The WTO and Infant Industry Promotion in Developing Countries

Perspectives on the Chinese Large Civil Aircraft Industry

Juan He



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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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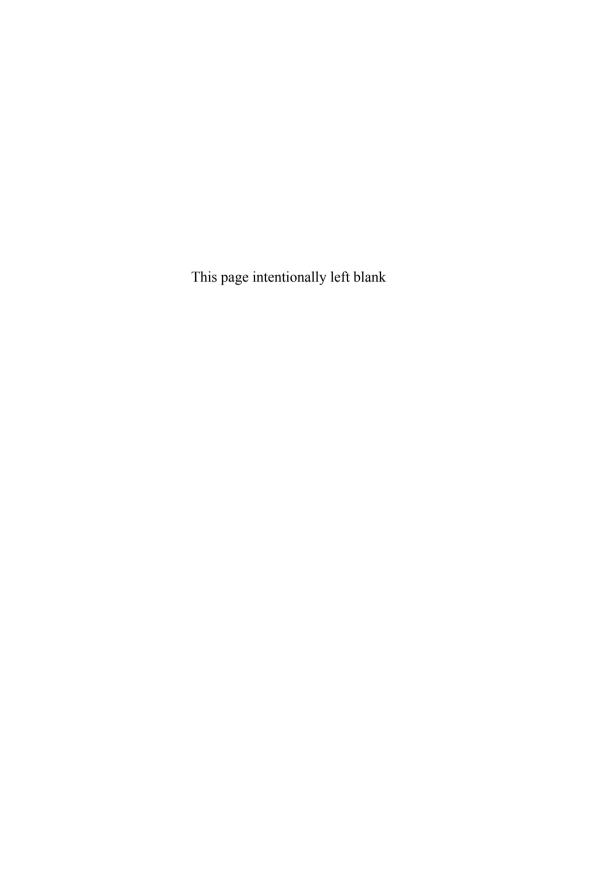
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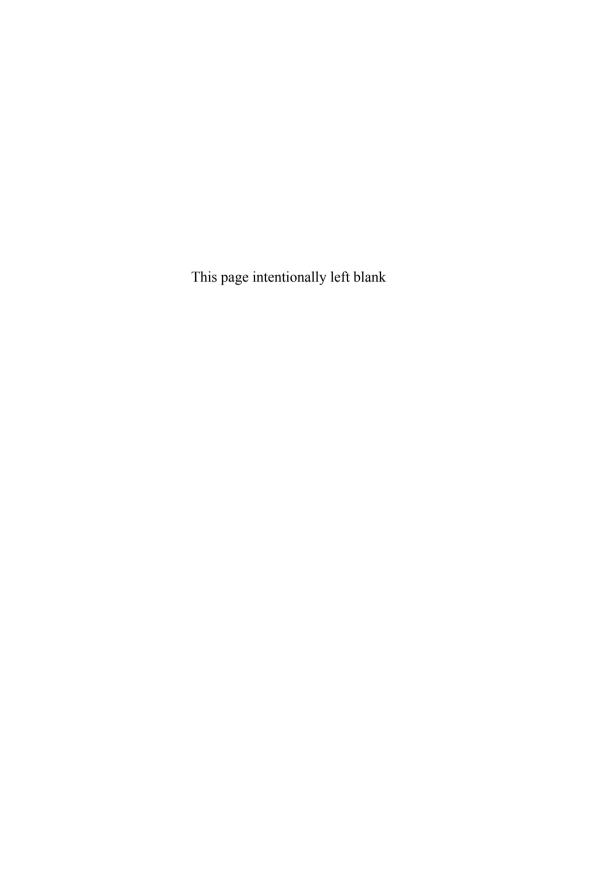
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Foreword

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

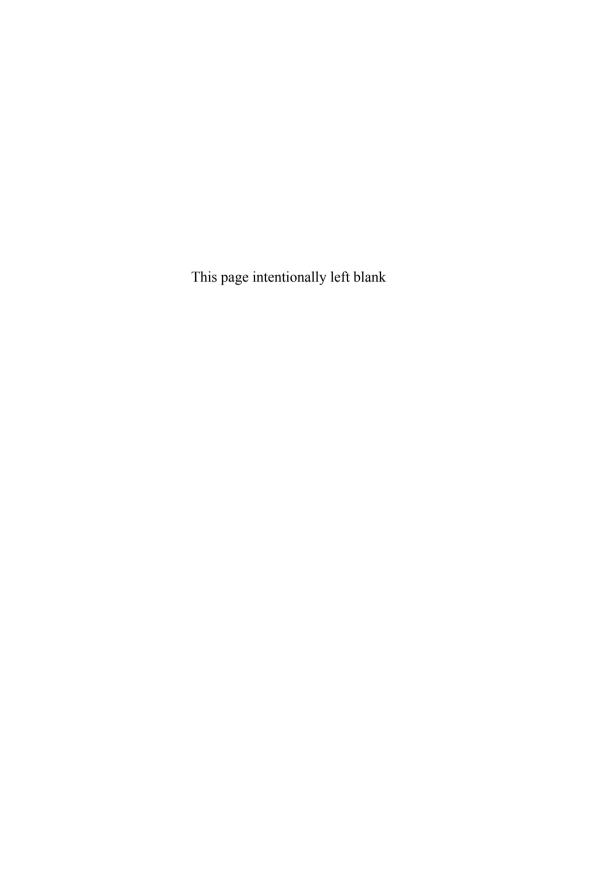
than for developed economies in terms of encouraging new and technologically advanced areas of production and trade. The evolution of global trade governance has generally followed and responded to the industrial development trajectory of developed economies. Regulatory measures prohibited by the WTO 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.

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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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