

Toward a Geoeconomic World Order

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INTRODUCTION

Recent developments suggest that we might be moving past the International Economic World Order that has flourished since the end of the Cold War and toward a new Geoeconomic World Order.¹ This new order, which is characterised by a growing ‘securitisation of economic policy and economisation of strategic policy,’² has the potential to significantly reshape the rules, norms and institutions of international trade and investment law. We explore this shift through the prism of U.S.-China great power rivalry with particular respect to their emerging tech/trade war.

I. CONCEPTUALIZING TWO ORDERS

What do we mean by an order? An order can be conceptualised as a relatively predictable set of agents’ behaviour, social interactions and social outcomes within a particular social system.³ A given order in an area of world politics tends to be defined by certain regulations (rules, norms, institutions) and patterns of action (behaviour, interactions, outcomes) that reflect how actors understand and apply those regulations. Within the international economic regime, we are currently seeing the emergence of new patterns of behaviour that portend the transition of orders.

After the Cold War, the old International Economic World Order flourished in a period of U.S. unipolar power. As we explain below, security was seen as both a justification for the order and an exception to the order, but not as the rule that governed the day-to-day workings of the regime’s core obligations. Instead, the core of the regime focused on maximizing absolute economic gains and tended to treat interdependence as a good that facilitated increased efficiency.

In the emerging Geoeconomic World Order, geopolitical power has changed, resulting in different patterns of behaviour among key states. In particular, although

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¹ This article builds upon ideas sketched in an earlier series of blog posts. See Anthea Roberts et al, ‘The Geoeconomic World Order’, *Lawfare*, 19 November 2018, <https://www.lawfareblog.com/geoeconomic-world-order>.

² Michael Wesley, ‘Australia and the Rise of Geoeconomics’, 29 *Centre of Gravity* 1 (2016), at 4.

³ Shipping Tang, ‘Order: A Conceptual Analysis’, 1 *Chinese Political Science Review* 30 (2016) 34.

the United States was the principal architect of the old International Economic World Order, it has equally been one of the driving forces behind the movement toward a new Geoeconomic World Order. Reflecting changing understandings of the balance and relationship between economics and security, the new order is marked by a greater focus on relative economic gains in view of their implications for security and heightened concern over the security risks posed by interdependence and connectivity.

In sketching these ideal types, we are not suggesting that one order has completely replaced the other, that security was absent from the old order, or that security always trumps economics in the new order. Instead, we are identifying in broad brushstrokes how the balance and relationship between economics and security have shifted. In particular, while an ‘economic’ mindset previously dominated the routine operation of international trade and investment law, ‘security’ considerations now play a more prominent role in the regime’s core.

Blackwill and Harris define geoeconomics as the ‘use of economic instruments to promote and defend national interests, and to produce beneficial geopolitical results.’⁴ The term was originally coined by American strategist Edward Luttwak in 1990 following the fall of the Berlin Wall. Luttwak argued that, in the newfound absence of a Soviet military threat to the United States and its allies, competition and rivalry among states would principally play out in the economic realm:

[T]he methods of commerce are displacing military methods – with disposable capital in lieu of firepower, civilian innovation in lieu of military-technical advancement, and market penetration in lieu of garrisons and bases. [This has led to] the emergence of “Geoeconomics” ... the best term I can think of to describe the admixture of the logic of conflict with the methods of commerce.⁵

Ultimately, Luttwak’s predicted rise in geoeconomics has proven not so much wrong as premature. In the immediate post–Cold War era, international trade and investment and national security appeared to operate on relatively independent tracks. But the acceleration of great-power rivalry between China and the United States in the 2000s, which was further heightened in the aftermath of the 2008 global financial crisis, prompted a rise in geoeconomic actions that are challenging the logic underlying existing approaches to international economic governance.

A. The Logic of the Old International Economic Order

Security did not dominate the core of the old International Economic World Order. In line with U.S. policy ideas and preferences discussed below, security served to justify the old order because entering into trade and investment agreements was understood to increase economic interdependence, which in turn would promote peace and

⁴ R. D. Blackwill and J. M. Harris, *War by Other Means: Geoeconomics and Statecraft* (Cambridge, MA: Harvard University Press, 2016).

⁵ Edward Luttwak, ‘From Geopolitics to Geo-Economics: Logic of Conflict, Grammar of Commerce’, 20 *The National Interest* 17 (1990), at 17-19. Beyond anchoring this concept in the academic tradition of geopolitics, the use of the prefix ‘geo’ reflects states’ maximization of their own (geographically) bounded economic interests even if it generates sub-optimal outcomes at the international level. See further Braz Baracuhy, ‘Geo-economics as a dimension of grand strategy’ in Mikael Wigell et al (eds), *Geo-economics and Power Politics in the 21st Century* (London and New York: Routledge, 2019).

cooperation by raising the costs of conflict between states.⁶ This idea was summed up in the slogan ‘World Peace through World Trade.’

Security also represented an (unused for the most part) exception in the regime. Most trade and investment agreements concluded after World War II included broadly phrased national security exception clauses.⁷ States, however, exercised restraint in invoking these clauses for fear of opening a Pandora’s Box: they realised that a national security exception would be difficult to regulate and that broadly invoking the clauses would ultimately undermine the trade and investment rules.⁸

Instead, the ordinary rules that underpinned trade and investment treaties reflected an ‘economic’ mindset rather than a ‘security’ mindset. The economic mindset was primarily concerned with maximizing economic gains for states engaged in international trade and investment by increasing efficiency within and across their economies. The potential security concerns caused by deepening interdependence across a broad range of sectors received comparatively little attention.

According to classical economic theory, free trade is beneficial because it allows states to play to their comparative advantage by concentrating on producing what they do best and trading for the rest.⁹ Free trade is therefore assumed to be a win-win situation: the size of the pie, and thus the slices of pie that can be claimed by each state, can be grown through cooperation. States may bargain fiercely over how to divide the pie, but the underlying assumption is that both parties can ‘win’ in absolute economic terms.¹⁰

To effect the goal of increased economic efficiency, trade and investment treaties aimed at overcoming economic nationalism and mercantilism by, for instance, reducing protectionism and instilling the principle of nondiscrimination. To the same end, corporations restructured their supply chains, creating deep interdependencies across states, both friends and potential foes.

Trade and investment obligations also became highly legalised after the creation of the World Trade Organization (WTO) and the widespread adoption of investor-state arbitration. Legalised dispute resolution was intended to insulate the economic realm from the vagaries of diplomacy and other foreign policy concerns.

⁶ On the logic of this assumption see, eg, Dale C. Copeland. ‘Economic Interdependence and War: A Theory of Trade Expectations’, 20:4 *International Security* 5 (1996); Erik Gartzke, ‘The Capitalist Peace’, 51:1 *American Journal of Political Science* 166 (2007), at 169-170.

⁷ There was a split among the treaties as to whether these clauses are phrased as self-judging and among states about whether self-judging clauses permit good faith review. For a recent overview and assessment of the self-judging debate, see J. Benton Heath, ‘The New National Security Challenge to the Economic Order’, 129 *Yale Law Journal* forthcoming (2019).

⁸ Keith Johnson, ‘Trump Opened ‘Pandora’s Box’ With Tariffs’, *Foreign Policy*, 14 March 2018, <https://foreignpolicy.com/2018/03/14/trump-opened-pandoras-box-with-tariffs-232-steel-article-21-wto/>.

⁹ David Ricardo, *On the Principles of Political Economy and Taxation* (London: John Murray, 1817).

¹⁰ Of course, this reasoning has its critics, such as Dani Rodrik, who argue that many modern trade and investment agreements end up largely serving the rent-seeking interests of big multinationals: ‘What Do Trade Agreements Really Do?’, 24344 NBER Working Paper, February 2018.

This development encouraged rule by lawyers rather than by politicians or diplomats,¹¹ which further sidelined security and strategic concerns.

B. The Logic of the Emerging Geoeconomic World Order

Key to the emerging Geoeconomic World Order is a shift in focus from absolute gains (based on the assumption of a positive-sum game) to relative gains (based on the concern that one party has gained disproportionately or that one party's gain amounts to another party's loss, ie a zero-sum game).¹² As described below, this shift appears to result from both increased inequality *within* states (leading to a populist backlash against globalization and free trade) and increased equality *among* states (leading to greater economic convergence, most notably between the United States and China).¹³

Another feature of the new order is a different approach to the relationship between trade and peace: long periods of peace (typically associated with times of hegemonic stability) enable the conditions that lead to increased economic interdependence, not the other way around.¹⁴ The hegemon typically supports free trade when it does not fear the economic growth of its strategic rivals. In such periods of relative peace, the hegemon can afford to focus primarily on its own absolute economic gains while largely ignoring changes in relative economic power.¹⁵ But when the relative size of the economies of the hegemon and its strategic rival converge to a sufficient degree, the hegemon's calls for free trade will weaken in favor of the adoption of greater protectionism.

This change occurs because economic power ultimately undergirds other forms of power, including military power, which are often understood by great powers in relative or zero-sum terms.¹⁶ As economic power converges – and particularly when it leads to bipolarity¹⁷ – the hegemon's sense of security diminishes, and its focus shifts from absolute economic gains to relative strategic power. In 2008, network theorist David Singh Grewal predicted that convergence in economic power would lead to a rethinking of the classical economic arguments in favor of free trade:

As industrial rivals develop, the cries for free trade become weaker, both from the hegemon, now willing to forgo additional material welfare in return for

¹¹ J. H. H. Weiler, 'The Rule of Lawyers and the Ethos of Diplomats', 35:2 *Journal of World Trade* 191 (2001); Taylor St John, *The Rise of Investor-State Arbitration: Politics, Law, and Unintended Consequences* (Oxford: Oxford University Press, 2018).

¹² For an overview on the impact of concerns about relative gains on trading relations and international cooperation generally, see Joseph Grieco, Robert Powell and Duncan Snidal to 'The Relatives-Gains Problem for International Cooperation', 87:3 *American Political Science Review* 729 (1993). For the impact on economic cooperation specifically, see Peter Liberman, 'Trading with the Enemy: Security and Relative Economic Gains', 21:1 *International Security* 147 (1996).

¹³ See Branko Milanovic, *Global Inequality: A New Approach for the Age of Globalization* (Cambridge, MA: Harvard University Press, 2016).

¹⁴ See Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981).

¹⁵ See Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984)

¹⁶ See Paul M. Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to the Present* (New York: Random House, 1987).

¹⁷ See Peter Liberman, 'Trading with the Enemy: Security and Relative Economic Gains', 21:1 *International Security* 147 (1996).

greater relative security, and among its rivals, who may seek a strategic disengagement from the world economy in order to protect infant industries and support a mature industrial and military policy.¹⁸

This scenario describes exactly what happened. And with this shift came another realization that underpins the patterns of behaviour in the emerging order: interdependence may increase economic efficiency, but it can also generate strategic vulnerabilities, such as dependencies on foreign states for the supply of critical technologies necessary to the economic advancement and military capacity of great powers. States can create economic interdependencies with the aim or awareness that these may translate into strategic advantages, as China is doing through its Belt and Road Initiative.¹⁹ Key asymmetries can also be exploited or ‘weaponized’ as strategic leverage by the less vulnerable party in an interdependent relationship.²⁰

The shift from a more ‘economic’ to a more ‘security’ mindset involves a transition from appeals to economic efficiency to calls for increased self-reliance and resilience. Concerns about interdependence are likely to be amplified when the economic competitor is also understood to be a strategic competitor. Instead of prioritizing the economic gains of interdependence, strategic competitors may seek to create what Tom Wright calls ‘spheres of independence,’ decoupling their integration in at least some areas to limit vulnerabilities.²¹

Weaponizing interdependence thus has a ‘use-it-and-lose-it’ quality. If states perceive that other states or actors are using economic interdependence to gain strategic advantages, their incentive to become independent is strengthened, especially when the actor seen as abusing the interdependence is a central or dominant node in the system. Examples include the establishment by other states of alternative payment regimes to avoid U.S. controls over SWIFT, which it has leveraged to enforce its sanctions.²²

II. U.S. AND CHINA RIVALRY: CAUSES AND CONSEQUENCES

Although many states have long had to balance and integrate their economic and security interests, the relative divergence and convergence of these spheres in U.S. policy have given essential impetus to the shifts in orders identified above. A significant driver in this shift has been the emergence of China as both an economic and a strategic rival, which has also given rise to an emerging tech/trade war.

¹⁸ David Singh Grewal, *Network Power: The Social Dynamics of Globalization* (New Haven: Yale University Press, 2008), at 236.

¹⁹ Gregory Shaffer and Henry Gao, ‘A New Chinese Economic Law Order?’, 21 University of California, Irvine Legal Studies Research Paper Series (2019), at 6.

²⁰ Henry Farrell and Abraham Newman, ‘Weaponized Interdependence’, 44 International Security forthcoming (2019). Foundational works on the mechanisms through which asymmetric trade relations can be leveraged to exercise power include Albert Hirschman, *National Power and the Structure of Foreign Trade* (Berkeley, CA: University of California Press, 1981) and Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown & Co, 1977).

²¹ Thomas Wright, ‘Sifting through Interdependence’, 36:4 The Washington Quarterly 7 (2013).

²² Henry Farrell and Abraham Newman, ‘America’s Misuse of Its Financial Infrastructure’, *National Interest*, 15 April 2019, <https://nationalinterest.org/feature/america%E2%80%99s-misuse-its-financial-infrastructure-52707>.

A. Convergence of Economic and Security Competition

The relative divergence between the economic and security realms in the old order occurred partly because the United States did not view itself as having an economic and strategic competitor. During the Cold War, the Soviet Union was a strategic competitor but, over time, it became clear that it was no match for the United States economically. Japan emerged as an economic competitor to the United States in the 1970s and 1980s, but it was a U.S. client state and security ally rather than a strategic competitor.²³

After the Cold War, the United States achieved both strategic and economic predominance. In the newly unipolar world, the communist threat fell away, leaving capitalism as the ruling economic ideology of the day. The neoliberal economic model spread rapidly with the support of various international organizations, including the World Bank and the International Monetary Fund. On the basis of the security premise and with an eye to profits, the United States welcomed former Soviet states and China into the world economy as a way to promote both peace and prosperity.

The United States perceived its main security threat during this period as coming from ‘rogue’ states like Iraq and Iran and – after 9/11 – from nonstate terrorist actors like al-Qaeda, the Taliban and the Islamic State.²⁴ The U.S. strategic focus was strongly trained on the Middle East and a succession of battlefield operations from Iraq to Afghanistan to Libya. Since these adversaries were economically marginal, security and economics continued to be treated as relatively separate domains, particularly in the legal regimes established to regulate them.

Of course, the separation of economics from politics and security in U.S. foreign policy was not complete.²⁵ During the post-Cold War period, the United States made ready use of economic sanctions to target adversary states as well as individuals and corporations engaged in terrorism financing.²⁶ But as largely asymmetric tools, these measures could be employed by the United States without significant fear of reciprocation or costs to its own economy; they also operated outside the highly legalised fields of trade and investment.

From the U.S. perspective, the assumptions underlying the old International Economic World Order increasingly came to fall under strain from around 2008 onwards for four main reasons.

First, the old order had resulted in increased economic convergence among states. In absolute economic terms, the United States and China both gained

²³ See generally Wendy Wu, ‘Why China’s U.S. trade stand-off is not a replay of Japan’s in the 1980s’, *South China Morning Post*, 16 April 2018.

²⁴ James B. Steinberg et al, ‘The New National Security Strategy and Preemption’, *Brookings Institute*, 21 December 2002.

²⁵ See Anthea Roberts et al, ‘Goeconomics: The Variable Relationship Between Economics and Security’, *Lawfare*, 27 November 2018, <https://www.lawfareblog.com/geoeconomics-variable-relationship-between-economics-and-security>.

²⁶ Juan Zarate, *Treasury’s War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013); Peter Harrell and Elizabeth Rosenberg, ‘Economic Dominance, Financial Technology, and the Future of U.S. Economic Coercion’, Center for New American Security, 29 April 2019. Available at: <https://www.cnas.org/publications/reports/economic-dominance-financial-technology-and-the-future-of-u-s-economic-coercion>.

tremendously; but in relative terms, China had begun to close the gap. This shift became stark in the late 2000s when the U.S. economy precipitated the global financial crisis, causing a crisis of faith in the Washington Consensus model, while China's economy emerged as the world's second largest.²⁷ An ever more economically competitive China came to be seen as a threat in Washington, which contributed to the U.S. 'pivot to Asia' in 2011 and the Trans-Pacific Partnership Agreement (TPP) – an agreement that President Obama claimed would '[allow] America – and not countries like China – to write the rules of the road for the 21st century.'²⁸

Second, rising inequality within the United States since the 1970s, owing to a variety of factors ranging from trade and technology trends to a lack of effective redistributive policies, culminated in a populist backlash against international trade and investment.²⁹ The resulting populist and protectionist political climate led all of the major candidates vying in the 2016 U.S. presidential race to disavow the TPP. It was also reflected in Donald J. Trump's claims that China was 'raping' the U.S. economy and 'stealing' its jobs and subsequent promises to 'bring our jobs back home' and get tough on economic competitors that were 'cheating.'³⁰

Third, differences in the economic and political systems of China and the United States both contribute to strategic rivalry and are used by the two states to justify that rivalry.³¹ Economically, the United States champions a free market neoliberal ideology, whereas China has adopted a state-led capitalist model, which means that they have different strengths and seek to craft and play by different rules. Politically, the United States depicts China as an authoritarian regime that is aggressive abroad and repressive at home,³² whereas China tars the United States as hegemonic and hypocritical,³³ pointing to its track record of interfering in the

²⁷ Christopher Layne, 'The US–Chinese power shift and the end of the *Pax Americana*', 94:1 *International Affairs* 89 (2018).

²⁸ Barack Obama, 'Statement by the President on the Signing of the Trans-Pacific Partnership', 3 February 2016, available at: <https://obamawhitehouse.archives.gov/the-press-office/2016/02/03/statement-president-signing-trans-pacific-partnership>.

²⁹ Gregory Shaffer, 'Retooling Trade Agreements for Social Inclusion', 1 *University of Illinois Law Review* 1 (2019).

³⁰ See Nicolas Lamp, 'How Should We Think about the Winners and Losers from Globalization? Three Narratives and their Implications for the Redesign of International Economic Agreements', 30:3 *European Journal of International Law* forthcoming (2019); Anthea Roberts, 'Being Charged by an Elephant: A story of globalization and inequality', *EJIL: Talk!*, 19 April 2017, <https://www.ejiltalk.org/being-charged-by-an-elephant-a-story-of-globalization-and-inequality/>.

³¹ See, eg, Kenneth G. Lieberthal, 'U.S., China Must Overcome Mutual Distrust', *Brookings Institute*, 10 April 2012, <https://www.brookings.edu/opinions/u-s-china-must-overcome-mutual-distrust/>; Yuwa Hedrick-Wong, 'The U.S.-China Trade War And Global Economic Dominance', *Forbes*, 11 September 2018, <https://www.forbes.com/sites/yuwahedrickwong/2018/09/11/the-u-s-china-trade-war-and-global-economic-dominance/#1806925b256a>.

³² See, eg, Donald Trump, 'A New National Security Strategy for a New Era', 18 December 2017, <https://www.whitehouse.gov/articles/new-national-security-strategy-new-era/>; Jacob Greber, 'China is weaponising on a massive scale, says Mike Pence', *Australian Financial Review*, 5 October 2018, <https://www.afr.com/news/world/china-is-weaponising-on-a-massive-scale-says-mike-pence-20181005-h1694g>.

³³ See, eg, Zhang Jiadong, 'How China, US misunderstand each other', *Global Times*, 1 August 2018, <http://www.globaltimes.cn/content/1113354.shtml>; 'The American hypocrisy when it comes to maritime rule of law', *People's Daily*, 12 July 2016, <http://en.people.cn/n3/2016/0712/c90000-9084833.html>.

domestic affairs of other states and accusing it of desiring to hold back China's development.³⁴

Some U.S. commentators advocate 'othering' China to help overcome domestic divisions and reinforce social cohesion. For instance, Jeff Colgan and Robert Keohane propose that:

Washington should nurture a uniquely American social identity and a national narrative. That will require othering authoritarian and illiberal countries ... such as China and Saudi Arabia ... Done properly, that sort of othering could help clarify the American national identity and build solidarity. It might at times constrain commercial relationships. However, a society is more than just an economy, and the benefits of social cohesion would justify a modest economic cost.³⁵

Others warn that doing so would amount to dangerous scapegoating to distract attention from domestic problems.³⁶

Whether the 'China threat' should be understood as real or constructed or both, this growing strategic rivalry is playing out as the world moves into the Fourth Industrial Revolution in which developments like artificial intelligence (AI) have the potential to create unknown but outsized economic gains and security risks. Even though the United States enjoys technological supremacy in many areas, surges in Chinese research and development funding and recent breakthroughs in areas like AI have stirred U.S. concerns, leading to a fourth reason for growing unease between the two.

These developments resulted in a noticeable shift in U.S. policy, particularly since 2017–18. Upon taking office, President Trump withdrew the United States from the TPP but doubled down on treating China as a threat. The 2017 U.S. National Security Strategy deemed China a 'revisionist power' and a 'strategic competitor' that uses 'predatory economics' to intimidate its neighbors.³⁷ Importantly, it also declared that 'economic security is national security.'³⁸ Endorsing this formulation, the U.S.

³⁴ Jake Werner, 'China Is Cheating at a Rigged Game', *Foreign Policy*, 8 August 2018, <https://foreignpolicy.com/2018/08/08/china-is-cheating-at-a-rigged-game/>.

³⁵ Jeff D. Colgan and Robert O. Keohane, 'The Liberal Order Is Rigged', 96:3 *Foreign Affairs* 36.

³⁶ Benjamin Shobert, *Blaming China: It Might Feel Good but It Won't Fix America's Economy* (Lincoln, NE: Potomac Books, 2018); Stephen S. Roach, 'America's False Narrative on China', *Project Syndicate*, 26 April 2019, <https://www.project-syndicate.org/commentary/america-false-china-narrative-by-stephen-s-roach-2019-04>.

³⁷ National Security Strategy of the United States of America, December 2017, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> ('National Security Strategy 2017'). See also United States Department of Defense, 'Summary of the 2018 National Defense Strategy of the United States of America: Sharpening the American Military's Competitive Edge', January 2018, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

³⁸ National Security Strategy 2017, 17. Also see Peter Navarro, 'Why Economic Security Is National Security', *RealClear Politics*, 9 December 2018, https://www.realclearpolitics.com/articles/2018/12/09/why_economic_security_is_national_security_138875.html.

Department of Defense concluded that America's 'manufacturing and defense industrial base must be secure, robust, resilient, and ready.'³⁹

The U.S. concept of 'economic security' bridges – and has the potential to collapse – the rule against economic nationalism and the exception in favor of national security, creating an exception that has the potential to swallow the rule.⁴⁰ Economic security is clearly important for national security: a state will not be able to defend itself if it lacks economic prosperity or if it must rely on foreign states, including potential adversaries, for key defense supplies. But if national security requires a state to be economically prosperous, globally competitive and capable of military self-sufficiency, including at surge capacity, it can be used to justify protection on everything from steel and aluminum to tents.⁴¹

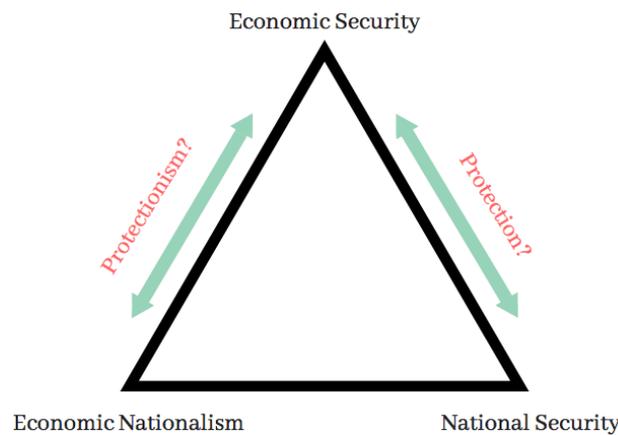


Figure 1: The Economic Security Triangle

This approach raises the question: if economic security is national security, how can one draw the line between protection and protectionism? Measures justified under economic security therefore have a Rorschach-test-like quality to them: what looks like protection from one perspective (a security mindset) looks like protectionism from another (an economic mindset) (figure 1). International economic law scholars have been particularly critical of the U.S. steel tariffs on this basis.⁴² This approach may also create a permanent state of exception where an external threat serves constantly to justify protection/protectionism. By mixing notions of competition, conflict and rivalry across economic, political and security realms, it is

³⁹ United States Department of Defense, 'Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States', September 2018, at 7. Available at: <http://defense.gov/StrengtheningDefenseIndustrialBase>.

⁴⁰ Although we focus on the great power competition that is driving some U.S. invocations of national security, a range of states are also starting to adopt broader interpretations of the national security exception to apply to areas like health and climate change: J. Benton Heath, 'The New National Security Challenge to the Economic Order', 129 *Yale Law Journal* forthcoming (2019).

⁴¹ On steel and aluminum, see United States Trade Representative, 'Statement by Ambassador Robert E. Lighthizer on Retaliatory Duties', Press Release, 26 June 2018 ('President Trump has taken actions on trade in steel and aluminum to protect our national security interests. These actions are wholly legitimate and fully justified ...'). On tents, see Peter Navarro, 'America's Military-Industrial Base Is at Risk', *New York Times*, 4 October 2018 ('Even the lowly, but increasingly high-tech, tent is at risk.').

⁴² Jennifer Hillman, 'Trump Tariffs Threaten National Security', *New York Times*, 1 June 2018, <https://www.nytimes.com/2018/06/01/opinion/trump-national-security-tariffs.html>.

hard to know where to draw the line and when a threat might be understood as starting or finishing.

B. The U.S.-China Tech/Trade War

One area in which these dynamics are unfolding is U.S.-China technological competition. The United States is a world leader in technological innovation, which it has used to fuel both its economic advantage and its military predominance. As a rising great power, China faces an ‘innovation imperative’: it needs to acquire and develop new technologies so as to enjoy long-term growth, continue its ascent up the global value chain and arm itself against a dominant strategic competitor with more advanced military capabilities.⁴³ It has sought to close this technological gap through a combination of what Andrew Kennedy and Darren Lim describe as *making*, *transacting* and *taking*:

- *Making* consists of supporting domestic firms in developing indigenous innovative and manufacturing capacity so that China can be more self-reliant when it comes to creating and producing new technologies. For example, the Made in China 2025 industrial policy seeks to spur Chinese innovation and technological advancement in key emerging technology sectors.
- *Transacting* involves concluding commercial transactions with foreign entities that result in the transfer of key technology. This goal can be achieved by Chinese companies buying or investing in foreign technology companies or requiring foreign companies that want to invest in China to work with domestic firms or transfer some of their intellectual property in return for market access.
- *Taking* means acquiring existing technology from foreign states and companies without paying for it. This objective can be realised through legal means, such as collecting open-source material like published scientific papers or sending Chinese students to study abroad, or illegal means, such as stealing intellectual property from foreign governments and competitors.

By contrast, we argue that, as the technological incumbent, the United States faces an imperative to maintain its ‘technological supremacy.’ It accordingly has an interest in defending its existing technological dominance, hobbling the technological ambitions of its upcoming rival, and doubling down on its own technological advancement to ensure it retains its edge going forward. But views differ over whether openness in trading, investment, and research and development with an economic and strategic competitor represents a security risk (because of the possibility of knowledge and material transfers) or a security gain (because it bolsters thriving technology industries that are then best placed to retain their innovative edge).⁴⁴

⁴³ Andrew B. Kennedy and Darren J. Lim, ‘The Innovation Imperative: Technology and US–China Rivalry in the Twenty-First Century’, 94:3 *International Affairs* 553 (2018).

⁴⁴ See, eg, Hugo Meijer, *Trading with the Enemy: The Making of US Export Control Policy toward the People’s Republic of China* (Oxford: Oxford University Press, 2016) (contrasting the views of ‘Control Hawks’ who believe that exporting technologies to competitors is a security risk with ‘Run Faster’ advocates who believe that exports are essential for keeping technology industries competitive and able to innovate).

Depending on the views prevailing at the time on the best balance to strike between being open and closed, the incumbent technological power may thus seek to protect its lead through some combination of what we call *shielding*, *stifling* and *spurring* – impulses that can be seen in recent U.S. actions and debates:⁴⁵

- *Shielding* consists of protecting domestic technological knowledge from taking and transacting by a competitor. In current U.S. practice, shielding includes prosecuting Chinese nationals and companies for industrial espionage; resisting ‘forced technology transfers’; and expanding the activities of the Committee on Foreign Investment in the United States (CFIUS) to permit the review and blocking of, inter alia, all non-passive foreign investments in any company that deals with ‘critical technology’ (including ‘emerging and foundational technologies’), ‘critical infrastructure,’ or ‘sensitive personal data of United States citizens that may be exploited in a manner that threatens national security.’⁴⁶
- *Stifling* involves taking actions to inhibit the strategic competitor’s capacity for making.⁴⁷ U.S. practice in this regard includes imposing unilateral tariffs with a view, among other things, to pressuring China to moderate industrial policies that support high-technology industries;⁴⁸ adopting new export controls on ‘emerging and foundational technologies’ to prevent the transfer of next-generation technologies, such as quantum computing, robotics and artificial intelligence;⁴⁹ banning the sale of components like semiconductors to Chinese companies like ZTE and Huawei;⁵⁰ and seeking to prevent the purchase or adoption of Chinese technology like Huawei and 5G domestically⁵¹ and abroad.⁵²
- *Spurring* means seeking to stimulate technological innovation by, for instance, increasing government research and development funding, adopting a more extensive industrial policy, attracting the best talent from around the world and seeking to ensure for domestic companies a competitive advantage in markets abroad. The United States has worked hard to open foreign markets for its

⁴⁵ See Harrell and Rosenberg, above n 25.

⁴⁶ See Stephanie Zable, ‘The Foreign Investment Risk Review Modernization Act of 2018’, *Lawfare*, 2 August 2018.

⁴⁷ Some actions, such as restricting knowledge transfers through limitations on Chinese STEM students and professors studying and working in the United States, can have elements of shielding (to prevent Chinese taking of existing technology) and stifling (to slow Chinese innovation through limiting human capacity). On such measures, see Todd Shields, ‘Top U.S. Universities Shun Cash From Huawei Under Trump Pressure’, *Bloomberg*, 13 March 2019; Benjamin Wermund, ‘Republicans push bill to prevent spying on ‘sensitive’ university research’, *Politico*, 12 March 2019.

⁴⁸ See White House Office of Trade and Manufacturing Policy, ‘How China’s Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World’, June 2018, available at: <https://www.whitehouse.gov/wp-content/uploads/2018/06/FINAL-China-Technology-Report-6.18.18-PDF.pdf>.

⁴⁹ See Robert Williams, ‘In the Balance: The Future of America’s National Security and Innovation Ecosystem’, *Lawfare*, 30 November 2018.

⁵⁰ Demetri Sevastopulo, Kiran Stacey and James Politi, Nian Liu and Kathrin Hille, ‘Trump puts Huawei on exports blacklist US companies’, *Financial Times*, 16 May 2019; Alan Rappeport, ‘U.S. to Block Sales to Chinese Tech Company Over Security Concerns’, *New York Times*, 29 October 2018.

⁵¹ White House, Executive Order on Securing the Information and Communications Technology and Services Supply Chain, 15 May 2019.

⁵² Parmy Olson, ‘U.S. Would Rethink Intelligence Ties if Allies Use Huawei Technology’, *Wall Street Journal*, 29 April 2019.

companies and it has a strong history in attracting and retaining foreign talent, but its support for research funding and the strength and coherence of its industrial policy have waned over the years, leading to current debates over whether such measures should be reinvigorated.⁵³ Political scientists have identified ‘creative insecurity’ as a key factor in spurring technological innovation, which occurs when a state’s perception of external security threats outweighs the drag of internal distributional fights between domestic stakeholders.⁵⁴

Some argue that such measures are necessary so that the two economies can be ‘decoupled’ to counteract China’s ‘technonationalism.’⁵⁵ In response, President Xi has increasingly invoked the importance of *zìlìgēngshēng*, which means ‘self-reliance and sufficiency.’⁵⁶ According to Xi: ‘Only by mastering crucial core technologies with our own hands can we ... fundamentally safeguard our national economic security, national security, and security in other areas.’⁵⁷ Thus, offensive and defensive actions by the incumbent might spur further offensive and defensive moves by the challenger, and both may increase levels of independence.

The economic and technological rivalry is likely to increase as data becomes a central battleground because of its unknown and potentially outsized economic benefits and security risks.⁵⁸ For instance, CFIUS recently requested that Chinese firms divest from Grindr (a gay dating app) and PatientsLikeMe (a personal health app) over concerns about access to sensitive data.⁵⁹ China has declared big data to be a ‘fundamental strategic resource’ and has sought to protect this strategic asset by requiring the localization of data within the country,⁶⁰ which fits within China’s broader policy of protecting its ‘cyberspace sovereignty.’⁶¹

⁵³ Kenneth Rapoza, ‘Senator Rubio: The U.S. Has No Industrial Policy To Counter China Made In 2025’, *Forbes*, 12 February 2019.

⁵⁴ Mark Zachary Taylor, *The Politics of Innovation* (Oxford: Oxford University Press, 2016).

⁵⁵ See, eg, Kathrin Hille and Demetri Sevastopulo, ‘Congressional body calls for probes into US-China ties’, *Financial Times*, 14 November 2018; Katherine Koleski and Nargiza Salidjanova, ‘China’s Technonationalism Toolbox: A Primer’, U.S.-China Economic and Security Review Commission Issue Brief, 28 March 2018.

⁵⁶ Orange Wang and Zhou Xin, ‘Xi Jinping says trade war pushes China to rely on itself and ‘that’s not a bad thing’’, *South China Morning Post*, 26 September 2018.

⁵⁷ Core technology depends on one’s own efforts: President Xi’, *People’s Daily*, 19 April 2018, <http://en.people.cn/n3/2018/0419/c90000-9451186.html>.

⁵⁸ Dan Ciuriak, ‘Digital Trade: Is Data Treaty-Ready?’ *CIGI Paper 162* (Waterloo: Centre for International Governance Innovation, 2018).

⁵⁹ See Sarah Bauerle Danzman and Geoffrey Gertz, ‘Is it a threat to U.S. security that China owns Grindr, a gay dating app?’, *Brookings Institute*, 8 April 2019, <https://www.brookings.edu/opinions/is-it-a-threat-to-us-security-that-china-owns-grindr-a-gay-dating-app/>; Zen Soo, ‘iCarbonX could be the latest Chinese company forced to sell stake in U.S. firm over national security concerns’, *South China Morning Post*, 6 April 2019.

⁶⁰ See Central Committee of the Communist Party of China, *The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China 2016-2020* (Beijing: Central Compilation and Translation Press), Chapter 27.

⁶¹ Samm Sacks, ‘Beijing Wants to Rewrite the Rules of the Internet’, *The Atlantic*, 18 June 2018, <https://www.theatlantic.com/international/archive/2018/06/zte-huawei-china-trump-trade-cyber/563033/>.

Economically, the Chinese government seeks to use data localization to give an advantage to Chinese companies over Western ones.⁶² Strategically, data localization helps ensure that Chinese data cannot be accessed by Western governments, a fear that became visceral for states like China and Russia after the Snowden revelations.⁶³ Data localization can be a *defensive* geoeconomic move to protect against U.S. spying or interference and an *offensive* geoeconomic move by: (1) securing China's big data advantage, which in turn will give the country a head start in AI development with its potential to reap large economic and military advantages;⁶⁴ and (2) enabling the Chinese government to access this data in accordance with its National Intelligence Law and Counter-Espionage Law, which require Chinese individuals and companies to comply with requests for information related to intelligence and counter-espionage work.⁶⁵

These developments signal that the United States and China are taking active steps to decrease the interdependence of their economies by moving towards greater spheres of independence in certain strategic areas. The question is not one of interdependence versus independence; rather, it is one of what degree of interdependence and independence is desirable and possible, in which areas, and subject to which precautions. It is a future of competitive and cooperative 'managed interdependence.'⁶⁶

III. CONSEQUENCES FOR GLOBAL ECONOMIC GOVERNANCE

Unlike the Cold War period when there was little economic interaction between the United States and the Soviet Union, China and the United States are now deeply integrated with each other and many other states throughout the world. The global economy is also crisscrossed with thousands of trade and investment treaties, many of which are subject to binding international dispute settlement before the WTO or arbitral tribunals.

Given these circumstances, what consequences are likely to flow from the shifting relationship between economics and security in the emerging Geoeconomic World Order and the growing tech/trade rivalry between China and the United States? To answer this question, it is helpful to visualise the United States and China as similar to the world's top two football teams who come together to play. Both are

⁶² John Selby, 'Data localization laws: trade barriers or legitimate responses to cybersecurity risks, or both?', 25 *Journal of Law and Information Technology* 213 (2017).

⁶³ Scott Livingstone and Graham Greenleaf, 'Data Localisation in China and other APEC Jurisdictions', 143 *Privacy Laws & Business International Report* 22 (2016), 23.

⁶⁴ See Anthea Roberts et al, 'Geoeconomics: the Chinese Strategy of Technological Advancement and Cybersecurity', *Lawfare*, 3 December 2018, <https://www.lawfareblog.com/geoeconomics-chinese-strategy-technological-advancement-and-cybersecurity>.

⁶⁵ Samantha Hoffman and Elsa Kania, 'Huawei and the ambiguity of China's intelligence and counter-espionage laws', *The Strategist*, 13 September 2018, <https://www.aspistrategist.org.au/huawei-and-the-ambiguity-of-chinas-intelligence-and-counter-espionage-laws/>.

⁶⁶ Henrique Choer Moraes, 'The turn to managed interdependence: a glimpse into the future of international economic law?', *EJIL: Talk!*, 14 August 2018, <https://www.ejiltalk.org/the-turn-to-managed-interdependence-a-glimpse-into-the-future-of-international-economic-law/>.

world class, but they have different strengths and are playing different versions of the game.⁶⁷

The U.S. team is like the World Cup champions; the game of football that it plays is soccer. Fast and nimble, the U.S. players move fluidly and feature a range of individual styles and tactics. The players are not especially centrally coordinated. They wear shin pads but are not heavily protected. The team is quick and innovative; individual members can move the ball in many directions at great speed and with daunting skill.

Counter-intuitively, the Chinese team is like the Super Bowl champions; they play American football or gridiron. Their plays are more centrally coordinated. The players wear full body protection, including helmets and chest pads. The game is not as quick or flexible. But the team has been highly successful in cooperating with one another to move the ball down the field in particular directions and overcome competitors along the way.

Of course, this metaphor overdraws the distinction. Many connections between the state and the market can be found in the U.S. ‘free market’ approach, as evidenced by the role of defense funding in innovations like the internet.⁶⁸ For its part, China has strayed far from a purely centrally controlled ‘state capitalist’ model, as evidenced by the role of its local governments in incubating different approaches⁶⁹ and its highly competitive privately owned companies across many areas, including its innovative information and communications technology (ICT) companies.⁷⁰

Commentators are spiritedly debating whether the differences between U.S. and Chinese capitalism represent differences in degree or kind.⁷¹ But the answer depends on the level of abstraction used: at one level, soccer and gridiron are different games; at another, they are both variations of football. The teams take different approaches and play by different rule books, but both are team sports that seek to move a ball down the field and through goals. They are not incommensurable in the manner of hockey and swimming.

When both teams play football on the same field, as the United States and China do in the world economy, we envisage four consequences: (a) it will be harder to reach agreement over the rules that do or should govern the game (‘selective

⁶⁷ We are grateful to Timothy Stratford for the football analogy: World Economic Forum, ‘Don’t understand the US-China trade war? This metaphor could help’, <https://www.weforum.org/agenda/2018/09/china-united-states-trade-war-sports-metaphor/>.

⁶⁸ Mariana Mazzucato, *The Entrepreneurial State: Debunking Public vs. Private Sector Myths* (London: Anthem, 2013).

⁶⁹ Teresa Wang, ‘Here’s Why Chinese Local Governments Might Be the World’s Largest Tech Incubators’, *Medium*, 17 January 2019, <https://medium.com/swlh/heres-why-chinese-local-governments-might-be-the-world-s-largest-tech-incubators-4bebc61c9d54>.

⁷⁰ Kai-Fu Lee, *AI Superpowers: China, Silicon Valley, and the New World Order* (Boston, MA: Houghton Mifflin Harcourt, 2018); Paul Trioli, ‘China’s AI trajectory is set by entrepreneurs and international collaboration, not by government edict’, *SupChina*, 19 April 2019.

⁷¹ On the argument that China and the U.S. represent different varieties of capitalism see, eg, Christopher McNally, ‘Sino-Capitalism: China’s Reemergence and the International Political Economy’, 64:4 *World Politics* 741 (2012); Tobias ten Brink, ‘Paradoxes of Prosperity in China’s New Capitalism’, 42:4 *Journal of Current Chinese Affairs* 17 (2013). On the argument that the two approaches are different in kind rather than degree, see, eg Mark Wu, ‘The “China, inc.” Challenge to Global Trade Governance’, 57:2 *Harvard International Law Journal* 261 (2016), at 269-270.

multilateralism’ and ‘multilateralism-minus-one’); (b) movement will occur toward politicization and away from entrusting an impartial umpire to settle disputes (de-legalization); (c) each team will engage in efforts to sponsor separate games of soccer and gridiron with like-minded or dependent states in certain sectors (sectoral spheres of influence); and (d) the teams will adapt their preferred method of play to compete more effectively when they have to meet on the same field (convergence in play).

A. Selective Multilateralism and Multilateralism-Minus-One

The difference in games played by China and the United States is going to make it harder to reach agreement on the application of existing multilateral rules and the development of new ones. What we call ‘selective multilateralism’ and use of the ‘multilateralism-minus-one’ and plurilateral techniques are likely to result.

The United States claims that China is cheating. Having underwritten the creation of almost all major international institutions since the end of the Second World War,⁷² the United States is used to (disproportionately) setting the rules of international games. Moreover, it is used to the adoption of *its* rules as the *neutral* international rules. The United States will say that it permitted China to join the game on the understanding that China would conform, over time, to the free market rules and spirit of the game that it helped establish, and that it would become more liberal and democratic in the process.⁷³

China will object that it is not cheating, that the rules are sufficiently flexible to permit its style of play. China has significantly changed its practices since joining the WTO, embracing many free market principles by, for instance, liberalizing its services market, removing restrictions on foreign investment, and reducing the role of state-empowered companies in its economy. It will say that the existing rules do not require a single approach to playing football or running the economy and that many of its practices do not violate the rules and have been crucial to its stunning development.⁷⁴

Part of the problem faced by the United States and the European Union is that the existing rules on issues like industrial subsidies do not clearly prohibit China’s conduct.⁷⁵ Crafting new rules, however, is hindered by changing economic and geopolitical power; gone are the days when the rules could be made by the West and

⁷² See G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (New Jersey: Princeton University Press, 2001).

⁷³ See Philip Levy, ‘Was Letting China Into the WTO a Mistake?’, *Foreign Affairs*, 2 April 2018, <https://www.foreignaffairs.com/articles/china/2018-04-02/was-letting-china-wto-mistake>; Kurt Campbell and Ely Ratner, ‘The China Reckoning: How Beijing Defined American Expectations’, 97:2 *Foreign Affairs* 60 (2018).

⁷⁴ WTO General Council, Minutes of Meeting on 26 July 2018, WT/GC/M/173, at 6.27-6.61 (In particular, Chinese ambassador emphasising ‘There was more than one model of market economy in the world. China had been vigorously exploring a road of market economy which suited China’s own national situation and circumstances and China had made remarkable progress in that endeavour. Whatever others could say, China would march along that road unswervingly.’ at 6.32). Available at <http://wto2.mofcom.gov.cn/article/chinaviewpoins/201807/20180702770676.shtml>.

⁷⁵ See, eg, Mark Wu, ‘The “China, inc.” Challenge to Global Trade Governance’, 57:2 *Harvard International Law Journal* 261 (2016); Pascal Lamy, ‘Trump’s protectionism might just save the WTO’, *Tribune Content Agency*, 14 November 2018, <https://tribunecontentagency.com/article/trumps-protectionism-might-just-save-the-wto/>.

exported to the Rest. If new rules need to be developed, they must involve input from – and reflect the interests of – all major players.

As power becomes more divided between unlikeminded great powers, the room for reaching agreements multilaterally or for one power to force a multilateral agreement over the objection of the other on core interests will narrow. Multilateralism will become more selective, often reduced to areas that do not intrude upon core interests of the great powers or zones of competition between them.

When one side is strong enough, it may also seek to create multilateralism-minus-one approaches. This movement involves developing quasi-multilateral rules by joining with a relatively broad and representative group of third states to put more pressure on the other great power. For this approach, third powers like the European Union may operate like swing votes. For instance, in WTO reform, the European Union is currently working with China and India to encourage procedural reforms (to counter the United States) and with the United States and Japan to encourage substantive reforms (to counter China).

B. De-legalisation of International Economic Law

In addition to disagreeing on rules of the road, great powers in geoeconomic competition are likely to seek to retain or increase their control over the interpretation and enforcement of the applicable rules. They do so especially concerning questions of national security where states often want to redirect decision-making authority vertically (from the international to the domestic level) and horizontally (from the adjudicatory sphere to executive determination). As economic relations become more subject to political influence, and less mediated by agreed-upon international rules subject to compulsory third-party adjudication, the levels of *obligation*, *precision* and *delegation* associated with the international economic regime will decrease.⁷⁶

The United States has made four key moves in this regard: (1) expanding the scope of ‘national security’ to include ‘economic security’ and the protection of a vast range of ‘strategic’ or ‘critical’ industries and infrastructures without clear limits; (2) claiming that invocations of national security are completely non-reviewable, in addition to hobbling the WTO Appellate Body in general;⁷⁷ (3) increasing decision making by domestic executive actors without judicial review through processes like CFIUS; and (4) attempting to strike a trade deal with China that is not subject to binding third-party dispute resolution at all, instead leaving each side with decision-making power over whether the other side is in violation, as well as over what sanctions should be imposed to rectify a unilaterally perceived breach.⁷⁸

For its part, China is unlikely to accept new international rules for areas it considers of key concern, such as cyber-sovereignty and the free flow of data, let alone agree to subject these rules to compulsory third-party dispute resolution. China

⁷⁶ Kenneth W. Abbot et al. ‘The Concept of Legalization’, 54:3 *International Organization* 17 (2000).

⁷⁷ See, eg, Third Party Oral Statement of the United States of America, *Russia - Measures Concerning Traffic in Transit*, DS512, 25 January 2018, available at: <https://ustr.gov/sites/default/files/enforcement/DS/US.3d.Pty.Stmt.%28as%20delivered%29.fin.%28public%29.pdf>.

⁷⁸ Shawn Donnan and Jenny Leonard, ‘Trump Stirs Alarm That He May Be Giving China a New Trade Weapon’, *Bloomberg*, 17 April 2019.

retains a significant level of discretion in the application of its domestic legislation on matters such as data localization, which China considers to be part of its 'national cybersecurity.'⁷⁹ Under the Belt and Road Initiative, Gregory Shaffer and Henry Gao also note that China is rolling out a 'soft law' network of memoranda of understanding and private law contracts, which points to a mode of engagement predominantly based on significant economic ties and private law ordering rather than strong legal obligations under public international law.⁸⁰

Whereas the U.S. approach involves relegating international issues to the domestic level, China's position seeks to prevent domestic issues from rising to the international level. As a result, trade and investment policy is likely to become more politicised and less judicialised, which will affect the predictability of rules as compared with the old international economic order.

C. Efforts to Create Sectoral Spheres of Influence

In the absence of multilateral agreement on new rules of the game, we should expect China and the United States to develop their own approaches at the national level and to seek to export those approaches to like-minded or dependent states and regions. This modus operandi is as if the United States and China were to leave the common football field in certain sectors to sponsor their own preferred games. We can see these developments most clearly in U.S. attempts to decouple economically and Chinese attempts to do so digitally.

Economically, the United States is seeking to pressure others to choose between it and China. For example, the United States inserted into the U.S.-Mexico-Canada Agreement a 'poison pill' that requires each treaty party to notify the others if it wishes to engage in free trade agreement negotiations with a non-market economy (here, read China) and permits the other treaty parties to terminate the agreement unilaterally if an FTA deal with China is reached.⁸¹ This clause appears to have greater symbolic value than practical effect,⁸² but the United States wants to replicate it in future deals.⁸³

The United States has also invoked national security concerns to limit the reach of certain Chinese companies in the rollout of 5G technology, increasing the chance of bifurcated 5G systems in the future.⁸⁴ U.S. delegations have encouraged allies to ban Huawei from participating in the construction of next-generation computer and phone networks, suggesting inter alia that America might not otherwise

⁷⁹ World Trade Organization, 'Council for Trade in Services, Report of the meeting held on 6 October 2017 - Note by the Secretariat', S/C/M/133, 6 November 2017, at 6.59.

⁸⁰ Gregory Shaffer and Henry Gao, 'A New Chinese Economic Law Order?', 21 University of California, Irvine Legal Studies Research Paper Series (2019), at 6.

⁸¹ James Politi, 'Trump's 'poison pill' in China trade fight', *Financial Times*, 9 October 2018.

⁸² Geraldo Vidigal, 'A Really Big Button that Doesn't Do Anything? The 'Anti-China Clause' in U.S. Trade Agreements', Amsterdam Law School Research Paper, forthcoming 2019. Available at: <https://ssrn.com/abstract=3377492>.

⁸³ David Lawder and Karen Freifeld, 'Exclusive: U.S. Commerce's Ross eyes anti-China 'poison pill' for new trade deals', *Reuters*, 6 October 2018.

⁸⁴ Eurasia Group, 'White Paper: The Geopolitics of 5G', 15 November 2018, [https://www.eurasiagroup.net/siteFiles/Media/files/181114%205G%20special%20report%20public\(1\).pdf/](https://www.eurasiagroup.net/siteFiles/Media/files/181114%205G%20special%20report%20public(1).pdf/).

be able to share intelligence with these states.⁸⁵ Some allies have banned Huawei outright, while others have struck a compromise approach that bars Huawei from the core of their systems.⁸⁶

The United States is trying to export its more stringent approach to investment screening to like-minded states. For example, the U.S. Congress has directed the President ‘to urge and help allies and partners of the United States to establish processes that parallel the [CFIUS] to screen foreign investments for national security risks....’⁸⁷ Various U.S. allies have already enacted or are contemplating enacting stricter rules on investment screening, including the United Kingdom, Australia, Canada and Germany,⁸⁸ as have some of America’s strategic competitors, including China and Russia.⁸⁹

Digitally, China leads the charge on decoupling, having strengthened its Great Firewall since the Arab Spring.⁹⁰ After Xi took power, the government strengthened internet controls and censorship, including by cracking down on the use of virtual private networks to access censored sources. The Chinese internet has developed relatively independently, giving rise to internet giants like Alibaba, Tencent and Baidu, and distinctive apps and super apps like WeChat. With this growth in mind, leading internet specialists, like ex-CEO of Google Eric Schmidt, have predicted that within 10–15 years the world will contain two distinct internets: a U.S.-led one and a Chinese-led one.⁹¹

Like the United States in the economic sphere, China is attempting to promote its influence in the cyber-sphere. China’s efforts to achieve greater connectivity with Belt and Road countries extend to digital infrastructure, in the so-called Digital Silk Road.⁹² Behind this initiative lies the interest in seeing that ‘China’s internet media should be at [the] driver’s seat to build a digital Silk Road that facilitates cross-border communication’ along the Belt and Road, according to a high-level Chinese

⁸⁵ Parmy Olson, ‘U.S. Would Rethink Intelligence Ties if Allies Use Huawei Technology’, *Wall Street Journal*, 29 April 2019, <https://www.wsj.com/articles/u-s-would-rethink-intelligence-ties-if-allies-use-huawei-technology-11556550371>.

⁸⁶ Christina Zhou and Jason Fang, ‘Why Australia is prepared to ban Huawei from its 5G network while the UK and Germany aren’t’, *ABC*, 8 March 2019, <https://www.abc.net.au/news/2019-03-07/why-is-the-uk-seemingly-not-as-worried-about-huawei-as-australia/10866848>; Dan Sabbagh, ‘May to ban Huawei from providing ‘core’ parts of UK 5G network’, *The Guardian*, 24 April 2019, <https://www.theguardian.com/technology/2019/apr/24/may-to-ban-huawei-from-supplying-core-parts-of-uk-5g-network>.

⁸⁷ *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, s 1702(b)(6).

⁸⁸ Charles Clover and Jim Pickard, ‘UK to tighten foreign investment reviews’, *Financial Times*, 24 July 2017; Jamie Smyth, ‘Australia to tighten foreign investment rules amid China concerns’, *Financial Times*, 1 February 2018; Alexandra Stevenson, ‘Canada Blocks Chinese Takeover on Security Concerns’, *New York Times*, 23 May 2018; Stephan Scheuer and Klaus Stratmann, ‘Uptick in Chinese investment has German authorities inspecting deals’, *Handelsblatt*, 14 March 2018.

⁸⁹ Gabriel Wildau and Tom Mitchell, ‘China plans tighter controls on foreign acquisitions’, *Financial Times*, 30 July 2018; Alexey Frolov and Sergei Voitishkin, ‘Russia Tightens Control Over Foreign Investments into Russian Companies’, *Baker McKenzie*, 8 August 2017.

⁹⁰ See Margaret E. Roberts, *Censored: Distraction and Diversion Inside China's Great Firewall* (New Jersey: Princeton University Press, 2018).

⁹¹ Isobel Asher Hamilton, ‘Google’s ex-CEO Eric Schmidt says the internet will split in two by 2028’, *Business Insider (Australia)*, 21 September 2018.

⁹² Rachel Brown, ‘Beijing’s Silk Road Goes Digital’, *Council on Foreign Relations*, 6 June 2017.

authority.⁹³ China is willingly disseminating its methods of internet governance and cybersecurity to interested partners⁹⁴ and actively promoting its approach in world conferences, international organisations and other forums.⁹⁵

Whereas China shows aversion to joining the interdependent infrastructure and network underpinning the internet – by decoupling measures such as data localization – it feels comfortable promoting its own network of interdependence with states willing to participate. This approach can also involve accessing data from those other states. For instance, it has been reported that a Chinese artificial intelligence company has been providing Zimbabwe with surveillance mechanisms in a deal that, in exchange, will grant it access to data on ‘millions of black faces’⁹⁶ for help training its AI experts on more ethnically diverse data than is available from Chinese sources.

The spheres of relative independence created by the United States and China can set the stage for sectoral spheres of influence, which may put third states in the uncomfortable position of having to choose between the two great powers, at least in some areas like trade agreements and digital connectivity. If independence does not or cannot exist, third states may be able to achieve a better deal by playing the United States and China off against each other in areas like infrastructure funding and aid grants.

D. Convergence in Styles of Play

Although the United States and China may seek to cultivate spheres of independence in crucial areas relevant to their core security interests, such as military supply chains and ICT systems, they will continue to play with and against each other on the same football field in many areas. In response, both sides are likely to adapt their preferred style of play to accommodate the style of the other side. The Chinese gridiron team has already become more decentralised and fast moving, whereas the U.S. soccer team will become more centrally coordinated and padded.

These developments are brought out by some of the defensive moves adopted by the United States in areas such as investment screening and export controls. They are also seen in calls for increased U.S. government investment in research and development in emerging technologies and a revamped industrial policy.⁹⁷ In Europe,

⁹³ He Yini, ‘Internet media should drive digital Silk Road: Ren’, *China Daily*, 17 July 2015.

⁹⁴ Samm Sacks, ‘Beijing Wants to Rewrite the Rules of the Internet’, *The Atlantic*, 18 June 2018, <https://www.theatlantic.com/international/archive/2018/06/zte-huawei-china-trump-trade-cyber/563033/>. On China’s model generally, see Adam Segal, ‘When China Rules the Web’, *Foreign Affairs*, September/October (2018).

⁹⁵ For example, since 2014, the Chinese government has been promoting the annual World Internet Conference (Wuzhen Summit) attended by guests from across the world where it showcases its approach: ‘China to hold 5th World Internet Conference in November’, *China Daily*, 28 September 2018. For examples of China using different forums to promote its vision for digital trade governance, see Henry Gao, ‘Digital or Trade? The Contrasting Approaches of China and US to Digital Trade’, 21 *Journal of International Economic Law* 297 (2018), at 308-315.

⁹⁶ Amy Hawkins, ‘Beijing’s Big Brother Tech Needs African Faces’, *Foreign Policy*, 24 July 2018, <https://foreignpolicy.com/2018/07/24/beijings-big-brother-tech-needs-african-faces/>.

⁹⁷ See, eg, U.S. Senate Committee on Small Business and Entrepreneurship, ‘Made in China 2025 and the Future of American Industry’, 12 February 2019, available at: https://www.rubio.senate.gov/public/_cache/files/0acec42a-d4a8-43bd-8608-a3482371f494/262B39A37119D9DCFE023B907F54BF03.02.12.19-final-sbc-project-mic-2025-

the same developments are revealed by calls for changes in European antitrust rules to develop ‘European champions’ capable of successfully competing with Chinese firms.⁹⁸ These Western states are effectively saying that if China won’t ‘level up’ to meet their standards, they are justified in ‘levelling down’ to play China at its own game.

Divergence between the two styles of play will be exaggerated in discursive terms so that the difference between the two teams seems stark. In practice, however, the style of play will converge to some extent. For example, the United States objects to China’s state-led capitalist approach on the basis that it creates an uneven playing field between Chinese and U.S. firms. But the Trump administration is responding with a version of ‘patriotic capitalism’⁹⁹ by, for instance, calling on Google to think beyond revenues and not engage in projects like its censored Dragonfly search application.¹⁰⁰

One way to think of this process is to envisage each state as a ‘triple helix’ involving three strands: the state, corporations and universities. The Chinese triple helix is more integrated and interconnected than the U.S. triple helix, as evidenced by approaches such as civil-military fusion and government censorship.¹⁰¹ Some actions by China could be understood as loosening the bonds of its triple helix, whereas some actions by the United States could be viewed as strengthening those connections. In addition to calls for patriotic capitalism, for instance, the U.S. government is increasingly scrutinising issues like U.S. universities receiving funding from and collaborating with Chinese sources.¹⁰² Regardless of what level of integration a given state thinks is ideal in the abstract, it may shift its approach in response to competition from another state with a different level of integration.

CONCLUSION

Although the United States and China are the most important actors in the newly emerging Goeconomic World Order, they are not the only relevant ones. Whatever balance is ultimately struck between economic and security concerns in this new order will depend not just on the internal machinations within these states, but also on the responses of third actors, including international organizations like the WTO, third

report.pdf; Veronique de Rugy, ‘Why Are Republicans Embracing Economic State Planning?’, *New York Times*, 5 March 2019, <https://www.nytimes.com/2019/03/05/opinion/china-marco-rubio-republicans-industrial-policy-.html>.

⁹⁸ See, eg, Federation of German Industries (BDI), ‘Partner and Systemic Competitor – How Do We Deal with China's State-Controlled Economy?’, Policy Paper, January 2019, <https://english.bdi.eu/media/publications/#/publication/news/china-partner-and-systemic-competitor>.

⁹⁹ Rana Foroohar, ‘Patriotic capitalism’, *Financial Times*, 8 October 2018, <https://www.ft.com/content/79944e7c-c9b9-11e8-b276-b9069bde0956>.

¹⁰⁰ Demetri Sevastopulo and Hannah Kuchler, ‘Mike Pence accuses China of anti-Trump meddling in midterm elections’, *Financial Times*, 5 October 2018. See also Yasmin Tadjdeh, ‘Dunford Knocks Tech Companies that Work with China, Not Pentagon’, *National Defense Magazine*, 13 May 2019, <http://www.nationaldefensemagazine.org/articles/2019/5/13/just-in-dunford-slams-tech-companies-that-work-with-china-over-pentagon>.

¹⁰¹ Of course, the revolving doors among business, academia and government in the United States means that the strands of the U.S. triple helix are not entirely separate, though the U.S. government does not have the same ability to direct business and academia as in the Chinese model.

¹⁰² Taisei Hoyama, ‘US universities under pressure to keep Huawei at arm's length’, *Nikkei Asian Review*, 17 March 2019, <https://asia.nikkei.com/Economy/Trade-war/US-universities-under-pressure-to-keep-Huawei-at-arm-s-length>.

states, and private actors like corporations and universities. The U.S.-China relationship is embedded in a web of other actors, many of which are likely to seek to temper great-power competition and retard efforts to economically or digitally decouple or allow security concerns to trump economic considerations. Understanding how those third actors will respond and with what effect is the next step in the analysis.