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Focus: Legal Challenges Surrounding Economic Security (Summary)

Essay: Legal Regulation of "Economic Security" and Its Challenges

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The Second Trump Administration's reciprocal tariff policy in 2025 has refocused attention on "economic security" — the convergence of economy and security. The United States has tightened import restrictions under such laws as the International Emergency Economic Powers Act (IEEPA) and Section 232 of the Trade Expansion Act, for reasons of national security. The push to establish domestic laws pertaining to "economic security" has spread to China, the EU, Japan and other countries that have developed legal frameworks aimed at securing supplies of strategic materials, preventing technology leakage, and protecting critical infrastructure. These measures reflect a common trend of "weaponizing" economies, manifesting internally as industrial policies protecting domestic industries and externally as trade policies involving export controls and foreign investment regulations. However, the extent to which measures invoking "economic security" are permissible within existing legal frameworks remains contentious, though, and it is unclear whether security exceptions under international law can adequately regulate modern "economic security"-related issues. It is therefore essential to curb the arbitrary application of "economic security" by nations and instead to affirm the rule of law within both domestic and international legal systems.

1 The Significance of the Security Exception: Considering the Position of GATT/WTO Within the International Legal Order

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The GATT has established multilateral economic interdependence in the pursuit of world peace, rather than merely the pursuit of trade gains based on peacetime assumptions. The Security Exception (Article XXI) serves to place trade relations irrelevant to this primary aim outside the scope of regulation. With respect to the wartime exception (Article XXI(b)(iii)), it is precisely when conflicts intensify that compliance with the GATT rules is needed. Precedents that regard "fundamental changes of circumstances" other than "wartime" as exceptions should be reconsidered; exceptions should be limited to "wartime" between disputing countries or to emergencies equivalent to "wartime" for third countries, such as when one of the disputing countries involved in an armed conflict is a permanent member of the UN Security Council. The military trade exception (Article XXI(b)(ii)) clarifies that military goods are not included within the scope of trade liberalization, based on the premise that they are subject to arms control. Since measures conforming to these specific clauses are outside the scope of regulation, the self-judging language in the chapeau of Article XXI(b), concerning the necessity of protecting "essential security interests," negates the panel's authority to review beyond the applicability of the respective clauses. These proposed interpretative changes re-affirm the fundamental nature of GATT norms within the post-war international legal order providing a starting point for revitalizing the WTO.

2 Is Resistance to Economic Coercion Possible? An Examination Focused on the EU's Anti-Coercion Instrument（ACI）

Tomofumi Kitamura（Professor, Graduate School of Arts and Sciences, The University of Tokyo）

The "weaponization of economic dependence" — the practice of using economic measures like trade restrictions to pressure foreign countries that depend on one's products, services, technologies, or markets — has been increasingly employed in recent years. This is done to compel policy changes favorable to the pressuring state, and it is raising concerns worldwide. A striking example is the Trump administration's "reciprocal tariffs" announced in April 2025, which caused global shockwaves. While means of reducing reliance on specific countries are being adopted by many nations as responses against the weaponization of economic dependence, a more proactive and, consequently more controversial response has recently garnered particular attention: the Anti-Coercion Instrument（ACI）introduced by the European Union（EU）at the end of 2023. The ACI allows the EU to impose trade restrictions and other retaliatory measures against a coercive state to deter or halt economic coercion directed at the EU or its member states. Its defining feature is the characterization of these retaliatory measures as countermeasures against a violation of the principle of non-interference. This paper examines the legality of measures taken under the ACI. This examination is conducted from two perspectives: the compliance of the measures with the requirements for countermeasures under general international law and their appraisal under WTO agreements.

3 Economic Security from the Perspective of Administrative Law

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This paper analyzes economic security, which emerged as a contrasting approach to the post-World War II free trade regime, from the perspective of domestic administrative law. The most important administrative laws in Japan concerning economic security are the Foreign Exchange and Foreign Trade Act（"Foreign Exchange Act"）and the Act on the Promotion of Ensuring National Security through Integrated Implementation of Economic Measures（"Economic Security Promotion Act"）, both of which are centered on prior notification systems. The Foreign Exchange Act adopted a prior notification system when transitioning from prohibition in principle to freedom in principle for regulating inward direct investment and similar activities. The Economic Security Promotion Act introduces a similar regulatory method for ensuring the stable supply of critical infrastructure services. A prior notification system by its nature lies between a permit system and a notification system, as it presupposes freedom of action while reviewing notification details and rendering adverse dispositions if problems are identified. In practice, however, a prior notification system operates more like a permit system — requiring pledges from investors and monitoring for violations — leaving doubts about its legal justification. Consequently, the establishment of a statutory authorization for administrative contracts（settlement agreements）could be considered as a means of tailoring the details of regulations（pledges）and clearly conferring legal binding force upon them.

4 Significance and Challenges of the Patent Application Non-Disclosure System

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In May 2024, Japan put in place a patent application non-disclosure system allowing patent applications for inventions that should not be made public for national security reasons to remain undisclosed for as long as necessary. Japan once had a secret patent system governing military-related inventions but, after abolishing this system in July 1948, it did not establish another for over 70 years. Japan consequently became a rarity within the international community, possessing cutting-edge technological development capabilities yet lacking a secret patent system. Concerns about this situation were eventually raised, leading to the recent creation of a system for non-disclosure of patent applications entirely different from the earlier secret patent system. This new system also stands out from its counterparts in other countries in that it specifically identifies by law the areas of technology to be kept non-public. This article reviews the former secret patent system and similar systems, presents an overview of the new patent application non-disclosure system, and discusses challenges from the perspective of national security.

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