

China's Investment Law Reform: Revolution or Evolution?

Lapteva Anna* & Skvortsov Oleg**

This study describes and analyses the recently adopted foreign investment law (the Law) of China. First, this paper presents reasons for the adoption of the Law. For example, we focus on the trade war between the US and China, which has greatly affected the adoption of the Law. The political background that influenced the adoption of the law is revealed. Of note, legal techniques used by the Chinese legislators in the Law are evaluated. For example, a list system for investment sectors is used, which divides all industries into categories with a special regime. This system divides all industries into four categories: (1) encouraged, (2) permitted, (3) restricted, and (4) prohibited. In conclusion, this study emphasizes that changes achieved by the Law are not revolutionary. Some of the consequences that the adoption of the law entails is analyzed. Thus, the Law represents a gradual evolution in how foreign investors access the Chinese economy.

Keywords: China's Foreign Investment Law, Foreign Investor, China

* Associate Professor at the Financial Law Department NRU HSE-St. Petersburg. Ph.D. (St. Petersburg). ORCID: <http://orcid.org/0000-0002-9636-0742>. The author may be contacted at: laptevaan@rambler.ru /Address: St. Petersburg, Morskaya nabereznaya, 39-2, 18, Russian Federation, 199058.

** Council with DLA Piper; Professor of Commercial Law Department at St. Petersburg State University; Member of the Council on Arbitration Development of the Russian Ministry of Justice. Doctor of Law (St. Petersburg). ORCID: <http://orcid.org/0000-0001-9697-5264>. The author may be contacted at: oleg.skvortsov@dlapiper.com /Address: St. Petersburg, Sredniy prospect V.O., 85 -171, Russian Federation, 199106.

All the websites cited in this article were last visited on February 6, 2021.

1. Introduction

On March 15, 2019 the 13th National People's Congress (NPC) of the People's Republic of China (PRC) approved the Foreign Investment Law (FIL or "Law") at the closing meeting of its second session.¹ The first version of the bill of the FIL submitted for discussion has undergone considerable changes.² The original text of the bill contained 170 articles, but the final version contained only 42 articles. The FIL consists of six chapters dealing with investment promotion, investment protection, investment regulation, and legal liability. In addition, it has general and ancillary provisions. The content and structure of the Law are traditional and correspond to the standards that have been formed in the international and national practice of investment regulation particularly in bilateral investment treaties (BITs). Before adopting the FIL, China tested the Law following the basic principles of BITs. The Chinese government started this process recently focusing on the standards of international investment law. Thus, investment lawyers may conclude that China is "denationalizing" its investment regimes.³

The FIL was adopted against the backdrop of the aggravation of trade relations between China and the US. These circumstances created prerequisites for its ambiguous assessment. For example, some opined that the FIL was more political than economic because it was intended to mitigate economic relations between the two States through declarative proposition.⁴ The Law was largely recognized a political declaration because it addressed rights for investors, but did not establish specific mechanisms for implementing these specific rules.⁵

2. Political Background for Adopting the Foreign Investment Law

The FIL was approved when Sino-US relations started to deteriorate. A political confrontation between the two leading powers was a result of their complex economic contradictions, which resulted in a trade war. For example, in 2018, the President Donald Trump imposed tariffs on Chinese goods.⁶ China responded with tariffs on several hundred US goods and accused the US of launching the largest trade war in history.⁷ Both parties did not limit accepted measures and declared

to impose further sanctions, which aimed to pressure the other side. In 2019, they finally increase tariffs and negotiations between the two countries were not successful.⁸ Moreover, standoff between China and the US continued to escalate and affected in trade and investment companies.

The US-China trade war was broken out against the background of considerable imbalance in an economic sphere. This demonstrated the large deficit of the US in its trade with China, while China became the largest foreign holder of the US's national debt. In 2019, the US was indebted USD 1.3 trillion to China.⁹ The trade war began with the hostile statements of the US Government about China's trading practices. The Commission on the Theft of American Intellectual Property provided information about Chinese theft of intellectual property (IP) and forced technology transfer.¹⁰ It was a consequence of the trade and investment policy that was adopted by the Chinese Government.

According to American politicians, first the Chinese Government connives such offenses and covertly promotes their spread. The US suspected that Chinese authorities should be forcing American companies to transfer their IP to Beijing as an entrance fee to the Chinese market¹¹ and instructing Chinese businessmen to invest in American enterprises to receive access to strategic technologies and use those for the needs of China.¹²

The second argument of ideological nature, on which Trump administration based, was the statement about protecting the interests of the American manufacturers. This clear argument relied on Trump's protectionist policy and aimed to reorient the domestic American market and American producers.¹³ President Trump also threatened to delist Chinese firms from public markets, requiring them to comply with new federal securities regulations regarding corporate audits.¹⁴

In turn, China considers that the US breaks the rules of the World Trade Organization (WTO), which limit the possibility to apply unilateral sanctions. From the Chinese Government point of view, the US tariffs against the imports from China ignores the ruled-based international trading system.¹⁵ China considers appealing to the jurisdictional bodies of the WTO as one of the main instruments to protect their rights and interests in the confrontation with the US.¹⁶

The US-China trade war triggered global economic recession, entailing geopolitical shifts with unpredictable social and political consequences.¹⁷ The Chinese authorities should carefully consider the current situation when forming

a legal model for the regulation of foreign investments because it was largely made by the American business society. If China does not reach a compromise with the US, it should look for a way-out by replacing cooperation with the US for activities with other States. Actually, such activities are substantially defined in the Belt and Road Initiative (BRI)¹⁸ and manifested in a considerable increase in economic and political contacts with Russia as well as the BRICS members.¹⁹ In this regard, China is expanding to Africa, the EU, and other regions for trade and investment.²⁰

3. Main Ideas of the Foreign Investment Law

The FIL is the foundation for building the branched and complexly structured investment law system of the PRC in the future. The Law is based on the following fundamental principles, which in fact determine the main directions of the investment legislation in China.

A. Openness

The main purpose of the FIL is to open Chinese economy to the outside world. It is known that transparency, as a principle of economic policy, has an ideological effect serving as a condition for foreign investment in domestic market. From 1949 to late 1970s, China was isolated from the outside world.²¹ At that time, attracting foreign investments were unthinkable. It was not until early 1980s that these circumstances were reformed by the Chinese leadership under the name of the open-door policy.²² As a prerequisite for economic development of the country, the open-door policy triggered commercial and investment legislations in line with the global standards, focusing on attracting investments.

B. Equality of Foreign and Domestic Investors

The FIL is to afford foreign investors “national treatment” by equalizing their rights with domestic investors.²³ This equalization ensures the governmental support to economic activities. To realize this idea, the FIL formulates a presumption of equality between the foreign and Chinese investors during the investment access stage.²⁴

Moreover, in the context of equality between foreign and domestic investors,

the Chinese Government declared the access of foreign investors to participate in government procurement activities through fair competition in accordance with the FIL.²⁵ These changes indicate the abandonment of explicit protectionism in some sectors of economy.

The equality of foreign and Chinese investors cannot be realized without simplifying the regulatory approval procedures for access of foreign investors to the Chinese economy. However, such simplification may create legal barriers for investments made during the pre-reform time, which penetrated the Chinese economy through bypassing established restrictions and prohibitions.²⁶

C. Protection of Intellectual Property Rights of Foreign Investors

The FIL also aims to protect IP rights of foreign investors. One of the most pressing problems that China is facing is the violation of the IP rights of foreign companies.²⁷ It was a reason for the US-China trade war. Article 22 of the FIL defines the infringement on IP rights and legal responsibility for such actions.²⁸

However, the Law does not define the degree, limits, and character of such responsibility. This ambiguity creates uncertainty in understanding what “legal responsibility” is and how the conditions and degree of responsibility are. The Chinese government should establish not only a civil, but also criminal liability for these offenses.

D. Centralization of the Legal Regulation of Investment Activity

The centralization of the legal regulation of investment flows is another question. Though the PRC Ministry of Commerce and the National Development and Reform Commission implemented the coordinating investment before adopting the FIL, local authorities have broad powers to regulate investments in their territories. For example, the administration of Chinese Special Economic Zones issues its normative acts that establish customs preferences, tax incentives (*e.g.*, lower tax rates), and flexibility of land use.²⁹ In practice, however, this entailed the growing regional disparities within China.³⁰ The elimination of differences among regions may solve economic, socio-political, and migration problems.

Nonetheless, the FIL does not answer the question on how the powers between the central and local authorities shall be divided. The Law states that foreign investors or foreign-invested enterprises may enjoy preferential treatment

in accordance with the provisions of laws, administrative regulations, or the State Council.³¹ Conversely, Article 18 of the FIL stipulates that local people's government at or above the county level may formulate policy measures for the promotion and facilitation of foreign investment. Simultaneously, the limits of such power are not clearly defined. It is clearly related to granting tax incentives and customs preferences, which are generally paid to the state budget, for the central authorities to agree with it. Meanwhile, various levels of local people's governments and their relevant departments shall draw-up normative documents on foreign investment. Without legal or administrative ground, however, such documents should not derogate from the lawful rights and interests of foreign-invested enterprises or increase their obligations; set market access or exit conditions; and interfere with the normal business activities of foreign-invested enterprises.³² Modification of local legislation by the national authorities will be required after the ratification of the Law.

E. Attraction of New Technologies

The FIL promotes attracting new technologies.³³ This idea is not new. In pre-reform times, Chinese legislation was interested in attracting new technologies, so that foreign investment should attract resources and high-tech products, which contributed to the competitiveness of Chinese enterprises. A foreign investor was admitted to the domestic market only if new technologies were transferred.³⁴

4. Legal Reforms

A. General Provision

The FIL has replaced the three existing laws on foreign investment in China, which were approved more than three decades ago, i.e., the PRC Law on Sino-Foreign Equity Joint Ventures (1979), the PRC Law on Foreign Capital Enterprises (1986),³⁵ and the PRC Law on Sino-Foreign Contractual Joint Ventures (1988).³⁶

In this course, the FIL harmonized those three laws. For example, the provisions on corporate organizational forms of a legal entity have been brought into line³⁷ Also, the issues of corporate governance have been removed from the Law. Since the FIL entered into force, such issues have been regulated by Articles 6-12 of

the PRC Company Law³⁸ and Articles 14-19 of the PRC Partnership Enterprises Law.³⁹ These laws apply not only to Chinese investors, but also to foreign-invested companies. Incidentally, this change is in line with the general conception of reform because foreign-invested companies can equalize their legal status and corporate organizational forms with Chinese companies. This, in turn, allows such investment forms as company mergers and acquisitions with Chinese enterprises, which overcome pre-reform time's barriers for foreign companies and Chinese companies.

B. List of Investment Sectors

Another legal reform essential to the distribution of investment flows is to divide all industries into categories with a special regime. Since 1995, the laws and regulations attracting foreign investments has been listed at the Catalogue for the Industrial Guidance of Foreign Investments by the National Development and Reform Commission (NDRC). The catalogue divides all industries into four categories: (1) encouraged; (2) permitted; (3) restricted; and (4) prohibited.⁴⁰ For the past twenty-five years, the Chinese authorities has been gradually expanding the list of encouraged and permitted industries. Since China's accession to the WTO in 2001,⁴¹ this process has been accelerated.

C. Corporate Regulation

In the pre-reform time, the Chinese government established different corporate organizational forms for both foreign investors and Chinese entrepreneurs. This regulation minimized the possibility of uncontrolled capital flows and penetration of foreign investment in restricted areas of Chinese economy.

Article 31 of the FIL regulates the corporate organizational forms for foreign investments. In this case, the legal status and corporate organizational forms of both foreign enterprise and Chinese companies are equal.⁴² This situation creates considerable implications in corporate management. Especially, it is possible to attract Chinese managers by either paying them a fee or providing options for shares of the enterprise, which was previously impossible because Chinese citizens could not own foreign property. Article 24 of the FIL prohibits the executive authority from interfering into the financial mechanism of foreign enterprises, which ensures their internal corporate governance and stimulates the effectiveness

of managers.

In the pre-reform period, the difference between foreign-invested enterprises and Chinese enterprises was considerable in related to governance structure, allocation of control rights, decision-making procedure, profit distribution, and liquidation quota distribution. Because Article 64 of Detailed Implementing Rules for the PRC Law on Wholly Foreign-Owned Enterprises⁴³ mandated the participation of Chinese citizens in foreign-invested enterprises, the procedure of corporate governance of such enterprises by foreign investors was complicated.

In practice, how to control Chinese people who acquired foreign citizenship and made investments in other jurisdictions may arise. It is unclear whether they are considered to be foreign investors in accordance with the FIL. This will be clarified only upon the actual application of the Law.

D. Contract Investment

The FIL aims to stimulate direct investments with the statutory fund of the corporate enterprises. Simultaneously, a contract investment based on special contract constructions (*e.g.*, concession agreement, production sharing agreement, and natural resource contract) is a special subject for foreign investors. It is important because Chinese legislation relies on the dominant system for mineral resources, that is, the exploration, development, and utilization of mineral resources is under State's control and realized by special agents with the status of state enterprises. In Chinese economy the main instrument for the relations between the State and an investor is the production sharing agreement.⁴⁴ State-investor relations in this area are regulated by particularly the PRC Law on Mineral Resources (1986).⁴⁵ The FIL is not applied to the State-investor relations in the field of mining. Thus, the Mineral Resources Law acts as a special law in relation to FIL (*lex specialis derogat generali*). Simultaneously, the exploration and development of natural resources (oil and gas) are included in the latest Catalogue of Industries for Encouraging Foreign Investment (paragraphs 18-22).⁴⁶

E. Registration System of Investment Projects

The FIL has established a registration procedure for investment projects.⁴⁷ In the pre-reform period, Chinese market access for investment project was conditioned under its registration by the authorities such as the Ministry of Commerce⁴⁸ and

the NDRC.⁴⁹ Moreover, before the adoption of the FIL the investment project was registered in the currency control body, which was the State Administration of Foreign Exchange (SAFE).⁵⁰ In general, the registration rule has a framework nature referring to normative acts to establish special procedures.

The registration measures of foreign investment are also linked to the provisions related to “a security review system for foreign investment.”⁵¹ At the legislative level, these measures were established in 2015 when the PRC National Security Law of was adopted.⁵² Articles 19 and 40 of the PRC National Security Law provides that the national security system shall focus on strategic economic sectors and be realized by both central and local authorities. Thus, the creation of a security review system is a serious barrier to the flow of foreign investment. However, such legislative solution seems reasonable. It preserves the economic sovereignty of the state and prevents uncontrolled penetration of foreign companies into the most sensitive areas of the economy, which could be have negatively affected the security of the country.

F. Foreign Investments in the Stock Market

The FIL regulates the investment activities in the stock market. In particular, foreign-invested enterprises may raise capital by publicly issuing stocks, corporate bonds, and other securities as well as through other means.⁵³ The Chinese Government has permitted foreign investors to trade a number of securities. In order to acquire the right to trade securities, however, a foreign investor must have the status of a qualified investment. This status allows to trade a number of financial instruments: stocks, depository receipts, bonds, bonds repurchase and asset-backed securities traded or transferred on stock exchanges; Stocks and other securities transferred on the National Equities and Exchange Quotations; products as well as bonds, interest rate and foreign exchange derivatives that are traded on the interbank bond market; Publicly-offered securities investment fund; Financial futures contracts listed and traded on the China Financial Futures Exchange, and others.⁵⁴

For many States, financial investment is generally excluded from the foreign investment. Instead, separate rules are created for financial markets depending on how foreign investors set market access. This approach is also adopted in Chinese law-making practice. Professor Min Zhao noted:

If the state has other regulations for the specific financial issues, however, such regulations shall be followed. The existing foreign investment management and statistical system contain the financial and non-financial fields. After implementing the new Foreign Investment Law, China is asked to integrate both management and statistics when taking into account the particularity of the financial industry. With the implementation of the Foreign Investment Law, relevant laws and regulations concerning foreign investment will be changed.⁵⁵

Regarding investment regulation of the stock market in China, Western lawyers stressed that for effective stock market investment, there should be a judicial system where private disputes connected with security transactions are considered.⁵⁶ Meanwhile, the protection of rights of minority shareholders must be emphasized in the first place.⁵⁷ This approach has a long-term significance, although its results would not be obvious in a short period of time. In order to implement this idea, a document was released titled, “Several Opinions of the Supreme People’s Court on Providing Judicial Guarantee for Establishment of the STAR Market and the Pilot Registration System Reform” in 2019. It declared:

[t]he people’s courts at all levels shall take the protection of legitimate rights and interests of investors and prevention and mitigation of financial risks as fundamental tasks of securities-related adjudication; form in an accelerated manner the multi-level capital market system featuring complete financing function, solid fundamental system, effective market regulation and effective protection of the legitimate rights and interests of investors; and create sound judicial environment.⁵⁸

The same idea was supported in the document titled, “Opinions of the Supreme People’s Court and the National Development and Reform Commission on Providing Judicial Services and Guarantees for Accelerating the Improvement of the Socialist Market Economic System in the New Era.”⁵⁹

G. Political Obligations as a Source of Regulation

In the Chinese legislation system, the Communist Party plays a significant role.⁶⁰ This circumstance appeared in investment regulation. For example, Article 25 of the FIL provides that various levels of local people’s governments and their relevant departments shall fulfill the policy commitments to foreign investors/foreign-

invested enterprises and various types of contracts concluded. When necessary, they would change policy commitments or contractual agreements for the national or public interest in accordance with the FIL and compensate the foreign investors or foreign-invested enterprises for any sustained loss.⁶¹ Such political obligation is based on a one-party system in which the party manages all social and economic processes.⁶² In turn, political decisions would greatly affect the public-private partnership in China.⁶³ In some cases, political nature of investment prevails over the economic aspects in China. This process may be found the PRC Constitution.⁶⁴

H. Methods of Protecting the Rights of Foreign Investors

The FIL addresses the protection of the rights of foreign investors. Specifically, there are two main mechanisms in the Law, i.e., administrative and judicial methods.

First, the State establishes working mechanisms to promptly handle the complaints raised by foreign-invested enterprises or foreign investors, and further coordinates and improves the relevant policy measures.⁶⁵ This method can be implemented with additional regulation which requires creating a new body or enduing an existing body with a new power. Within the framework of the administrative method, the plaintiff's procedural capabilities are limited. It is explained by the fact that this procedure is not adversarial. In addition, there are no rules of evidence established in judicial procedures, while the role of discretion of the official is considerable.⁶⁶

Second, the judicial mechanism to protect foreign investor's rights is based on an administrative claim.⁶⁷ Thus, investor claims should be considered through special administrative procedures specific to public investment disputes.

Thus, the authors opines that China is trying to create a mechanism that is competitive with the International Centre for Settlement of Investment Disputes (ICSID) which suggests to transfer disputes with foreign investors to domestic jurisdiction.

5. Conclusion

Foreign-invested enterprises may retain their original corporate organizational forms for five years after the implementation of the FIL. Nonetheless, this

process would be painstaking because it may affect the distribution of property inside the enterprises. In addition, the jurisdiction mechanisms are not clear. For foreign shareholders, the appeal to both national and foreign courts are not always attractive for the difficulties with the execution of their judicial decisions. That is why China has concluded several BITs providing easier judicial remedy. This was noted in the pre-reform period⁶⁸ and will not lose significance after the adoption of the FIL.

The Chinese Government has a variety of maneuvers owing to the possibility of expropriating foreign enterprises “in special circumstances” and “for the public interest”⁶⁹ In particular, these regulations are important for retorts by the Chinese Government in the event of the US-China trade war. Considering that the disputes that may arise in connection with expropriation for such reasons are subject to national jurisdiction based on administrative claims, such system is unlikely to be welcomed by foreign investors. In addition, the political environment will always provoke the Executive to use the ‘rubber’ nature of such categories as “special circumstances” and “the public interest.”⁷⁰

Accordingly, the FIL could be considered as a type of Manifesto, which declares a number of positive principles implemented within the framework of the current norm-setting and stimulates the investment activity of foreign businessmen. The FIL is a signal to foreign investors as a long-term invitation to cooperation. The revolution of investment law has not occurred. However, the Law one step forward streamlined the system of rules governing foreign investments in China. In this case, the Chinese proverb applies: “crossing the ford, feel for the stones [穿越福特, 感受石头].”

REFERENCES

1. See Draft Foreign Investment Law (Open for Comments until February 17, 2021), available at <https://1.next.westlaw.com/Document/Ied185d55a08c11e498db8b>.
2. Meichen Liu, *The New Chinese Foreign Investment Law and Its Implication on Foreign Investors*, 38 J. INT’L L. & BUS. 285-306 (2018), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1830&context=njilb>. See also P. McKenzie, Xiaohu Ma & Wei Zhang, *China’s Draft Foreign Investment Law Still under*

- Review, but “Negative List” System Comes in to Effect Nationwide October 1*, Morrison & Foerster (Sept. 15, 2016), available at <https://media2.mofo.com/documents/160915-china-foreign-investment-law.pdf>; Jiamu Sun, *China Foreign Investment Draft Law: What You Should Know*, NAT'L L. REV. (2015), available at <https://www.natlawreview.com/article/china-foreign-investment-draft-law-what-you-should-know>.
3. J. Alvarez, *Contemporary Foreign Investment Law: An “Empire of Law” or the “Law of Empire”?*, 24 AM. U. INT'L L. REV. 836 (2009). See also T. Cohen & D. Schneiderman, *The Political Economy of Chinese Bilateral Investment Treaty Policy*, 5 CHINESE J. COMP. L. 110-1 (2017).
 4. Yukon Huang, *China's Foreign Investment Law and US-China Trade Friction*, DIPLOMAT, Mar. 19, 2019, available at <https://carnegieendowment.org/2019/03/19/china-s-foreign-investment-law-and-us-china-trade-friction-pub-78647>.
 5. *Id.*
 6. J. Tankersley & K. Bradsher, *Trump hits China with tariffs on \$200 billion in goods, escalating trade war*, N. Y. TIMES, Sept., 17, 2018, at A1, available at <https://www.nytimes.com/2018/09/17/us/politics/trump-china-tariffs-trade.html>.
 7. J. Mullen, *China: The US has started ‘the biggest trade war’ in history*, CNN (Hong Kong), July 6, 2018, available at <https://money.cnn.com/2018/07/06/news/economy/us-china-trade-war-tariffs/index.html>.
 8. M. GROWLEY, TRADE WAR: THE CLASH OF ECONOMIC SYSTEMS ENDANGERING GLOBAL PROSPERITY 93 (2019), available at <http://digamoo.free.fr/tradewarcepr19.pdf#page=93>.
 9. US Department of the Treasury, Major Foreign Holders of Treasury Securities (Dec. 15, 2020), available at <https://ticdata.treasury.gov/Publish/mfh.txt>.
 10. Commission of the Theft of American Intellectual Property estimates that the annual cost to the US economy continues to exceed USD225 billion in counterfeit goods, pirated software, and theft of trade secrets and could be as high as USD600 billion. See The National Bureau of Asian Research, *The Report of the Commission on the Theft of American Intellectual Property 2013* (Feb. 2017), available at http://www.ipcommission.org/report/IP_Commission_Report_Update_2017.pdf.
 11. It seems that this policy is the implementation of the concept proposed by the Secretary of the Treasury Alexander Hamilton, who was the author of the program of accelerated trade and industrial development of the US. See D. Dodwell, *The Real Target of Trump's Trade War is Made in China 2025*, S. CHINA MORNING POST, June 17 2018, available at <https://www.scmp.com/business/global-economy/article/2151177/real-target-trumps-trade-war-made-china-2025>.
 12. US Department of State, 2020 Investment Climate Statements: China (report overview), available at <https://www.state.gov/reports/2020-investment-climate-statements/china>.
 13. Chunding Li, Jing Wang & John Whalley, *Trade protectionism and us manufacturing employment* (NBER Working Paper No. 25860, May, 2019), available at <https://www>.

- nber.org/system/files/working_papers/w25860/w25860.pdf.
14. D. Michaela, *White House Seeks Crackdown on U.S.-Listed Chinese Firms*, WALL ST. J., Aug. 6, 2020, available at <https://www.wsj.com/articles/trump-administration-seeks-crackdown-on-chinese-companies-with-shares-traded-in-u-s-11596748284>; Min Zhao, *Analysis and Interpretation of the New Foreign Investment Law of the People's Republic of China*, 5 CHINA & WTO REV. 351-86 (2019), available at http://cwr.yiil.org/home/pdf/archives/2019v5n2/cwr_v5n2_05.pdf. See also S. Malawer, *Trump, Recent Court Cases and the 2020 Presidential Election*, 6 CHINA & WTO REV. 407-16 (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3684141.
 15. CHANG-FA LO, JUNJI NAKAGAWA TSAI-FANG CHEN, THE APPELLATE BODY OF THE WTO AND ITS REFORM 10 (2020), available at https://doi.org/10.1007/978-981-15-0255-2_2.
 16. WTO, United States - Tariff Measures on Certain Goods from China, WTO Doc. WT/DS543 (2020), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm.
 17. D. Hanson & T. Orlik, *All-Out Trade War Could Cost Global Economy \$600 Billion*, BLOOMBERG, May, 21, 2019, available at <https://www.bloomberg.com/news/articles/2019-05-21/all-out-trade-war-could-cost-global-economy-600-billion-chart>.
 18. Ran Guo, *Is China's Belt and Road Initiative Moving towards a Silk Road Union?: A Legal and Policy Consideration*, 6 CHINA & WTO REV. 49-80 (2020), available at http://cwr.yiil.org/home/pdf/archives/2020v6n1/cwr_v6n1_02.pdf.
 19. See *Russia-China Dialogue* (The Russian council 2020 Model: Report No. 58/2020, 2020), available at <https://russiancouncil.ru/papers/Russia-China-2020-Report58-En.pdf>.
 20. H. Timmis & M. Gavvas, *What Does China's Investment in Africa Mean for Europe?*, Center for Global Development Website (Nov. 14, 2019), available at <https://www.cgdev.org/blog/what-does-chinas-investment-africa-mean-europe>.
 21. E. Khusnutdinova, D. Martynov & Y. Martynova, *The Qing Policy of Self-Isolation in China*, 12(5) J. POLITICS & L. 11-5 (2019).
 22. Shigeo Kobayashi, Jia Baobo & Junya Sano, *The "Three Reforms" in China: Progress and Outlook*, 45 RIM (1999), available at <https://www.jri.co.jp/english/periodical/rim/1999/RIME199904threereforms>.
 23. FIL art. 4.
 24. *Id.*
 25. *Id.* art 16.
 26. For details on bypass restrictions of the law for investing industries, see Liu, *supra* note 2.
 27. S. Li & I. Alon, *China's intellectual property rights provocation: A political economy view*, 3 J. INT'L BUS. POL'Y 60-72 (2020).
 28. The most serious violations are punishable under the Chinese Criminal Code (Section 7: Violation of Intellectual Property Rights). For example, in accordance with Article 216 of the Criminal Code, whoever counterfeits other people's patents, and when the

circumstances are serious, is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, and may in addition or exclusively be sentenced to a fine.

29. O. Kuzmenko, S. Pelkova, O. Lukianenko & I Fomichev, *Comparative Analysis of Taxation for Special Economic Zones in Russia and APEC Economies*, 21 EUR. RES. STUD. J. 219-42 (2018).
30. F. Haifeng Liao & Yehua D. Wei, *Sixty Years of Regional Inequality in China: Trends, Scales and Mechanisms* (Working Paper Series No. 202, 2016), available at https://www.rimisp.org/wp-content/files_mf/1473279216202_FH_Liao_YD_Wei.pdf.
31. FIL art. 14.
32. *Id.* art. 24.
33. *Id.* art. 22.
34. Article 5 of the Law the People's Republic of China on Sino-Foreign Equity Joint Ventures (adopted at the Second Meeting of the Fifth National People's Congress on July 1, 1979, and the latest amendment was made at the Twenty-Second Meeting of the Standing Committee of the Twelfth National People's Congress in 2016).
35. The Law of the People's Republic of China on Foreign Capital Enterprises (adopted on April 12, 1986 at the Fourth Meeting of the Sixth National People's Congress; the latest version was passed on September 3, 2016 at the Twenty-Second Meeting of the Standing Committee of the Twelfth National People's Congress).
36. The Law of the People's Republic of China on Sino-Foreign Contractual Joint Ventures (adopted at the First Meeting of the Seventh National People's Congress on April 13, 1988; the newest amendment was passed at the Thirteenth Meeting of the Standing Committee of the Twelfth National People's Congress on November 4, 2017).
37. FIL art. 31.
38. The Company Law of the People's Republic of China (amended and adopted at the 18th session of the Standing Committee of the Tenth National People's Congress of the People's Republic of China in 2005).
39. The Partnership Enterprise Law of the People's Republic of China (amended and adopted at the 23rd session of the Standing Committee of the 10th National People's Congress of the People's Republic of China in 2006).
40. See the full text of the Catalogue for the Industrial Guidance of Foreign Investments promulgated by PRC Ministry of Commerce (amended 2011), available at <http://english.mofcom.gov.cn/article/policyrelease/aaa>.
41. WTO, China and WTO, available at https://www.wto.org/english/thewto_e/countries_e/china_e.htm.
42. Zhao, *supra* note 14.
43. Detailed Implementing Rules for the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises 2001 (approved by the State Council on October 28, 1990;

- promulgated by the Ministry of Foreign Trade and Economy Cooperation on December 12, 1990; amended pursuant to the State Council's Decision concerning the amendment to Detailed Implementing Rules for the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises 2001), *available at* <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/foreign-investment/detailed-implementing-rules-for-the-law-of-the-peoples-republic-of-china-on-wholly-foreign-owned-enterprises-2001.html>.
44. These agreements are named oil contracts in the special literature. *See* Hao Hong & M. Kaiser, *Modeling China's offshore production sharing contracts using meta-analysis*, 7(2) PETROLEUM SCI. 283. (2010).
 45. Adopted at the 15th Meeting of the Standing Committee of the Sixth National People's Congress on March 19, 1986; revised in accordance with the Decision of the Standing Committee of the National People's Congress on Revising the Mineral Resources Law of the People's Republic of China adopted at the 21st Meeting of the Standing Committee of the Eighth National People's Congress on August 29, 1996, *available at* http://www.china.org.cn/environment/2007-08/20/content_1034342.
 46. The Catalogue of Industries for Encouraging Foreign Investment (2020), adopted upon deliberation at the 11th commission affairs meeting of the National Development and Reform Commission on November 5, 2020; deliberated and decided by the Ministry of Commerce; and approved by the CPC Central Committee and the State Council, was promulgated and came into effect on January 27, 2021, *available at* <http://proxy.library.spbu.ru:2805/maf/china/app/document?&docguid=i0aceb00700000176a87fe68467ea6e28&hitguid=i0aceb00700000176a87fe68467ea6e28&srguid=i0ad62833000001771178bc408784ef49&spos=1&epos=1&td=5&crumb-action=append&context=3&lang=en>.
 47. FIL arts. 29 & 34.
 48. The PRC Ministry of Commerce is missioned to: formulate the strategies, guidelines and policies for developing domestic and foreign trade and international economic cooperation; draft the laws and regulations governing domestic and foreign trade, foreign investment in China, foreign assistance, overseas investment and foreign economic cooperation; and devise relevant departmental rules and regulations. *See* the PRC Ministry of Commerce, *available at* <http://english.mofcom.gov.cn/column/mission.shtml>.
 49. The main functions of the NDRC are to: formulate and implement strategies of national economic and social development, annual plans, medium and long-term development plans; to coordinate economic and social development; to carry out research and analysis on domestic and international economic situation; to put forward targets and policies concerning the development of the national economy, the regulation of the overall price level and the optimization of major economic structures, and to make recommendations on the employment of various economic instruments and policies; and to submit the plan for national economic and social development to the National People's Congress on behalf of the State Council. *See* NDRC, *available at* <https://en.ndrc.gov.cn/>

- mfndrc_8237/200812/t20081217_1193980.html.
50. In accordance with Interim Administrative Measures for the Verification and Approval of Foreign Investment Projects 2004 (No. 22), the National Development and Reform Commission verifies and approves the project application reports under the encouraged or permitted category with the total investment of no less than USD500 million and for projects under the restricted category with the total investment of no less than USD100 million. *See* Interim Administrative Measures for the Verification and Approval of Foreign Investment Projects adopted on September 10, 2004, *available at* <http://www.asianlii.org/cn/legis/cen/laws/timftaoeafip949>.
 51. FIL art. 35.
 52. National Security Law of the People's Republic of China 2015, *available at* http://eng.mod.gov.cn/publications/2017-03/03/content_4774229.htm. *See generally* Congyan Cai, *Enforcing a New National Security? China's National Security Law and International Law*, 10 J. EAST ASIA & INT'L L. 65-90 (2017).
 53. FIL art. 17.
 54. Provisions on Issue concerning the Implementation of the "Administrative Measures for Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and Renminbi Qualified Foreign Institutional Investors" (Announcement (2020) No. 63 of the China Securities Regulatory Commission), *available at* http://www.csrc.gov.cn/pub/csrc_en/newsfacts/release/202009/P020200925685894935344.pdf.
 55. Zhao, *supra* note 14.
 56. M. Layton, *Is private securities litigation essential for the development of China's stock markets?*, 83/6 N.Y.U. L. Rev. 1951-52 (2008).
 57. *Id.*
 58. Several Opinions of the Supreme People's Court on Providing Judicial Guarantee for Establishment of the STAR Market and the Pilot Registration System Reform, *available at* <http://proxy.library.spbu.ru:2805/maf/china/app/document?docguid=i0ad816120000016b88a1092339b27d4f&hitguid=i0ad816120000016b88a1092339b27d4f&srguid=i0ad82b44000001770b0f3508e9108d72&spos=8&epos=8&td=58&crumb-action=append&context=6&lang=en>.
 59. Opinions of the Supreme People's Court and the National Development and Reform Commission on Providing Judicial Services and Guarantees for Accelerating the Improvement of the Socialist Market Economic System in the New Era, *available at* <http://proxy.library.spbu.ru:2805/maf/china/app/document?&docguid=i0aceb0070000017375adf918c12cc848&hitguid=i0aceb0070000017375adf918c12cc848&srguid=i0ad6a473000001770b9e8f28c43765db&spos=3&epos=3&td=91&crumb-action=append&context=40&lang=en>.
 60. Xiaodong Ding, *Law According to the Chinese Communist Party: Constitutionalism and Socialist Rule of Law*, 43(3) MOD. CHINA 322-52 (2017), *available at* <https://journals.sagepub.com/doi/pdf/10.1177/0097700416686731>.

61. Article 28 of Order of the State Council of the People's Republic of China No. 723 provides: "The Implementing Regulations of the Foreign Investment Law of the People's Republic of China" (adopted at the 74th Executive Meeting of the State Council on December 12, 2019; came into effect on January 1, 2020).
62. In the same way, the social life was regulated in the USSR and in other socialistic countries up to the collapse of the Soviet Union.
63. Ziwei Zhang, *Foreign Investment and Public-Private Partnerships in China*, 12/1 EUR. PROCUREMENT & PUB. PRIVATE PARTNERSHIP L. REV. 33 (2017).
64. P.R.C. CONST. art. 1.
65. Paragraph 5 of Order (2020) No.3 of the Ministry of Commerce provides: "Working Measures for Complaints Filed by Foreign-Invested Enterprises": Ministry of Commerce and related departments of the State Council will set up the inter-ministerial joint meeting system (hereinafter referred to as the "Joint Meeting") for processing complaints from foreign-invested enterprises to coordinate and facilitate operations concerning complaints from foreign-invested enterprises at the level of the central government, and guide and supervise local authorities in handling complaints from foreign-invested enterprises..., *available at* <http://proxy.library.spbu.ru:2805/maf/china/app/document?&docguid=i0aceb0070000017443e34738ac793c11&hitguid=i0aceb0070000017443e34738ac793c11&srguid=i0ad62833000001770ba660a94bcf4f48&spos=11&epos=11&t d=594&crumb-action=append&context=52&lang=en>.
66. Article 16 of the Rules on Handling Complaints of Foreign-Invested Enterprises provides: "the Agency Handling Complaints shall conduct sufficient communications with the Complainant and the Complainee, collect information, coordinate to handle complaints in accordance with law, and work for an appropriate solution for the complaint," *available at* <http://english.mofcom.gov.cn/article/policyrelease/aaa/202008/20200802997073.shtml>.
67. Rules on Handling Complaints of Foreign-Invested Enterprises, art. 8.
68. D. Harris, *Suing Chinese Companies in US Courts. The Pros and the Cons*, China Law blog, (June 27, 2011), *available at* http://www.chinalawblog.com/2011/06/suing_chinese_companies_in_us_courts_the_pros_and_the_cons.html.
69. FIL art. 20.
70. *Id.*