

## Trade Tensions rise on dual use technologies, trade protectionism and geopolitical risk

Stephen Olson, Hinrich Foundation Research Fellow

There has never been a time when **trade policy** was conducted entirely separate from broader geopolitical issues. But **trade has now become deeply and inexorably intertwined with national security issues and geopolitical risk** ....

### National security strategy now at forefront of US China trade relations

Trade policy is now being recalibrated to reflect the complexities raised by dual-use technologies. **Policy instruments such as investment reviews and export control regulations (and in some cases, restrictions) are being fortified to more stringently monitor which countries are able to receive potentially sensitive dual use technologies.**

**Import policies are also being adjusted** to prevent potential malevolent foreign manipulation (through sophisticated imported technologies) of critical domestic infrastructure, and/or heightened vulnerability to cyber espionage activities.

**The Huawei sanctions provide a good example.** China's national champion and global 5-G leader has not only been excluded from meaningful participation in the development of US 5-G networks, the US is also pressuring allies to implement a similar Huawei China ban. And US firms that have been supplying Huawei with critical technologies are at risk of facing Huawei sanctions.

**China FDI into the US is facing much tougher scrutiny** (especially in sensitive technology sectors) under the recent Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which expanded the jurisdiction of CFIUS to do investment reviews related to US national security strategy and concerns over cyber espionage.

In return, China's "unreliable entities" list targets foreign companies that have "severely damaged the legitimate interests" of Chinese firms. While details are vague, US tech giants like Google, Qualcomm, and Intel could be subjected to trade retaliation in response to US restrictions placed on Chinese companies on the basis of security concerns.

## WTO rules need reform

**WTO rules unfortunately do not shed much light on how to manage the complexities of trade, geopolitical issues, and security.**

While WTO rules do attempt to nominally deal with trade actions taken on the basis of national security, these provisions are glaringly insufficient.

GATT Article XXI(b)(iii) permits a WTO Member to take any action “which it considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations.”

The remarkable broadness of this provision gives license to member economies to essentially do what they deem appropriate under the rubric of national security strategy. This might have been a workable approach in previous times, when trust and restraint were higher, but it is entirely inadequate in today’s world.

Russia WTO national security case signals initial progress on clarifying WTO rules

**A WTO Dispute Settlement ruling in April 2019 marks the first potential, tentative step towards greater clarity on WTO rules for trade and security. Ukraine had brought the case against Russia, arguing that in the aftermath of Russia’s 2014 military intervention, Russia had contravened WTO rules by restricting Ukraine’s access to trade routes.**

In its defense, Russia argued that it was justified in taking these steps under the national security provisions contained in GATT Article XXI. The WTO Dispute Settlement Panel however **rejected Russia’s argument, in particular its claim that the national security provisions were “self-judging”.**

This was the first time that the national security exception had been invoked or probed, and as such is the first attempt to flesh-out exactly what it means. But we still have a long way to go. And in the meantime, Pandora’s box has been opened, and trade actions will continue to be taken on the basis of national security concerns that are oftentimes flimsy at best.

**Trade policy was undeniably simpler when national security and geopolitical issues were largely relegated to the background.** In adjusting to the new realities, a couple of principles might be helpful.

Trust has dwindled and there is no longer an inclination to give trade partners the “benefit of the doubt” (see article published in the East Asia Forum on 16 May 2019). If there is any ambiguity about the national security implications or the underlying strategic intentions behind a policy or program, the default position will be to assume the worst and act accordingly. That will frequently mean more restrictive policies, including tariff and non tariff barriers, investment reviews, and less trade and investment.

Transparency and dialogue – to the maximum extent possible – are therefore more important than ever. While it is inevitable that an increasing portion of trade and investment will be restricted or prohibited on the basis of national security strategy, we should avoid unnecessarily widening that net through misunderstanding or a lack of clear information.

**A second useful approach would be to delineate the WTO rules on national security more explicitly. The starting point should be to specify what circumstances do – and do not – justify taking trade actions based on national security grounds.**

Ultimately, more explicit rules on justifiable use of this provision would have to be codified. While this would not be a comprehensive solution, it would put us on much clearer and firmer ground than today’s “anything goes” environment.

Greater transparency and clearer WTO rules will help us – at least somewhat – navigate this new landscape in which trade, security, and geopolitics are tightly intertwined. But there is no escaping the simple reality that trade policy has now become more complex – and combustible – than any time previously.