WILL CHINA REDEFINE INTERNATIONAL TRADE NORMS?

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ABSTRACT

China has joined most global institutions and accepted a cornucopia of international norms. As it rises, China has started assuming the responsibilities that come with its great-power, promoting global governance amid surging anti-globalization sentiments. Does this signal that China has embraced the international trade norms dominated by the western powers? Alternatively, will China redefine international trade norms? This article examines China's trade behaviors, particularly after it joined the World Trade Organization (hereinafter "WTO"), intending to elucidate these issues. In light of prevailing domestic politics and international relations, the article finds that China's attitude towards the international order and international norms is evolving. With respect to compliance with the existing norms, it has exhibited the following approaches to WTO rules: honoring its commitments, using international trade rules to its advantage, and actively participating in the making of new rules. China's trade behaviors have charted a course showcasing China's journey from a rule-taker to a trade rule-rider and trade rule-maker. While some observers suggest that China will become a trade rule-shaker, this article takes the view that there is a compelling reason to argue that

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it is redefining itself as a trade rule-maker by reshaping rules and tactically giving new meaning to the existing norms.

KEYWORDS: *China, international trade norms, compliance, global governance*

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I. INTRODUCTION

Historically, China has avoided most international affairs and shunned most international norms.[1] During Mao's era, recognizing the legitimacy of international institutions and norms dominated by Western countries was alien and unacceptable.[2] Under Deng Xiaoping's leadership, however, China decisively departed from isolationism and gradually embraced much of the current cornucopia of international institutions, rules, and norms. This can be best exemplified by its accession to the World Trade Organization (hereinafter "WTO"). Even as international observers closely observe China's international trade behavior, there are three questions remain unanswered. First, has China truly embraced international trade norms heavily influenced by the West—and if so, in what way?[3] Second, will the ongoing international trade rule-making cohere with China's aspiration to play a leading role in global economic governance? Third, under the leadership of President Xi Jinping, China is assiduously promoting and implementing the grand Belt and Road Initiative (hereinafter "BRI") under the vision of a "Community of Shared Future for Mankind,"[4] which, juxtaposed with a rising isolationist sentiment in other parts of the world, raises the final question: is China going to take on the responsibilities that come with its great power and promote global governance?[5]

To address these questions, this article examines and interprets China's behavior since its accession to the WTO, and further expounds on its implications. Details are as follows.

First, China's perception of the current international economic order will be summarily explained.

Second, this article presents the extent to which China is satisfied with the international trade rules. Since the WTO was regarded as the most successful instance of China's integration into international institutions, this question can primarily be answered by examining China's WTO compliance record. This may be illustrated by two examples. First, one could interpret

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[1] *See generally* Stefan Kroll, *The Emergence and Transformation of International Order: International Law in China, 1860-1949*, 37(1) ASIAN PERSP. 31 (2013).

[2] *See generally* Hungdah Chiu, *Communist China's Attitude Toward International Law*, 60(2) AJIL 245 (1966).

[3] *See, e.g.*, Mark Wu, *The "China, Inc." Challenge to Global Trade Governance*, 57 HARV. INT'L L.J. 1001 (2016); Gregory Shaffer & Henry Gao, *China's Rise: How It Took on the U.S. at the WTO*, 2018(1) U. ILL. L. REV. 115 (2018). *See also* Gregory Shaffer, *How Do We Get Along? International Economic Law and the Nation-State*, 117(6) MICH. L. REV. 1229, 1248-49 (2019); C. Y. Cyrus Chu & Po-Ching Lee, *Three Changes Not Foreseen by WTO Rules Framers Twenty-Five Years Ago*, 53(6) J. WORLD TRADE 895 (2019).

[4] Su Ge, *Xi Jinping's Strategic Thought Guiding Chinese Diplomacy*, 61 CHINA INT'L STUD. 11, 17 (2016).

[5] *See generally* Lai-Ha Chan et al., *Rethinking Global Governance: A China Model in the Making?*, 14(1) CONTEMP. POL. 3 (2008).

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China's behavior in the WTO dispute settlement mechanism (hereinafter "DSM") as revealing its attitudes towards the multilateral trading system. Second, China's increasing role in global governance under the auspices of Asia-Pacific Economic Cooperation (hereinafter "APEC") and G20 and its initiative in creating international institutions reflect its rising ambition in international economic law-making.[6] It is interesting to consider if China will project its influence to define the future of the international trade rules. Two aspects—including, (i) rules and norms and (ii) institutions—will be discussed. With respect to norms, the Regional Comprehensive Economic Partnership (hereinafter "RCEP") will be examined as a counterpart to the Comprehensive and Progressive Trans-Pacific Partnership (hereinafter "CPTPP"). The BRI will also be examined in the context of China's efforts relating to global governance. With respect to institutions, the Asian Infrastructure Investment Bank (hereinafter "AIIB") will be used to illustrate China's ongoing efforts to redefine the international economic order. The rationales behind the Chinese approach will also be discussed before the article proposes a few concluding remarks.

II. CHINA'S ATTITUDE TOWARDS CURRENT TRADE NORMS AND INSTITUTIONS

A. Chinese Perception and Reception of Current Trade Norms

1. Chinese Perception of Current Trade Norms — In an interdependent world, international norms are crucial to any country's national interests within the global economic system. It is no exaggeration to say that the structure of international relations determining the international rules that follow. In China's perspective, although the WTO rules are a result of contentions and compromises between developed and developing countries, it cannot be denied that the major rule-making is still led by the developed world. These rules inevitably represent the interests of the developed countries in their theoretical foundations. Therefore, not all trade norms are reasonable.[7]

For China, the current trade norms can be divided roughly into four categories.

The first one refers to most of the trade norms embodied in WTO agreements. The second one refers to discriminatory rules, such as the

[6] *See generally* Ming-Jiang Li, *Rising from Within: China's Search for a Multilateral World and Its Implications for Sino-US Relations*, 17 GLOBAL GOVERNANCE 331 (2011).

[7] *See* Jing-Yu Yang, *"Rushi" yu Woguo de Fazhi Jianshe* [*Accession to the WTO and the Legal Institution-Building in Our Country*], 3 QIUSHI 170, 171 (2002). (Yang was then Director of the Legislative Office of the State Council. Qiushi is the mouthpiece magazine of the Chinese Communist Party.)

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China-specific rules in China's WTO accession protocol, which set forth the terms and conditions of its WTO entry. China's accession to the WTO has been described as the most difficult one. The long-drawn-out accession process often involved coerced compromises and was sometimes received with frustration by the Chinese public. The Chinese public also saw the imposition of additional obligations on China as being particularly unfair. For instance, in the context of anti-dumping measures, a "market economy clause" in China's Protocol of Accession to the WTO allowed the investigating authority to use an alternative method to calculate the value of Chinese imports and refused to accord China with market economy status immediately.[8] However, the United States (hereinafter "US") and the European Union (hereinafter "EU") refused to recognize China's market economy status after the expiration of the relevant clauses.[9] China's irritation was apparent from the fact that it brought cases against the US and the EU immediately after their refusal.[10]

The third category of trade norms refers to the provisions that allow for various interpretation—and thus are subject to the discretion of influential WTO members. These rules often relate to trade remedies and the use of Special and Differentiated Treatment (hereinafter "S&DT"). In China's view, while the rules relating to anti-dumping and anti-subsidies provide certain safeguards, they were deliberately designed to leave loopholes so that skillful WTO members may easily take advantage of them for their interests.

China sees S&DT as being a mere nominal promise to developing members of the WTO. It noted that "trade remedy rules have failed to exert their due functions or respond to the needs of the development of the multilateral trading system to the detriment of the normal course of international trade" due to "a number of gaps and ambiguities" of the trade remedy rules.[11] Misuse and abuse of trade remedy measures abound. Discriminatory practices based on country-of-origin and types of enterprises have been on the rise. The particular situations of developing Members and small and medium-sized enterprises (hereinafter "SMEs") as well as the

[8] World Trade Organization [hereinafter WTO], Accession of the People's Republic of China: Decision of 10 November 2001 (Protocol on the Accession of the People's Republic of China), WTO Doc. WT/L/432, art. 15 (2001) [hereinafter China Protocol of Accession to the WTO].

[9] Ni Hong-Fu, *Commentary: China's Development Deserves Market Economy Status*, EN.PEOPLE.CN (Dec. 20, 2017, 10:41 AM), en.people.cn/n3/2017/1220/c90000-9306563.html. *See* Jeffrey M. Telep & Richard C. Lutz, *China's Long Road to Market Economy Status*, 49(2) GEO. J. INT'L L. 693, 703-04 (2018).

[10] Request for Consultations by China, *European Union — Measures Related to Price Comparison Methodologies*, WTO Doc. G/ADP/D116/1, G/L/1170, WT/DS516/1 (Dec. 12, 2016); Request for Consultations by China, *United States — Measures Related to Price Comparison Methodologies*, WTO Doc. G/ADP/D115/1, G/L/1169, WT/DS515/1 (Dec. 12, 2016).

[11] WTO, China's Proposal on WTO Reform: Communication from China, WTO Doc. WT/GC/W/773, ¶ 2.14 (2019) [hereinafter China's Proposal on WTO Reform], http://images.mofcom.gov.cn/sms/201905/20190514094326217.pdf.

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public interest are not accorded adequate or appropriate consideration.[12] Instead, developed counties resort to trade remedies to further uphold their protectionist policies and China has often been the target of such measures. China has also complained that most of the S&DT provisions "are best-endeavour clauses in nature and their implementation leaves much to be desired", and demands that "[i]t is crucial for the WTO to safeguard the rights of developing Members to S&DT and make S&DT provisions more precise, effective and operational."[13]

The fourth category of trade norms refers to the rules that are left blank but are highly relevant to trade development and the interests of developing countries. Such rules might govern new types of trade. China considers that "[s]tate-owned-enterprises (SOEs) engaged in commercial competition are equal players in the market as other types of enterprises."[14] However, some Members have indiscriminately labeled all SOEs as "public bodies" within the meaning of the Agreement of Subsidies and Countervailing Measures. This imposed additional transparency requirements and disciplines for SOEs, and discriminated against SOEs in foreign investment security review.[15] Such practices are detrimental to creating an institutional framework for fair competition and, if left unchecked, they would give rise to more discriminatory rules in the future.[16] Commentators have observed that "[t]rade and investment are closely interlinked in today's world underlined by the in-depth development of global value chains. Investment facilitation measures play an increasingly important role in improving the business environment, attracting inbound cross-border investment and promoting trade and sustainable development."[17] However, when making cross-border investments, challenges for businesses include difficulty in connecting to global value chains, which might be caused by limited access to information and high costs of trade financing. To that end, no coordinated international legislation has addressed these challenges.

2. China's Record of Compliance with Current Trade Norms — China's accession to the WTO on 11 December 2001 was a historic event. For the rest of the world, China's admission into the world trading system was a grand experiment. China was a vast and highly populated country with a rapidly growing economy. It was also a country where the State played a major role in resource allocation. At its time of accession, it was not clear if China's economic system would cohere well with the WTO's rules—or even cohere well with its trading partners that generally have market-oriented

[12] *Id.*
[13] *Id.* ¶¶ 2.32-.33.
[14] *Id.* ¶ 2.35. *See generally* Wei-Huan Zhou et al., *Building a Market Economy Through WTO-inspired Reform of State-owned Enterprises in China*, 68(4) ICLQ 977 (2019).
[15] Zhou et al., *supra* note 14, at 34-35.
[16] *See id.*
[17] China's Proposal on WTO Reform, *supra* note 11, ¶ 2.23.

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economies. China's accession was unprecedented—it was of such trading importance that it was admitted despite its economic system's incompatibility with WTO norms.

Given China's large trade volume, some believed that a gigantic trade surge would disrupt the market of other member states of the WTO after China's accession. There were also fears that the rule-based multilateral trading system would be endangered if China ignored the WTO rules. With this apprehension in mind, leading trading partners led by the US and the EU forced China to accept a comprehensive accession protocol with additional obligations. They also kept a close watch on China's compliance record in the WTO—forming monitoring task forces.

This section will explore both China's adherence and non-adherence to international economic norms.

First, China's adherence to international economic norms will be explained by two main rationales: first, adherence to international economic norms benefits China's economy and national interest; second, China has been "shaped", "constructed", "influenced" or "socialized" by international organizations through repeated interactions with other countries and institutions.[18]

On the other hand, China's non-compliance may also be explained by two main rationales. First, compliance is costly and would reduce China's competitiveness in global markets; second, strict compliance would be contrary to the fundamental interest of the Chinese government, which relies on monopolies to control the national economy.[19]

Salient examples illustrating China's compliance and non-compliance (and the rationales mentioned above) include China's (i) submission of information to the Trade Policy Review Body, (ii) improved transparency, (iii) its practice of notifying Committees at the WTO.

(a) China in Trade Policy Monitoring — Trade Policy Reviews (hereinafter "TPR") are mandated in the WTO agreements to examine and evaluate members' trade and related policies periodically. Significant developments that may have an impact on the global trading system are also

[18] International relations theory has different frames for compliance, such as realist, liberalist, and constructivist or institutionalist. Realism views argue that States abide by international norms out of national interests; liberalism theory views argue that cooperation among states is out of their shared ideologies; constructivism or institutionalist views argue that international institutions influence member states through repeated interactions, such as attending the meetings under the same roof, etc. For a general description of the three theories, see Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35(3) MICH. J. INT'L L. 525, 530-33 (2014). An opposing view to Webster's article, see generally Guang Ma & Jiang Li, *A Legalization Theory Based Response to Timothy Webster's Paper Compliance of China in WTO Dispute Settlement*, 10(2) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 541 (2015).

[19] For more information about arguments that China selectively incorporates international norms benefiting its economic growth and the preferences of its elites, see Pitman B. Potter, *China and the International Legal System: Challenges of Participation*, 191 CHINA Q. 699, 701 (2007).

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monitored. The US and the EU have used this review process to exert pressure on China on key issues such as government interference, transparency, standards, intellectual property rights protection, and discrimination against EU firms. [20] Since its accession, China has cooperatively undergone six rounds of transitional TPR and five rounds of normal TPR.

Although some aspects of China's trade policies do not meet the transparency requirements of the WTO, it has gradually increased the level of transparency of its trade and trade-related policies. For example, the Regulation on Open Government Information was introduced to enhance transparency. China has also adopted measures to increase the alignment of its national standards with international norms. While these policies ostensibly bring China into greater compliance with WTO requirements, it further deepens China's interest in globalizing the economy—which in turn promotes the introduction of foreign technology and know-how, the development of trade relations, and sustainable economic development. This illustrates the point that China's compliance with the WTO obligations is driven by its self-interest.

Compliance by China is also achieved through repeated interactions and monitoring at the WTO. This includes pressure from other trading partners. In the WTO, for instance, members are obligated to notify the WTO of their state trading enterprises. The Working Party on State Trading is responsible for reviewing the notifications and counter-notifications on state trading.[21] While China submitted notifications on their state trading enterprises in 2002 and 2003, it failed to submit any notifications for a decade—until 2015. During then, other WTO members persistently questioned China's non-compliance through counter-notifications. They also raised the concern at every meeting commenced by the Working Party on State Trading at the WTO.[22] Arguably, the fact that China finally complied in 2015 illustrates that the WTO monitoring mechanism and pressure from other members worked to some extent. This illustrates how China has been "shaped", "constructed", "influenced" or "socialized" by international organizations through repeated interactions with other countries and institutions.

However, there are also areas where China is not fully compliant with international economic norms. One reason is that China has interpreted and

[20] On the second Trade Policy Review [hereinafter TPR] from 21 to 23 May 2008, for example, the European Union [hereinafter EU] submitted more than 170 questions to China.

[21] General Agreement on Tariffs and Trade art. XVII(4)(a), Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194; *Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994*, WTO, https://www.wto.org/english/docs_e/legal_e/08-17_e.htm (last visited June 13, 2021).

[22] For information regarding China's notifications of its state trading to the Working Party on State Trading Enterprises, see *State Trading Enterprises*, WTO, https://www.wto.org/english/tratop_e/statra_e/statra_e.htm (last visited June 13, 2021).

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applied the norms, institutions, and processes of the WTO in light of its local culture, where a utilitarian approach to law or a thin form of the rule of law prevails. Trade and trade-related measures are still used as instruments of industrial policy with a view, among other things, to promote investment in high technology, encourage innovation, and protect the environment (by, for example, reducing energy consumption). These tools include tax incentives, non-tax subsidies, price controls, and various forms of "guidance," including sector-specific "industrial policies." In order to reduce exports of products consuming large amounts of natural resources and energy, or to reduce China's large trade surplus in an attempt to reduce trade friction, a variety of measures, including export taxes, reduced rebates of value-added tax (hereinafter "VAT") on exports, and export prohibitions, licensing and quotas are used to restrain, if not prohibit, exports of a considerable and growing number of products. These make China's already complex export regime considerably more restrictive.

This lack of full compliance was mentioned in its TPR Reports. In 2016, the Chairman on the Report of TPR of China, in his concluding remarks, noted concerns about barriers to foreign investment, especially in areas considered to be of strategic importance or related to national security; the prohibition of foreign investment in the film industry; regulation of the circulation of foreign audiovisual content; standards for banking and insurance; and market access in telecommunications and financial services; protection of intellectual property rights; the continuous and active State role in China's economy; support and subsidy policies.[23] These issues either implicate China's competitiveness in global markets or the fundamental interest of the Chinese government.

Although China's compliance with its notification obligations is improving, its compliance record is not satisfactory when matters implicate fundamental interests. One area is China's treatment of SOEs and the subsidies granted to them. This is reflected in its insufficient notifications of state trading and subsidies to relevant Committees and Working Parties at the WTO. The issue of overcapacity is also an illustrative example because it correlates to subsidies granted to SOEs. While other countries like Canada, the EU, Japan, and the US called for discussions in the Committee on

[23] *Concluding Remarks by the Chairperson*, WTO (July 21 & 22, 2016), https://www.wto.org/english/tratop_e/tpr_e/tp442_crc_e.htm. For more information about TPR of China 2016, see Trade Policy Review Body, *Trade Policy Review: China*, WTO Doc. WT/TPR/S/342 (June 15, 2016). In the TPR of China 2014, similar concerns were also raised regarding transparency: both at the central and sub-central level; consistency in the implementation of laws, regulations, and policies; the role of the State: given China's size and importance, government intervention affected the allocation of resources and competitive conditions of companies in and outside China, etc. *See Concluding Remarks by the Chairperson*, WTO (July 1 & 3, 2014), https://www.wto.org/english/tratop_e/tpr_e/tp400_crc_e.htm; Trade Policy Review Body, *Trade Policy Review: China*, WTO Doc. WT/TPR/S/300 (May 27, 2014).

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Subsidies and Countervailing Measures (hereinafter "SCM Committee") within the WTO on how subsidies contribute to industrial overcapacity,[24] China—in contrast—reiterated that the SCM Committee was not the appropriate forum for discussing the issue of overcapacity and questioned the causation between subsidies and overcapacity. Another instance was when the US and the EU questioned China about what they alleged were some 160 government subsidies or grants listed in the annual reports of 6 of the largest Chinese steel producers[25] which were not included in China's WTO subsidy notifications as well as about the non-notification of other alleged subsidies in sectors such as steel, aluminum, and fisheries. In response, China stated that it believed the notifications on central and sub-central subsidy programs submitted in October 2015 and June 2016 addressed most of the concerns raised by members and denied the existence of these specific subsidy programs for steel producers and others.[26]

(b) China in the Dispute Settlement Body (DSB) — A main strength of the WTO trading system is the success of the WTO dispute settlement system. China is actively involved in the WTO dispute settlement system, both as a disputant and an adjudicator. Since its accession to the WTO, a disproportionately larger share of the WTO's caseload is related to China.[27] China has been brought to the WTO Dispute Settlement Body (hereinafter "DSB") forty-seven times and has lost most of the cases against it. It has taken other countries to the Body twenty-two times.[28] On some occasions, it consented to phase out the trade measures in question before the adjudicating panel was established. China has been inured to the fact that other members' use of the WTO DSM should not be viewed as hostile acts; they follow lengthy negotiations and represent the way for mature trading partners to resolve their differences. China has also shown itself to be familiar with other areas in the WTO DSM, with an example being third-party intervention procedure in disputes—it participated in 189 cases as a third party.[29]

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[24] Committee on Subsidies and Countervailing Measures, *Role of Subsidies in Creating Overcapacity and Options for Addressing This Issue in the Agreement on Subsidies and Countervailing Measures: Revision*, WTO Doc. G/SCM/W/572/rev.1 (Apr. 24, 2018); Committee on Subsidies and Countervailing Measures, *The Contribution of the WTO to the G20 Call for Action to Address Certain Measures Contributing to Overcapacity*, WTO Doc. G/SCM/W/569 (Oct. 14, 2016).

[25] Committee on Subsidies and Countervailing Measures, *Subsidies: Questions from the United States and the European Union to China Pursuant to Article 25.8 of the Agreement*, WTO Doc. G/SCM/Q2/CHN/70 (Apr. 13, 2017).

[26] *Concerns Grow About Slippage in Subsidy Notifications*, WTO (Apr. 25, 2017), https://www.wto.org/english/news_e/news17_e/scm_25apr17_e.htm.

[27] Chi Man-Jiao, *China's Participation in WTO Dispute Settlement over the Past Decade: Experiences and Impacts*, 15(1) J. INT'L ECON. L. 29 (2012).

[28] *Disputes by Member*, WTO, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (last visited June 13, 2021).

[29] *Id.*

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In a nutshell, China has become comfortable with the WTO DSM after decades of involvement and litigation. Repeated interactions with other trading partners have reduced China's hostility towards being sued before the DSB. Furthermore, DSB rulings and recommendations improve China's implementation record by bringing its inconsistent measures into conformity.[30] This is done through the WTO's robust enforcement mechanism, such as authorization of retaliation. Ultimately, China is willing to participate in the WTO DSM because it is a means of seeking and safeguarding its perceived interests.

Nevertheless, much discourse perpetuates the narrative that China enjoys the benefits of international norms and institutions without pulling its proportional weight because of the minimal commitment it undertakes.[31] The same criticism is also leveled at the US.[32] Generally, non-compliance by WTO members is due in part to the need to protect national or industrial interests. For China, non-compliance might also be out of the concern that compliance would be contrary to the fundamental interest of the Chinese government, which relies on control over the national economy through state enterprises. For instance, in relation to Chinese publications and audiovisual products, some inconsistent provisions appear to remain in effect.[33] One commentator remarked that this is not surprising given the Chinese government's fundamental interest in having a monopoly on information and cultural products; the Chinese government's social control would be considerably affected if China complied fully with the WTO ruling.[34]

There are, however, instances where the government's fundamental interest and the domestic industry's competitiveness can be set in tension. For example, China allows a certain number of films to be imported from the US into China every year.[35] While such a bilateral agreement on the import of films would not have much impact on the government's monopoly and control over information and culture, the Chinese film industry may be

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[30] *See generally* Weihuan Zhou, *Fifteen Years on: Has China Implemented WTO Rulings?—A Perspective on "Trade in Goods" Disputes*, 11(1) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 155 (2016). *See also* WEIHUAN ZHOU, CHINA'S IMPLEMENTATION OF THE RULINGS OF THE WORLD TRADE ORGANIZATION (2019).

[31] Samuel S. Kim, *China's International Organizational Behaviour*, *in* CHINESE FOREIGN POLICY: THEORY & PRACTICE 401, 409 (Thomas W. Robinson & David Shambaugh eds., 1994).

[32] David A. Koplow, *Indisputable Violations: What Happens when the United States Unambiguously Breaches a Treaty?*, 37(1) FLETCHER F. WORLD AFF. 53, 71 (2013).

[33] *See generally* Appellate Body Report, *China — Measures Affecting Trading Rights and Distribution Service for Certain Publications and Audiovisual Entertainment Products*, WTO Doc. WT/DS363/AB/R (adopted Jan. 19, 2010).

[34] Julia Ya Qin, *Pushing the Limits of Global Governance: Trading Rights, Censorship and Jurisprudence—A Commentary on the* China—Publications *Case*, 10 CHINESE J. INT'L L. 271, 277 (2011).

[35] Joint Communication from China and the United States, *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WTO Doc. WT/DS363/19 (May 11, 2012).

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affected to some degree. It suggests that the government's fundamental interest prevails, while the industrial interest or domestic industry's competitiveness can be compromised and forgone.

Nevertheless, as for China's behavior in the WTO, there is often a vast perception gap.[36] For some critics, China's compliance with its WTO rules and commitments lingers as an inconsistent unsettling issue. A prevailing criticism is that the business environment for foreign enterprises in China is deteriorating.[37] This suggests an inherent tension between the international norms and the Chinese domestic policies.[38]

In conclusion, it is fair to conclude that, saving for issues implicating the government's fundamental interests, China has mostly complied with existing WTO norms—even though its compliance might be less than satisfactory in light of the relatively many occasions where it was brought before the DSB.[39] China has prudently and judiciously participated in a way that accords with its culture and philosophy to safeguard its interests within the WTO framework. In other words, the country's participation in the WTO was driven as well as circumscribed by what it perceives to be in its interests. In the process, China is also consistently influenced by other trading partners through collaboration, monitoring, peer pressure, and repeated interactions at the WTO. It is also fair to characterize China's participation in the WTO as marked more by cooperation than confrontation—even though certain activities, such as the dispute settlement process, are to some extent confrontational in nature. Despite this, it is ironic that some WTO members still regard China's state-led economy as causing problems that cannot be addressed within the existing WTO norms.[40]

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[36] On 17 January 2018, Chinese President Xi Jinping hailed and reiterated China's commitment to promoting free trade at the World Economic Forum at Davos. He hailed and reiterated China's unfailing commitment to promoting free trade. The next day, Wilbur Ross, Designated US Secretary of Commerce, in the Senate Hearing on his nomination, lashed out at China to be the largest trade protectionist country that spoke more about free trade than practiced.

[37] In the 2017 China Business Climate Survey Report, the American Chamber of Commerce in China said more than 80% of its 462 member companies surveyed "feel foreign businesses are less welcome in China than before", and more than 60% expressed a lack of confidence in the Chinese government's commitment to further opening Chinese markets. THE AMERICAN CHAMBER OF COMMERCE IN THE CHINA, CHINA BUSINESS CLIMATE SURVEY REPORT 8 (2017), http://www.iberchina.org/files/2017/amcham_survey_2017.pdf.

[38] Some have even made radical arguments that for China to conform to the WTO rules, the Constitution of the People's Republic of China might have to be revised in reference to the principle of Party leadership in Article 12. *See* PITMAN POTTER, THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL CULTURE 136 (2001).

[39] 45 cases have been brought against China since 2002, while the 99 cases against the EU since 1995, and 170 cases against the US since 1995.

[40] *See, e.g.*, UNITED STATES TRADE REPRESENTATIVE, 2018 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (2019), https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf.

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B. China's Position on WTO Reform

As the multilateral trading system is increasingly threatened by rising unilateralism and protectionism in a changing world economy, China supports reform of the WTO as being necessary to enhance its authority and efficacy, to build an open world economy, and to pursue a shared future for mankind.[41]

To this end, China has put forward three basic principles and five suggestions on WTO reform.[42] The three basic principles are as follows. At its foremost, China takes the firm view that "the WTO reform shall preserve the core values of the multilateral trading system. The reform shall reinforce these fundamental rules of the multilateral trading system, including non-discrimination and openness, in order to create a stable and predictable environment for international trade."[43] Secondly, China believes that developed members should "safeguard the development interests of developing members."[44] Specifically, reform should give these members the flexibility and policy latitude "needed for their economic development."[45] Thirdly, China believes that any reform should adhere to the principle of inclusivity and "follow the practice of decision-making by consensus."[46] Decisions should follow "extensive consultations, based on mutual respect and dialogues on equal footing . . . . The reform cannot be dictated by a few, nor decided by an exclusive small group of Members."[47]

China has also proposed the following five suggestions. First, it is essential to "uphold the primacy of the multilateral trading system."[48] Second, the reform agenda should focus on tackling the "existential crisis/problems faced by the WTO."[49] Third, "the imbalance of trade rules and . . . the latest developments of our time" must be dealt with.[50] This suggestion was in response to the massive run-away subsidies developed members doled out to their agricultural sectors at home.[51] China saw this as an "abuse of trade remedy measures", especially when other countries exploited the "surrogate country" methodology in anti-dumping

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[41] *See generally* Qing-Jiang Kong & Shuai Guo, *WTO Reform: Will There Be a Third Option Other than a U.S. Withdrawal and a China Expulsion?*, 14(2) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 359 (2019).
[42] China's Position Paper on WTO Reform (Dec. 17, 2018), http://images.mofcom.gov.cn/sms/201812/20181217184454064.docx.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* China's Proposal on WTO Reform, *supra* note 11, ¶ 1.10.
[47] China's Position Paper on WTO Reform, *supra* note 42.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*

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investigations.[52] Fourth, it is crucial to safeguard the "special and differential treatment for developing members."[53] China opposes any suggestion to deny this special arrangement for developing members. Finally, China emphasized the necessity to respect "members' development models," and vocally advocates reform to "prohibit discrimination against enterprises of certain members [during] investment security review and anti-trust investigations." Given China's state capitalism model, it is unsurprising that it "opposes special and discriminatory disciplines against state-owned-enterprises in the name of WTO reform."[54]

C. China's New Initiatives in Shaping Regional Trade Norms

China has also sought to shape regional trade norms through several initiatives. Two of these initiatives are the signing of the RCEP between China and fifteen other Asian countries on 15 November 2020,[55] and the conclusion of the Comprehensive Agreement on Investment (hereinafter "CAI") between China and the EU on 30 December 2020.[56] The RCEP is expected to create the world's largest and most populous free trade area.[57] It joins together several of the world's largest economies (such as China, Japan, and South Korea), and represents 28.9% of the world's GDP and 29.7% of the world's population. It is a strong signal to traders and investors that China is committed to regional trade integration. Likewise, the CAI is expected to shape the landscape of world investment and the future of China and Europe given the formidable size of the EU and China's GDP, which are US$18 trillion and US$14 trillion respectively.

The RCEP was designed to establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will facilitate the expansion of regional trade and investment and contribute to global economic growth and development.[58] As a forward-looking agreement, the RCEP updates the coverage of the existing Association of Southeast Asian Nations (hereinafter "ASEAN") Plus One Free Trade Agreements (hereinafter "FTAs") (ASEAN's FTAs with the five dialogue partners,

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[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] The Regional Comprehensive Economic Partnership Agreement (RCEP) is available at *Regional Comprehensive Economic Partnership Agreement*, RCEP, https://rcepsec.org/legal-text/ (last visited June 13, 2021).
[56] The Comprehensive Agreement on Investment (CAI) is available at *EU–China Comprehensive Agreement on Investment (CAI)*, EUR. COMMISSION (Jan. 22, 2021), https://trade.ec.europa.eu/doclib/press/in dex.cfm?id=2237.
[57] *RCEP: Asia-Pacific Countries Form World's Largest Trading Bloc*, BBC (Nov. 16, 2020), https://www.bbc.com/news/world-asia-54949260.
[58] *Summary of the Regional Comprehensive Economic Partnership Agreement*, ASEAN (Nov. 15, 2020), https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf.

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namely China, Japan, Korea, Australia, and New Zealand) and takes into consideration changing and emerging trade realities, including electronic commerce, the potential of micro, small and medium enterprises, the deepening regional value chain, and the complexity of the market competition. The RCEP will complement the WTO. Yet, it should be pointed out that while the RCEP will generate the world's largest trade bloc, the key significance of this is not simply that new trade norms will be created; rather, it is that a uniform set of trade norms will be established between all fifteen contracting members of the trade bloc. The CAI, which covers market access commitments, fair competition rules, sustainable development, and dispute settlement mechanisms, is the most ambitious agreement that China has ever concluded with a third country.

Both the RCEP and the CAI are economically significant and have a real impact on market accessibility, but they are political creations with implications for international trade norms.[59]

III. IS CHINA ON THE WAY TO REDEFINE NORMS AND ESTABLISH NEW INSTITUTIONS?

A. Sustaining the Multilateral Trading System Calls for a Stronger Leadership

Developed economies are still recovering and adjusting to the weak global economy amid the ongoing global public health crisis. With feeble market demand and rising protectionism, they cannot continue importing goods from emerging economies on a large scale: they are unwilling to tolerate large trade deficits from emerging economies. Developed and developing economies are also unable to work together to strengthen the multilateral trading system; each side blames the reluctance of the other for their lack of cooperation.[60] As evident from the deadlock in the WTO's Doha Round, the WTO is unlikely to continue to be effective in rule-making. Nowadays, the developed countries tend to undertake, between themselves, exclusive rules for trade and investment. An example is the Trans-Pacific

[59] In this regard, it is worth noting that China is favorably considering joining the Comprehensive and Progressive Trans-Pacific Partnership [hereinafter CPTPP]. It marks a significant shift in China's attitude after watching warily from the sidelines as the US-led Trans-Pacific Partnership [hereinafter TPP] was first negotiated. It was viewed as nipping in the bud the US's efforts of building a common economic and ideological front against China as well as giving fresh impetus to China's continued reform and opening up. Zeyuan Yu, *China's True Intentions in Wanting to Join the CPTPP*, THINKCHINA (Nov. 23, 2020), https://www.thinkchina.sg/chinas-true-intentions-wanting-join-cptpp.

[60] After the fallout of the negotiations under the WTO's Doha Development Agenda in July 2008, several countries blamed each other for the breakdown. The United States [hereinafter US] and some EU members blamed India for the failure of the talks. India claimed that its position was supported by over 100 countries.

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Partnership (hereinafter "TPP") concluded between the US, Japan, and ten other nations.[61] The TPP was similar to many FTAs concluded between the US and other countries; to some extent, it might be said that the US "exported" its version of FTAs, such as the U.S.–Korea FTA and the U.S.–Singapore FTA, into the TPP. This feature was particularly apparent in areas of government enterprises and designated monopolies, competition policy (anti-competitive business conduct), investment, intellectual property protection, government procurement, labor and environment protection, E-commerce, etc.[62]

More alarmingly, the WTO DSM, which had been acclaimed as a pillar of the multilateral trading system, is at a critical impasse due to the obstructionist measures of certain members; this is due to the controversial appointment of the succeeding Appellate Body (hereinafter "AB") members and the perceived inability of the WTO to address certain trade issues. The US took advantage of the consensus decision-making mechanism to block the appointment of AB members—as a result, the AB has ground to a halt since December 2020.[63] The unwillingness to cooperate arguably stems from former President Donald Trump's "American First" policies.

The DSM's impasse is a crisis for the WTO. The free and open global trading system runs the real risk of disintegration, undermining the competitive advantages that the emerging countries and other developing countries have enjoyed under the existing global trading system. Even amidst the dire need for a joint effort to save the WTO from this crisis, no agreement for reform has been reached—this might remain the case for the near future. The crisis is an indication that the US has given up its leadership and its responsibilities as a leading power in the international trade community; it has gone so far as to obstruct the renewal of international trade norms. The US' stunning retreat has created a leadership vacuum for the shaping of trade norms.

Therefore, there is an urgent need to save the multilateral trading system. The world needs a democratic decision-making process within the international order and it needs to curb the unilateral actions of the US. Strong leadership is required to plug the gap left by the US as a result of its

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[61] After the US withdrew from the TPP in 2017, the remaining eleven countries modified it and renamed it CPTPP.

[62] For comparative study, see generally, Ines Willemyns, *Disciplines on State-Owned Enterprises in International Economic Law: Are We Moving in the Right Direction?*, 19(3) J. INT'L ECON. L. 657 (2016); Tsuyoshi Kawase, *The Trans-Pacific Partnership as a Set of International Economic Rules*, THE E15 INITIATIVE (May 2016), http://e15initiative.org/blogs/trans-pacific-partnership-as-a-set-of-international-economic-rules/; Rodrigo Polanco Lazo & Sebastian Gomez Fiedler, *A Requiem for the* Trans-Pacific Partnership*: Something New, Something Old and Something Borrowed?*, 18(2) MELB. J. INT'L L. 298 (2017).

[63] Wendy Wu, *'Painful' Exit of Chinese Member Leaves WTO Appeals Body Without a Judge and Trade Dispute Cases in Limbo*, SCMP (Dec. 2, 2020, 10:00 PM), https://www.scmp.com/news/china/diplomacy/article/3112293/painful-exit-chinese-member-leaves-wto-appeals-body-without.

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inward-looking policies.

B. China's Capacity

China's remarkable economic growth gives it leverage within the international fora. After the start of the global financial crisis, China quickly realized that as the US and the West fell from power, there arose an unprecedented opportunity to increase China's international visibility and, more importantly, an opportunity for China to shape international norms. As a result, China had since been actively seeking opportunities to participate—and even assume leadership—in the making of international trade rules.

By 2013, the relationship between China and the world had fundamentally changed: China had risen to be the second-largest economy in the world,[64] the largest exporter and the second-largest importer of goods,[65] the third-largest source of outbound foreign direct investment,[66] and the owner of the largest foreign exchange reserve. Its economic power, coupled with its huge market potential and tremendous financial capacity, bolsters China's economic relationship with emerging economies. China can import goods from the emerging economies on a large scale and provide them with needed capital; this makes China an irreplaceable market for their goods and an important source of capital for these developing countries.

As one of the engines driving the global economy, China has contributed substantially to the world economy. According to Yi Gang, the Governor of the People's Bank of China, China was the most significant contributor to global economic growth between 2002 to 2019, contributing nearly 30%—on average—to global economic growth in that period.[67] Moreover, China is the only major economy to experience economic growth in 2020, a year ravaged by the COVID-19 pandemic.[68] Perhaps, as some Chinese experts

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[64] By the end of 2010, China had become the second largest economy after the US. *See China Overtakes Japan as World's Second-Biggest Economy*, BBC (Feb. 14, 2011), http://www.bbc.com/news/business-12427321.

[65] *See* WTO, INTERNATIONAL TRADE STATISTICS 2014, at 15, 26 (2015), https://www.wto.org/english/res_e/statis_e/its2014_e/its2014_e.pdf.

[66] According to Xinhua News Agency, China's outbound direct investment (ODI) reached a record high of $108 billion in 2013, making it the world's third largest investor for the second year, see *China 2013 Outbound Investment Hits Record High*, CHINA DAILY (Sept. 10, 2014), http://usa.chinadaily.com.cn/business/2014-09/10/content_18576669.htm.

[67] *Yi Gang: Building New Development Patterns and Expanding the Opening Up of the Financial Sector*, BIS (Nov. 9, 2020), https://www.bis.org/review/r201109f.htm. *See* INT'L MONETARY FUND [hereinafter IMF], WORLD ECONOMIC OUTLOOK, OCTOBER 2014: LEGACIES, CLOUDS, UNCERTAINTIES (2014), http://www.imf.org/en/Publications/WEO/Issues/2016/12/31/Legacies-Clouds-Uncertainties; IMF, WORLD ECONOMIC OUTLOOK, OCTOBER 2020: A LONG AND DIFFICULT ASCENT (2020) https://www.imf.org/en/Publi cations/WEO/Issues/2020/09/30/world-economic-outlook-october-2020.

[68] Jonathan Cheng, *China Is the Only Major Economy to Report Economic Growth for 2020*, WALL STREET J. (Jan. 18, 2021, 5:38 AM), https://www.wsj.com/articles/china-is-the-only-major-

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believe, a "China Proposal" or "China Solution" might be the "global solution" to challenges faced by the world economy.[69]

Nevertheless, as China seeks to play a bigger role in international norm-making, it may encounter various challenges. The most significant challenge is eliciting support from an international community that might not wish to cooperate with an ambitious China. China is facing strategic competition with the US,[70] which is taking a united front with its allied nations and other countries against China.[71] In this context, China's political, economic systems and ideology, which differ from those of most countries, can disadvantage it *vis-à-vis* the US in its search for partner nations. To this end, China has promoted its foreign policy under the banner of "building up a community of shared future for mankind" to de-colorize its unique political, economic systems and ideology and to align itself more closely with other nations. However, it remains to be seen whether this strategy will give China its desired result.

C. China's Ambition

China's ambition in international institution-building and international trade rule-making is due in part to the need to stimulate its domestic economy. Four areas will be discussed.

First, China is in the midst of a difficult transition to a "new normal" of slower and more sustainable economic growth.[72] While China has focused on manufacturing and exporting low-priced goods for the past three decades as part of its "opening-up" policy, this strategy now faces enormous challenges in light of rising labor costs, decreasing competitiveness in labor-intensive goods, and relocation of factories to neighboring countries with lower labor costs. As a result, China is exploring and venturing into new markets, particularly that of developing countries, through strategies such as the BRI.

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economy-to-repor t-economic-growth-for-2020-11610936187?mod=djemalertNEWS.

[69] *See, e.g.*, Hu-Cheng Gao (Minister of Commerce), *Cujin Quanqiu Fazhan Hezhou de Zhongguo Fangan* [*A Chinese Solution to the Promotion of Global Cooperation on Development*], PEOPLE'S DAILY, Sept. 18, 2015, at 7.

[70] *See, e.g.*, Tran Hung, *Is the US-China Strategic Competition a Cold War?*, ATLANTIC COUNCIL (Apr. 21, 2021), https://www.atlanticcouncil.org/blogs/new-atlanticist/is-the-us-china-stra tegic-competition-a-cold-war/.

[71] The approach is clearly stated in the draft Strategic Competition Act of 2021, pending to be adopted by the US Congress. *S.1169 — Strategic Competition Act of 2021*, CONGRESS.GOV, https://www.congress.gov/bill/117th-congress/senate-bill/1169/text (last visited June 13, 2021).

[72] "New Normal," a popular term coined by President Xi during his May 2014 visit to Henan, a hinterland province, refers to the current economic situation. According to Xi, the economy now features more sustainable, mid-to-high-speed growth with higher efficiency and lower cost, suggesting that the Chinese economy has entered a new phase different from the high-speed growth pattern exhibited in the past three decades. *See generally* Nishimura Yusaku, *New Normal and New Economy: A New Growth Engine for China*, 14 INT'L J. ECON. POL'Y STUD. 301 (2020).

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Secondly, Overseas Direct Investment (hereinafter "ODI") from China had surged in the past decade by an average annual rate of 41.6%. Notably, China was the third-largest source of ODI in the world in 2012 and even became a net exporter of capital in 2013. This means that China needs a safe, balanced, and efficient strategy to boost its economy and foster a new cycle of economic development. The key to this lies in institution-building and the creation of a freer trading system. Given that China's status has shifted from being a net importer to a net exporter of capital in relation to foreign investments, China should work together with other countries—especially developing countries—to establish investment rules and norms to accommodate its outbound capital.

Thirdly, strong economic power can give China a louder voice in the international arena. Emerging countries are collectively a rising force in the global arena; their total economic output is comparable to the established powers. However, as the existing world economic structure and governance system are dominated by American and European economies, the voices of emerging economies are rarely heard in the discourse on global economic governance.

Lastly, the movement towards regional integration provides China with an opportunity to test if regional trade agreements are conducive in helping China shape its version of international order and institutions.

In a nutshell, China's efforts to redefine international trade norms so far have been guided by the frustration that multilateralism fails to produce the progress that it wants; by its ambition to play a leading role in international economic order; and by its economic greenhouse.

D. Vision

China's economic rise has boosted its ambitions to assume a greater role in global governance.[73] The Chinese practice in international trade rulemaking/institution-building illustrates the Chinese vision of global economic governance. In recent years, China has embraced a more prominent profile approach to global economic governance. To name a few, it has proposed a plethora of Asian regional economic arrangements and established an AIIB with a group of fifty-seven countries.[74] It has created the BRI, a regional infrastructure investment plan, stretching from China through central Asia to Europe; it has hosted meetings of the G20 and APEC

[73] *See generally* Hong-Ying Wang & James N. Rosenau, *China and Global Governance*, 33 ASIAN PERSP. 5 (2009).

[74] *See generally* Shahar Hameiri & Lee Jones, *China Challenges Global Governance? Chinese International Development Finance and the AIIB*, 94 INT'L AFF. 573 (2018); Martin A. Weiss, *Asian Infrastructure Investment Bank (AIIB)*, CONGRESSIONAL RES. SERV. (Feb. 3, 2017), https://fas.org/sgp/crs/row/R44754.pdf.

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and proposed organizing themes for each event. It had actively supported the successful negotiations and conclusion of the RCEP involving all the major economies of Asia. It has worked to internationalize its currency and was successful in persuading the International Monetary Fund (hereinafter "IMF") to include the RMB in its basket of major currencies, which the IMF uses to structure balance of payments and debt resettlement loans.[75] It has rapidly become more comfortable with the idea of assuming leadership, as opposed to itself in the previous era when it shied away from such activism, owing to the fact that it either lacked capacity, shied away out of habit, or shied away for fear of arousing regional anxiety.

China is also making progress in its efforts to create norms and rules and to establish institutions. It creates norms and rules through bilateral investment treaties (hereinafter "BITs") and FTA,[76] with the RCEP and the BRI being useful illustrations. It is likely that the RCEP is meant to be a counterpart of the TPP. China is also planning to establish institutions in which it will be an active player—and presumably a leader.

For China, changing trade norms is more difficult than changing trade rules. China still has insufficient economic power for it to remake international trade rules. Nevertheless, China has recently started nurturing institutions that can be utilized to help remake trade norms, and it is expected to primarily rely on its soft power to do so. Interpreting existing trade norms and imputing new meaning to such norms are the most convenient ways towards redefining them. The recent introduction of the notion of the "Community of Shared Future for Mankind," which is not unprecedented in the history of international law, is an example of such.

Another question merits discussion: will China assume the responsibility of global leadership? While China has always envisioned an international political and economic order that is fair and rational, it is aware that the current multilateral institutions are not able to deliver on this because of American dominance. That is why, to further its national interests, China took bold initiatives in reforming the trading system.

One possible avenue is through the establishment of regional institutions. From a macro perspective, regional institutions would provide China with an avenue to foster mutual trust with other countries and improve its image as a benign emerging power. As China plays a more important role in the world, there are many countries that feel uneasy about this because China's ideology and political system differs from theirs; they also see

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[75] *IMF Launches New SDR Basket Including Chinese Renminbi, Determines New Currency Amounts*, IMF (Sept. 30, 2016), https://www.imf.org/en/News/Articles/2016/09/30/AM16-PR16440-IMF-Launches-New-SDR-Basket-Including-Chinese-Renminbi.

[76] *See* Jun Zhao & Timothy Webster, *Taking Stock: China's First Decade of Free Trade*, 33(1) U. PA. J. INT'L L. 65, 66-68 (2011). *See generally* Heng Wang, *The Features of China's Recent FTA and Their Implications: An Anatomy of the China-Korea FTA*, 11(1) ASIAN J. WTO & INT'L HEALTH L. & POL'Y 115 (2016).

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China's military and economic strength as a threat.[77] In East Asia in particular, US influence in Asia has caused neighboring states to form an informal coalition against China driven by the fear surrounding China's peaceful rise.[78] In an effort to gain more political capital, China is pursuing economic integration with its trading partners. As China's trading partners become more reliant on China for their economic well-being, Beijing would have more clout over such countries. Therefore, although many commentators have doubted if China would reap economic benefits from the ASEAN–China FTA since it is a net importer *vis-à-vis* the rest of ASEAN, China has adopted the principle of "giving a lot yet demanding little" in the FTA negotiations because it sees the political significance of the FTA as greatly outweighing economic considerations.[79]

In evaluating whether an institution has a democratic decision-making process or one that balances the interests of its members, two criteria can be applied: first, it may be asked if the big powers within the institution share power and responsibility. One manifestation of power-sharing might be the presence of a consultative mechanism, whether formal or informal, between the big powers. Secondly, whether the interests of developing countries at large are taken into consideration in the decision-making process. China regards this criterion as vital because it believes that the international economic order should accommodate all participating nations; this can mean respecting each nation's sovereignty or responding to the concerns of the participating countries.

However, despite China's numerous initiatives, it remains unclear whether China can garner sufficient economic and political support from these developing countries. It is suggested that, alternatively, China can get political support from these countries in other international institutions and fora, such as the WTO.

China's many FTAs with other countries do not pose a risk to multilateralism; rather, it supplements the multilateral trading system. China has consistently reassured its commitment to the multilateral trading system. By concluding regional trade agreements, China can flex its muscles in rule-making with no risk of contravening the multilateral rules of the WTO (the relevant provisions governing the formation of regional trade agreements are Article 24 of the General Agreement on Tariffs and Trade and Article 5 of

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[77] Julianne Smith & Torrey Taussig, *The Old World and the Middle Kingdom: Europe Wakes Up to China's Rise*, 98(5) FOREIGN AFF. 112, 112-17 (2019).

[78] The US plays a strong leadership in the framing of the proposed TPP in the Asia-Pacific Economic Cooperation [hereinafter APEC] forum. The TPP was dubbed as ABC (anyone but China), and deemed to have been used by the US as a grand scheme to isolate China. David Pilling, *It Won't Be Easy to Build an 'Anyone but China' Club*, FIN. TIMES (May 22, 2013), https://www.ft.com/content/08cf74f6-c216-11e2-8992-00144feab7de.

[79] *See generally* Bin Gu, *MCDF: A New Beacon of Multilateralism in Development Finance*, 23(3) J. INT'L ECON. L. 665 (2020).

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the General Agreement on Trade in Services). This is why China started intensifying its pursuit of bilateral/regional free trade agreements with its trading partners shortly after its accession to the WTO.

IV. CONCLUSION

It is arguable that China has overtaken the US as the world's largest economy in 2020 in terms of purchasing power parity. No major power has emerged without causing concern to other nations: a rising late-comer initiating a confrontation with a weakening hegemony. Many observers even see China as the contemporary parallel to the USSR or Wilhelmine Germany, viewing it as a potential challenger to the US.[80]

In this context, the international community and its members have devoted significant resources to deepen China's participation in the international system and promote its emergence as a responsible great power that observes the norms and principles of the international society. The international community's goal for international order is a system characterized by observance of international law as agreed in international institutions. There is nevertheless criticism that China maximizes its interests through international institutions while only being minimally involved, free-riding on the actions of other major powers while claiming the moral high ground. In other words, the complaint is that China has sought many of the rights and privileges of being a great power without accepting most of the attendant obligations and responsibilities.[81]

There is another criticism that China's actions in the WTO have challenged some of the most fundamental norms and rules of the existing order. This is an exaggeration. The country is aware that it has an important stake in a well-functioning multilateral trading system [82] and it predominantly works within the international system.

As observers have pointed out, China is taking a less confrontational and a more sophisticated, confident, and often constructive approach towards regional and global affairs. China's experience in the WTO was a mixture of monitored adoption, eagerness to pursue its interest, and an aspiration to change existing norms and rules. In this context, the issue at stake is how the

[80] Joshua Cooper Ramo, *An Image Emergency: The Gap Between How China Sees Itself and Others See It Is Wide and Dangerous*, NEWSWEEK INT'L (Sept. 25, 2006).

[81] *See generally* Alastair Iain Johnston, *Meiguo Xuezhe Guanyu Zhongguo yu Guoji Zuzhi Guanxi Yanjiu Gaishu* [*An Overview of Studies of American Scholars on the Relationship Between China and International Organizations*], 8 WORLD ECON. & POL. 48 (2001).

[82] For example, Xiang-Chen Zhang, head of WTO affairs of the Chinese Ministry of Commerce was quoted to have stated that "given its huge volume of imports and export, China has always made the multilateral trade system a priority of its trade policies." *See China Plays Active Role in WTO Talks: Official*, CHINA DAILY (July 28, 2008), http://www.chinadaily.com.cn/china/////////2008-07/25/content_6877318.htm.

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delicate balances between compliance and reform, and between adaptation and exploration can be struck. As a starting point, China should learn how to assess and quantify the interests and costs involved in international participation. If China is to be seen as a leader, it must be prepared to pay its fair share (which, indeed, will be substantial) of the costs of formulating new international trade norms.

This article argued that China will further integrate itself into the international system of which it has become an indispensable part in the foreseeable future. As it gradually accustoms itself to the norms, it will become more confident in using these norms for its benefit. In the meantime, China will not give up the chance to reform those norms. This is illustrated by the fact that China has proven itself to be in general compliance with international norms and has become increasingly interested in using norms to its advantage; it is also clear about its deep aspiration for a shift towards a more balanced order. It is also generally expected that as China integrates itself into the international system, it must share the burdens of providing "global public goods" even as it benefits from global cooperation.

This article has also explored China's attitude towards the international economic order from a legal perspective. In relation to compliance with current trade norms, China's record is improving given that this behavior benefits China to some extent. Institutional mechanisms have also influenced China to become more compliant with its rules through repeated interaction, monitoring, and enforcement.

Nevertheless, when the Chinese government's core interests conflict with international economic norms and rules, China is unlikely to be fully compliant. This explains why China seeks to redefine international norms and establish institutions relating to international trade. Its efforts are reflected in its BITs, FTAs, RCEP, and BRI. The rules and norms of its BITs, FTAs, and the RCEP are different from those of the TPP Agreement in areas relating to China's fundamental and core interests. China's role as a leader is also reflected in those institutions that is initiated, e.g., in the establishment of the AIIB.[83] However, its impact on the legal order and institutions relating to international trade remains unclear. For instance, one weakness of the BRI is that it is not characterized by rigid institutional rules. Instead, the BRI is situated in a network of existing institutions and norms governed by bilateral investment agreements, regional trade agreements and the WTO agreements. This network is in turn supported by non-binding instruments such as memorandums of understanding and joint declarations between China and other countries. The norms created by such instruments can differ in their legal force between different contracting states, which often lead to inconsistency in the application of laws. Against this backdrop, China has

[83] *See* Bin Gu, *Chinese Multilateralism in the AIIB*, 20 J. INT'L ECON. L. 137, 137, 144 (2017).

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begun the process of institution-building for the purpose of giving greater effect to the BRI; it is upgrading its BITs and concluding or upgrading its FTAs with other nations. Furthermore, the RCEP (in its present form) only governs norms relating to the maritime BRI. This is why China and the other members of the Shanghai Cooperation Organization are considering further economic integration in the form of a free trade agreement for the land-based BRI. On balance, China's deepening integration and continued engagement with the international community, as opposed to exclusion and isolation, positively reflects China's efforts to redefine international economic norms and global governance.

In conclusion, while some observers suggest that China will become a trade rule-shaker, this article argues that China's evolving attitudes towards the international order and international norms, as well as its trade behaviors, reveal its roadmap to transform itself from a rule-taker to a trade rule-rider and rule-maker.

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