

China's Trade and Development Policy under the WTO: An Evaluation of Law and Economics Aspect*

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China's economic success and trade expansion since the 1980s is one of the most important economic achievements, which lifted more populations out of extreme poverty than any other time and place in history. This achievement has been made possible by trade-led development policies successfully adopted by China. China also joined the WTO in 2001, after fifteen years of negotiations with its trade partners, and is subject to WTO legal disciplines requiring the transparency of its trade-related decisions and procedures. This article examines China's economic reform, which led to its accession into the WTO, and reviews China's trade and development policies under the WTO. In addition, this article discusses China's participation in the WTO Dispute Settlement Procedure. There has been a concern as to whether China will be compliant with the requirements under the Dispute Settlement Understanding (DSU). The article shows that China has become an active participant and has maintained well under the terms of the DSU.

Keywords: China, WTO, Economic Development, Trade Expansion, Trade and Development, Rule of Law

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1. Introduction

China's breathtaking economic development is one of the most fundamental changes in the postwar world economy. Through the remarkable economic growth, Chinese people could escape from absolute poverty within three decades. A World Bank report shows some 600 million Chinese were taken out of poverty between 1981 and 2004.¹ It was caused by the sustained economic development between 1978 and 2011 during which Chinese economy recorded an annual GDP growth rate of 9.89 percent in average.² Through successful economic development, China became the second-largest economy in 2010 and the largest trading nation by 2013.³ In terms of per capita income, China also has become a respectable upper-middle-income country, as classified by the World Bank,⁴ with the GNI per capita of USD 7,590 as of 2014.⁵

China owes much of its economic growth to the successful expansion of trade. From 1980 to 2012, China's annual trade increase was 15.6 percent, exceeding its annual economic growth rate.⁶ It shows the expansion in international trade was leading economic growth. China has also adopted the growth strategy of outward-orientation and expanded trade.⁷ As a result of sustained trade expansion, China became the world's largest exporter of merchandise goods and the second largest importer of merchandise goods and commercial services (excluding intra-EU trade) in 2013.⁸ China's trade is expected to keep expanding, which would, by 2030, account for 15 percent of world exports.⁹ China is indeed the factory and (more recently) the market of the world,¹⁰ an acclaim that such hegemonic countries as Britain and the US once had in history. This fast economic growth was, however, slowing down to 7.4 percent by 2014.¹¹ It was a little lower than the annual growth for the previous decades, but still very robust. Few economists expect that China will soon step down from its position as a major engine of world's economy and trade.¹²

This research will review and evaluate China's economic development and trade policies under the WTO. This paper is composed of four parts including a short introduction and conclusion. Part two will discuss China's economic reform prior to its accession into the WTO in 2001. That part will particularly examines China's commitments under the WTO and the resulting compliance issues. Part three will analyze the major characteristics of China's industrial and trade policies.

Some of China's current trade and development initiatives, such as One Belt, One Road ("OBOR") initiative and the Shanghai Free-Trade Zone ("FTZ"), are also examined.

2. China's Foreign Trade Initiatives: From the 'Open Door' to the WTO

A. Trade Reforms under Deng Xiaoping

When the People's Republic of China was established in Mainland as a socialist country in 1949, the Chinese government began initiating the state-planned socialistic economy. In 1978, Chinese leadership under Deng Xiaoping gradually introduced a market component as a series of reforms.¹³ This "reform and open door" policy introduced a number of reform measures to decentralize international trade¹⁴ which had been under the state control.¹⁵ These measures included: (1) extension of 'trading rights,' which had been exclusively vested with the state; (2) liberalization of import and export prices; (3) introduction of tariff and nontariff trade measures compliant with the international practice; (4) devaluation of the Chinese currency (Renminbi); and (5) provision of incentives for foreign investment and allowance of trade by foreign-funded firms.¹⁶ The state still controlled much of economy, but these reforms introduced a substantial market element allowing some private sector autonomy in international trade.¹⁷

Among the most significant reform measures was the diversification of trading rights. Before the reform, only twelve specialized corporations were granted exclusive trading rights.¹⁸ At that time, central state planning controlled trading arrangements. As the reform progressed, however, trading rights were granted to additional domestic companies; by 2001, over 35,000 companies obtained foreign trade licenses, and by then, their trade was no longer subject to state planning.¹⁹ In addition, tariffs and non-tariff measures, the conventional tools of the market economy to regulate trade, replaced import planning. The average tariff rates were very high in the beginning - 56 percent in 1982.²⁰ These rates have been systematically reduced, down to the average MFN rate of 15 percent by 2001.²¹

Licenses and quotas were also adopted to regulate international trade and replaced state planning in trade. As trade has continued to be liberalized since the

early 1980s, the extent of commodities subject to licensing restrictions accounted for only 8.5 percent of all imports.²² A series of legal developments has also shown China's transition from administrative control to the "rule of law" in the governance of international trade.²³ China adopted laws and regulations governing international trade in the late 1990s, such as the 1997 Anti-dumping Regulations, the 1999 Provisional Regulations on Government Procurement, and the 1999 Competitive Bidding Law.²⁴

B. China's Commitments under the WTO

China initiated economic reform in the 1980s and promoted it throughout the 1990s via substantial economic integration with the rest of the world. However, it took fifteen years for China to join the WTO. This delay was caused primarily by the widespread concern among the WTO Members, including the US and the EU, about the substantial impact that China, with massive economic and trade capacities, would have on their trade and economies. They expected their own domestic industries to face intense competition from China's large export industries as a result of China's accession into the WTO. China's reduced but still substantial state involvement in the economy was another concern as the state provides key support for export industries under its ownership or control. These concerns led to broader and stricter terms of accession than any other Member had to accept.²⁵

China made a series of commitments, as a condition to the WTO accession, such as improved market access for imports, including further reductions in tariff and nontariff barriers; extension of trading rights to both foreign and domestic firms; greater market access in the areas of telecommunication, banking, and insurance; grant of direct distribution rights within China; and greater protection of intellectual property rights. Moreover, China agreed to substantial 'transparency commitments,'²⁶ including publication of trade-related laws, regulations, and other measures.²⁷ This transparency obligation was extended to China's rule-making process which committed China to grant a reasonable period of time for the general public to provide a comment before implementing new trade-related laws, regulations, and measures.²⁸ Additional WTO-plus transparency obligations were addressed for China, including the creation of a single inquiry point with a pre-set timeframe for response²⁹ and a special Transitional Review Mechanism for

China.³⁰

Lardy noted: “The scope and depth of China’s market access commitments compare favorably with those of other WTO members.”³¹ The extent of China’s commitments exceeded those of most other countries that had joined the WTO.³² China agreed to discriminatory treatment under the WTO-plus obligations such as product-specific safeguard measures applicable only to the imports from China.³³ China viewed these commitments as a price for integrating itself into the global trading system which, in turn, would grant China market access and the MFN terms for further trade expansion and economic development. As the implementation of such extensive commitments would cause difficulties, however, commentators have raised doubts about China’s capability of meeting its far-reaching obligations.³⁴

C. Compliance Issues

Two important structural impediments to China’s compliance of its commitments under the WTO have been observed. One was “the less than fully developed state of domestic institutions, especially the legal system supporting the market,”³⁵ and the other was the independent powers of provincial and local governments, which were extensive on economic issues. The local autonomy, which is inevitably given the vast size of the country, may impede the implementation of WTO commitments, even if the central people’s government was fully committed to the implementation of those commitments.³⁶ China, unlike the US or Brazil, is not a federal state, so that the will of the central government in Beijing should be implemented at any local level. Nevertheless, the huge territory encompassing the population of over 1.3 billion could make the task of consistent implementation of the WTO obligations over the country very difficult, if not entirely impossible.

Given this structural difficulty, China has made considerable efforts to implement its obligations and commitments under the WTO in the years immediately before and after accession, showing its willingness to integrate. China has positively reviewed its own implementation record since the WTO accession. Shouwen Wang, Minister of Commerce of China, stated in the 2014 Trade Policy Review session that: “China has one of the best track records of implementing WTO rulings ... [S]ince its accession to the WTO, China has actively assumed its due responsibility as a major developing trading nation.”³⁷ Before this review, the Director-General

of the WTO had already concluded that China's five year's compliance record deserved an 'A+' mark in 2006.³⁸ Given the unprecedented width and depth of China's commitments under the WTO,³⁹ it appears that China has made significant efforts to implement the commitments.

However, according to some other Members, China's implementation record is rather a mixed one. The 2014 Trade Policy Review for China raised major concerns about China's compliance, including: the role of state-owned enterprises ("SOEs") and government involvement in economic activities with respect to the allocation of resources; China's anti-dumping ("AD") investigation practices and measures; and transparency.⁴⁰ Several countries, including the US, Switzerland, Norway, the EU, Canada, and Australia, also shared the view that the SOEs in China tend to benefit from the provision of cheap inputs and credit from the Chinese government.⁴¹ These Members pointed out that such kind of government intervention affects the allocation of resources and the competitive conditions of companies in and outside China.⁴²

China's AD investigation practices are another issue that raises concern among Members. Several Members have raised issues regarding transparency of injury determinations by China's Ministry of Commerce ("MOFCOM") and the standards used for those determinations, including margin calculations. The US observed:

[The] pattern of conduct by China's Ministry of Commerce ... seemed to be a reflexive resort to domestic trade remedy investigations and duties in response to legitimate actions taken by the United States or other trading partners under their trade remedies laws. We explained that this type of apparently retaliatory conduct, which is specifically provided for under Chinese law, is at odds with fundamental WTO principles, and that the WTO's dispute settlement mechanism, not the immediate initiation of a new trade remedy investigation, is the appropriate means to try to resolve concerns about a trading partner's actions.⁴³

Several Members have also raised concerns about China's implementation of transparency obligations. The US stated that the lack of available translations can create significant challenges when trying to understand and navigate China's trade and investment regime, noting the Secretariat's concern about its inability to conduct the review because underlying documents were not available for various

reasons or were only available in the Chinese language without translation.⁴⁴ The EU also emphasized: "Given the important role the Government plays in the Chinese economy, the need for China to comply with its obligations is all the greater."⁴⁵

D. China's Participation in the WTO Dispute Settlement Process: From Passive Rule-Taker to Active Player with a Leadership Potential

China, having been excluded from the Uruguay Round negotiations, did not have an opportunity to participate in the rule-making of the WTO. From the launch of the WTO to its accession into the WTO in 2001 as well as for several years since then, China remained largely as a rule-taker unable to affect the regulatory environment of the WTO that has significant impact on China's trade interests. The stringent terms of China's WTO accession⁴⁶ reflected this reality. As discussed earlier, China accepted these terms and the existing WTO rules that would constrain its policy space in trade and economy, in return for market access that China considered essential for continuing economic development. Given China's importance and influence in world trade and economy, however, it was unlikely that China would remain as a rule-taker for long.

China's passive stance indeed changed around 2006 when it began to participate in the WTO dispute settlement procedure in a significantly increased number.⁴⁷ The WTO mandates a trade dispute under the Dispute Settlement Understanding ("DSU").⁴⁸ A Member is not permitted to retaliate unilaterally against a trade rule violation⁴⁹ and is required to refer the matter to the WTO Dispute Settlement Body ("DSB") for adjudication.⁵⁰ The decisions of the WTO DSB, which adopt the recommendations of dispute settlement panels and the Appellate Body,⁵¹ determines the way in which the WTO rules are interpreted and applied. Also, by actively participating in the WTO dispute settlement process, a Member may indeed become an active player protecting its own trade interests.

China has adopted this path. According to the WTO record, China participated in 13 cases as a petitioner, 34 cases as a respondent, and 130 cases as a third party participant.⁵² This number is remarkable, considering that China's WTO accession was 15 years later than most other Members. For the past fifteen years, China participated in more trade dispute cases as a direct party (i.e. a petitioner or a respondent) than some of the other major trading nations and inaugural WTO

Members, such as Japan, and South Korea.⁵³ Only Canada, the US, and the EU have more trade dispute cases than China has.⁵⁴ China's participation in the WTO dispute settlement system is expected to increase for the coming years.

China has fared well in the WTO dispute settlement process; it prevailed in its first dispute case as a petitioner in 2002 against the US,⁵⁵ leading to the withdrawal of safeguard measures on steel products. It has recently won several cases against the US with respect to the latter's AD and CVD measures on exports from China.⁵⁶ Even some of the losses that China sustained in the WTO dispute cases were beneficial to China in the sense that those helped China to revise its trade policies and strategies. In a trade dispute that involved rare earth minerals,⁵⁷ China's export restrictions on certain minerals in order to secure supplies for its own industries were not endorsed by the WTO, although one might consider that such protection could be a legitimate national interest.⁵⁸ Although China argued that the export restrictions were also necessary to protect its environmental interests, they were not upheld due to ambiguities in China's laws and regulations.⁵⁹ The outcome of this case would help China to devise an industrial policy which will better comply with its obligations under the WTO rules and streamline its laws and regulations for improved clarity and certainty.

China's stance in the WTO dispute cases will also have a systematic effect on the WTO. The world's largest trader's active participation in the WTO dispute settlement procedure will help maintain the legitimacy of the dispute settlement process, which is among the most important roles of the WTO. Its compliance with the DSB decisions will be the key to maintaining the stability of the international trading system. China has indeed become an active WTO player and no longer a passive rule-taker. Coupled with its increasing involvement and leadership in other trade forums such as regional trade agreements ("RTAs"), as discussed below, China is expected to play an essential role in leading international trade potentially competing with the existing gigantic traders such as the US.⁶⁰ The prospect of competing for the leadership set aside, the focus of China, still being a developing country with lower per-capita income than the other developed countries,⁶¹ remains continued economic development.

3. China's Trade Policies in the Context of Economic Development

A. 'Gradual' Liberalization

The single undertaking approach under the WTO and China's WTO-plus commitments reflected the Washington Consensus.⁶² The major concerns about China's compliance with its obligations and commitments also revolve around the extent to which the Chinese government has been involved in its economic development. Direct government control over the economy has been diminishing, but China's SOEs continue to dominate a number of sectors, such as petroleum and mining, telecommunications, utilities, transportation, and various other industrial sectors, including those investing overseas.⁶³ A range of state-led industrial policies have frequently been used for economic development purposes. Critics opined: "Market opening measures going beyond the accession obligations no longer occur, apart from certain cautious liberalization steps in the capital markets."⁶⁴ However, the old divide between the market-driven economic policies and those controlled by the state seems to have been blurred with the emergence of New Development Economics ("NDE"). NDE has recognized the utility of market on the one hand, while it advocated the complementary role of governments and markets on the other,⁶⁵ which would support the government industrial policies adopted in China utilizing the market. The gradual sequencing of economic reform was another important feature of China's approach to development. Wang noted:

Liberalization of FDI in manufacturing industry in coastal regions was carried out at the earliest stage. When market infrastructure and modern corporate governance was roughly established, FDI liberalization was then extended to inland regions and to more industries. Financial liberalization was started only after China built a comprehensive banking system and accumulated relatively large foreign exchange reserve to fend off reversal of capital flows.⁶⁶

In this gradual approach, "government attitudes have been pragmatic and open to trying new approaches when old ones fail."⁶⁷ It is consistent with Rodrik's point about the industrial policy:

The usual criticism of industrial policy is that government cannot pick winners

and, therefore, should not try. However, this is not the right way to think about industrial policy. In environments that are rife with uncertainty and with technological and informational spillovers, markets under-provide investment in non-traditional products. The appropriate role for industrial policy is to fill in this market incompleteness by subsidizing investment in new products. It is given that not all of these additional investments will prove to be socially profitable. Good industrial policy is not that ‘only winners should be picked’ (an impossible task) but that ‘losers should be let go’ (a much less demanding and more doable task).⁶⁸

Trade liberalization was also a part of the reform package. Even during the 2008 Financial Crisis, China did not turn back on the continued trade liberalization policy, but took a flexible approach to facilitate trade and.⁶⁹

B. Moving Up on the Global Value Chains

The contribution of China’s trade expansion may have been reduced for its low position in the global value chains (“GVCs”).⁷⁰ The OECD’s 2015 report comments on China’s relatively low position in GVCs:

While China became the world’s largest exporter – and the world’s second largest importer – of merchandise in 2012, when measured in value added terms, China’s share was lower. Indeed, the domestic value added content of China’s exports was 67% in 2009, below the OECD average (76%), and the second lowest in the G20. This reflects China’s role in GVCs mainly as an assembler, engaging in relatively low value added activities.⁷¹

As China approaches the limits of export-dominated growth (based on export quantities), as reflected in its recent slowing growth rate, efforts to move up in the GVCs and thus boost growth are of particular importance. It is expected that China would try to improve its position in GVCs by moving to more high-tech production through increased R&D spending.⁷² Given China’s technology and research capacities, as well as the industry’s adaptability, the improvement is likely to be made in the near future. Also, China’s current effort to diversify its economic trade portfolio into new areas such as services and investment will contribute to upgrading its maturing economy.⁷³ The WTO legal disciplines in these areas, promoting cross-border transactions by prohibiting arbitrary restrictions, would facilitate China’s efforts.

C. China's Initiatives on RTAs and Additional Economic and Trade Integration

China's interest in RTAs, sanctioned under GATT Article XXIV, and its willingness to participate in the rule-making process for international trade are well reflected in the 2014 address by President Xi Jinping:

China needs even more opening-up to address problems in economic and social development. China must accelerate the FTA strategy and make FTAs play a bigger role in trade and investment. Accelerating the FTA strategy is an important way for China to actively participate in the rule-making of international economic and trade areas.⁷⁴

Following the WTO accession in 2001, China continued efforts to integrate with the global economy by concluding fourteen RTAs, including thirteen free trade agreements ("FTAs") and one preferential trade agreement.⁷⁵ As of November 2015, China was negotiating seven additional FTAs.⁷⁶ Among the latter, the Regional Comprehensive Economic Partnership ("RCEP") is the most substantial, with participation from sixteen Asian-Pacific countries.⁷⁷ The main objectives of China's RTA drive are lowering tariffs, improving market access to export markets, and strengthening economic ties with its trade partners.⁷⁸ RTAs with China, offering access to China's vast market, are a useful card for China to play in strengthening bilateral ties, as the US bilateral FTAs did in the Latin American context.⁷⁹

In addition to the RTA drive, China has been promoting new trade and development projects, such as the "One Belt, One Road" initiative and the Shanghai Free Trade Zone ("FTZ"). The OBOR initiative, inspired by the ancient trade pathways between China and Europe (Silk Road), refers jointly to the "Silk Road Economic Belt" and the "21st Century Maritime Silk Road."⁸⁰ The OBOR initiative, announced in 2013, calls for the integration of the region located on the original Silk Road (Central-West Asia, the Middle East, and Europe under the Silk Road Economic Belt) and the ancient maritime trade route (Southeast Asia, Oceania, and North Africa under the 21st Century Maritime Silk Road) into a cohesive economic area through building infrastructure, increasing cultural exchanges, and broadening trade.⁸¹ It is a massive initiative across more than sixty countries and regions, with a total population of 4.4 billion.⁸² China set up a USD 40 billion fund to support this initiative.⁸³

The Shanghai FTZ is intended to promote only international trade, but will be a testing ground for further economic reform.⁸⁴ It adopts a negative list approach to regulate foreign investment (i.e., investment authorized unless specifically listed as prohibited or restrained), with a streamlined process for foreign investment project filings through “a single window” for registration.⁸⁵ Additional reforms, such as interest rates liberalization within the FTZ, overseas commodity entry into the zone without duty and customs clearance, freeing of cross-border financial flows, and trading of the Renminbi (China’s currency) with less control, are scheduled under this initiative. This experimental reform is carried out as a pilot effort to facilitate business investment.⁸⁶ If these innovative measures successfully implemented in the FTZ, including a fully convertible currency and open capital markets, they may be implemented in the rest of China, just as the economic policies successfully adopted in the SEZs decades ago spread out to the other parts of the country.⁸⁷ The direction of this reform will also be consistent with China’s effort to reduce the role of the government and SOEs in the economy, allowing the market to play a predominant role in resource allocation,⁸⁸ as preferred by other WTO Members.

4. Conclusion

China’s remarkable economic development since the 1980s is one of the most successful achievements in its modern history, lifting hundreds of millions of people out of absolute poverty.⁸⁹ Such an economic miracle was facilitated by rapid expansion of trade, subsequently aided by China’s accession into the WTO in 2001, which granted China the needed market access for its continued growth in trade and economy. China’s trade and development strategy is another success story following that of South Korea, Taiwan, Singapore, and Hong Kong (the former British colony that became China’s self-governing territory in 1997). China’s integration into the global economy worked as a growth engine for the domestic economy.⁹⁰

In China, both trade protection and export promotion have been adopted simultaneously in the development process. This path was a successful policy option implemented in the past in other developing economies, such as South

Korea and Taiwan. Most development economists recognize that there are no generalizable theories of determinants of economic growth and that feasible policy options are shaped and constrained by the particularities of each country's history, politics, and culture.⁹¹ The successful development process of China revealed a pattern of strong state involvement in the market in the early stages of economic development, followed by the liberalization of economy and trade in the later stages.⁹² China's extensive commitments under the WTO are testaments to its latter efforts, which further improved the efficiency and transparency of China's economy.

China faces further tasks. For maturing its economy, above all, there is a call for advanced institutions essential to a sophisticated market economy. These institutional reforms will be necessary to resolve concerns expressed by some WTO Members about lack of transparency on China's trade-related decisions and processes. Here, institutions not only refer to physical organizations, but include both formal and informal rules and practices.⁹³ Well-structured institutions will indeed enhance the security and predictability of economic transactions and reduce risk premium. A critical element of the necessary institutions will be the rule of law, which is the prerequisite to meet domestic demand for transparent governance. It is required to meet the WTO commitments because, without the consistent rule of law, to ensure consistent and coherent implementation of the commitments will be difficult. To fulfill this need, reform is being undertaken in the area of legislation. A recent amendment on China's Legislation Law puts restriction on delegated legislative authority, enhances transparency, and provides for public comments for new legislation.⁹⁴ Rules have been set up to require the WTO-compliance review for government agencies,⁹⁵ and interim rules have been devised to ensure compliance with the WTO DSB decisions on trade remedy cases.⁹⁶ Institutional and regulatory reforms will help China continue economic development and improve compliance with its WTO obligations.

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36. *Id.* at 148.
37. WTO, Trade Policy Review – China, Minutes of the Meeting, WT/TPR/M/300 (Aug. 26, 2014), ¶¶ 2.25 & 2.33, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=126734&CurrentCatalogueIdIndex=0&FullTextHash=371857150 (last visited on Aug. 5, 2016).
38. *Re-cited from* Yu & Liu, *supra* note 32, at 341. The author noted: “The Chinese implementation of WTO commitments in many areas has set a good example. China’s agricultural tariffs are today lower than most developing countries; they are even lower than some developed countries such as the European Union or Japan. China also provides less trade distorting subsidies than that of the United States or the EU. Or on industrial tariffs which are today the lowest in developing countries.” *See supra* note 13, at 203.
39. *Supra* note 32.
40. *Supra* note 37.
41. *Id.*
42. *Id.*
43. USTR, *U.S. Statement at the WTO Trade Policy Review of China*, July 1, 2014, available at <https://geneva.usmission.gov/2014/07/01/u-s-statement-at-the-wto-trade-policy-review-of-china> (last visited on Aug. 5, 2016).
44. *Supra* note 37, ¶¶ 4.110 & 4.111. Gaps have also been reported in the SPS and TBT fields. *See id.*
45. *Id.* ¶ 4.101.
46. For details on the terms, *see* Accession Protocol, *supra* note 26
47. China has brought 12 out of 13 complaints to the WTO Dispute Settlement Body since 2006. *See* K. Thomas, *China and the WTO Dispute Settlement System: From Passive Observer to Active Participant?*, 6 GLOBAL TRADE & CUSTOMS J. 481-90 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1866259; Zhuang Wei, *An Empirical Study of China’s Participation in the WTO Dispute Settlement Mechanism: 2001-2010*, 4 L. & DEV. REV. 218-46 (2011), available at <http://www.degruyter.com/view/j/ldr.2011.4.iss-ue-1/1943-3867.1130/1943-3867.1130.xml> (all last visited on Aug. 5, 2016).
48. The WTO Understanding on Rules and Procedures Governing the Settlement of Dispute (Dispute Settlement Understanding or “DSU”) provides the rules for the settlement of disputes among the WTO Members. *See* Marrakesh Agreement Establishing the World Trade Organization (hereinafter WTO Agreement), Annex 2, available at <http://www.wto>.

- org/english/docs_e/legal_e/04-wto.pdf (last visited on Aug. 5, 2016).
49. Some unilateral measures, such as trade remedy measures such as AD measures, CVD measures, and safeguard measures, are approved under the relevant WTO rules. For details, see Reclaiming Development, chs. 3 & 4.
 50. *Supra* note 48.
 51. *Id.* The recommendations of the panels and the Appellate Body are adopted by the WTO DSB unless there is a consensus contrary to the adoption (Reverse Consensus). This means that the decisions of the panels and the Appellate Body (if appealed) will almost always be adopted by the DSB.
 52. WTO, Dispute Settlement: Disputes by country/territory, available at https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (last visited on Aug. 5, 2016).
 53. *Id.*
 54. *Id.*
 55. *United States-Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS252/R (Panel Report, July 11, 2003) & WT/DS252/AB/R (Appellate Body Report, Nov. 10, 2003), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds252_e.htm (last visited on Aug. 5, 2016).
 56. Wei, *supra* note 47, at 235.
 57. *China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum* (China -Rare Earth), WT/DS433/R (Panel Report, Mar. 26, 2014) & WT/DS433/AB/R (Appellate Body Report, Aug. 7, 2014), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds433_e.htm (last visited on Aug. 5, 2016).
 58. *Id.* See also R. Jebe, D. Mayer, & Y.S. Lee, *China's Export Restrictions on Raw Materials and Rare Earths: A New Balance between Free Trade and Environmental Protection?*, 44 GEO. WASH. INT'L L. REV. 579-642 (2012).
 59. *China-Rare Earth*, *supra* note 57.
 60. Reflecting on this sentiment, US President Obama, declaring 'pivot' to the Pacific, stated: "If we don't write the rules for free trade around the world, guess what, China will. And they'll write those rules in a way that gives Chinese workers and Chinese businesses the upper hand." See P. Koring, *China will have to play by TPP rules to join world's biggest free-trade league*, GLOBE & MAIL, July 29, 2015, available at <http://www.theglobeandmail.com/news/world/china-will-have-to-play-by-tpp-rules-to-join-worlds-biggest-free-trade-league/article25769349> (last visited on Aug. 5, 2016).
 61. *Supra* note 4.
 62. M. Trebilcock, *Between Theories of Trade and Development: The Future of the World Trading System*, University of Toronto Law Working Paper Series, No. 2014-10 (July 24, 2014), at 11, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2473158 'Washington Consensus,' the phrase coined by John Williamson in 1989, refers to a set of policies representing the lowest common denominator of policy advice being addressed

by Washington-based institutions. See Global Trade Negotiations, Center for International Development at Harvard University, available at <http://www.cid.harvard.edu/cidtrade/issues/washington.html> (all last visited on Aug. 2016).

63. W. Morrison, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*, Congressional Research Service, RL33534 (Aug. 21, 2014), at 25, available at <http://www.css.ethz.ch/en/services.html?lang=en&id=182601> (last visited on Aug. 5, 2016).
64. H. Hilpert, *China's Trade Policy: Dominance without the Will to Lead*, SWP Research Paper (Jan. 2014), at 17, available at https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2014_RP01_hlp.pdf (last visited on Aug. 4, 2016).
65. Trebilcock summarized this point:

By the late 1990s, the consensus in development economics had shifted dramatically. The Washington Consensus was agreed to have often been a failure and two principal paths forward have emerged... A more promising approach is represented by the New Development Economics (NDE) which eschews truisms such as "getting institutions right" and represents a break with big-picture paradigms that advance one-size-fits-all solutions. Drawing on the neoclassical paradigm, it recognizes that markets are not nearly as inefficient as the early structuralists believed; rather the fundamental principle of rational responses to incentives continues to organize economic behavior. Further, with the rise of the New Institutional Economics, the distinction between government and markets has become blurred - each operating via similar fundamental mechanisms. As such, NDE advocates a complementary role for governments and markets, finding both to be susceptible to failures in coordination, imperfect information, and agency problems.

See Trebilcock, *supra* note 62, at 9.

66. *Supra* note 13, at 209-10.
67. *Id.* at 208-9. This is of course contrary to the neoliberal prescriptions for economic development, which would emphasize free markets and enterprises. However, there is a case for national industrial policy. For details, see *Reclaiming Development*, ch. 1.4.
68. D. Rodrik, *What's So Special about China's Export?*, 14 *CHINA & WORLD ECONOMY* 17 (2006), *re-cited from supra* note 13, at 210-1.
69. The 2009 WTO Director-General Report pointed out:

China reportedly increased VAT rebates on its exports of some textiles and clothing and bamboo products, plastics and furniture on 1 November 2008, thereby partially removing implicit export taxes (in the absence of a full VAT rebate). It increased tax rebates on exports of about 3,770 items on 1 December 2008. From 1 February, import tariffs and VAT on 1,730 tariff lines (8-digit HS) will be refunded if these items are bound for re-export... The auto industry has been hit particularly hard by the slowdown, and government support packages have been provided or are under consideration in a number of countries... China announced, inter alia, a reduction of sales tax for certain cars, a subsidy of ¥5 billion for the purchase of modern vehicles by farmers, an allocation of ¥10 billion over the next three years for the development of clean cars, and the loan by the Export and Import Bank of about USD 1.45 billion to an automobile company.

See WTO, *Report to the TPRB from the Director-General on the Financial and Economic Crisis and Trade-Related Developments*, JOB(09)/2 (Jan. 23, 2009), at 6-7, available

- at <http://www.iatp.org/documents/report-to-the-tprb-from-the-director-general-on-the-financial-and-economic-crisis-and-trad> (last visited on Aug. 4, 2016).
70. The value chain describes “the full range of activities that firms and workers do to bring a product from its conception to its end use and beyond. This includes activities such as design, production, marketing, distribution and support to the final consumer.” See Global Value Chains Initiative (Duke University), *available at* <https://globalvaluechains.org/concept-tools> (last visited on Aug. 5, 2016). Thus the term global value chains are used where these activities are conducted across national borders
 71. *Supra* note 9, at 24.
 72. China's Gross Expenditures on Research and Development (GERD, PPP) in 2014 was estimated at USD 284 billion, the second largest in the world following the US (USD 465 billion). China is expected to surpass the US in R&D spending by year 2022. See *2014 Global R&D Funding Forecast*, BATTELLE AND R&D MAG. 5&7 (Dec. 2013), *available at* http://www.battelle.org/docs/tpp/2014_global_rd_funding_forecast.pdf (last visited on Aug. 5, 2016)
 73. Xiaoming Pan, *China's FTA Strategy*, DIPLOMAT, June 1, 2014, *available at* <http://thediplomat.com/2014/06/chinas-fta-strategy> (last visited on Aug. 5, 2016).
 74. Jianfeng Zhang, *China's Xi Demands Accelerated FTA Strategy*, CCTV, June 14, 2014, *available at* <http://english.cntv.cn/2014/12/06/ARTI1417863011411748.shtml> (last visited on Aug. 5, 2016).
 75. PRC Ministry of Commerce, China FTA Network, *available at* http://fta.mofcom.gov.cn/english/fta_qianshu.shtml (last visited on Aug. 5, 2016).
 76. *Id.* Despite resemblance to the best FTA practices in Asia, such as the US-Korea and the EU-Korea FTAs, the level of liberalization in China's FTAs is not so comprehensive in terms of coverage and depth. There is still considerable scope for China to develop its FTAs. See *supra* note 73.
 77. These countries include China, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Viet Nam, Australia, India, Japan, South Korea, and New Zealand.
 78. The political consideration was also relevant to other RTAs such as the US-Korea FTA. For details, see Yong-Shik Lee, *The Beginning of Economic Integration between East Asia and North America? – Forming the Third Largest Free Trade Area between the United States and the Republic of Korea*, 41 J. WORLD TRADE 1091-123 (2007); Y.S. Lee, J.M. Lee, & K.H. Sohn, *The United States - Korea Free Trade Agreement: Path to Common Economic Prosperity or False Promise?*, 6 U. PENN. EAST ASIA L. REV. 111-62 (2011), *available at* <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1051&context=earl> (last visited on Aug. 4, 2016).
 79. *Id.* See also Reclaiming Development, ch. 12.
 80. For details, see PRC State Council, The Belt to Road Initiative, *available at* <http://english>.

- gov.cn/beltAndRoad (last visited on Aug. 5, 2016).
81. It was reported that Chinese companies had signed 1,401 project contracts worth USD 37.6 billion in countries along its OBOR initiative in the first half of the year, nearly half of the combined overseas contract value for Chinese companies. *See China Signs 1,401 Project Contracts under Silk Road Initiative*, HINDU, July 21, 2015, available at <http://www.thehindu.com/business/Economy/china-signs-1401-project-contracts-under-silk-road-initiative/article7447694.ece> (last visited on Aug. 5, 2016).
 82. *Id.*
 83. *Id.*
 84. Pansy Yau, *Shanghai Free Trade Zone: Model for China's Future Economic System*, HKTDC Research (Nov. 21, 2014), available at <http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Shanghai-Free-Trade-Zone-Model-for-China-s-Future-Economic-System/tp/en/1/1X000000/1X0A02O6.htm> (last visited on Aug. 5, 2016).
 85. *Id.* Investment projects in the sectors not included in the negative list are no longer required to apply for government verification.
 86. China ranks at 84th place in the World Bank Report Doing Business. *See* World Bank, *Doing Business 2016*, available at <http://www.doingbusiness.org/rankings> (last visited on Aug. 5, 2016).
 87. M. Shuman, *Shanghai Has a Free-Trade Zone, so Now What?*, TIME (Asia), Sept. 30, 2013, available at <http://business.time.com/2013/09/30/shanghai-has-a-free-trade-zone-so-now-what> (last visited on Aug. 5, 2016).
 88. For details on China's SOE reform, *see generally* J. HASSARD ET ALS., *CHINA'S STATE ENTERPRISE REFORM: FROM MARX TO THE MARKET* (2007).
 89. *Supra* note 1.
 90. *Supra* note 64.
 91. *See generally* D. RODRIK, *ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH* (2009).
 92. *Supra* note 50.
 93. Douglas North described 'institution' to mean "the humanly devised constraints that structure political, economic and social interaction" which "consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)." *See* D. North, *Institutions*, 5 J. ECON. PERSPECTIVES 97 (1991), *re-cited from* Yong-Shik Lee, *Call for a New Analytical Model for Law and Development*, 8 L. & DEV. REV. 8 (n. 34) (2015).
 94. Qiu Shi, *China: Law on Legislation Amended*, Library of Congress Global Legal Monitor, July 8, 2015, available at <http://www.loc.gov/law/foreign-news/article/china-law-on-legislation-amended> (last visited on Aug. 5, 2016).
 95. PRC General Office of State Council, *Notice on Further Strengthening the Compliance Review of Trade Policies*, June 9, 2014, available at <http://www.gov.cn/zhengce/content/2014-06/>

17/content_8887.htm (last visited on Aug. 5, 2016).

96. PRC Ministry of Commerce, Provisional Rules on the Compliance of WTO Trade Remedies Case Report, July 29, 2013, *available at* <http://www.mofcom.gov.cn/article/b/fwzl/201307/20130700219044.shtml> (last visited on Aug. 5, 2016).

