

# Uneasy Days of Push-and-Pull between China and the WTO: Recent Issues of China in the WTO

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As China's 12-year experience in the WTO has induced an ambitious global vision so-called "New Silk Road Strategy," its global status has leveled up to 'G2' of the world. In terms of global trade, consumers all over the world have gained much from cheap Chinese goods, and Chinese growth has provided a huge market for other countries' exports. This paper briefly analyzes traditional issues concerning China's cases in the WTO in such areas as goods and services, intellectual property, dispute settlement, multilateral and regional trade agreements. It also tackles China-related issues in the WTO including investment, competition, government procurement, trade finance, and labor and human rights. This paper concludes that China needs to be equipped with better enforcement of domestic rule of law and greater room for trade liberalization. Moreover, the WTO is expected to encourage and boost China's economic growth and institutional development, while China will continue to pose both new opportunities and threats to the multilateral trading system.

**Keywords:** Goods, Services, IP, Dispute Settlement, Investment, Labor, Human Rights

## 1. Introduction

According to the Trade Policy Review Report of China by the WTO Secretariat, China's economy has enjoyed a stable growth, with real GDP expanding by 7.7 percent annually.<sup>1</sup> This was witnessed both in the years 2012 and 2013, and a

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forecast of 7.5 percent is expected for 2014.<sup>2</sup> Backed by strong domestic demand, mainly from the private sector, the Chinese government continues to promote consumption expansion through fiscal policy measures such as its structural tax reduction policy.<sup>3</sup> The surplus in China's external current account reflects an excess of national savings over investment because the levels of both savings and investment continue to be very high, representing some 50 percent and 47 percent of GDP, respectively.<sup>4</sup> IMF also indicates that China's real GDP growth recovered somewhat in the second half of 2013 and stayed robust in the year of 2014.<sup>5</sup> Table 1 refers to the overall macro-economic indicators of China, Japan and Korea. The announcement of the government's reform blueprint including fiscal reforms has gained global confidence.<sup>6</sup>

**Table 1: China, Japan, & Korea: Real GDP, Consumer Prices, Current Account Balance & Unemployment<sup>7</sup>**

	Real GDP			Consumer Prices			Current Account Balance			Unemployment		
	Projections			Projections			Projections			Projections		
	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015
<b>China</b>	7.7	7.5	7.3	2.6	3.0	3.0	2.1	2.2	2.4	4.1	4.1	4.1
<b>Japan</b>	1.5	1.4	1.0	0.4	2.8	1.7	0.7	1.2	1.3	4.0	3.9	3.9
<b>Korea</b>	2.8	3.7	3.8	1.3	1.8	3.0	5.8	4.4	3.5	3.1	3.1	3.1

\* Unit: annual percentage change

This paper will briefly analyze traditional issues concerning China's cases at the WTO, in areas such as goods and services, intellectual property, dispute settlement, multilateral and regional trade agreements. It will also tackle China-related issues in the WTO under topics such as investment, competition, government procurement, trade finance, and labor and human rights.

## 2. Traditional Issues

### *A. Goods and Services*

China's trade in goods expanded rapidly, with exports totaling USD 2.21 trillion and imports amounting to USD1.95 trillion in 2013.<sup>8</sup> The share of both merchandise exports and imports on GDP has, however, declined to 24 percent and 21.3 percent, respectively, in 2013 (a significant reduction from 26.7 percent and 23.7 percent in 2010).<sup>9</sup> In 2013, manufactured products remained the main component of China's exports, accounting for 94 percent of the total, while manufactures accounted for 58 percent of China's imports in 2013.<sup>10</sup> Meanwhile, services represented 8.7 percent of China's total exports and 14.4 percent of its imports in 2013. China's effort for trade facilitation includes the introduction of paperless customs clearance procedures, although harmonization of customs procedures across the WTO member countries is still in process.<sup>11</sup> The Trade Policy Review by the WTO Secretariat summarizes that China's average applied MFN rate in 2013 was 9.4 percent with the average tariff on non-agricultural products at 8.6 percent and agricultural products at 14.8 percent.<sup>12</sup>

Just like other WTO members, China also provides a variety of domestic support programs at the sectorial, regional and enterprise level to attain different economic and social goals even though the application of these programs is not always transparent.<sup>13</sup> China maintains:

Industry-specific subsidies for inputs, land and technology to firms that the central and provincial governments perceive as strategically important or to revitalize them as the NDRC calls for in its National Old Industrial Base Adjustment and Renovation Plan (2013-2022).<sup>14</sup>

Such initiative allows favored companies, including State-Owned Enterprises ("SOEs"), the ability to purchase inputs below cost and directly from each other.<sup>15</sup> Price controls are set by the government at both central and provincial levels. It may take the form of either 'government prices' and fixed prices set by the authorities, or "government-guided prices."<sup>16</sup> In addition, agriculture continues to receive support to guarantee farmers' income, develop rural areas, and ensure food security and price stability of agricultural products in the domestic market.<sup>17</sup>

### ***B. Intellectual Property***

China has continued to implement measures aimed at improving its Intellectual Property Rights (“IPRs”) protection regulatory environment, including the amendments to legislation and regulations, as well as departmental rules.<sup>18</sup> Significant changes were the enactment of the third amendment to the Trademarks Law [商标法] of 2013,<sup>19</sup> and the Administrative Measures on Prioritized Examination of Invention Patent Applications [对发明专利优先审查管理办法] of 2012.<sup>20</sup> The Trade Policy Review concludes that enforcement of IPRs continues to be a major challenge in China in the years to come.<sup>21</sup>

### ***C. Dispute Settlement***

According to Hsieh, China’s participation in the WTO dispute settlement cases can be categorized into three dimensions: China as a third party, China as a respondent, and China as a complainant.<sup>22</sup> During the twelve years after its accession to the WTO, the total number of dispute cases involving China as a complainant is 12 and as a respondent, 23. Between 2012 and 2014, China was involved in 4 dispute settlement cases as a complainant, 9 as a respondent. Hsieh also claims that China had shown a ‘soft approach’ in the early stage of its membership, but her attitude and strategy toward the WTO litigation has been gradually getting stronger and more affirmative. However, it still lacked proper competence particularly toward defensive cases.<sup>23</sup>

**Table 2: The Yearly Cases of WTO Litigation Involving China<sup>24</sup>**

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	total
as a complainant	1	0	0	0	0	1	1	3	1	1	3	1	0	12
as a respondent	0	0	1	0	1	3	2	1	4	2	7	1	1	23
total	1	0	1	0	1	4	3	4	5	3	10	2	1	35

*D. Multilateral and Regional Trade Agreements*

As of February of 2015, China has concluded 14 FTAs with over 23 States and regions as summarized in Table 3. China and the US are in a state of being “locked in behind-the-scenes competition over free trade agreements.”<sup>25</sup>

**Table 3: China's FTAs in Brief**<sup>26</sup>

Implemented (year of enforcement)	Signed or finalized	Under negotiation	Under study or preparation
Hong Kong (June 2003. CEPA)			
<b>Macao</b> (October 2003. CEPA)			
<b>ASEAN</b> (Product: July 2005 Service: July 2007 Investment: January 2010)	<b>Korea</b> (November 2014 -Declaration of an agreement)	<b>GCC</b>	
<b>Chile</b> (Product: October 2006 Service: August 2010)		<b>Norway</b>	<b>India</b>
<b>Pakistan</b> (Product Investment: July 2007 Service: October 2009)	<b>Australia</b> (November, 2014 -Declaration of an agreement)	<b>SACU</b>	RTA collab- orative research project (June 2003 ~ October 2010, 6 meetings)
<b>New Zealand</b> (January 2008)		<b>Korea-China- Japan</b>	
<b>Singapore</b> (January 2009)	<b>Iceland</b> (April 2013)	<b>RCEP</b>	
<b>Peru</b> (March 2010)			
<b>Costa Rica</b> (August 2011)	<b>Switzerland</b> (July 2013)		
<b>Taiwan</b> (September 2010/ Under negotiation about product)			

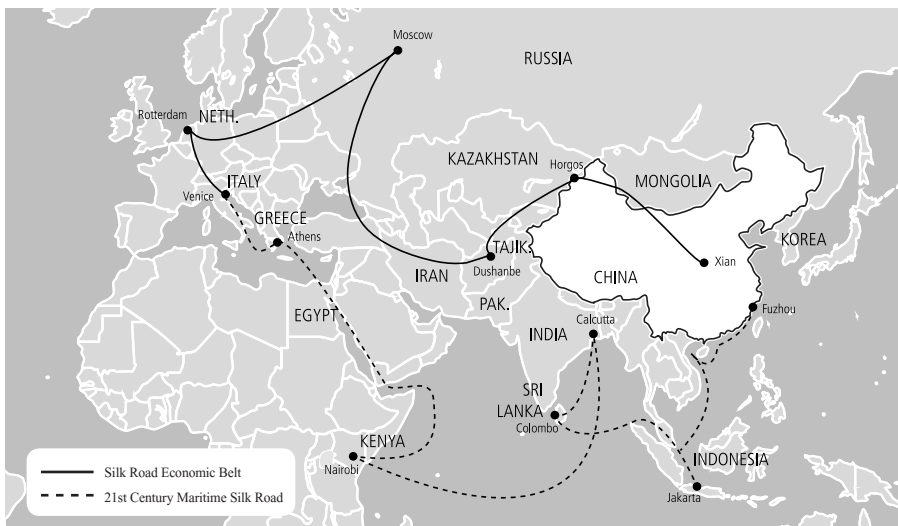
Excluding China, the US is currently under negotiation with 12 other States under the title of the Trans-Pacific Partnership (“TPP”),<sup>27</sup> while China suggests the Free Trade Area of the Asia-Pacific (“FTAAP”) embracing economies in

Asia-Pacific Economic Cooperation (“APEC”) forum with a rather shallow trade agreement. Yet, Min also argues:

China’s real strategy is not just FTAAP but] the “New Silk Road Strategy,” a sprawling set of trade and infrastructure agreements proposed by Chinese President Xi Jinping, which aims to foster free trade - and bolster Chinese soft power - with China’s neighbors to the west and southeast.

As shown in Figure 1 below, this is an ambitious plan, however, “connecting China to Europe via Central Asia,” aiming at “deepen[ing] linkages between China and its neighbors via trade, investment, energy, infrastructure, and internationalization of China’s currency, *Renminbi*.”<sup>28</sup>

**Figure 1: China’s “New Silk Road Strategy”**<sup>29</sup>



### 3. New Issues

#### A. Investment

China recorded high amount of foreign direct investment (“FDI”), particularly in sectors of manufacturing, real estate, and wholesale and retail trade, inviting FDI

inflows of USD 117.6 billion in 2013.<sup>30</sup> In 2012, outward FDI reached USD 70.1 billion, with the main destination being Hong Kong, China, with two-thirds of the total. China's institutional tools for investment policy include Central Government Five-Year Plans, sectorial and provincial Five-Year Plans and different 'Catalogues' that guide in the implementation of overall policies.<sup>31</sup> It is, however, said to "sometimes overlap and even conflict, reflecting the different agendas at the different levels."<sup>32</sup> China encourages direct inward FDI as well as joint ventures between Chinese and foreign companies, particularly regarding R&D activities since China has strategic interest in nurturing high-end manufacturing, high-tech industries, service industries, new energy and energy-saving environmental protection industries.<sup>33</sup>

In July of 2014, China and the US opened a new era on trade in investment with the negotiation of a bilateral investment treaty ("BIT").<sup>34</sup> Enjoying robust Sino-US trade and China's further integration into the global economy, the two governments agreed that a BIT would cover all sectors of the economy unless explicitly identified in a so-called negative list, ensuring the nondiscriminatory treatment for investors from both countries throughout the entire life cycle of investments. Furthermore, Barshefsky and Yongtu add that:

... which sectors will be on the countries' negative list, which exceptions from the general nondiscrimination principles will be permitted, how the treaty will be enforced at the sub-national level, and how the dispute settlement mechanisms will be structured.<sup>35</sup>

It would settle investment criteria clearly by narrowing down on national security reviews to those sectors of essential security relevance, as well. Meanwhile, this treaty is intended to limit barriers to investment related to intellectual property, technology transfer, technical standards and the treatment of State-owned enterprises, and would establish credible legal mechanisms for resolving relevant disputes.<sup>36</sup>

### ***B. Competition***

In 2012, China began implementing provisions regarding competition policy, aiming at reinforcing observance and combating monopolistic practices as her economy liberalizes.<sup>37</sup> Adopted were provisions on the implementation of

reviews of concentrations of undertakings (anti-trust reviews) and reviews of foreign companies' mergers and acquisitions of domestic companies relating to 'national security' (national security reviews), with a view to increasing transparency. Provisions with respect to measures related to price abuse of dominant positions, price-related administrative monopoly, and price fixing were also adopted. As China is not maintaining a free enterprise system completely, immunity against the provisions of the Competition Law [中华人民共和国反不正当竞争法] is granted to SOEs even though the Law covers all types of enterprises.<sup>38</sup>

### ***C. Government Procurement***

Since her accession to the WTO, China has become an observer to the Plurilateral Agreement on Government Procurement ("GPA") and an observer to the Plurilateral Agreement on Trade in Civil Aircraft and a participant in the Information Technology Agreement ("ITA").<sup>39</sup> According to the Trade Policy Review of China by the WTO Secretariat, the amount of centralized budget of procurement in 2013 was RMB 500,000 for goods and services, and RMB 600,000 for construction projects which accounted for 87.6 percent of government procurement in 2012.<sup>40</sup> Along with the government's modest effort to liberalize its procurement market, core members of the WTO are paying a keen attention to reaping profit after entering into China.

### ***D. Trade Finance***

China continues to enhance coordination between credit policy and industrial policies, by speeding up rural financial products and service innovation, improving the provision of financial services for small and medium-sized enterprises, and adopting measures to prevent and alleviate local debt-related risks.<sup>41</sup> Financial institutions were strongly recommended to support profitable export-oriented enterprises by a variety of credit products as well as providing credit support for building infrastructures such as railways, shipping, thermal power and steel.<sup>42</sup> The People's Bank of China ("PBC") has controlled financial institutions to strengthen financial support to such areas as "scientific and technological innovation, emerging industries of strategic importance, and service industries."<sup>43</sup>



### ***E. Labor and Human Rights***

Import licensing, restrictions and prohibitions are indeed related to national security, public morality, and human, animal and plant health, and even environmental protection.<sup>44</sup> Since there exists both automatic and non-automatic licensing by the government, the list of goods subject to any of these restrictions are issued by the relevant agencies; it can sometimes be adjusted or even prohibited as necessary.<sup>45</sup> The Economist reports that Chinese companies are getting innovative in dealing with labor issues including recruiting and compensating; some offer “housing, schooling for their children and trips abroad” in order to attract young and competent workers who are sometimes from rural areas.<sup>46</sup>

## **4. Conclusion**

China had made serious efforts for 15 years before joining the WTO. Nonetheless, she was initially afraid of many ‘headaches,’ including “the loss of customs duties and the distress of farmers exposed to foreign competition.”<sup>47</sup> In spite of heroic reforms in the years around China’s WTO entry, new and various complaints from trading partners are raised regarding its exports being too massive with too cheap manufacturing goods, subsidized by an undervalued currency. Moreover, it is feared that China is likely to be too slow in implementing the WTO rules and that it may suddenly impose new or unwritten rules that are hazardous or discriminative to foreigners.<sup>48</sup> The Economist, however, recognized that, in terms of global trade, consumers all over the world have gained much from cheap Chinese goods, and Chinese growth has provided a huge market for other countries’ exports. Moreover, the remaining trade barriers are often exaggerated. Although The Economist fully congratulated China’s decade in the WTO, it calls for better enforcement of domestic rule of law and greater room for trade liberalization.<sup>49</sup>

China has become ‘more resilient’ to changes for development in advanced economies due to her deeper connection to the global supply chain, her own growing demand, and higher foreign direct investment flows into other emerging regions as reports suggest by IMF in the World Economic Outlook.<sup>50</sup> In fact, for the second half of 2014, China has come up with new institutional players in the

International Financial System. With the fund amount of more than USD140 billion, China - along with Brazil, Russia, India and South Africa - established the New Development Bank, and then formed the Asian Infrastructure Investment Bank, and finally, launched the Silk Road Fund, backed by yet another development bank.<sup>51</sup> Even though it is partially welcome, some worries exist that China would attach conditions far too loose to loans. It is mentioned: “The fear is that, as international use of the yuan grows, China will start to provide pariah states with a means to evade Western financial sanctions, thus subverting the diplomatic order as well as the financial one.”<sup>52</sup> This represents subconscious worries of the West toward China’s rising role as “a banker to the world.”<sup>53</sup>

Hsieh said that China policy for economic liberalization succumbed to the demand of Western powers and its Marxist–Leninist ideology have definitely “contributed to China’s suspicions about the modern legal order and international tribunals.”<sup>54</sup> This incongruity would cause an “uneasy push-and-pull” between China and the rest of the world including the WTO. Today, China is welcomed to focus on enhancing legal capacity building in order to cope with the WTO disputes. In the beginning, China has had a passive attitude towards the WTO dispute practices. Hsieh, however, argues: “It not only defends its cases vigorously, but also acts preemptively by filing cases against the US and the European Union. This transformation furthers its integration into the international legal order.”<sup>55</sup> As of February 2015, China’s 12-year experience as a WTO member has induced an ambitious global vision and “has taken a more assertive role in shaping WTO rules and defending its political and commercial interests in WTO disputes.”<sup>56</sup> The WTO is expected to encourage and boost China’s economic growth and institutional development, while China will continue to pose both new opportunities and threats to the multilateral trading system.

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2. *Id.*

3. *Id.*
4. *Id.*
5. World Economic Outlook: Recovery Strengthens, Remains Uneven, World Economic and Financial Surveys, International Monetary Fund (Apr. 2014) 58-9, *available at* <http://www.imf.org/external/pubs/ft/weo/2014/01/pdf/text.pdf> (last visited on Feb. 2, 2015).
6. *Id.*
7. *Id.* at 59. (Compiled by the author)
8. *Supra* note 1, at 9.
9. *Id.*
10. Trade Policy Review reads: "Among manufactured products, office machines and telecommunication equipment and textiles and clothing continued to be China's main exports. In 2013, the main destinations for China's merchandise exports remained the EU; the United States; Hong Kong, China; Japan and the Republic of Korea, as well as ASEAN countries. The main sources of its imports were the EU; the Republic of Korea; Japan; Chinese Taipei; the United States and Australia, as well as ASEAN countries."
11. *Supra* note 1, at 11.
12. Trade Policy Review reads: "China's applied MFN tariff in 2013 consisted mainly of *ad valorem* rates (99.5% of the total number of lines) while the non *ad valorem* rates comprise specific and alternate rates, and formula duties."
13. *Supra* note 1, at 12.
14. *Id.* at 13.
15. *Id.* at 12.
16. *Id.* at 13. Trade Policy Review reads: "The determination of government prices or government-guided prices varies in accordance with the type of product or service, based on criteria such as market situation, average social costs, the effect on the standard of living of the population, as well as on economic, regional and seasonal factors. Although the methodology for setting prices is the same across provinces, prices may be set at different levels depending on the particular province."
17. *Id.* Trade Policy Review reads: "The four main subsidies in place to support the sector are: the subsidy to promote the use of superior strains and seeds, the subsidy to purchase agricultural machinery and tools, the comprehensive subsidy for agricultural inputs, and the direct subsidy to farmers."
18. *Id.*
19. Adopted on Aug. 30, 2013; entered into force on May 1, 2014, *available at* <http://www.docin.com/p-708465577.html> (last visited on Feb. 18, 2015)
20. Adopted on Jun. 19, 2012; entered into force on Aug. 1, 2012, *available at* [http://www.sipo.gov.cn/zwgg/jl/201310/t20131023\\_837456.html](http://www.sipo.gov.cn/zwgg/jl/201310/t20131023_837456.html) (last visited on Feb. 18, 2015).
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  24. See KIEP Beijing Office, *China's WTO Dispute Settlement Cases during 10 Years: Topics, Procedures, and Judgment: Current Issues of the Chinese Economy*, 14-04 Korea Institute for International Economic Policy 3 (2012), compiled by the author from the official website of the WTO, available at [http://www.wto.org/english/thewto\\_e/countries\\_e/china\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/china_e.htm) (last visited on Feb. 6, 2015).
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  26. Compiled by the author based on the official FTA website of the Republic of Korea, available at <http://www.fta.go.kr> (last visited on Feb. 6, 2015).
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  28. *Supra* note 25.
  29. For details, see *China Sees Itself at Center of New Asian Order: Beijing Builds Roads, Pipelines, Railways and Ports to Bind Itself to Region*. WALL ST. J. Nov.(9, 2014) available at <http://www.wsj.com/articles/chinas-new-trade-routes-center-it-on-geopolitical-map-1415559290> (last visited on Feb. 5, 2015).
  30. *Supra* note 1, at 10. (July 10, 2014). The sources of FDI inflows continue to be highly concentrated: Hong Kong, China remains, by far, the main source of FDI to China, accounting for 62.4% of total FDI in 2013. It is followed by Singapore, Japan, the EU, the British Virgin Islands, the Republic of Korea, the United States, and Chinese Taipei.
  31. *Id.*
  32. *Id.*
  33. *Id.* Trade Policy Review reads: "Foreign investment projects are classified in four categories: encouraged, permitted, restricted, and prohibited. Projects in the encouraged category are eligible for preferential treatment as specified in the relevant laws and regulations, while projects in the restricted category must undergo a more thorough examination and approval process."
  34. C. Barshefsky & Long Yongtu, *A Win-win Possibility for China-U.S. Trade: Bilateral Investment Treaty Talks on July 9-10 could pay big dividends*, WALL ST. J. (June 30, 2014), available at <http://www.wsj.com/articles/charlene-barshefsky-and-long-yongtu-a-win-win-possibility-for-china-u-s-trade-1404170926> (last visited on Feb. 14, 2015). This Article reads: "China's total stock of foreign direct investment in the U.S. grew from virtually zero in 2000 to roughly USD 17 billion in 2012, with USD 4 billion flowing from China to the U.S. in 2012 alone. In 2012, the total stock of U.S. FDI in China stood at about USD 70 billion. But U.S. investment still accounts for only 3% of China's inbound FDI, a small fraction of what it could be with the relaxation of market barriers, particularly

in services.”

35. *Id.*

36. *Id.*

37. *Supra* note 1, at 13.

38. *Id.* Adopted on Sep. 2, 1993; entered into force on Dec. 1, 1993, *available at* [http://www.law-lib.com/law/law\\_view.asp?id=245](http://www.law-lib.com/law/law_view.asp?id=245) (last visited on Feb. 18, 2015).

39. *Id.* at 10. Trade Policy Review reads: “Under the Government Procurement Law, the Government is required to procure domestic goods, construction projects and services, subject to certain exceptions including: unavailability in China, lack of availability on reasonable commercial terms, procurement for use abroad, or when it is otherwise provided for by other laws and administrative regulations.”

40. *Id.*

41. *Id.* at 12.

42. *Id.*

43. *Supra* note 1, at 13.

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48. *Id.*

49. *Id.*

50. *Supra* note 5, at 124.

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52. *Id.*

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54. P. Hsieh, *China’s Development of International Economic Law and WTO Legal Capacity Building*, 13 *J. INT’L ECON. L.* 1033-4 (2010).

55. *Id.*

56. *Id.*