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Trade Wars: Analysing National Security through Geoeconomic Prism

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ABSTRACT

The post-Cold War era was characterized by the divergence of national security and economics. Predominantly, policy makers focused on interdependence in economic relations leading to maximisation of economic gains for all the nations and considered it a positive-sum game often turning a blind eye to the outcomes arising when economic actions were pursued to secure strategic and geo-political goals. However, recent global developments have brought back attention of the global community towards the reality as it exists. Weaponisation of trade by using tariffs and economic sanctions to secure strategic goals is not a new phenomenon but what makes it unique is the systemically crippling of the watchdogs i.e. the international organizations responsible to establish and administer a rules-based system. The underlying message is unambiguous and clear that the world order is being re-invented to facilitate the competition between the incumbent super-power and newer players. Deeper economic integration amongst these nations as a result of various multilateral and free trade agreements makes the situation even more complex. In light of these revelations economy is now considered one of the fundamental elements of power and economic security forms integral part of national security. The innovation in the field of Internet of Things, Artificial Intelligence, 5G, 3-D printing etc. which proposes to revolutionise trade makes the subject matter of this essay more relevant since these new technologies are currently limited to only few nations.

The essay is an attempt to highlight the growing importance of geoeconomics which forms part of hybrid warfare and poses a non-traditional threat to the national security of any nation. This essay is exploratory in nature and aims to analyze the interaction of national security and realm of international trade. The essay will rely on political theories and the domain of international trade and investment to ascertain the linkage between power, national security and economics. Further, as a case study, essay will analyze the responses of major powers specifically the U.S. and the rising Chinese geoeconomics influence and will try to map the policy options available to India within the present international economic law framework.

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Keywords: Trade war, Geoeconomics, International organisations, National Security, India.

I. INTRODUCTION

The post-Cold War era was characterized by the divergence of national security and economics. Predominantly, policy makers focused on interdependence in economic relations leading to maximisation of economic gains for all the nations and considered it a positive-sum game often turning a blind eye to the outcomes arising when economic actions were pursued to secure strategic and geo-political goals. However, recent global developments have brought back attention of the global community towards the reality as it exists. Weaponisation of trade by using tariffs and economic sanctions to secure strategic goals is not a new phenomenon but what makes it unique is the systemic crippling of the watchdogs i.e. the international organizations responsible to establish and administer a rules-based system. Although, ‘Tariff man’ Donald Trump and his United States Trade Representative (USTR) Robert Lighthizer are blamed for the Appellate Body (AB) crisis at the WTO, the process of punishing those not catering to American interests at the WTO and blocking of appointments began during Obama administration. The disruptive behaviour of United States (US) began when it blocked the reappointment of Prof. Jennifer Hillman who was a US Member of the AB for ‘inadequate patriotism.’³ The consensus on the selection of James Gathii, who would have been the first and only black sub-Saharan Member of the AB was also blocked by US. In May 2016, US also blocked the reappointment of Prof. Seung Wha Chang⁴ stating that ‘the United States will not support any individual with a record of restricting trade agreement rights or expanding trade agreements obligations.’⁵

The underlying message is unambiguous and clear: the world order is being re-invented to facilitate the competition between the incumbent super-power and newer players. Deeper economic integration amongst these nations as a result of various multilateral and free trade agreements makes the situation even more complex. In light of these factors, economy is now considered one of the most fundamental elements of power and economic security forms integral part of national security. Further, innovations in the field of Internet of Things,

³ Ernst Ulrich Petersmann, *Between member-driven WTO governance and Constitutional Justice: Judicial dilemmas in GATT/WTO Dispute Settlement*, 21 J. INT. ECON. LAW 103-122 (2018).

⁴ J. Caporal, *Debate Erupts over US Blocking Korean Appellate Body Reappointment*, INSIDE U.S. TRADE’S WORLD TRADE ONLINE (May 12, 2016), <https://insidetrade.com/daily-news/debate-erupts-over-us-blocking-korean-appellate-body-reappointment>.

⁵ Shreyansh Singh, *The Show must go on: Reforming the Dispute Settlement Body*, 32 RES. J. SOC. SCI. 44-58 (2020).

Artificial Intelligence (AI), 5G, 3-D printing etc. which propose to revolutionise trade makes the subject matter of this essay more relevant since these new technologies are currently limited to only few nations.

This essay is divided into six parts. Part B of the essay is aimed at familiarising readers with concept of geoeconomics and briefly discusses development of the concept and definitions given by various scholars. Part C looks into China's use of geoeconomic tools and the factors which give it leverage to use these tools. Part D is about the on and off relationship of the US with geoeconomics. Part E looks at the power struggle which is currently unfolding between US and China on new geoeconomic frontiers. Part F concludes by suggesting options for India.

II. CONTOURS OF GEOECONOMICS

The term Geoeconomics was coined by Edward Luttwak in 1990 who remarked that the 'methods of commerce' were displacing 'military methods' which has eventually led to the emergence of 'Geoeconomics'. In Luttwak's opinion, international relations could be characterized by 'the logic of conflict with the methods of commerce' since nations in an interdependent world were less likely to be involved in a military conflict but were 'inherently inclined to strive for relative advantage against rest of the nations'.⁶ Similarly, Samuel Huntington suggested that 'in a world in which military conflict between states is unlikely, economic power will be increasingly important in determining the primacy or subordination of states'.⁷ Scholars and researchers have long struggled to reach a common definition of the term geoeconomics.⁸ The differences arise partly because of the diverse academic backgrounds of the scholars attempting to define the term which in itself is multidisciplinary in nature. For few the term is broad enough to include all economic policies (internal or otherwise) so long as they have strategic implications.⁹ Few view the term as a synonym to economic statecraft i.e. using economic policies to sway other states.¹⁰

Largely, the proponents suggest that economic tools can be a viable alternative to military tools in shaping other nations' behaviour and exerting influence on them. They are best suited to the

⁶ Edward Luttwak, *From Geopolitics to Geo-economics: Logic of Conflict, Grammar of Commerce*, 20(17) NATIONAL INTEREST 17-19 (1990).

⁷ Samuel P. Huntington, *Why International Primacy Matters*, 17(4) INT. SECUR. 72 (1993).

⁸ Soren Scholvin and Mikael Wigell, *Power politics by economic means: Geoeconomics as an analytical approach and foreign policy practice*, 37(1) COMP. STRATEGY 73-87 (2018).

⁹ Mark Thirlwell, *The Return of Geo-economics, Perspectives*, LOWY INSTITUTE FOR INTERNATIONAL POLICY, (Sept. 2010), https://archive.lowyinstitute.org/sites/default/files/pubfiles/Thirlwell_per cent2C_The_return_of_geo-economics_web_and_print_1.pdf.

¹⁰ DAVID A. BALDWIN, *ECONOMIC STATECRAFT* (1985); JEAN MARC F. BLANCHARD & NORRIN M. RIPSAN, *ECONOMIC STATECRAFT AND FOREIGN POLICY* (2015); ALAN P. DOBSON, *U.S. ECONOMIC STATECRAFT FOR SURVIVAL, 1933-1991* (2002).

situations where military means are likely to have huge costs.¹¹ This does not mean that geoeconomics can completely replace military methods. Instead, both of them coexist for nations to choose depending on the nature of specific challenges. Jennifer Harris and Robert Blackwill define geoeconomics as the ‘use of economic instruments to promote and defend national interests, and to produce beneficial geopolitical results; and the effects of other nations’ economic actions on a country’s geopolitical goals’.¹² They suggest that in today’s sophisticated world ‘geoeconomic and military dimensions of statecraft tend to be mutually reinforcing.’¹³

Broadly, it can be concluded that geoeconomics is about using a nation’s economic policy as a tool to defend its national and strategic interests. It is distinct from economic strategies not by the means it adopts but by the ends it seeks to achieve. It is important to note that these ends are in most cases long term. Any trade and investment policy whether foreign or domestic can qualify as geoeconomic tool if it is primarily implemented for security and strategic interests which may or may not converge with economic interests. A contemporary example can be that of Malaysia attracting restrictions on its palm oil exports to India after PM Mahathir Mohamad’s comments on Citizenship (Amendment) Act, 2019 and Kashmir.¹⁴

Needless to say, the essential consideration in employing geoeconomics is that the target state has more to lose than the state which utilizes these tools. This is also termed as vulnerability interdependence.¹⁵ However, while adopting such measures, states must be cautious that other economically powerful states may undermine the adverse economic impacts on target state by intervening and serving as an alternative. Hence, a careful analysis needs to be conducted which looks beyond bilateral economic relations and takes into account other externalities as well.¹⁶

¹¹ ROBERT D. BLACKWILL & JENNIFER M. HARRIS, WAR BY OTHER MEANS: GEOECONOMICS AND STATECRAFT 19-48 (2016); Jennifer M. Harris, *The Best Weapon against Chinese Expansionism Is Not a Weapon*, WASHINGTON POST (Sept. 2, 2016), <https://www.washingtonpost.com/news/in-theory/wp/2016/09/02/the-best-weapon-against-chinese-expansionism-is-not-a-weapon/>.

¹² ROBERT D. BLACKWILL & JENNIFER M. HARRIS, WAR BY OTHER MEANS: GEOECONOMICS AND STATECRAFT 20 (2016).

¹³ *Id.* at 9.

¹⁴ Anuradha Raghu & Pratik Parija, *\$1.4 billion of palm oil is caught in CAA, Kashmir crossfire between India and Malaysia*, THE PRINT (Jan 22, 2020), <https://theprint.in/economy/1-4-billion-of-palm-oil-is-caught-in-cao-kashmir-crossfire-between-india-and-malaysia/352897/>.

¹⁵ ALBERT O. HIRSCHMAN, NATIONAL POWER AND THE STRUCTURE OF FOREIGN TRADE (1980); ROBERT O. KEOHANE & JOSEPH S. NYE, POWER AND INTERDEPENDENCE (2001); KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS 143-146 (1979).

¹⁶ Dong Jung Kim, *The Perils of Geoeconomics*, 42(1) WASH. Q. 153-170 (2019).

III. DRAGON'S APOCALYPTIC DANCE: GEOECONOMICS IN CHINESE STATECRAFT

China's application of geoeconomics is distinct from the popular belief that pursuit of national interests in international trade leads to protectionism and assault on free trade. In fact, it is in China's interest that trade remains free from barriers or restrictions. Call it state capitalism, neo mercantilism, embedded mercantilism, etc but to put it in simpler words China's strategy is to make trade and capital flows in its favour while accelerating the transfer of technology.¹⁷ Its emphasis is on asymmetric gains instead of a zero-sum game.¹⁸ The unique nature of China's economy provides it with geoeconomic means other countries lack such as State-Owned Enterprises (SOEs) and State-Owned Banks (SOBs). Chinese policy makers view industrial investments as the key to economic growth and consider it essential to get it over the middle-income trap. Further, investments in high-end sectors are also needed to climb up the value chain. Miao Wei the Minister of Industry and Information Technology has even remarked that 'If China wants to be a world power, it must be an industrial powerhouse first.'¹⁹

China is also aware of the fact that its increasing economic gains might also attract calls to lower the trade deficits. Wary of this China maintains that it balances out exports of goods with imports of raw materials and services. Additionally, Jonathan Holslag in his article identifies five tools of China for its export promotion which includes exempting exporters from taxes, trade credit (both export credit and concessional loans), Free Trade Agreements (FTAs), exchange rate adjustments and supporting foreign market penetration through branding and outward investments.²⁰ The Regional Comprehensive and Economic Partnership (RCEP) is a case in this regard. The mega-regional trade agreement has ASEAN + five countries (Australia, China, Japan, South Korea and New Zealand) as its members covering 30 per cent of the world's population and almost 30 per cent of the global GDP and is viewed as China's long term geoeconomic move by many. Additionally, the foreign aid China provides to countries such as Sudan helps it in gaining political influence²¹ and control of rare earth metals (indispensable for advanced technology). All of these combine to provides China with an option to unilaterally disrupt supply chains in case of a conflict.²²

¹⁷ Hettne B, *Neo-Mercantilism*, 28(3) COOP. CONFL. 211-232 (1993); Jayasuriya, *Embedded mercantilism and open regionalism*, 24(2) THIRD WORLD Q. 339-335 (2010).

¹⁸ Jonathan Holslag, *Geoeconomics in a globalized world: the case of China's export policy*, 14 ASIA EUR. J 173-184 (2016).

¹⁹ *Id.*

²⁰ *Id.*

²¹ DANIEL JOHANSON, CHINA'S MEDIA AND SOFT POWER IN AFRICA 181-192 (Zhang H & Wasserman H & Mano W. eds., Palgrave 2016).

²² China Power team, *Does China Pose a Threat to Global Rare Earth Supply Chains?*, CHINA POWER (July 17, 2020), <https://chinapower.csis.org/china-rare-earths/>.

China has also used geoeconomics in context of Taiwan towards its reunification. The one China policy makes it explicit that countries cannot have relationship with both China and Taiwan. It serves as a necessary condition for other countries to attract Chinese investments.²³ Similarly, Taiwan's gradually increasing trade dependence on China (by various instruments of economic integration such as the Economic Cooperation Framework Agreement (ECFA)) has resulted in China adopting a harder stand on the reunification issue.²⁴ This has led Taiwan to consider diversifying its exports and trade partners.²⁵ In fact Taiwan also adopted stringent measures to screen Chinese investments in an attempt to lessen the vulnerability.²⁶ Another event which underlined the growing sentiments against economic integration was public protests in Taiwan against the Cross-Strait Service Trade Agreement (CSSTA) which was signed in 2013 but was never ratified.²⁷ So far as the geoeconomics is concerned, China has successfully thwarted and silenced calls for Taiwan's independence with minimum resistance even from rest of the world till date. It is to be noted that a military action in this case might not have been viable for China and would have attracted resistance from other countries as well.

Similarly in its relationship with Japan, China (well aware of the fact that a direct military confrontation will immediately result in Japan invoking the US-Japan treaty) has projected its power and influence through geoeconomic means. Largely, China has used these tools punitively against Japan. Outraged by Japanese textbooks which whitewashed the wartime atrocities, China adopted various measures such as making the inspection of imports from Japan stricter, deliberate delaying of the work visa processing, not allowing Japanese firms at international trade fairs, etc.²⁸ Interestingly, this was also accompanied by demonstrations and

²³ Chris Barker, *What Implications Does Rising Chinese Influence Have for Latin America?*, E-INTERNATIONAL RELATIONS STUDIES (Aug. 13, 2013), <https://www.e-ir.info/2013/08/13/what-implications-does-the-rising-chinese-influence-have-for-latin-america/>; Andrew Browne & Jay Solomon, *China Threatens U.S. Sanctions over Arms Sale to Taiwan*, WALL STREET JOURNAL, (Jan 31, 2010), <https://www.wsj.com/articles/SB10001424052748703389004575034240303883892>; James Reilly, *China's Unilateral Sanctions*, 35(4) WASH. Q. 121-133 (2012).

²⁴ Huang Tien-lin 黃天麟, *Reiterating ECFA is a poison pill*, TAIPEI TIMES (Sep 11, 2020), <https://www.taipeitimes.com/News/editorials/archives/2020/09/11/2003743193>; Chi-hung Wei, *China's Economic Offensive and Taiwan's Defensive Measures*, 215 China Q. 644-645 (2013).

²⁵ Yu Nakamura & Iori Kawate, *Taiwan looks to host economic talks with US, eyeing trade deal*, NIKKEI ASIA, (Sept. 12, 2020), <https://asia.nikkei.com/Politics/International-relations/Taiwan-looks-to-host-economic-talks-with-US-eyeing-trade-deal>.

²⁶ Justina Lee & Argin Chang, *Taiwan Restricts Chinese Investment amid Trade Pact Review*, BLOOMBERG BUSINESS, (Nov 14, 2013), <https://www.bloomberg.com/news/articles/2013-11-13/taiwan-says-it-strengthened-rules-on-china-investment-projects>.

²⁷ Jenny Hsu, *Thousands Protest Taiwan's Trade Pact With China*, WALL STREET JOURNAL (March 30, 2014), <https://www.wsj.com/articles/SB10001424052702303978304579470552484527172>.

²⁸ James Reilly, *China's economic statecraft : turning wealth into power*, LOWY INSTITUTE (2013), https://www.lowyinstitute.org/publications/chinas-economic-statecraft-turning-wealth-power#_edn50.

boycott of Japanese goods in China which was termed as ‘rational patriotic activities’ by Commerce Ministry spokesman.²⁹ However, when it comes to Japan the most efficient and impactful leverage that China has is the control of rare earth metal supplies which is critical and vital for Japan’s manufacturing sector and its exports to US and Europe. China has used this card to coerce Japan into kowtowing to Chinese interests on multiple occasions including as a response to territorial disputes with respect to Senkaku.³⁰ China has also taken similar punitive actions against India as a response to its territorial dispute. Particularly, the blocking of Asian Development Bank’s loan to India because it included financing of projects in Arunachal Pradesh was an eye opener for Indian policy makers.³¹ Further, a study was conducted to analyse how Dalai Lama’s visit to a country affects its performance in international trade. Surprisingly, the results showed that exports to China fall by almost 16.9 per cent which takes about two years to normalise.³² These are not merely statistics of an academic nature. In fact, the economic implications have actually deterred many leaders (including the prime ministers of Norway and Denmark) from meeting Dalai Lama in their official capacity.³³ Chinese statecraft in Africa merits another study but to indicate the nature of coercion, it is appropriate to provide excerpts from the speeches of the Zambian leader Michael Sata in different years holding different positions (as also quoted in Blackwill and Harris’s work).³⁴

‘We want the Chinese to leave and the old colonial rulers to return. They exploited our natural resources too, but at least they took good care of us. They built schools, taught us their language and brought us the British civilisation. At least Western capitalism has a

²⁹ Blackwill & Harris, *supra* note 10, at 107.

³⁰ Associated Press, *News Summary: Island Standoff Hits Japan Business*, CNBC (Oct 9, 2012), <https://www.cnbc.com/2012/10/09/news-summary-island-standoff-hits-japan-business.html>; Keith Bradsher, *Amid Tension, China Blocks Vital Exports to Japan*, NEW YORK TIMES (Sept. 22, 2010), <https://www.nytimes.com/2010/09/23/business/global/23rare.html>; Paul Krugman, *Rare and Foolish*, NEW YORK TIMES (Oct. 17, 2010), <https://www.nytimes.com/2010/10/18/opinion/18krugman.html>; Yun Zhang, *China’s Economic Statecraft and the Diaoyu/Senkaku Dispute*, 16(1) HARVARD ASIA Q. (2014).

³¹ Raphael Minder & Jamil Anderlini & James Lamont, *China blocks ADB India loan plan*, THE FINANCIAL TIMES (Apr. 10, 2009), <https://www.ft.com/content/033935c2-25e4-11de-be57-00144feabdc0>.

³² Andreas Fuchs & Nils-Hendrik Klann, *Paying a Visit: The Dalai Lama Effect on International Trade*, SSRN (Oct. 20, 2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694602.

³³ Ben Blanchard, *China approves of Norwegian leaders not meeting Dalai Lama*, REUTERS (Apr. 28, 2014), <https://www.reuters.com/article/us-china-norway-idUSBREA3R0L320140428>. Rick Gladstone, *Norway’s Leaders Snub Dalai Lama in Deference to China*, THE NEW YORK TIMES (May 7, 2014), <https://www.nytimes.com/2014/05/08/world/europe/norways-leaders-snub-dalai-lama-in-deference-to-china.html>; Timothy McGrath, *No one likes the Dalai Lama anymore*, THE WORLD (Sept. 4, 2014), <https://www.pri.org/stories/2014-09-04/no-one-likes-dalai-lama-anymore>; Stone Fish, *Kow-towing to Beijing and Stiff- Arming the Dalai Lama*, THE NATION THAILAND (May 10, 2014), <https://www.nationthailand.com/opinion/30233275>; The Local DK, *Dalai Lama Stiffed by Danish Leaders*, THE LOCAL DK (Feb. 9, 2015), <https://www.thelocal.dk/20150209/dalai-lama-stiffed-by-danish-leaders>.

³⁴Blackwill & Harris, *supra* note 12, at 129.

human face; the Chinese are only out to exploit us.'

— As opposition leader, 2007

'I have come here to thank China for helping Zambia to develop. The Chinese have done tremendous things in Zambia.'

— As President, 2013

IV. TO BE OR NOT TO BE: THE US'S GEO-ECONOMIC DILEMMA

Although American history is full of instances where economic means were adopted to secure national interests but American geoeconomics peaked after the Second World War when it became the primary architect of the plan for security and stability in Europe and rest of the world. Marked by the Marshall plan, the joint COCOM embargo against USSR and China, EXIM Bank loans to South Korea, etc the initial few decades after the war were considered as the golden age of American geoeconomics by many scholars. Towards the later phase of the Cold War under President Nixon geoeconomic strategies waned. His famous statement 'I don't give a shit about the value of lira' perfectly captures the sentiment prevalent in those days that trade and financial issues were not priority issues.³⁵ During rest of the Cold War geoeconomics took a back seat partly also because events like Cuban missile crisis, Soviet actions in Angola, Afghanistan, etc made military measures more prominent and partly because of the growing sentiments in the US that the government must stay away from economic matters.

Fast forward to Obama years, when the American state machinery opened its eyes to the possibility that China was increasingly become a challenger to the American hegemony by cleverly using geoeconomic tools. To counter the rising dominance of China, Obama administration introduced two key mega-regional FTAs i.e. the Transpacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP). It is relevant to take into account President Obama's op-ed for The Washington Post to get a clear picture of the motivations behind the TPP and the geoeconomics involved:³⁶

'This agreement also strengthens America's national security. When fewer people suffer in poverty, when our trading partners flourish and when we bind our economy closer to

³⁵ Transcript of a recording of a meeting between the President and H.R. Haldeman in the oval office on June 23, 1972 from 10:04 to 11:39 am, <https://www.nixonlibrary.gov/sites/default/files/forresearchers/find/tapes/watergate/wspf/741-002.pdf>.

³⁶ Barack Obama, *President Obama: The TPP would let America, not China, lead the way on global trade*, THE WASHINGTON POST (May 2, 2016), https://www.washingtonpost.com/opinions/president-obama-the-tpp-would-let-america-not-china-lead-the-way-on-global-trade/2016/05/02/680540e4-0fd0-11e6-93ae-50921721165d_story.html.

others in a strategically important region, America is both stronger and safer.

.. America should write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around... The world has changed. The rules are changing with it. The United States, not countries like China, should write them. Let's seize this opportunity, pass the Trans-Pacific Partnership and make sure America isn't holding the bag, but holding the pen.'

However, in a democracy policy decisions to a very large extent are dependent on public sentiments and at times even pose a threat to consistency and continuity. Laced with protectionist sentiments, the 'America first' strategy of President Donald Trump led US to finally withdraw from the two deals. President Trump blamed the free trade agreements negotiated by the US in the past for the miseries of American workers and promised that fair and mutually beneficial trade deals will be signed by his administration to bring jobs back to the US.³⁷ The decision also had supporters from across party lines including from Bernie Sanders³⁸ (as they say protectionist far right economic policies resonate with the left, the good old horseshoe theory). Although scholars are divided on whether abandoning the TPP and the TTIP was a geoeconomic gift to China or not,³⁹ but what now seems certain is the fact that President Trump's actions brought international trade policy back in the limelight and it is now seen as an important aspect of national security. In fact, Peter Navarro who served as Director of the National Trade Council and later as Director of the Office of Trade and Manufacturing Policy under Trump administration delivered a speech on 'Economic Security as National Security' at an event at the Center for Strategic & International Studies (CSIS) and how it was central to Trump administration's agenda.⁴⁰ Similarly, Robert Lighthizer who served as the USTR under Trump administration facilitated the weaponization of tariffs by crippling the watchdog i.e. WTO's Appellate Body eventually leading to a demise of the rules-based dispute settlement body in international trade relations. Interestingly, Lighthizer back in 1997 opposed Clinton administration for allowing China to join the WTO and recognized very early that it

³⁷ Michael D. Shear & Julie Hirschfeld Davis, *Trump, on YouTube, Pledges to Create Jobs*, THE NEW YORK TIMES (Nov. 21, 2016), https://www.nytimes.com/2016/11/21/us/politics/donald-trump-presidency.html?_r=0.

³⁸ Allan Smith, *Reaction to Trump's withdrawal from TPP doesn't fit cleanly along party lines*, BUSINESS INSIDER (Jan 24, 2017), <https://www.businessinsider.in/politics/white-house/reaction-to-trumps-withdrawal-from-tpp-doesnt-fit-cleanly-along-party-lines/articleshow/56743857.cms>.

³⁹ Eric Gomez, *US Withdrawal from TPP: Geopolitical and Geoeconomic Gift for China?*, CATO INSTITUTE (Jan 25, 2017), <https://www.cato.org/commentary/us-withdrawal-tpp-geopolitical-geoeconomic-gift-china>; Abhijit Mukhopadhyay, *Geo-Economics: The art of Trumpnomics*, OBSERVER RESEARCH FOUNDATION (Nov 02, 2020), <https://www.orfonline.org/expert-speak/geo-economics-the-art-of-trumpnomics/>.

⁴⁰ Transcript of Economic Security as National Security: A Discussion with Dr. Peter Navarro November 13, 2018, CSIS. <https://www.csis.org/analysis/economic-security-national-security-discussion-dr-peter-navarro>, accessed on January 29, 2021.

will be a threat to manufacturing jobs in the US.⁴¹

On matters of international trade and industrial policy it can be reasonably concluded that while analysing the developments in the historical context that the US believes in ‘kicking away the ladder’ approach. To put it in simple words, the US doesn’t want other countries to adopt policies which it once adopted on its way to becoming an economic superpower. An appropriate example of this is the case of Intellectual Property (IP) which is a familiar platitude in US policy makers’ speeches targeting the developing world. Interestingly, with respect to copyright US refused to join Berne Convention until 1989 since it was a net copyright importer. It was only in the late twentieth century that the U.S. joined Berne Convention, when the need was felt for better protection of copyright since by then it had become a net exporter because of software, films etc.⁴²

On a lighter note, for decades Americans were used to reading pirated versions of British works including those of Charles Dickens. In fact, on his tour to the US, Charles Dickens had to plead for international copyright protection of his works to his American audience.⁴³ The only difference back then was that there were no USTR Special 301 Reports to ‘reflect the outcome of a Congressionally-mandated annual review of the global state of intellectual property (IP) rights protection and enforcement.’⁴⁴

V. THE STRUGGLE TO CONTROL THE NEW COMMANDING HEIGHTS

Rules regarding international trade were highly legalised after WTO came into being particularly because it had a fully functional and binding dispute settlement system. The distinctive feature from its predecessor (the General Agreement on Tariffs and Trade popularly known as the GATT) was a standing body of individuals trained in law called the Appellate Body to hear appeals against the findings of ad-hoc panels. The effect of the WTO rulings was such that the member countries including the US framed its laws to avoid potential WTO disputes.⁴⁵ Hence, facilitation of the power struggle between the incumbent power and the challenger by utilising all means of geoeconomics (legal or otherwise) required sacrifice of the

⁴¹ Robert E. Lighthizer, *What Did Asian Donors Want?*, THE NEW YORK TIMES (Feb. 25, 1997), <https://www.nytimes.com/1997/02/25/opinion/what-did-asian-donors-want.html>.

⁴² SIVA VAIDHYANATHAN, *COPYRIGHTS AND COPYWRONGS: THE RISE OF INTELLECTUAL PROPERTY AND HOW IT THREATENS CREATIVITY* 160-161 (2001).

⁴³ *Id.* at 51.

⁴⁴ United States Trade Representative, *Ustr Special 301 Report*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (Apr. 30, 2021), <https://ustr.gov/issue-areas/intellectual-property/Special-301>.

⁴⁵ JENNIFER HILLMAN, *A HISTORY OF LAW AND LAWYERS IN THE GATT/WTO: THE DEVELOPMENT OF THE RULE OF LAW IN THE MULTILATERAL TRADING SYSTEM, MOVING TOWARDS AN INTERNATIONAL RULE OF LAW?* 68 (Gabrielle Marceau ed., Cambridge University Press 2015); T. Potuto Kimble, *Anticipatory Compliance with WTO Rules and the Erosion of US Sovereignty*, 25 *Quinnipiac Law Rev* 97-115 (2006).

rule-based system.

(A) The Bipolar World of Cybersecurity and 5G

This issue deserves a separate study because of the multiple episodes of direct confrontation between various countries involved. This sub-section is limited to only relevant developments showing the interplay of law, economics and statecraft.

The US and China are at loggerheads over 5G technology and are making it a geoeconomic issue. In this case, US is the incumbent player in innovation and China is the rising challenger which requires technology so as to gain geoeconomic power in the long run. As per Andrew Kennedy and Darren Lim, China is opting for a strategy aimed at making (developing its capacity for innovation), transacting (through commercial transactions) and taking (forced technology transfers and stealing of IP).⁴⁶

According to Prof. Anthea Roberts, in response US has adopted a policy of shielding (protecting domestic industry from espionage and by granting wide range of power to Committee on Foreign Investment in the United States (CFIUS)), stifling (inhibiting Chinese companies like Huawei, ZTE, restricting technology transfers) and spurring innovation through government assistance.⁴⁷

Additionally, the US has called upon ‘freedom loving’ nations and companies to join the ‘Clean Network’ initiative aimed at safeguarding privacy from alleged Chinese intrusion.⁴⁸ This program is an extended version of the ‘Clean Path’, which was designed to protect 5G networks from untrusted vendors. The ‘Clean Network’ aims at removing Chinese players from 5G infrastructure, carrier, app stores, apps, cloud, submarine cables and telecommunication services. In response, China has come up with its ‘Global Initiative on Data Security’ (GIDS) which is primarily aimed at maintaining stable supply chain of global ICT products and services.⁴⁹

Both these countries are currently lobbying and garnering support for their own programs, designed to safeguard their interest. The US has gained much support for its ‘Clean Network’ partly due to a contentious law passed by China which made other countries suspicious of

⁴⁶ Andrew B. Kennedy & Darren J. Lim, *The Innovation Imperative: Technology and US–China Rivalry in the Twenty-First Century*, 94(3) Int. Aff. 553-572 (2018).

⁴⁷ Anthea Roberts, *Henrique Choer Moraes and Victor Ferguson, Toward a Geoeconomic Order*, 22(4) J. Int. Econ. Law Vol. 655-676 (2019).

⁴⁸ US Department of State, *The Clean Network*, US DEPARTMENT OF STATE <https://www.state.gov/the-clean-network/>.

⁴⁹ Ministry of Foreign Affairs of the People’s Republic of China, *Global Initiative on Data Security*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE’S REPUBLIC OF CHINA (Sept. 08, 2020), https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1812951.shtml.

Chinese corporations. The National Intelligence Law of 2017 which provides authority to the intelligence institutions to seek assistance from Chinese individuals or corporations. This has led to a backlash against Huawei in countries like Australia which hasn't named a country or corporation but has cleverly tweaked its media release to target Chinese corporations.⁵⁰

(B) Digital economy, Data and the Artificial Intelligence

The Digital Economy Report, 2019 released by UNCTAD has already highlighted the digital divide that exists among nations and suggests that it will only worsen the inequality in times to come. It brings to light that the US and China are the biggest beneficiaries in the digital economy having more than 75 per cent of the patents on blockchain, 50 per cent of the global spending on IoT and over 90 per cent of the market value of top 70 largest digital platforms. The state of market concentration is also an eye opener with top seven platforms (Alibaba, Amazon, Apple, Facebook, Google, Microsoft and Tencent) having 2/3rd of the total market. It is also widely known that despite the tremendous amount of data being generated, world is at an initial phase and a surge is expected with increasing internet penetration and innovation in new age technologies.⁵¹

Additionally, a peculiar feature of A.I. innovation is that its efficiency increases with the quantum of data sets.⁵² In short, data creates competitive advantage and provides an edge to the incumbent player over newer entrants.⁵³ Further, a World Intellectual Property Organisation (WIPO) report has also highlighted that US and China presently are the leaders when it comes A.I. related patents.⁵⁴ In such a scenario it is highly unlikely that other countries like India will be able to effectively catch up if the digital economy is left unregulated because of the high entry barriers for new entrants and first mover advantage.

To facilitate the rise of their champions and perpetuate the digital divide, US and China while competing with each other on many fronts, are increasingly indulging in rule making at various multilateral, plurilateral and bilateral forums. Going by the legal text of already finalised FTAs, it is apparent that new rules are largely aimed at eroding the power of other countries to regulate

⁵⁰ Tania Voon & Andrew Mitchell, *Australia's Huawei ban raises difficult questions for the WTO*, East Asia Forum, EAST ASIA FORUM (Apr. 22, 2019), <https://www.eastasiaforum.org/2019/04/22/australias-huawei-ban-raises-difficult-questions-for-the-wto/>.

⁵¹ United Nations, UNCTAD, *The Digital Economy Report, 2019*, (Geneva: United Nations, 2019).

⁵² Willem Sundblad, *Data Is The Foundation For Artificial Intelligence And Machine Learning*, FORBES (Oct 18, 2018), <https://www.forbes.com/sites/willemsundbladeurope/2018/10/18/data-is-the-foundation-for-artificial-intelligence-and-machine-learning/?sh=2baac50b51b4>.

⁵³ Andrei Hagiu & Julian Wright, *When Data Creates Competitive Advantage and When it doesn't*, HARVARD BUSINESS REVIEW (2020), <https://hbr.org/2020/01/when-data-creates-competitive-advantage>.

⁵⁴ World Intellectual Property Organisation, *WIPO Technology Trends 2019: Artificial Intelligence*, 2019 (Geneva: WIPO, 2019).

the digital economy and level the playing field for newer businesses.

VI. CONCLUSION: OPTIONS FOR INDIA

A late entrant, India began flexing its muscles to project its geoeconomic capabilities under the present leadership. India's foreign policy has shifted from 'Look East' to 'Act East'. India provided concessional Lines of Credit (LOCs) through its EximBank under Indian Development and Economic Assistance Scheme (IDEAS in the form of a development aid for infrastructure, healthcare, education, connectivity etc. The year 2020 has been particularly eventful for India. Notably, it had put restrictions on imports of palm oil from Malaysia as a response to PM Mahathir Mohamad's comments on Citizenship (Amendment) Act, 2019 and Kashmir.⁵⁵ India had also revised its Foreign Direct Investment policy to scrutinise Chinese investments⁵⁶ and had restricted Chinese companies from public procurement contracts.⁵⁷ To defend privacy of its citizens and to neutralise potential cybersecurity threats, India had also banned Chinese apps.⁵⁸

From the above, it can be observed that India has adopted an attitude of constructive engagement with friendly nations while acting punitively towards hostile nations. This kind of foreign policy shows that policymakers are confident of the growing geoeconomic clout of the nation. It sends a clear signal to friends and foes alike that India is willing and capable of setting the rules of engagement when it comes to issues of vital importance. To sustain this direction and momentum, there are some issues of vital importance which must be addressed.

(A) Reducing vulnerability interdependence in the Pharmaceutical sector

The Indian pharmaceutical industry is hugely dependent on imports of Active Pharmaceutical Ingredients (APIs). Geoeconomically, this becomes a pressure point for India since it has to rely on other countries to support healthcare infrastructure for its 1.3 billion citizens. The problem is exacerbated as a bulk of the APIs are sourced from China which has been known to exploit such vulnerabilities to extract concessions in areas which further its geoeconomic agenda. A case in point would be that of Paraguay which was promised Coronavirus vaccines by China if they cut off diplomatic relations with Taiwan and supplies were actually held up

⁵⁵ Raghu & Parija, *supra* note 15.

⁵⁶ Department for Promotion of Industry and Internal Trade, Consolidated FDI Policy (Effective from October 15, 2020), 14.

⁵⁷ Asit Ranjan Mishra, *India restricts Chinese companies from participating in public procurement bids*, MINT (Jul. 24, 2020), <https://www.livemint.com/politics/policy/government-restricts-chinese-companies-from-participating-in-public-procurement-bids-11595547926781.html>.

⁵⁸ India TV Tech Desk, *Complete list of 267 Chinese apps banned in India: PUBG Mobile, TikTok, AliExpress and more*, INDIA TV (Nov. 24, 2020), <https://www.indiatvnews.com/technology/news-list-of-all-chinese-apps-banned-in-india-2020-667131>.

since Paraguay did not budge.⁵⁹

The need to end API dependency cannot be overstated. This vulnerability was identified as early as 2015 and the Katoch Committee was tasked with formulating recommendations in this context. It recommended that setting up mega scale API parks was the answer. The defining feature of such parks was that communizing manufacturing facilities such as Effluent Treatment Plants, water, electricity, testing facilities which found application in a large variety of manufacturing processes would result in economies of scale. Around such facilities, clusters of API manufacturing facilities would be set up. The upfront investment cost was pegged at 750-1000 crores. Apart from this initial investment, capex loans to companies manufacturing APIs of critical value could be provided at cheap interest rates with extended repayment periods while also giving 15-year tax breaks to cluster developers and participants. In conclusion, the correct financial incentives coupled with administrative efficiency could result in a cluster achieving an output worth \$1 billion annually. It was opined that three such cluster had the potential to completely wipe off the problem of API vulnerability.

In the long run, once the domestic situation has been stabilized, India could aim at becoming an API export hub. Aside from generating export revenue, it would contribute towards India's geo-economic heft while blunting that of China.

(B) Value-chain oriented planning

One of the lasting policy changes which the Trump administration made was a shift in the perception of China from that of trading partner to one of a strategic rival. This view now enjoys bipartisan support in Washington. The Strategic Competition Act of 2021 is a concrete expression of this vision. It is a bill- '*to address issues involving the People's Republic of China*'. Its preamble sets the tone of the long-term policy of the US vis-a-vis China. Of special relevance is- '*the commitment to support allies and partners in the Indo-Pacific.*' The bill comprehensively addresses issues such as infrastructure development, education, technological co-operation, military training, financing, etc. The bill authorizes combined appropriations of \$3.25 billion to be made towards bilateral and regional foreign assistance, as well as diplomatic engagement in the Indo-Pacific region.⁶⁰

India is identified as a key partner in this strategic initiative.⁶¹ The bill reaffirms and resolves

⁵⁹ Harsh V. Pant & Premesha Saha, *India's Vaccine Diplomacy Reaches Taiwan*, FOREIGN POLICY (Apr. 20, 2021), <https://foreignpolicy.com/2021/04/20/india-vaccine-diplomacy-china-taiwan/>.

⁶⁰ The Strategic Competition Act, 2021, s. 216(e).

⁶¹ The Strategic Competition Act, 2021, s. 224(10).

to deepen the US government commitment to Comprehensive Global Strategic Partnership.⁶² This partnership was mooted in 2013 but gained definite form only in 2020 wherein, India was identified as a 'net provider of security' in the Indo-Pacific. A close Indo-US partnership was deemed- 'central to a free, open, inclusive, peaceful and prosperous Indo-Pacific region.'⁶³ Considering that the India-EU FTA⁶⁴ and the India-Australia FTA⁶⁵ have been fast tracked and the Resilient Supply Chain Initiative⁶⁶ formally launched, it is apparent that this sentiment is shared by policymakers globally. For Indian policy makers, writing on the wall is clear- China is a threat to the Indo-Pacific and India is the strategic counterweight.

To benefit from opportunities which such expectations are sure to bring, India will require a strong geo-economic footprint, characterized by robust internal consumption and aggressive export growth. India accounted for \$2.6 trillion GDP in nominal terms for a global GDP size of \$80 trillion in 2017 or 3.27 per cent. The 2017 world export figure stood at about \$18 trillion which is assumed to grow at a rate of 3.5 per cent compounded annually would expand to about \$21.4 trillion in five years. Maintaining India's current share of exports will require an annual growth rate of over 17 per cent.⁶⁷

Achieving such a growth rate will be a tall order. To deliver such growth, economic policymakers need to transition from supply-chain management to value-chain management approach. Owing to the increasing complexity and scale of processes in manufacturing, a value chain approach is conducive since it fragments the production-marketing cycle. This fragmentation encourages a high degree of specialisation in research, sourcing, marketing, sales, software, compliance and other primary as well as ancillary industries. Each unit contributes to increase the economic viability of any given product or service.⁶⁸ Instead of just increasing output, a value chain creates an experienced set of professionals and institutions

⁶² The Strategic Competition Act, 2021, s. 261(2).

⁶³ Nayanima Basu, *Comprehensive Global Strategic Partnership: What Modi-Trump just formalised is 2013 concept*, *THE PRINT* (Feb. 26, 2020), <https://theprint.in/diplomacy/comprehensive-global-strategic-partnership-what-modi-trump-just-formalised-is-2013-concept/371631/>.

⁶⁴ Naina Bhardwaj, *Can We Expect an India-EU FTA Soon? What Has Changed in the Bilateral Relationship* INDIA BRIEFING (May 18, 2021), <https://www.india-briefing.com/news/can-we-expect-an-india-eu-fta-soon-what-has-changed-in-the-bilateral-relationship-22287.html/>.

⁶⁵ Kirtika Suneja, *India, Australia likely to resume FTA talks soon*, *ECONOMIC TIMES* (June 06, 2021) <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-australia-likely-to-resume-fta-talks-soon/articleshow/83265110.cms?from=mdr>.

⁶⁶ Asit Ranjan Mishra, *India, Japan and Australia unveil the Supply chain initiative*, *LIVEMINT* (Apr. 28, 2021), <https://www.livemint.com/news/world/india-japan-australia-launch-supply-chain-initiative-to-counter-china-11619532624451.html>.

⁶⁷ MINISTRY OF COMMERCE, *REPORT OF THE HIGH-LEVEL ADVISORY GROUP 130* (2019), https://commerce.gov.in/wp-content/uploads/2020/02/NTESCL637084602888237192_HLAG-Report-.pdf,

⁶⁸ For a detailed discussion of supply chain approach and value chain approach, See Ninel Seniuk, *BRICS countries in global value chain*, 43(6) *STRATEGIC ANALYSIS* 509-531 (2019).

operating across the value chain as force multipliers to increase the value proposition of a particular industry. Once such capabilities are developed, they often find application in various other sectors which sets a virtuous cycle resulting in a domino effect which can raise the overall economic profile of the nation.

(C) 3D printing and the threat to domestic manufacturing

In 1998, the member countries of the WTO agreed to a moratorium stating that they will not levy custom duties on electronic transmissions for two years (to be renewed every two years by consensus).⁶⁹ At that time, it meant not imposing custom duties on transmissions of e-books, music files, etc transaction of which were very taking place on a small scale. It was dubbed as a necessity for the future development of E-commerce and the internet at that time. Therefore, all countries developed or developing agreed to such a noble initiative. The moratorium has since then been renewed after every two years at the WTO (except 2003-05).

However, today when technologies such as remote manufacturing, additive manufacturing or 3-D printing have come into existence, developing countries are at the risk of losing whatever small share they have of global manufacturing, government revenues etc. The advantage of cheap labour which developing countries like India have boasted about all these years will be of no use if manufacturing is done by a machine (3-D Printer) working on CAD files created, coded and sent by a design professional sitting in Washington or Tokyo. The issue is not disruption caused by innovative methods of manufacturing but the lack of ability to impose custom duties on CAD files transmitted from abroad.

Leaving aside the disruption caused by innovation (which includes job losses in traditional manufacturing, declining incomes), the adverse impacts will be two-fold. First, India will not be able to protect its domestic manufacturing industry through tariffs as was the case in traditional manufacturing which will lead to the domestic products losing in their own markets. Second, will be the loss of revenues.⁷⁰ Such a scenario will be detrimental to the geo-economic power of India since the traditional advantage of cheap labour will be of no use just when government has taken steps to boost manufacturing sector. India along with South Africa has made joint submissions at the WTO to highlight the issues but so far have failed to block the renewal of the moratorium.⁷¹ There are also concerns that majority of the

⁶⁹ World Trade Organisation, Ministerial Declaration of 20 May, 1998, WT/MIN(98)/DEC/2, (2002).

⁷⁰ A study authored by Ms. Rashmi Banga highlights that the outcome of this phenomenon will be asymmetric in nature and will hit developing countries the hardest. For more, see generally: Rashmi Banga, *Rising Product Digitalisation and Losing Trade Competitiveness*, UNCTAD 2017, UNCTAD/GDS/ECIDC/2017/3.

⁷¹ IISD, *WTO Members Highlight Benefits and Drawbacks of E-commerce Moratorium*, IISD (Jul. 23, 2020), <https://sdg.iisd.org/news/wto-members-highlight-benefits-and-drawbacks-of-e-commerce-moratorium/>.

countries have already committed to a permanent moratorium under various FTAs.

(D) Data is the new oil and India has the biggest oilfields

Data serves as the fuel and raw material for digital economy. Therefore, resisting pressure from other countries on localisation is essential. This also finds some support in the UNCTAD Digital Economy Report, 2019.⁷² A lot of jobs will simply cease to exist because of automation, putting 'India's demographic dividend' in uncertainty. India is currently placed in a unique position with respect to the digital revolution since it generates large amount of data which is also diverse in nature. Expecting India to not localise data and promote free flow of data which creates competitive advantage is similar to expecting a country to export its oil, timber, etc for free. Therefore, India must retain policy space to develop and incentivize development of data infrastructure. Insistence on data localization should be aggressively pursued as that would contribute to revenue. Additionally, India must not undertake commitments under FTAs or under WTO which are open-ended and may extend to future technologies compromising the long-term economic interests.

As they say: *'To a man with a hammer, every problem looks like a nail'*. The goal of this paper has been to emphasise that national security is threatened not just by military aggression but also by economic, technological and trade policy challenges. A unidimensional approach of burdening the military establishment with national security where questions of trade and economic policy are in play will not work. It is high time that economic and trade policies be formulated within the frame of national security. Towards this, an improved coordination between the relevant ministries and agencies is essential. It is important to note that the Cabinet Secretariat Resolution (April 16th, 1999) establishing the National Security Council (NSC) specifically stated economic security (particularly energy, foreign trade, food, finance and ecology) as one of the broad subject areas.⁷³ To sum up, Indian policymakers need to think like men with Swiss-knives, which is to develop a raft of options and strategies to deal with the ever-evolving geoeconomic order.

⁷² United Nations, UNCTAD, The Digital Economy Report, 2019, (Geneva: United Nations, 2019); Amiti Sen, *Data localisation may not impede digital trade or e-commerce, says UNCTAD report*, THE HINDU BUSINESS LINE (Sept. 05, 2019), <https://www.thehindubusinessline.com/info-tech/data-localisation-may-not-impede-digital-trade-or-e-commerce-says-unctad-report/article29339861.ece#>.

⁷³ Cabinet Secretariat Resolution No. 281/29/6/98/TS, dated 16 April 1999, p.5