

## The “China, Inc.” Challenge to Global Trade Governance

---

Mark Wu\*

*In the past decade, the World Trade Organization has adjudicated over forty disputes between China and other powerful economies. These cases are often trumpeted as a sign of the enduring strength of the trade regime and the efficacy of international law in managing geopolitical tensions associated with China's rise. This Article suggests that this positive assessment obfuscates dangers lurking on the horizon. It explains why the rise of China presents a major challenge to the multilateral trade regime. At the heart of this challenge is the fact that China's economic structure is sui generis, having evolved in a manner largely unforeseen by those negotiating WTO treaty law.*

*As a result, the WTO can deal effectively with only a limited range of disputes—those in which Chinese policies largely resemble elements of other alternative economic structures. Outside of this set of issues, the WTO faces two very different but equally serious challenges. The first is reinterpreting certain legal concepts to adapt and fit an unforeseen Chinese context. The second is deciding whether to expand the scope of its legal rules to accommodate issues that currently fall outside its jurisdiction. This Article explores options for meeting these challenges. It suggests that the most likely outcome is one in which China's rise will exacerbate the diminishing centrality of WTO law for global trade governance.*

### INTRODUCTION

The World Trade Organization is widely heralded as a model for how international law can manage and mitigate tensions between states amid a changing geopolitical order.<sup>1</sup> When it comes to the rise of China—arguably, the most significant geopolitical challenge of our times—this might appear to be the case. A cursory glance gives rise to optimism.

Consider the following facts: in 1978, China accounted for less than 1% of global trade.<sup>2</sup> By 2000, its share grew to 3%—an impressive gain, but by

---

\* Assistant Professor of Law, Harvard Law School. Many thanks to William Alford, Gabriella Blum, Che Pizhao, Ding Ding, Noah Feldman, Paul Gewirtz, Jack Goldsmith, Benjamin Liebman, Liu Jingdong, Petros Mavroidis, Curtis Milhaupt, Mariana Prado, Intisar Rabb, Holger Spamann, Alan Sykes, Chantal Thomas, Joel Trachtman, Yang Guohua, and David Zaring for their excellent insights and suggestions on earlier drafts of this Article. This project benefited from comments and suggestions provided by participants at presentations given at Columbia Law School, the University of Toronto Law School, the American Society of International Law Mid-Year Research Forum, the Chinese Academy of Social Sciences Eleventh International Law Forum, Harvard Law School, and UC Berkeley School of Law. Mark Jia provided superb research assistance for which I am immensely grateful.

1. See John Ikenberry, *The Rise of China and the Future of the West*, 87 FOREIGN AFF., Jan.–Feb. 2008, at 23.

2. In 1978, China ranked thirty-second in the world in terms of its trade volume. See Xiaojun Li, *China as a Trading Superpower*, in CHINA'S GEOECONOMIC STRATEGY 25, 25 (Nicholas Kitchen ed., 2012).

no means dominant.<sup>3</sup> A decade later, its share had more than tripled,<sup>4</sup> and China became the world's top exporter.<sup>5</sup> In 2013, China surpassed the United States to become the world's largest overall trading nation.<sup>6</sup> Depending on how one counts, the Chinese economy now ranks as the largest or second-largest in the world.<sup>7</sup>

Not surprisingly, as China's importance in global trade has increased, so too has the number of WTO disputes concerning China. Between 2006 and 2015, forty-four cases—representing over a quarter of the WTO's caseload—have involved China as a complainant or a respondent.<sup>8</sup> Only the United States and the European Union (“EU”) outrank China in active disputes.<sup>9</sup>

Government officials give the impression that WTO dispute settlement is effective. In the 2012 U.S. presidential election, President Barack Obama boasted that his administration had filed more WTO cases against China in his first term than his Republican predecessor had during the preceding eight years.<sup>10</sup> Recent high-profile examples include the *China—Raw Materials*<sup>11</sup> and *China—Rare Earths*<sup>12</sup> cases, in which the WTO ruled against Chinese export controls on inputs critical to high-tech industries.

Nor has the WTO simply served as a forum for Western governments to vindicate their rights against China. The reverse is increasingly true, but

3. Valentina Romei, *China and US Battle for Trade Leadership*, FIN. TIMES (Jan. 10, 2014, 06:08 AM), <http://blogs.ft.com/ftdata/2014/01/10/china-and-us-battle-for-trade-leadership/>.

4. World Trade Organization, *World Trade Report 2011*, at 31 (2011).

5. See John Miller & Marcus Walker, *China Detronoes Germany as Top Goods Exporter*, WALL ST. J. (Jan. 6, 2010), <http://www.wsj.com/articles/SB126272143898416853>; see also Steven Mufson, *China Surpasses Germany as World's Top Exporter*, WASH. POST (Jan. 11, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/10/AR20100111002647.html>.

6. Angela Monaghan, *China Surpasses US as World's Largest Trading Nation*, GUARDIAN (Jan. 10, 2014), <https://www.theguardian.com/business/2014/jan/10/china-surpasses-us-world-largest-trading-nation>.

7. See, e.g., *China Set to Overtake U.S. as Biggest Economy in PPP Measure*, BLOOMBERG NEWS (Apr. 30, 2014), <http://www.bloomberg.com/news/2014-04-30/china-set-to-overtake-u-s-as-biggest-economy-using-ppp-measure.html>; *Crowning the Dragon*, ECONOMIST (Apr. 30, 2014), <http://www.economist.com/blogs/graphicdetail/2014/04/daily-chart-19>; Hugo Duncan & David Martosko, *America Usurped: China Becomes World's Largest Economy – Putting USA in Second Place for the First Time in 142 Years*, WORLD MAIL (Oct. 8, 2014), <http://www.dailymail.co.uk/news/article-2785905/China-overtakes-U-S-world-s-largest-economy-IMF-says-economy-worth-17-6trillion-America-falls-second-place-time-1872.html>.

8. Calculation based on information provided at *Chronological List of Disputes Cases*, WORLD TRADE ORGANIZATION: TRADE TOPICS: DISPUTE SETTLEMENT, [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (last visited May 22, 2016) [hereinafter WTO Dispute List].

9. *Disputes by Country/Territory*, WORLD TRADE ORGANIZATION: TRADE TOPICS: DISPUTE SETTLEMENT: THE DISPUTES, [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm) (last visited May 22, 2016) [hereinafter WTO Disputes by Country/Territory].

10. See Mark Landler, *In Car Country, Obama Trumpets China Trade Case*, N.Y. TIMES (Sept. 18, 2012), <http://www.nytimes.com/2012/09/18/us/politics/in-car-country-obama-trumpets-china-trade-case.html>.

11. Appellate Body Report, *China — Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R (Jan. 30, 2012) [hereinafter *China — Raw Materials*].

12. Appellate Body Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R (Aug. 7, 2014) [hereinafter *China — Rare Earths*].

receives less attention in the Western media. In 2014, the WTO Appellate Body<sup>13</sup> ruled for China in two different cases, finding that the U.S. Department of Commerce violated WTO commitments when imposing trade remedies against several Chinese products.<sup>14</sup>

All of this has fostered a perception that all is well with the WTO, at least as far as dispute settlement is concerned.<sup>15</sup> Optimists paint the growing number of China-related cases in a positive light. Emblematic of this viewpoint is Professor Ka Zeng’s suggestion that “the growing utilization of the [WTO Dispute Settlement Mechanism] may have helped to channel the tensions surrounding the bilateral trade relationship and prevented intense interest group pressure from impairing overall U.S.-China trade relations.”<sup>16</sup> This is undoubtedly true. But it obfuscates another growing tension.

What academics and other commentators have missed (or at least, have avoided mentioning) is that since the Great Recession, the pattern of WTO cases among the major trading powers—the United States, the European Union, Japan, and China—has shifted dramatically. Until the mid-2000s, the three major advanced economies (the United States, the EU, and Japan) regularly brought cases against one another.<sup>17</sup> But since 2009, disputes among these established powers have virtually come to a halt. Only three such complaints have been filed, and only one has proceeded to requiring that a WTO Panel be constituted.<sup>18</sup>

Instead, WTO disputes among major powers almost exclusively involve China. Between 2009 and 2015, China-related cases accounted for 90% of

13. The Appellate Body is a standing body of seven jurists appointed for four-year terms whose role is to hear appeals of decisions of WTO Panels. For more information, see *Appellate Body*, WORLD TRADE ORGANIZATION, [https://www.wto.org/english/tratop\\_e/dispu\\_e/appellate\\_body\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm) (last visited May 22, 2016).

14. Appellate Body Report, *United States — Countervailing and Anti-dumping Measures on Certain Products from China*, WT/DS449/AB/R (July 7, 2014); Appellate Body Report, *United States — Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R (Dec. 18, 2014).

15. See, e.g., Michael Froman, U.S. Trade Representative, Keynote Address at the WTO Public Forum (Oct. 1, 2013) (“The dispute settlement body of the WTO is second to none as a respected forum for the resolution of international frictions.”).

16. Ka Zeng, *China, America, and the WTO*, DIPLOMAT (Feb. 7, 2013), <http://thediplomat.com/2013/02/china-america-and-the-wto/>.

17. From 1995 to 2005, over 40% of the cases filed by the United States were against Japan, the EU, or one of its member states. Nearly half of the cases filed by the EU were against the United States or Japan, and two-thirds of the cases filed by Japan were against the United States. Calculations based on information provided by WTO Disputes by Country/Territory, *supra* note 9.

18. The Panel is the first-instance body that adjudicates the claim once it is clear that the mandatory consultations have not succeeded. The three complaints are: Request for Consultations by the United States, *European Communities — Certain Measures Affecting Poultry and Poultry Meat Products from the United States*, WT/DS389/1 (Jan. 16, 1989); Request for Consultations by the European Union, *United States — Anti-dumping Measures on Imports of Stainless Steel Sheet and Strip in Coils from Italy*, WT/DS424/1 (Apr. 1, 2011); Request for Consultations by the European Union, *United States — Conditional Tax Incentives for Large Civil Aircraft*, WT/DS487/1 (Dec. 19, 2014). A Panel was composed for the last dispute on April 22, 2015.

the cases brought by the 4 largest economies against each other.<sup>19</sup> China's rise is thus reconfiguring WTO dispute settlement in a potentially worrying manner. Even when a status quo power's legal interest aligns with China's, it has not joined forces with China to challenge its ally.<sup>20</sup> The reverse also holds true.<sup>21</sup> Instead, since the Great Recession WTO litigation has increasingly bifurcated into an "Established Power(s) versus China" dynamic.

While trade diplomats do not acknowledge it publicly, the WTO is struggling to adjust to a rising China. The objective of this Article is to describe and assess this challenge. To be clear, the problem is not the high volume of cases involving China. As China's share of global trade rises, it is only natural that its share of WTO disputes should as well.<sup>22</sup> Moreover, the WTO continues to have a larger volume of cases involving the United States and the EU; yet, no one quietly speaks of needing to adjust to an American or European challenge to the institution. Instead, the nature of this challenge is subtler.

The root of the challenge, I argue, lies with China's distinctive economic structure. Some commentators refer to this structure as Chinese state capitalism.<sup>23</sup> This terminology suggests that the Chinese economy resembles other economies, such as Russia's or Brazil's, that are also labeled as state capitalist. I contend, however, that China's economy is fundamentally different—even unique. Therefore, I resist adopting the moniker of "state capitalism" in this Article. Instead, I employ the shorthand reference of "China, Inc." to describe the Chinese economy.<sup>24</sup>

What distinguishes China, Inc.? Contradictions pervade the Chinese economy today. While one might think of the economy as state-dominated, private enterprises drive much of China's dynamic growth.<sup>25</sup> In addition,

19. Calculation based on WTO Dispute List and WTO Disputes by Country/Territory, *supra* notes 8–9.

20. Consider, for example, the *EU — Renewable Energy* dispute, in which neither Japan nor the United States joined China in challenging the EU's local content requirement for renewable energy, even though both had brought similar cases elsewhere. See Request for Consultations by China, *European Union and Certain Member States — Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS452/1 (Nov. 7, 2012).

21. Similarly, China did not join the U.S. complaint in challenging India's local content requirement in the *India — Solar Cells* dispute. See Requests for Consultations by the United States, *India — Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/1 (Feb. 11, 2013).

22. However, note that China's share of WTO disputes is disproportionately large as compared to its share of world trade. In 2013, China accounted for 11% of global trade. World Trade Organization, *International Trade Statistics 2015*, at 44 (2015). Yet China accounted for 38% of WTO disputes between G20 countries during 2009–2015. Calculation based on WTO Dispute List and WTO Disputes by Country/Territory, *supra* notes 8–9.

23. See, e.g., IAN BREMMER, *THE END OF THE FREE MARKET* 128–45 (2010); USHA C. V. HALEY & GEORGE T. HALEY, *SUBSIDIES TO CHINESE INDUSTRY* (2013); ANDREW SZAMOSSZEGI & COLE KYLE, *AN ANALYSIS OF STATE-OWNED ENTERPRISES AND STATE CAPITALISM IN CHINA* (2012).

24. Others have also used the term "China, Inc." to describe the unique organization of the Chinese economy. See, e.g., TED FISHMAN, *CHINA, INC.* (2006); Bill Powell, *China, Inc. Is on a Spending Spree Abroad*, NEWSWEEK (Apr. 4, 2016), <http://www.newsweek.com/chinese-foreign-investments-starwood-hotels-443706>. I elaborate upon the exact meaning of the term, as I employ it, in Part I *infra*.

25. See generally NICHOLAS LARDY, *MARKETS OVER MAO* (2014).

economic intervention does not always flow through the state. Alongside the state is the Chinese Communist Party (“Party”), a separate political actor that plays an active role in the management of state-owned enterprises (“SOEs”).<sup>26</sup> The economy embraces market-oriented dynamics, yet it is not strictly a free-market capitalist system. Networked hierarchies and embedded relationships exist among businesses, but not necessarily in the way they operate elsewhere in the world.<sup>27</sup>

Challenges arise from the fact that the contours of today’s China, Inc. include elements that many outsiders did not anticipate at the time of China’s WTO accession. This may seem remarkable, given that China joined the WTO just fifteen years ago. Nevertheless, over this short period, the Chinese economy has undergone an impressive transformation. As I will discuss, key elements of the Chinese economy have emerged that did not exist, at least in their present forms, in 2001. These elements make it difficult to determine certain legal issues under WTO rules—such as whether an entity is associated with the state, or how to characterize the overall form of China’s economy. These elements also raise the stakes associated with certain activities that fall outside the scope of the WTO’s present jurisdiction. Consequently, the WTO rules, as written, are not fully equipped to handle the range of economic problems associated with China’s rise.

Consider two examples. First, in an economy with a complicated web of relationships between the state, the Party, and firms with links to one or both actors, how do we determine what entities count as an extension of the state? What if the links run through only the Communist Party, but not the state? What if the links are only informal, and no direct control mechanisms exist? Should WTO law treat Chinese firms of this type no differently than a Western company whose executives or board members maintain informal relationships with members of the governing political party? Or does the nature of such relationships in China somehow differ such that the law should differentiate between Chinese and Western firms, even if they look relatively similar on paper? If so, what is the basis for doing so?

Second, is China a market economy? Certainly, it is not a command economy. But while market forces play a key role in many sectors, so does the Party-state.<sup>28</sup> The aggressive interventions following the stock market bubble burst in 2015 reminded us how the Chinese government’s behavior can

---

26. See generally RICHARD MCGREGOR, *THE PARTY* (2010).

27. Li-Wen Lin & Curtis Milhaupt, *We Are the (National) Champions*, 65 *STAN. L. REV.* 697 (2013).

28. Previous high-level Party documents have described market forces as playing a “basic” role in resource allocation, while the most recent such directive issued at the Third Plenum of the Chinese Communist Party’s 18th Congress in 2013 indicated that the market is now supposed to play a “decisive” role in allocating resources. See Arthur R. Kroeber, *Xi Jinping’s Ambitious Agenda for Economic Reform in China*, BROOKINGS INST. (Nov. 17, 2013), <http://www.brookings.edu/research/opinions/2013/11/17-xi-jinping-economic-agenda-kroeber>. Some saw this rhetorical upgrade as “potentially very significant.” See *id.* However, the Party-state has not quite retreated from its unique supervisory role in the Chinese economy.

differ from that of governments overseeing other major economies.<sup>29</sup> Nevertheless, are these differences sufficient to justify treating Chinese exporters differently than others in trade remedy cases?

Provisions of China's WTO Protocol of Accession allowed the WTO to evade several of these questions in the years immediately following China's re-entry into the global trading system. But as these temporary provisions expire, such questions rise to the fore. Trade diplomats must now confront the dilemma of how to tackle these questions—whether through WTO negotiations, in WTO dispute settlements, or through free trade agreements. Such decisions will have long-term implications for the WTO system, particularly if trade diplomats choose to work around the WTO multilateral process.

Thus the WTO faces a challenge: can the institution craft a predictable and fair set of legal rules to address new trade-distortive behavior arising out of China, Inc.? If not, key countries may turn away from the WTO to address these issues. This will weaken the institution. On the other hand, if the WTO crafts new rules that the Chinese view as unfair or discriminatory, this will also weaken the institution. After all, China is the world's largest exporter and already, or soon to become, the world's largest economy.<sup>30</sup> Retaining Chinese faith in the WTO dispute settlement system is critical to the institution's long-term well-being. The WTO must balance these dual objectives carefully.

To be clear, my argument is not that the WTO system is failing altogether in addressing China-related trade issues. The WTO dispute settlement system has effectively resolved certain disputes and will continue to do so. But the system has its limits.

This Article seeks to demarcate those limits. It addresses the question of why faith in the WTO is waning, particularly when it comes to negotiating and crafting clearer legal rules to address the legality of Chinese behavior. This is despite the fact that the institution has served its purpose effectively as a forum to enforce China's trade obligations. On the numerous occasions when the WTO has ruled against China, the Chinese government has willingly complied with the judgment and usually altered its laws or regulations to comply with WTO rules.<sup>31</sup> Yet many commentators in the West remain skeptical, and some have started to urge their governments to move

---

29. Edward Wong et al., *China's Response to Stock Market Plunge Rattles Traders*, N.Y. TIMES, Sept. 10, 2015, at A1.

30. See *supra* notes 6-7 and accompanying text.

31. For the first fourteen years following China's WTO accession in 2001, there have not been any complaints of noncompliance following a WTO ruling and the initiation of article 21.5 proceedings. For a discussion of the nature of Chinese compliance, see Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35 MICH. J. INT'L L. 525 (2014).

beyond the WTO in dealing with China.<sup>32</sup> This Article explains why this view persists and why it is not entirely irrational.

The WTO system works but only up to a point. For a range of China-related trade issues, the WTO offers an effective forum. But its continued efficacy will be tested in the years ahead. By design, the WTO has largely managed to avoid a series of difficult interpretative questions concerning China's economic structure in the years immediately following China's accession. However, as the transition period ends, such questions will surface with greater frequency in litigation. How the WTO resolves such questions will have important implications for the continued willingness of major powers to turn to the WTO dispute settlement system to resolve trade tensions. Furthermore, for another range of issues, the WTO system, if left unchanged, will prove impotent. The WTO's jurisdictional mandate, as currently demarcated, does not allow it to tackle such issues.

Collectively then, elements associated with China's development pose a systemic challenge to the future capacity of the WTO to handle trade tensions between major powers. The WTO, as a young institution, faces an inflection point. Can the WTO adapt to address the new legal challenges associated with China's rise? Can it continue to function as an effective interface between different economic systems, allowing them to trade harmoniously?<sup>33</sup> If so, will the WTO rely more on judicial lawmaking or treaty making? Is its current jurisdictional scope sufficient or must it be expanded? How the WTO answers these questions and addresses the China, Inc. challenge will shape its future relevance for global trade governance.

Of course the WTO faces other challenges beyond China. Similar questions arise on account of other new developments not necessarily anticipated or addressed when the rules were originally written. But because of China's size and importance, the challenges associated with China, Inc. are particularly pressing for the institution. They also raise interesting questions for what we seek as the desirable structure for global trade governance. At its heart, the problem is political rather than economic: do we seek a "one-size-fits-all" set of multilateral trading rules? If so, to what extent will we allow WTO jurists to shape these rules and/or will we accommodate Chinese interests in future WTO negotiations? If neither alternative proves attractive, to what extent will we tolerate growing regime fragmentation?

The Article has three goals. First, I classify instances when the WTO regime can clearly and adequately address problems related to China, Inc.

---

32. See, e.g., *Ten Years in the WTO: Has China Kept Its Promises?: Hearing Before the Cong.-Exec. Comm'n on China*, 112th Cong. (2011) at 4 (statement of Congressman Chris Smith) (testifying that China's WTO membership "has come with a cost to the credibility of the WTO, raising the question 'is China killing the WTO?' given China's state capitalism and poor governance"); Clyde Prestowitz, *China's Not Breaking the Rules. It's Playing a Different Game*, FOREIGN POL'Y (Feb. 17, 2012), <http://foreignpolicy.com/2012/02/17/chinas-not-breaking-the-rules-its-playing-a-different-game/>.

33. See JOHN JACKSON, *THE WORLD TRADING SYSTEM* 248 (2d ed. 2000) (describing his interface theory for global trade rules).

and when this will prove more difficult or problematic. I argue that, when the behavioral elements more closely resemble those of other former socialist and/or newly industrialized Asian economies, the problems are easier to handle. In contrast, difficulties arise when the action relates to either: (a) vague treaty provisions or (b) an issue area that advanced economies intentionally excluded from the WTO's jurisdiction. In short, the Article aims to provide a roadmap for when companies and governments can hope to turn to the WTO to resolve future cross-border disputes related to China and when they cannot.

Second, the Article draws attention to a series of emerging issues in WTO litigation. Special provisions of China's Protocol of Accession have allowed the WTO to sidestep several China-related questions in the immediate years following China's WTO accession. For example, until 2011, China's trading partners could easily limit Chinese imports through a special safeguard mechanism whenever Chinese imports caused unexpected injury to domestic producers.<sup>34</sup> Through the end of 2016, China's trading partners may treat China as a non-market economy unless China can demonstrate otherwise, making it relatively easy to apply higher tariffs in the form of antidumping duties against imports from China.<sup>35</sup> But as these special provisions expire, WTO members will increasingly need to rely on the general provisions of the WTO agreements for resolving their grievances against China. Questions of how to treat China's economic structure under general WTO rules, which have been suppressed to date, will come to the fore. This Article anticipates some of these questions before they surface in an actual dispute in the hope of promoting a rational discussion about emerging issues before they become politically charged elements of a trade conflagration.

Finally, the Article highlights potential ways in which the WTO and its member states might handle this systemic challenge. One option is for the global trade regime to respond as it has previously when confronted with new economic structures—by elaborating through additional multilateral treaty rules. But that option may be foreclosed. If that is the case, then the Article discusses and addresses two other possibilities—expansion through judicial lawmaking or through treaty making outside of the WTO. I discuss why the latter of these two possibilities is more likely. If this proves true, then the China, Inc. challenge will result in greater regime fragmentation.<sup>36</sup> The third aim of this Article then is to equip policymakers and academics with a tool for future scenario planning.

This Article proceeds as follows. Part I argues that China's economic structure is unique. Part II explains how this informs the limits of the WTO's efficacy in addressing issues arising out of China's economic struc-

---

34. World Trade Organization, Ministerial Declaration of 10 November 2001, WT/L/432 (2001), ¶ 16 [hereinafter Protocol of Accession].

35. *Id.* ¶ 15.

36. *See infra* Part III.C.



ture. Part III examines the options for meeting the dual challenge of interpreting legal concepts to fit the Chinese context, as well as shaping and revising laws to fit unanticipated circumstances. Part III also considers systemic implications. Overall, I contend that without major change China's rise, should it continue, will contribute to a gradual weakening of the WTO legal order.

## I. THE ORIGIN AND NATURE OF THE CHALLENGE

The root cause of the China, Inc. challenge is the fact that the Chinese economy is structured differently from any of the other major economies. Equally important is the fact that treaty negotiators did not anticipate many of these differences at the time of China's accession to the WTO accession. In this Part, I explain these differences and why they pose new issues for WTO law. I also discuss why these issues are only surfacing now, more than a decade after China's WTO accession.

### A. *The Uniqueness of China's Economic Structure*

China's growing economic prowess is clear. Today, China is home to the second largest number of Fortune 500 companies in the world.<sup>37</sup> The largest initial public offering ever was that of a Chinese technology company, Alibaba.<sup>38</sup> The world's four largest banks are all Chinese; China has more banks in the top 100 than any other country in the world.<sup>39</sup> Even Chinese law firms have started to branch out worldwide by acquiring or merging with firms in advanced economies.<sup>40</sup>

Deeper integration into the world economy does not necessarily prompt deeper convergence. The Chinese economy today bears little resemblance to that of twenty-five years ago. But neither does it resemble that of any other economy in the world.

Many scholars beg to differ. Foreign commentators are often tempted to apply conceptual frameworks developed elsewhere to the Chinese context.<sup>41</sup>

---

37. Wei Tian, *China Has Second-most Fortune 500 Companies*, CHINA DAILY (July 11, 2012), [http://europe.chinadaily.com.cn/business/2012-07/11/content\\_15568721.htm](http://europe.chinadaily.com.cn/business/2012-07/11/content_15568721.htm).

38. Elzio Barretto, *Alibaba IPO Ranks as World's Biggest After Additional Shares Sold*, REUTERS (Sept. 22, 2014), <http://www.reuters.com/article/alibaba-ipo-value-idUSL3N0RN1C920140922>.

39. Liyan Chen, *2015 Global 2000: The World's Largest Banks*, FORBES (May 6, 2015), <http://www.forbes.com/sites/liyanchen/2015/05/06/2015-global-2000-the-worlds-largest-banks/#18e8efa624f1>.

40. See, e.g., Catherine Ho, *Global Law Firm Dentons Poised to Merge with Chinese Firm Dacheng*, WASH. POST (Jan. 25, 2015), [https://www.washingtonpost.com/business/capitalbusiness/global-law-firm-dentons-poised-to-merge-with-chinese-firm-dacheng/2015/01/23/9cb0707c-a314-11e4-903f-9f2faf7cd9fe\\_story.html](https://www.washingtonpost.com/business/capitalbusiness/global-law-firm-dentons-poised-to-merge-with-chinese-firm-dacheng/2015/01/23/9cb0707c-a314-11e4-903f-9f2faf7cd9fe_story.html); Jessica Seah, *King & Wood and Mallesons Confirm Ambitious Merger Plans*, ASIAN LAWYER (Dec. 15, 2011), <http://www.americanlawyer.com/id=1202535701845/King—Wood-and-Mallesons-Con-firm-Ambitious-Merger-Plans?slreturn=20160128104154>.

41. See, e.g., Seung-Wook Baek, *Does China Follow "the East Asian Development Model"?*, 35 J. CONTEMP. ASIA 485, 486-96 (2005); John Knight, *China as a Developmental State*, 37 WORLD ECON. 1335, 1335-46 (2014).