

Developments in Trade and National Security: Considering the UK's Role

Introduction

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On 8th March 2023 we held a TaPP workshop to discuss recent developments in relation to trade and national security. We heard from TaPP members on developments in Japan, the US, China, and the EU. This note summarises the discussion. We also provide some additional reflections and suggestions in the conclusion.

A view from Japan

Minako Morita-Jaeger (University of Sussex)

Increasing concern over interdependence with China, its potential dominance in the Pacific, and ability to distort supply-chains, has led Japan to radically shift its position in relation to economic security. This is most recently marked by the Economic Security Promotion Act 2022 which accompanies a new national security strategy. As part of its 'new capitalism', Japan seems to move away from prioritizing liberalized trade as the key element of its post-war trade policy to one that is centred on economic security. This manifests itself through a focus on self-reliance, enhancing competitiveness in key technological industries, and strengthening its trade partners' dependence on Japan in key technologies.

Japan's new policy can be seen as built around four pillars: first, on increasing the resilience of supply chains through a combination of instruments including targeted government procurement, provision of cheap financing, and subsidies; second, protecting core infrastructure by identifying sectors of particular significance, including insurance, transport, infrastructure, all of which are to be protected against cyberattack (including through requirements to replace older technologies with newer plant); third, increasing use of public-private partnerships to support business and incentivize certain types of behaviour, in particular, focusing on research and development in new technologies such as AI and quantum computing; and fourth, a concern over 'sensitive' technologies which marks a particular shift for Japan which had previously had no system in place for non-disclosure.

There now exists an independent funding body to support these areas, with the focus on effective implementation of the policy. However, different ministries are responsible for different items, which makes for a complicated system. A strengthened investment screening has also changed the environment, though it is less restrictive than those existing in other countries, such as the US.

Three elements of the changing picture in Japan were of particular note: first, Japan has clearly shifted from its prior neo-liberal economic policy by placing security at the heart of its industrial policy. This marks a significant change for business, as the Japanese government was promoting deregulation and reducing government intervention from 1980s. Second, Japan's position moves it away from its prior stance to one that is far more comfortable melding its security and trade policy. This is clear not only from the arguments it will need to present at the WTO should it be questioned but also in its free trade agreement policy, where security exceptions have been expanded to ensure a degree of flexibility on this front. Third, as a middle power, Japan has been extremely active in engaging at the bilateral and plurilateral levels to support its policy of economic security.

What implications does this have for the UK? Japan presents an interesting comparison as a middle power, traditionally accustomed to having a liberal external trade policy, having to rethink its position, not least in

relation to China and Russia. Can decoupling take place, is it possible, or indeed desirable? China remains the largest investment destination for Japanese business, and trade continues to grow. The question will be how to manage the relationship, a project the UK is likely to share.

A view from the US

Kathleen Claussen (Georgetown University)

There has been a clear change in the discourse over economic security in the US: from the early steel and aluminium tariffs where the linkage with national security was, for many, surprising, the question now has focused on how to limit the ever-increasing securitization of trade policy.

Of particular concern is the normalization of the trade/national security dynamic. It had, not only under GATT but also in US law, traditionally been an *exceptional* linkage. Whereas discussions in the trade and national security space have become increasingly accepted as the 'standard' which raises real concerns over its impact on legal systems that relied on these exceptions or extraordinary measures sparingly, if at all. While trade and security policy have long been linked through US foreign policy, this explicit reliance on security defences (rather than objectives) is presenting anxiety in relation to the legal system.

Along with the normalization of trade/security, this linkage has also spread across a multiplicity of agencies, policy areas, and branches of government within the US, further expanding the risks it may pose. For example, the use of sanctions and export controls in relation to China and Russia have relied on a matrix of measures that include: a Federal Communications Commission drive to ban restrict China's access to the telecoms network; the CHIPS and Science Act 2022 which introduced (among other elements) restrictions on the export and continuation of business services in China on advanced semiconductors; the investment screening regime through the Committee on Foreign Investment in the United States (CFIUS); and new bills in Congress, including on restrictions in relation to sharing advanced technologies.

Although this (hyper)active space makes clear analysis difficult, there were three key observations to be noted. The first relates to the targets of these measures: this is a shift away from rules as applied between governments (as traditionally has been the case) to enforcement targeting private actors, putting corporate accountability at the centre of economic security policy. Second, the highly experimental nature of these measures tests both the international trade regimes' ability to manage them but also the US' own internal constitutional framework, with large number of actors involved in novel rule-making or enforcement. Third, this shift also puts an emphasis on the tools being used – that is, how the government has identified and reappraised measures that can be repurposed for a security objective.

These developments have left a number of potentially lasting features for the US trade-security policy: this is a space where there are a large number of actors actively engaged, not only the executive but Congress, courts, and administrative agencies. Due to this now crowded policy space, there is a worrying lack of consistency or predictability as relates to the introduction or application of measures, with necessary knock-on effects for policy makers elsewhere but also business. Finally, the exceptionalism the US has asserted internationally has been internalized into the national measures that have/are being introduced, a development that could give pause to other governments considering similar policies, not least the UK.

A view from China

Ming Du (Durham University)

It is clear that for many countries, China is being positioned as a security threat, and is coming under pressure from these security-framed trade instruments. At the same time, China has its own internal approach to trade policy which includes a significant 'securitised' element.

In response to other countries' security-framed trade instruments, China has faced an increase in national security reviews of both its investment and businesses. China, which views itself as a clear target of such

measures has been open in its criticism of the expansion of national security, and open in its criticism of a politicisation of trade policy that it views as discriminatory and unfair. China and its businesses have responded at multiple levels: there are significant legal challenges in domestic courts of western countries (TikTok in US, China telecoms in Canada, Huawei in Sweden, etc) as well as at the WTO and (in the case of Huawei) under investment tribunals also. Following the recent Article XXI disputes at the WTO, China responded positively to the approach that the panels took, especially the confirmation that a mere political disagreement is insufficient to constitute grounds for relying on the security exception. China has positioned itself as a supporter of the system through its challenge of an expansive use of security exceptions.

Internally, China's view of its own security/trade policy dynamic is quite different. In the first instances, there is no question or debate over the position of national security in relation to other policy areas, taking clear priority. President Xi has consistently stressed the increasing dangers from the international system, which has led to a 'holistic view of national security' which encompasses 16 types of security, including 'ideological security' and 'cultural security.' To support this programme, China has set out comprehensive institutional system through the National Security Commission, with similar institutions at provincial and local levels also. Additionally, a large number of laws (over a dozen in last 5 years) have echoed similar measures used by the EU and US.

There are risks and concerns on this front, not least that this will have (and has) a negative impact on trade. There have long been concerns from states and firms regarding restrictions on trade due to 'security' concerns in China, and these recent developments appear to be confirming such anxieties.

Together, this marks a more proactive position in China from its previous defensive stance. And in a system where the government is able to influence the behaviour of firms more effectively than others, this may play out in unexpected ways in the near future. Though China is an extremely active security actor, in relation to its trade and security policy, it is currently principally focussed on responding to new and existing coercive measures from other governments, and data security. With the UK positioning itself as a leader in digital trade and regulation, as well as an important security partner for the US and others (such as Australia), these priorities are likely to present new challenges in the short to medium term.

A view from the EU in relation to investment screening

Mavluda Sattorova (University of Liverpool)

As in the other jurisdictions discussed, the EU has seen a merging of trade and security, not least in relation to investment screening. The EU has drawn on decades of experience of Member States in the screening of foreign investment. Its new measures demonstrates the expansion of how security is framed in relation to investment. Whereas previously it had focused on defence and defence-adjacent sectors (dual-use products and services) it now includes minerals, media, and novel technology including AI.

While the EU investment screening framework is currently driven by 'security' its origins demonstrate its other considerations which are now also playing a role. Not least, the attention given to the distortive effect of investment from non-market economies (principally China) on competition within the single market. Its extension has gone beyond obviously sensitive sectors into some that could be (eg., robotics) and others which are harder to make a case for (eg., recent practice in relation to Danone). By linking economic security to competitiveness and (over)reliance on non-EU suppliers, the EU has pushed reciprocity to the front of its framing of liberalisation. That is, that access to the EU market should be conditioned by reciprocal access to foreign markets, on a state-by-state basis. This is something that has long been argued in some quarters within the EU (eg., by France) but has only become mainstreamed recently in light of the shift in China policy among Western powers.

As these disparate interests have fed into the EU's position, it is unsurprising that disparate measures have been used in response: in case of investment screening, Member State investment screening continues but is linked through the new EU regime. New additional foreign subsidies regulation also shares similar concerns, bridging competition with security of production. As many of these measures cut across interests and

(importantly) competences, many are managed at the Member State level, leaving the Commission as a key actor both coordinating and guiding policy.

In relation to the EU's increasing linkages between security and investment policy, it has been driving a broader interpretation of national security that feeds into new legislation, marking a fundamental shift away from investment neutrality as a core element of the investment regime toward conditional investment access.

Reflections and conclusions

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There were a number of common threads emerging from analysis of the different jurisdictions: an increasing comfort with using 'security' as a way of framing narrow national security threats but also wider positions of economic reliance or dependence, sensitivities to pressure in strategic sectors (however they may be designated), and an increasing conditional (perhaps even mercantilist) logic underpinning key policy instruments. For Japan, and to a lesser extent EU and US, this marks a notable shift from a previously more economically liberal approach. The wide framing of security is also bringing a wider array of actors into trade policy, especially within national systems.

Workshop participants expressed concern over the potential spread of 'securitisation' language into other areas (echoing worries over green-washing in relation to climate policy). And the wider discussion raised new areas of security concern which were, so far, under-targeted (such as food security).

What does this mean for the UK? And what might the UK do to ensure it is able to position itself as both a security actor and an economically liberal support of the rules based international system? There were two key takeaways on this front.

First, the trend of an increasing breadth of actors involved in developing security-based or security-framed trade policy instruments is unlikely to reverse. This will require a reappraisal of the key actors that the UK will need to engage with at the national level through its overseas network.

Second, the risk of 'security-washing' - whereby protectionist measures are justified on the basis of security grounds - is unlikely to disappear. As such, while the traditional policy tools will be used to counter this (economic diplomacy, alliance building and coordination of pressure, legal challenge, etc), a valuable tool would be a common language or grammar of economic security. On this point, other middle powers such as Japan, Korea, Australia, and Canada could act as key partners through which to agree a common position in relation to the contours of what is meant by 'economic security'. Though this would not change the current practice of governments, it could create a boundary around the use of certain instruments for security objectives and halt the ongoing spread of securitised trade policy instruments.