

Industrial Policy: Course Outline

I. Industrial Policy in General:

1) What is industrial policy?

By common usage, the term industrial policy refers to government intervention in the economy to improve its performance. The term is frequently associated with government intervention on behalf of specific industries or firms.

2) Is there a history of industrial policy in the United States?

In 1791, Alexander Hamilton submitted a Report on Manufactures to Congress, recommending that the government encourage the development of manufacturing, primarily by imposing tariffs and other measures to protect it against imports. Although Congress did not respond specifically to Hamilton's proposal, Congress maintained substantial tariffs throughout most of the nineteenth century and the first part of the twentieth century. During the nineteenth century, Congress also subsidized the building of canals and railroads.

3) What are the arguments on behalf of various forms of industrial policy?

The arguments rest on the premise that factors which the private markets do not take into account can be manipulated by government to reach a result that, from a national perspective, is superior to the results in a laissez-faire market.

Restated, the government may be able to act in such a way as to remedy a market failure or other market malfunction.

Commonly recognized market failures lie in the areas that are presently subject to intellectual property protection.

Markets ignore externalities (both positive and negative).

Recent research into trade have identified ways in which governments may affect the terms of trade to advantage domestic industries.

4) What are the arguments against industrial policy?

Governments cannot intervene on behalf of particular industries or markets to reach results that are superior to market outcomes, because government policy-makers cannot amass the information necessary to do so. The impersonal decision-making process of the markets are inherently superior.

Also, government is subject to lobbying and political pressures. Even if government officials could make decisions that were superior to those of the market, their decisions would be skewed by these political pressures.

- 5) Why was industrial policy a major topic of debate in the 1980s and 1990s?
During the 1980s, Japanese imports were severely threatening the viability of an array of U.S. industries that included: automobiles; machine tools; semi-conductor chips. The call for an industrial policy was a call to come to the aid of these industries.

The early 1990s was the period when the Clinton administration took office. Many of the policy-making officials in that administration had been advocating the use of industrial policy during the previous decade.

- 6) The Japanese government—especially through its Ministry of International Trade and Industry (or “MITI”)—had guided Japanese industry to unprecedented levels of prosperity through several decades into and including the 1980s. Many Americans believed that the Japanese had demonstrated the effectiveness of industrial policy.
- 7) In 1980 [?] the Chrysler Corporation was on the verge of bankruptcy. The U.S. government guaranteed critical financing for Chrysler as a step in its recovery. As a result, Chrysler regained profitability. This was government intervention in behalf of a particular firm. Was this action a proper act of government? At the time, the government’s action was the subject of heated debate.
- 8) France, Britain, and other European governments have supplied critical financing for Airbus, Europe’s venture into the production of large commercial aircraft. These nations expect that the Airbus effort will provide high-paying employment, will foster technical development, and perhaps earn significant profits for their economies. Is Europe’s support of Airbus a proper action of government?
- 9) If Japan and Europe provide support for particular industries and firms, and if their efforts are successful, do their actions provide lessons for the United States? If the Japanese and European governments are able to benefit their own economies through industrial policies, why can not the U.S. government benefit the U.S. economy by taking analogous actions?

II. Government/Industry relationships

- 1) lobbying and public choice.

Mancur Olson on lobbying and political pressure.

Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365 (1991);

Eastern Railroad Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657

(1965); *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972). Cf., *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1992).

- 2) Rulemaking under the Administrative Procedure Act. 5 U.S.C. § 553 (informal rulemaking); § 556, 557 (formal rulemaking).

- 3) Government by negotiation
 Negotiated rulemaking
 EPA Project XL

- 4) Government/industry relationships in Japan under MITI

- 5) The corporatist and neo-corporatist models.

III. The U.S. Constitutional scheme and policy formation:

1. Let's suppose that legislation can do one of three things: 1) it can alter property rights among private persons; or 2) it can subject a person or activity to regulation; or 3) it can establish a benefit program, thus in some cases establishing property rights against the government (entitlements).

2. Legislation is difficult to enact because of constitutional rules of bicameral approval and presentment.¹

3. The constitutional default is no legislation. Thus the constitution has an initial built-in bias towards the market or self-help as the remedy for a problem.

4. But once legislation is enacted, it can only be repealed by another act of legislation.

5. Thus the normal expectation is that government does not supply an answer to a problem or need; but once legislation puts government in such a remedial role, the

¹ U.S. Constitution Article I § 7, clause 2, requiring bicameral passage and presentment:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

expectation is reversed: government is likely to continue in that role. Self-help or the market are excluded from the sphere of government involvement or reduced to a secondary role.

6. These considerations explain why society expects that problems relating to poverty or the problems of a minority should look to market solutions or to self-help solutions. They also explain how interest groups can remain powerful long after achieving an initial success in getting legislation through Congress.

Consider, for example the Department of Agriculture --- established when farmers were a major part of the workforce; the Department now serves to institutionalize agricultural interests in government.

Thus the constitution deals with Madison's concern over the influence of "factions" in a two-sided way. The governmental structure makes it difficult to enact legislation, thus raising the barrier for factional influence; but once the barrier is overcome, a particular faction (e.g., agricultural interests) can become institutionalized in the government itself.

IV. Corporatism and the New Deal:

- a. What was the primary problem facing the Roosevelt administration when it took office in 1933?
- b. What were some of the primary causes of the great depression? To what extent was the Smoot-Hawley tariff a contributing factor? To what extent was the Federal Reserve's response of tightening the money supply a contributing factor?
- c. What was that administration's view about the causes of the depression and the likely remedies? Did the administration believe that costs did not adjust as well as prices to a situation of falling demand? Were prices in fact lower than costs? If such situations were common, what responses should the administration's policy-makers have pursued?
- d. What was the strategy embodied in the National Industrial Recovery Act? Why did the Act exempt business firms from the Sherman Act? What was that Act's labor strategy?
- e. Were there parallels between the NIRA approach and the economic policies of Mussolini's Italy?
- f. How--and to what extent--did the New Deal policies change after the *Schechter* decision?

V. European and Japanese neo-corporatism

- 1) The European struggle with wages, productivity, inflation and trade.
- 2) Neo-corporatism in Sweden
 - The Aukrust/EFO bargaining model.
 - National wage bargaining
 - The breakdown of the Swedish model.
 - Compare wage bargaining in Germany.
- 3) Incomes policies in the United Kingdom.

VI. Trade policy

- 1) Ricardo on free trade
- 2) U.S. Tariff policy: nineteenth century; twentieth century; Smoot-Hawley Tariff Act; Reciprocal Trade Agreements Act.
- 3) Post-World War II trade policy:
 - Bretton Woods Agreement; proposed International Trade Organization (Havana Charter); General Agreement on Tariffs and Trade (GATT); World Trade Organization (WTO)
- 4) Antidumping and countervailing duty laws:
 - Antidumping Act of 1916; Tariff Commission Report (1919); Tariff Act of 1921; Tariff Act of 1930; Trade Act of 1974 (redefinition of fair value to include cost)
- 5) Voluntary export restraints:
- 6) Safeguards provisions -- under U.S. law and under the Safeguards Agreement.
- 7) Industrial restructuring under safeguards provisions.
 - In Europe: Synthetic Fiber Agreement, Common Mkt Rep. (CCH) ¶ 10,606 (1984); in Japan: see Matsuo Matsushita, International Trade and Competition Law in Japan 272-95 (1993)
- 8) Past practices:
 - Steel; automobiles; machine tools.

VII. Strategic Trade Policy

- 1) The optimum tariff.
- 2) Airbus; state financing; and game theory

- 3) The strategic-trade model: continuously falling cost curves (scale economies; learning curves); and imperfectly competitive markets.
- 4) Consider: the semi-conductor chip industry
Protection as a tool for market penetration.
The U.S./Japanese Semiconductor Agreements

VIII. U.S. Labor policy and its operation

- 1) The shaping of the U.S. labor movement: the Knights of Labor; the American Federation of Labor (AFL); the Western Federation of Miners; the United Mine Workers; the Industrial Workers of the World (IWW); the Railway Brotherhoods; the Congress of Industrial Organization.
- 2) The interaction of labor unions and the courts during the late nineteenth and early twentieth centuries; the use of injunctions; Congressional responses.
- 3) The impact of the courts on social legislation and the resulting impact on the philosophy and goals of the labor movement. See esp. William E. Forbath, *The Shaping of the American Labor Movement*, 102 Harv. L. Rev. 1109 (1989).
- 4) Major pieces of U.S. labor legislation: Railway Labor Acts; National Industrial Recovery Act § 6a; National Labor Relations Act; Taft-Hartley Act; Landrum-Griffith Act.
- 5) Economics of labor relations
- 6) Issues of cost-push inflation during the last half of the twentieth century.

IX. Applying models of social contract to labor, trade and other policies:

- 1) John Rawls, *A Theory of Justice*
- 2) Walter Reuther, *Price Policy and Public Responsibility*
- 3) Kennedy/Johnson Wage-Price Guidelines

X. Comparative Labor policies

- 1) labor relations in Sweden and Germany
- 2) labor relations in Japan
- 3) comparison with U.S. labor policies

XI. Regulation and De-Regulation of Public Utilities and Carriers

1) Classic public utility regulation

Rate of return regulation: reasonable return on fair value of investment: determine value of investment used and useful in performing the service. Consider different types of valuation: historical cost; present value; replacement cost) (Consider depreciation issues: straight line or accelerated; differences between tax depreciation and depreciation for regulatory purposes)

Determine reasonable rate of return. Apply that rate to the value of the assets devoted to the service.

Determining reasonable operating expenses.

Determine the rate structure that will generate revenues sufficient to cover operating expenses and to provide the needed return.

2) Classic public utility decisions:

Including *Smyth v. Ames*, 169 U.S. 466 (1898); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989)

3) Mechanics of transportation regulation:

Railroads; motor transport; airlines

XII. Innovation Policies

1) Patent and copyright systems:

U.S. Const. Art. 1, §8; theory of protection (property rights rationale); subjects and scopes of protection.

2) Economics:

Kenneth Arrow, *Economic Welfare and the Allocation of Resources for Invention*, in *The Rate and Direction of Inventive Activity* (1962); Louis Kaplow on measuring social costs and benefits.

3) Software protection under patent and copyright laws.

4) Other intellectual property laws and their functions.

5) Alternatives to intellectual property for generating new technologies: direct government funding; rewards and prizes.

XIII Agricultural policies

- 1) The New Deal agricultural program:
- 2)

XIV. Safety-Net Policies

- 1) David A. Super, *The Political Economy of Entitlement*, 104 *Colum. L. Rev.* 633 (2004)

XV. Healthcare policies

- 1) Economic analysis
- 2) Caselaw on healthcare insurance:
Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic, 63 F.3d 1406 (7th Cir. 1995); *FTC v. Butterworth Health Corp.*, 946 F.Supp. 1285 (W.D. Mich. 1996), *aff'd per curiam*, 121 F.3d 708 (6th Cir. 1997); *Ball Mem. Hosp. v. Mutual Hosp. Ins., Inc.*, 784 F.2d 1325 (7th Cir. 1986).
- 3) Political/economic issues in healthcare reform.