade competitiveness. For example, policies on subsidizing key industrial sectors such as large civil aircraft manufacturing, policy intervention in high-technology areas and agricultural subsidies were widely used by developed economies as governmental involvement in national economies. Consequently developed economies became even more powerful in the areas of economy, technology and trade. Developing economies, for political and historical reasons, have been left significantly behind developed economies. After several rounds of multilateral trade negotiations, developing economies' claims for special and differential treatment, enabling clauses, trade and development, and capacity building were finally included in the GATT/WTO legal framework. For example, infant industry protection has been included in Article XVIII of GATT. Similar development policy facilitation also has been embodied in many WTO agreements. But as this book correctly indicates, those provisions are not effective and the special and differential treatment has been criticized as the weakest area.

The WTO is still a Member-driven institution. How to balance developing economies' rights and obligations and have their voice heard represent critical steps to implement the mission in the WTO relevant agreements on trade and development. The central argument of the book is that the regulatory room prescribed by multilateral trade rules is less adequate for developing

than for developed economies in terms of encouraging new and technologically advanced areas of production and trade. The evolution of global trade governance has generally followed and responded to the industrial development trajectory of developed economies. Regulatory measures prohibited by the WTO are those of diminishing importance to advanced market economies, while those endorsed or implicitly permitted are unfamiliar to less developed economies, countries and so on. The author has collected a lot of information, scholars' studies, WTO jurisprudence and legal interpretations of the relevant provisions of GATT 1994, SCM, TRIMs, TBT, SPS and TRIPS. The latest Appellate Body reports on Boeing and Airbus subsidies; Tuna and COOL under TBT, etc. are also included in the study, which altogether make it a very interesting and informative exploration.

The author has also undertaken a comprehensive survey of the Chinese governmental measures for developing the large civil aircraft industry. This study illustrates some policy constraints that the WTO has unfairly imposed on China. A series of reforming initiatives are thus submitted to the multilateral trade negotiators, calling them to modify the WTO rules to support developing economies' industrialization efforts. In this case study, the author has tried to make a two-pronged argument. For example, the discussion indicates that China's science and technology development programme is a general economic development policy and it is not a government financial assistance decision. If a set of incentive measures are provided to all priority sectors at the nationwide level, they cannot be considered specific. China has a huge domestic market for large civil aircraft and does not aim, primarily, to export. Even if these were subsidies, they do not constitute the prohibited type of export subsidy. So far, the WTO legal determination of export subsidy is not merely because the subsidized aircraft will be used in a foreign country. It should be 'subsidies contingent ... upon export performance'. Airbus's export subsidy allegation has not been supported by the Appellate Body. Furthermore, since the Chinese civil aircraft is still in its infancy, it cannot compete with Boeing and Airbus or cause any material injury to the importing country's civil aviation industry. What if China uses Article XVIII of GATT to defend its new industrial development policy?

Needless to say, the study goes beyond the protective mechanisms specified under the GATT Article XVIII. It aims at a comprehensive and coherent legal analysis to reveal the broader array of regulatory options and conditions under the WTO agreements that are pertinent to the infant industry promotion discourse. The topical subject chosen, infant industry promotion, in combination with the focus on Chinese large civil aircraft, makes this scholarly investigation cutting edge and worthwhile. Such an exposition of WTO law could prove to be a particularly useful complement to developing countries' economic policies on industrial escalation and trade diversification. At its core, this book attempts to provide a normative and analytical framework to allow, or assist, more emerging economies like

China to maintain their rise and climb up the developmental ladder. The work is of high academic standard and represents good-quality legal and theoretical research undertaken in a significant area of WTO law, policy and practice. The novel take on the traditional topic of law and development, as well as the comprehensive treatment of a recurring theme – rising developing economies – will also be good for the WTO. The book is likely to become a benchmark within this area, and to be a standard reference of use and interest to international legal practitioners, professors, students of international trade law and development studies, policy-makers and advisers around the world.

Yuejiao Zhang  
Professor of Law  
Shantou University  
Member of the World Trade Organization Appellate Body  
Geneva



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# Acknowledgements

I am indebted to many individuals and institutions for their sustained and generous support during the writing of this book. The book draws upon a doctoral dissertation supervised by Challis Professor of International Law Gillian Triggs (now President of the Australian Human Rights Commission) and Professor of Law Chester Brown from the University of Sydney, and examined by Professor Yuejiao Zhang, Professor Joel P. Trachtman and one anonymous examiner. I am very grateful for the detailed and constructive comments received from all supervisors and examiners, who gave me the courage to embark on a difficult and challenging project of preparing the manuscript for publication. Special thanks are also extended to the University of Sydney – China Scholarship Council Postgraduate Research Scholarship Programme, without which I could never have had the opportunity and motivation to commence a doctoral life in Sydney. It must be acknowledged that parts of the book draw upon and develop material that has been published previously. An earlier version of Chapter 7 appeared in Juan He, ‘Developing Countries’ Pursuit of an Intellectual Property Law Balance under the WTO TRIPS Agreement’, *Chinese Journal of International Law*, Volume 10, Issue 4, December 2011, pp. 827–63, and sections of Chapter 8 in Juan He, ‘WTO-plus Commitments and Emerging Implications for China’s Large Civil Aircraft Manufacturing’, *World Trade Review*, Volume 13, Issue 3, July 2014, pp. 517–45.

The decision to publish the book has also been greatly inspired by my visiting colleagues Harris Professor of International Law Keyuan Zou (University of Central Lancashire), who offered me insightful advice on the conception to completion of the work, and Lecturer in Law and Law Librarian Mr Wei Luo (Washington University), for whose considerable expertise and friendly recommendation to publish this book internationally I am very grateful. Thanks are also due to Rebecca Brennan, Katherine Carpenter and Mark Sapwell and others at Routledge (Taylor & Francis Group), for giving me professional guidance that has ensured a robust pace and good quality editing and production processes. When drawing near to the completion of the book I was fortunate to receive further support from the State Education Ministry of China through a writing fellowship awarded

by the Scientific Research Foundation for the Returned Overseas Chinese Scholars, and from the Qianjiang Talent Project of the Science Technology Department of Zhejiang Province (grant no. QJC1402009).

My greatest expression of gratitude is reserved for my parents, who first inspired in me a lifetime pursuit of excellence, self-respect and intellectual independence. They have extended every encouragement and understanding throughout my academic career so far. My husband and lifelong friend Dr Wei Jin, who has patiently accompanied me at every twist and turn in the journey of finalizing the book, is a real hero. My other family members and friends, both in China and Australia, also deserve to be acknowledged for their immense support and confidence in my capacity to complete the project.

The treaties and other legal instruments included in the text are current as of 20 June 2014. All websites referenced hereinafter were last accessed on that date.

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