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## DOES CHINA FOLLOW THE WEST? A PERSPECTIVE OF STATE-CITIZEN INTERACTION IN FOREIGN TRADE GOVERNANCE

### **Abstract**

*China's emergence onto the world is one of the most eye-catching events in the past decades, but it remains unclear to what extent the diffusing western liberalism has changed Chinese society and how a rising China will, in turn, impact the evolving global governance order. Focusing on the perspective of the interaction between the Chinese government and its citizens in foreign trade governance, this article explores China's deviation from the constitutionalisation pathway for global economic governance. As China rises, China is likely to add its own values to the evolving global governance order. Likewise, some Chinese thoughts deserve being added to the theorization of global economic governance.*

### **Annotasiya**

*Çinin dünya üzərində əhəmiyyətinin ortaya çıxması son onilliklərin ən gözə çarpan hadisələrindən biri olmuşdur. Lakin sürətlə yayılan Qərbi liberalizminin Çin cəmiyyətini nə dərəcədə dəyişməyi və onun global idarəetmədə yenidən rolunun nə cür artmağı anlaşılmaz olaraq qalır. Bu məqalə beynəlxalq ticarətin idarə olunmasında Çin hökuməti və onun vətəndaşları arasında qarşılıqlı fəaliyyətin perspektivlərinə diqqəti yönəldərək Çinin global iqtisadi idarəetmə üçün konstitusional yoldan yayınmasından bəhs edir. Çin yüksəlməsi ilə yanaşı, öz dəyərlərini inkişaf edən global idarəetmə qaydalarına əlavə etməyə meyil edir. Onu da vurğulamaq lazımdır ki, bəzi Çinə xas ideyalar dünya iqtisadi idarəetmə qaydaları nəzəriyyəsinə əlavə edilməyə layiqdir.*

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## INTRODUCTION

Beijing exhibits a far-reaching influence over the world in recent years. The Beijing-inspired Asian Infrastructure Investment Bank, with memberships not only from Asian countries but also many western countries,<sup>1</sup> was declared open for business on 16 January 2016, which is considered by some media as China's challenge to the international financial order. The Belt and Road Initiative unveils Beijing's more ambitious determination to advance international economic integration.<sup>2</sup> In late 2015, Beijing entered into a whirlwind diplomacy mode, with President XI Jinping consecutively sending out strong Chinese voices on global and regional economic cooperation at various occasions of state visits and multilateral meetings.<sup>3</sup> From the then *Tao Guang Yang Hui*" diplomatic strategy to the

<sup>1</sup> From June 29, 2015 to December 31, 2015, a total of 57 countries, 37 from Asia and 20 from outside, signed the AIIB's Articles of Agreement. By the end of 2015, 30 countries have ratified the Articles. See, Signing and Ratification Status of the AOA of the AIIB, <http://www.aiib.org/html/aboutus/introduction/Membership/?show=0> (last visited Mar. 17, 2016)

<sup>2</sup> The Silk Road Economic Belt and the 21st-century Maritime Silk Road, also known as the Belt and Road Initiative, is a development strategy and framework that focuses on connectivity and cooperation among countries primarily in Eurasia. The strategy underlines China's push to take a bigger role in global affairs.

<sup>3</sup> From September to the end of 2015, XI Jinping attended the UN 70th anniversary, G20 Antalya summit meeting, APEC Pasay summit meeting, and Paris climate change conference, and visited the US and the UK, among other diplomatic trips. He expressed for many times

current high profile on the world stage,<sup>4</sup> the Chinese government has played an increasingly significant role in world affairs. As an increasingly powerful China stands up from the earth, the world indeed has realized that China starts to make the rules.

China's ascendance goes in together with the permeation of a raft of western liberal values into China, including individualism, freedom, private property, unrestricted commerce, popular sovereignty, and rule of law. All seem to be committed to enlarging human freedom and enhancing democratic control of public power. Partly owing to the pervasion of this individual-oriented liberal thoughts, Chinese citizens indeed have gained some visible welfare increment: More and more Chinese people are going abroad for study or tourism, making China the largest source of outbound students and tourists<sup>5</sup>; A variety of commodities with world-widely well-known trademarks are domestically available to Chinese consumers - with an LVMH bag in hand, a Chinese woman expresses luxury, elite excess, celebrity culture and all other things that the brand stands for ubiquitously throughout the world.<sup>6</sup> However, China is still generally deemed as an authoritarian state by the academic circle; so some questions remain to be answered: To what extent have those western values transformed Chinese society? In which way can Chinese citizens genuinely exert their control over the public power? And, as China rises, will China add its own values to global economic governance in the future?

Undoubtedly, it is overwhelmingly difficult for this article to answer the above grand questions. So it is expedient to focus on a narrower perspective and then shed light on them. Considering that China's ascendance owes much to its deliberate utilization of the open world market, this article is thus confined to China's distinctive mode of state-citizen interaction in foreign trade governance and its implication for China's contribution to the evolving global economic order.

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some Chinese understandings, such as win-win cooperation, mutual learning, and common development, regarding the future of global governance.

<sup>4</sup> "Tao Guang Yang Hui", meaning not to show off one's capability but to keep a low profile, was a strategic thought advocated by many ancient Chinese theorists. It was recommended for those who were in plight and could gain advantage by refraining from show-off and improving themselves unobtrusively. It was proposed by the late leader DENG Xiaoping as China's diplomatic strategy in late 1980s and early 1990s.

<sup>5</sup> Our Country has Become the Largest Exporter of Students (2014), <http://www.jsj.edu.cn/n2/7001/12107/537.shtml> (last visited Mar. 17, 2016); UNWTO Annual Report 2014, p. 83 (2014), [http://www.dtxqt4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto\\_annual\\_report\\_2014.pdf](http://www.dtxqt4w60xqpw.cloudfront.net/sites/all/files/pdf/unwto_annual_report_2014.pdf) (last visited Mar. 17, 2016).

<sup>6</sup> Sonia K Katyal, *Trademark Cosmopolitanism*, 47 University California Davis L. Rev. 875, p. 879 (2014)

# I. THE EVOLUTION OF CHINA'S FOREIGN TRADE GOVERNANCE

China was the original contracting member of the GATT, but left it in 1950 for some reasons pertaining to the CCP's rise to power. When it was again admitted into the WTO, more than a half century elapsed. It is generally accepted that if China had continuously complied with GATT rules since its original GATT membership, Chinese citizens could have gone out of poverty far earlier.<sup>7</sup> Also, some Chinese scholars have pointed out that during the total 15 years for negotiating GATT-WTO re-accession, less attention was paid to the rights of individuals and enterprises.<sup>8</sup> It is, therefore, meaningful to have an in-depth review of the development of China's foreign trade system.

## A. 1949-1978: State-monopoly

In the early time of the CCP's administration, China was suffering from economic hardship plus the all-round blockade and embargo imposed by the United States and other Western countries. The CCP, therefore, adopted a model of economic management featuring comprehensive central planning and control. In line with this economic tactic, a foreign trade policy emphasizing state control came into being. The founding leader MAO Zedong once addressed, "It is impossible for the People's Republic to recover and develop its national economy without the control over foreign trade".<sup>9</sup>

The Common Programme promulgated in 1949, on the eve of the founding of the PRC, made it clear that control shall be exercised over foreign trade and a protective trade policy shall be adopted.<sup>10</sup> Based on this ideology, private trading organizations were gradually eliminated as part of a programme of economic transformation, so that all foreign trade transactions were ultimately handled by state corporations under the direct control and supervision of the government pursuant to a master plan.<sup>11</sup> State-controlled foreign trade corporations were, in essence, an arm of the government performing a state function, while individuals and private corporations are

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<sup>7</sup> See, e.g., Ernst-Ulrich Petersman, *International Economic Law in the 21st Century: Need for Stronger "Democratic Ownership" and Cosmopolitan Reforms*, 31 Polish Y.B. Int'l L. 9, p. 32 (2011)

<sup>8</sup> See, e.g., SHEN Muzhu, *WTO Yu Zhongguo Fazhi [WTO and Chinese Legal System]*, p. 203 (2002); CAI Congyan, *A Paradigm Shift of China's Foreign Trade Administration Law*, 2 Xiamen Daxue Xuebao [Xiamen University Journal] 116, p. 119 (Art & Soc., 2004).

<sup>9</sup> MAO Zedong, *MAO Zedong Xuanji [Selected Essays of MAO Zedong]*, p. 1433 (Vol. 4, 1991)

<sup>10</sup> The Common Program of Chinese People's Political Consultative Conference 1949, Art. 37.

<sup>11</sup> In 1950, there was 7 state-owned imp. & exp. corporations. In 1953, the former state-owned foreign trade corporations were reorganized into 16 foreign trade corporations according to the broad commodity categories, which had subsidiary foreign trade corporations in various local places. In 1978, after several times of reorganization, there were 11 foreign trade corporations. See Ma Fengqin, *Zhongguo Duiwai Maoyi Zhengce Yu Guanli [China's Foreign Trade Policies and Management]*, pp. 11-12 (1995)

completely deprived of the right to foreign trade engagement. A state-monopoly foreign trade system based on high centralization was thus established.

Foreign trade was considered by the then Chinese leaders as a mean to achieve diplomatic objectives. An extreme of this policy is that in many years of this period China provided many other countries with tremendous economic aid that were far beyond China's affordability, even when China was suffering from extreme economic difficulties.<sup>12</sup>

This stringent central control policy was the cornerstone of China's foreign trade system until 1978. It indeed made great contributions for the new government to combat western embargo and to recover national economy in its early ages. However, when the international environment had favorable changes to China later, it became a stumbling-block, hampering the development of China's economy and the improvement of Chinese people's living standard.

### ***B. 1978-1992: Tentative Reform***

The 3<sup>rd</sup> Plenary Session of the 11<sup>th</sup> CCCCPC convened in December 1978 brought China into a new era accentuating reform and development. The gazette of this session pointed out: "The state will actively develop equal and mutually beneficial economic cooperation with various countries on the basis of self-independence, and strive to acquire worldly advanced technologies and equipment".<sup>13</sup> Later in 1982, HU Yaobang, the then General Secretary of the CCCCPC gave a speech on foreign economic relations, saying that:

Our socialist modernization should make use of both domestic resources and overseas resources, open both domestic markets and international markets, and learn the abilities both to organize domestic construction and to develop foreign economic relations.<sup>14</sup>

From then on, the former diplomacy-oriented trade policy was replaced by the opening-up policy, and comparative advantage theory became the underpinning ideology for China to advance foreign trade development.

As the economy were dragged carefully away from the former stringent planning system, foreign trade policy became less rigid as well. A series of measures, including power degradation, profit sharing, operation dispersal, and contracting, was implemented to reform the foreign trade system and therefore to encourage export. The reform went through two phases. The first phase run from 1979 to 1986 with an emphasis on diversification of operation

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<sup>12</sup> YANG Hongxi, *A Review of the Development of China's Foreign Aid*, 11 Xuexi Yuekan [Study Monthly], p. 40 (2009)

<sup>13</sup> Gazette of the 3<sup>rd</sup> Plenary Session of the 11<sup>th</sup> CCCCPC (2009), [http://www.gov.cn/test/2009-10/13/content\\_1437683.htm](http://www.gov.cn/test/2009-10/13/content_1437683.htm) (last visited Mar. 17, 2016)

<sup>14</sup> The History Research Office of the CCCCPC, *Zhongguo Gongchan Dang Lishi Dashi Ji* [Chronicle of Events of the CCP], pp. 169-170 (2009)

organs, devolvement of foreign trade operational right, and severance between government and enterprises. The second phase, from 1987 to 1992, stressed abandoning the practice of having everybody “*Chi Daguo Fan*” (eat from the same big pot) by implementing the contract managerial responsibility system.<sup>15</sup> Under the precondition that foreign trade were still controlled by the central government, provincial and municipal authorities have more independence in foreign trade matters, and foreign trade corporations were injected with more incentives to pursue economic interests. Also, new trade organs were established in a number of municipalities and provinces for the purposes of promoting foreign trade and improving foreign trade management.<sup>16</sup>

By granting economic incentives to foreign trade apparatus, China’s foreign trade had sizable expansion, and the operation regime for foreign trade were better off.<sup>17</sup> However, the legal status of foreign trade corporations remains unchanged. Individuals and private corporations were not allowed to engage foreign trade business. Traditional restrictive measures, such as tariffs, license, and quota were still prevailing. Hence, trade policy still featured formidable state protectionism in this period.

### ***C. 1992-2001: Provisional Liberalization***

Based on the vision of establishing a socialist market economy and the perception of the impact of economic globalization, Chinese leaders in this period made great efforts to nudge China into the GATT-WTO system.<sup>18</sup> The 14<sup>th</sup> National Congress of the CCP, convened in 1992, made it clear that, “The state will deepen the reform in foreign trade with a view to establishing a new foreign trade system that conforms to international trade rules”.<sup>19</sup> In the 15<sup>th</sup> National Congress of the CCP convened in 1997, the then president JIANG Zemin pointed out that, “Facing economic and technological globalization, we should walk up to the world with a more active attitude and promote all-directional, multi-tiered and wide-ranging opening-up”.<sup>20</sup>

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<sup>15</sup> SHEN Muzhu, *Zhongguo Duiwai Maoyi Falv* [China’s Foreign Trade Law], p. 9 (1989)

<sup>16</sup> Sally Lord Ellis, *Decentralization of China’s Foreign Trade Structures*, 11 *Georgia J. Int’l & Comp. L.* 283, p. 284 (1981)

<sup>17</sup> FU Ziyang, *Zhongguo Duiwai Maoyi Sanshi Nian* [China’s Foreign Trade in 30 Years], p. 146 (2008)

<sup>18</sup> On 10 July 1986, China formally submitted to the GATT Secretariat its request for resumption of China’s status as a GATT contracting party. In a communication dated 7 December 1995, China applied for accession to the WTO.

<sup>19</sup> JIANG Zemin, *Accelerate Reform, Opening-up, and Socialist Modernization Drive and Win Victory for the Cause of Building Socialism with Chinese Characteristics: Report Delivered at the 14th National Congress of the CCP* (2004), [http://news.xinhuanet.com/zhengfu/2004-04/29/content\\_1447497.htm](http://news.xinhuanet.com/zhengfu/2004-04/29/content_1447497.htm) (last visited Mar. 17, 2016)

<sup>20</sup> JIANG Zemin, *Hold High the Great Banner of DENG Xiaoping Theory for An All-round Advancement of the Cause of Building Socialism with Chinese Characteristics into the 21st Century: Report Delivered at the 15th National Congress of the CCP*,

In order to obtain the trust of trading partners, to showcase its sincerity in economic cooperation, and to fulfil the transparency requirement of the GATT-WTO, China made provisional efforts to convert its legal system into consistency with GATT-WTO rules. Foreign Trade Law, which is China's fundamental law governing foreign trade, went into force as of 1 July 1994. It was provided in this law that, "The State encourages the development of foreign trade, exercises the initiative of localities and safeguards the autonomy of business operation of foreign trade dealers".<sup>21</sup> It also set forth the basic requirements for a foreign trade dealer<sup>22</sup>; in particular, it stipulated that foreign trade dealers must acquire license from the competent authorities before operation, which in fact excluded individuals and most corporations from foreign trade operation.<sup>23</sup> It was not until 1999 that private enterprises were allowed to apply for foreign trade operation in accordance with a rule adopted by the Ministry of Foreign Trade and Economic Cooperation.<sup>24</sup>

Since in this period China was continuously striving for GATT-WTO membership, the 1994 Foreign Trade Law was of transitional nature. On the one hand, it proclaimed China's commitment to maintain a fair and liberalized foreign trade order<sup>25</sup>; on the other hand, protective measures were still in force, though the tariff was generally reduced and export licensing and quota were eliminated in a large scale.<sup>26</sup> Independent operational right was extended to private enterprises, but the participation into this sector were still subject to licensing procedures.

#### ***D. 2001-Today: Full Open to Private Sector***

After fifteen years of arduous and prolonged negotiations, China formally became the 143<sup>rd</sup> member of the WTO on December 11, 2001. China's accession to the WTO is a milestone in China's reform and opening-up process, bringing china into a new era of further integration into the world. Also, Foreign Trade Law was amended in April 2004, echoing the free trade ideal endorsed by the WTO rules. Highlights in this amendment include the straightforward acknowledgement to protect the legitimate rights and interests of foreign

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[http://news.xinhuanet.com/zhengfu/2004-04/29/content\\_1447509.htm](http://news.xinhuanet.com/zhengfu/2004-04/29/content_1447509.htm) (last visited Mar. 17, 2016)

<sup>21</sup> Foreign Trade Law of the PRC 1994, Art. 4.

<sup>22</sup> Foreign Trade Law of the PRC 1994, Art. 9.

<sup>23</sup> This also protected the interests of the former foreign trade corporations. *See, e.g.*, HE Maochun, *Duiwai Maoyi Fa Bijiao Yanjiu: Zhongguo Rushi Hou Waimao Tizhi De Quanmian Gaige* [A Comparative Study on Foreign Trade Law: A comprehensive reform after China's WTO Accession], p. 176 (2000)

<sup>24</sup> Interim Provisions concerning Granting Import and Export Rights to Private Enterprises and Research Institutes 1999, Art. 3.

<sup>25</sup> *Supra* note 21

<sup>26</sup> *See* LIU Sichen, *Evolution and Trend of Foreign Trade Policies*, 8 *Zhongguo Guoqing Guoli* [China's National Conditions and Strength] 48, p. 49 (2004)

trade dealers<sup>27</sup> and the explicit recognition of individuals as subjects of foreign trade dealers.<sup>28</sup> Furthermore, in line with the requirement of China's Protocol of Accession, the amendment changed the previous licensing requirement to the current registration requirement for obtaining foreign trade operational rights,<sup>29</sup> which in effect opened completely the door for individuals and private enterprises to engage in foreign trade business.

After its accession to the WTO, China progressively reduced its import tariff and eliminated all the non-tariff measures that are inconsistent with WTO rules. Up to the 10<sup>th</sup> anniversary year of China's WTO accession, the general tariff rate had dropped from 15.3% to 9.8%, lower than the WTO's requirement for developing countries.<sup>30</sup> Regulations on trade remedy measures, including antidumping, countervailing, were also set up soon after the accession,<sup>31</sup> with a view to providing and maintaining a fair competition environment.

More importantly, the most direct form of discipline that WTO accession brings is the increased competition that China's state-owned sector would face from foreign trade opening-up.<sup>32</sup> China's accession to the WTO and the subsequent amendment of its Foreign Trade Law terminated its practice of protecting inefficient state-owned enterprises and fostered the rise of private sectors.<sup>33</sup> By lifting the restrictions on foreign trade operation and expanding the private sector, more and more citizens and private enterprises become self-initiated dealers in foreign trade.

### ***Conclusion: Rise of Private interests***

Roscoe Pound states that interests can be classified into individual interests, public interests (state interests), and social interests,<sup>34</sup> which are often contradictory to each other.<sup>35</sup> One basic objective of administrative law is to

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<sup>27</sup> Foreign Trade Law of the PRC 2004, Art. 1.

<sup>28</sup> Foreign Trade Law of the PRC 2004, Art. 8.

<sup>29</sup> Article 5 of the Protocol on China's Accession stipulates: "... China shall progressively liberalize the availability and scope of the right to trade, so that, within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China". This requirement is reflected in Art. 9 of Foreign Trade Law of the PRC 2004.

<sup>30</sup> HU Jintao, Speech at the High Level Forum on the 10th Anniversary of China's WTO Accession (2011), [http://news.xinhuanet.com/politics/2011-12/11/c\\_111234873.htm](http://news.xinhuanet.com/politics/2011-12/11/c_111234873.htm) (last visited Mar. 17, 2016)

<sup>31</sup> China's Regulation on Antidumping, Regulation on Countervailing, and Regulation on Safeguard were all promulgated in November 2001, came into effect in January 2002, and were amended in March 2004.

<sup>32</sup> Karen Halverson, *China's WTO Accession: Economic, Legal, and Political Implications*, 27 Boston College Int'l & Comp. L. Rev. 319, p. 334 (2004)

<sup>33</sup> *Ibid.* p. 335

<sup>34</sup> Roscoe Pound, *Social Control through Law*, pp. 63-80 (1942)

<sup>35</sup> HE Qinhua, *Xifang Faxue Shi [History of Western Legal Science]*, p. 400 (1996)

reconcile the conflicts between public interests and private interests. Insofar as China is concerned, public interests have been prioritized for a long time, especially before the Constitution was amended in 2004. Despite no frank expression that public interests preceded private interests, the underlining principle was unambiguous; that is, public interests ran first in case of conflicts between the two.<sup>36</sup> This can be discerned from the phrasing of Constitution 1982 that “Public property is sacred and inviolable”,<sup>37</sup> but for citizens’ legitimate property rights only “protection” was promised.<sup>38</sup> This can also be inferred from the provision of Foreign Trade Law 1994 that, “This law is formulated with a view to developing the foreign trade, maintaining the foreign trade order and promoting a healthy development of the socialist market economy”, without reference to the interests of foreign trade dealers.<sup>39</sup> Prioritization of public interests was an outcome of the supervising administrative mode that had been applied predominantly since the PRC establishment, which underscored the superiority of administrative power over private interests and disregarded administrative procedure and judicial review.<sup>40</sup> The fundamental reason for adopting this mode is that in a planned economic system, the government becomes the major distributor and redistributor of social resources and therefore the deputy of public interests, whereas the actual participants in economic activities can only obey the distribution and redistribution of social resources and thus fail to be independent stakeholders. Hence, China’s foreign trade corporations under the planned economy system were in essence instruments for the state to implement foreign trade control.

2004 is a landmark in China’s legislative development in view of the affirmation and guaranty of Chinese citizens’ private interests. The Amendment to Constitution 1982, adopted by the 10<sup>th</sup> National People’s Congress (NPC) in March 2004, raises private interests up to a new height. Constitution 2004 provides that “The State protects the lawful rights and interests of the individual and private sectors of the economy”,<sup>41</sup> and that “Citizens’ lawful private property is inviolable”.<sup>42</sup> Further, Foreign Trade Law 2004 proclaimed for the first time to protect the legitimate rights and interests

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<sup>36</sup> HU Yuhong, Faxue Fangfalun Daolun [Introduction to Law Methodology], p. 280 (2002)

<sup>37</sup> Constitution of the PRC 1982, Art. 12.

<sup>38</sup> Constitution of the PRC 1982, Art. 13.

<sup>39</sup> Foreign Trade Law of the PRC 1994, Art. 1.

<sup>40</sup> For the supervising administrative theory, see Gan Wen, The Equilibrium Theory of Administrative Law, in Luo Haocai and others (eds.), Xingzheng Fa Luncong [Collected Essays on Administrative Law], pp. 23-31 (Vol. 1, 1998)

<sup>41</sup> Constitution of the PRC 2004, Art. 11.

<sup>42</sup> Constitution of the PRC 2004, Art. 13.

of foreign trade dealers,<sup>43</sup> signalling a significant shift of China's foreign trade paradigm.

To summarize the evolution of China's foreign trade operation since 1949, three conversions come up. First, it is a conversion from state orientation to private orientation. This is closely related to China's overall economic reform from a highly centralized planned economy to a socialist market economy. Second, it is a conversion from political governance to legal governance. Before China's WTO accession, foreign trade policy was significantly influenced by the ideology of the CCP, embodied in the CCP's documents and even the speech of its leaders; after that, foreign trade policy has been publicized in the form of legislation, which is ostensibly outcomes of citizens' democratic participation. Third, it is a conversion from control to liberation. When foreign policy was merely an instrument to attain political objectives, control from the state was indispensable; but when China has been integrated into the liberalized world trading system, more freedom should be given to citizens. In all, the evolution of China's foreign trade policy features a rise of private interests, and with this comes an advancement of Chinese citizens *vis-a-vis* a retreat of the state in foreign trade operation.

## II. CHINESE CITIZENS' PARTICIPATION IN FOREIGN TRADE GOVERNANCE

It is a common practice for various countries to attain state interests by establishing or participating into international economic relations under the background of economic globalization. Compared to the governance of domestic affairs, foreign affairs are handled much covertly in all countries with elitism politics as a camouflage. This can be discerned not only from the inadequate participation by representative bodies in foreign affairs decision-making, but also the inefficient judicial review of the practice of foreign affairs departments. This issue has been observed by many western theorists. Louis Henkin asserts that individual rights receive less attention in the area of foreign affairs,<sup>44</sup> which results in the inherent deficiency of representative democracy, that is, the widened difference between the public will and the activities of representative bodies. Ernst-Ulrich Petersmann puts forward a bolder constitutionalisation theory for international economic law. He observes that national parliaments, national courts, and citizens are often incapable of effectively control the discretionary power exercised by foreign

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<sup>43</sup> *Supra* note 27

<sup>44</sup> Louis Henkin, *Constitutionalism, Democracy, and Foreign Affairs*, p. 137 (DENG Zhenglai tr., 1996)

policy bureaucrats.<sup>45</sup> Based on the imperfect EU experience in complementary domestic and international safeguarding of representative democracy, power control, and judicial review, he calls for constitutionalizing governance powers beyond states “with due regard for citizens as legal subjects and sources of justification of international law”.<sup>46</sup> Petersmann proposes a bottom-up reform of the Westphalian model of international economic law<sup>47</sup>; but the means, including broader democratic participation and stronger judicial protection, are traditionally rooted in the Enlightenment. So, essentially, what Petersmann has advocated is an extension of western liberal values to a broader global sphere.

As is illustrated in Section 1, the evolution of China’s foreign trade system since 1949 has led to more commercial freedom, enhanced private property protection, and risen individual interests for Chinese citizens. China’s accession to the WTO also entails a legislative amendment storm for what it described as rule-of-law blueprint.<sup>48</sup> In a sense, all these social changes can be traced to the diffusion of western liberalism which is also planted into the WTO principles. However, it must be noted that the evolution of China’s foreign trade system is not a citizen-driven process; instead, the CCP has always played a leading role in China’s social and economic development. So, it is still worthwhile to examine whether China has totally accepted those western liberal values during its integration into the world, and more importantly, whether China will follow the constitutionalisation pathway advocated by Petersmann.

### ***A. Legislative participation***

Currently, foreign trade policies remains the domain of China’s central legislation, embraced in its *Falv* (laws), *Xingzheng Fagui* (administrative

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<sup>45</sup> Petersmann, *How to Constitutionalize International Law and Foreign Policy for the Benefit of Civil Society?* 20 Michigan J. Int’l L. 1, p. 24 (1998)

<sup>46</sup> Petersmann, *Human Rights Require “Cosmopolitan constitutionalism” and Cosmopolitan Law for Democratic Governance of Public Goods*, 5 Contemporary Readings L. & Social Justice 90, p. 94 (2013)

<sup>47</sup> Petersmann, *International Economic Law in the 21st Century: Constitutional Pluralism and Multilevel Governance of Interdependent Public Goods*, (2012). See also Petersmann, *Addressing Institutional Challenges to the WTO in the New Millennium: A Longer-Term Perspective*, 8 JIEL 647, (2005); Petersmann, *The Future of the WTO: from Authoritarian “Mercantilism” to Multilevel Governance for the Benefit of Citizens?* 6 Asian J. WTO & Int’l Health L. & Pol’y 45, (2011); Petersmann, *International Economic Law in the 21st Century: Need for Stronger Democratic Ownership and Cosmopolitan Reforms*, 31 Polish Y.B. Int’l L. 9, (2011); Petersmann, *Fragmentation and Judicialization of International Law as Dialectic Strategies for Reforming International Economic Law*, 5 Trade L. & Dev. 209, (2013); Petersmann, *Need for a New Philosophy of International Economic Law and Adjudication*, 17 JIEL 639, (2014).

<sup>48</sup> China revamped more than 2,300 laws, regulations and department rules at the central level and more than 190,000 regulations and policies at the local level to ensure that they are consistent with WTO rules. HU Jintao, *supra* note 30

regulations), and *Guizhang* (rules) respectively adopted by the central legislature,<sup>49</sup> the State Council, and relevant central government departments. Theoretically, one opportunity for individuals and groups to influence the formation of foreign trade policy is to participate in the legislation. By electing deputies who represent their opinions and sending them into the legislation process, individuals and groups can indirectly manage to bring foreign trade policies in consistent with their own interests. However, this is only a vision in theory; its effectiveness to real practice remains to be checked.

Regarding the enactment and revision of laws, also the highest legal source other than the Constitution in China, a major problem is the less representation of the members of the NPC and its SCNPC. The Constitution provides that all power in the PRC belongs to the people and that the organs through which the people exercise state power are the NPC and its local counterparts.<sup>50</sup> So, supposedly the NPC and the SCNPC should be composed primarily of citizens outside the government and representing the will of the general public. But in fact, there is a far distance between the central legislature and the people, which can be illustrated by the 10<sup>th</sup> SCNPC, also the legislature of the amendment of the Foreign Trade Law. Among its total 175 members, 118 were from the CCP, making the CCP the predominant component.<sup>51</sup> If viewed from the perspective of vocation, the members were preferably chosen from former officials of the central government and heads of the local counterparts of the SCNPC.<sup>52</sup> In contrast, few can represent the interests of a vast number of consumers. In fact, the scope of SCNPC candidates is rather limited, those from the non-governmental sectors are quite a few in quantity, and civil social elites hardly have any access to the SCNPC.<sup>53</sup> The SCNPC is a highly bureaucratized body of the CCP, resulting its decisions, including the formulation of trade policy, hardly reflecting the people's will.<sup>54</sup>

Democracy is more badly missing in China's administrative legislation, mainly including the aforesaid administrative regulations and rules. Administrative legislation is a quasi-legislative activity that is conducted by the administrative body based on the mandate from the Constitution or laws

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<sup>49</sup> The central legislature refers to the NPC and the SCNPC. The NPC develops and amends the basic laws on criminal matters, civil matters, and state authorities, among others. The SCNPC develops and amends laws other than those developed by the NPC. (Legislation Law of the PRC 2015, Art. 7)

<sup>50</sup> Constitution of the PRC 2004, Art. 2.

<sup>51</sup> ZHANG Tao, *An Analysis of the Constituent Structure of the 10th SCNPC: Main Characteristics and Development Tendency*, 7 *Dangdai Zhongguo Zhengzhi Yanjiu Baogao* [Contemporary Chinese Politics Review] 78, p. 80 (2009)

<sup>52</sup> *Ibid.* p. 84

<sup>53</sup> ZHU Haiying, *An Analysis of the Constituent Structure of the SCNPC: A Comparative Point*, 8 *Renda Yanjiu* [People's Congress Study] 10, p. 16 (2004)

<sup>54</sup> *Ibid.*

rather than on citizens' delegation,<sup>55</sup> thus it suffers a democratic deficit from the very beginning. In order to make sure that the people's will can find expression in administrative legislation, a mechanism for safeguarding public opinion expression is requisite.<sup>56</sup> Legislation Law 2015 stipulates that legislation shall represent the will of the people and ensure the people's participation in legislative activities through various channels.<sup>57</sup> It also provides that in drafting administrative regulations and rules, the opinions of general public shall be extensively solicited in multiple forms such as forums, discussion meetings, and hearings, and that the draft regulations and rules shall be published to request public comment.<sup>58</sup> However, these legal provisions are inherently deficient in that there are no formalized procedures for requiring the administrative body to solicit public opinions.<sup>59</sup> Hence, the administrative body is much discretionary in applying these provisions, and public participation can hardly be guaranteed.<sup>60</sup> In the realm of foreign trade, an overwhelming majority of legal source are in the form of administrative regulations and rules; but for most of them, there had been no drafts published in advance to solicit public comments.<sup>61</sup> The Regulation on Import and Export Duties stipulates that the Customs Tariff Commission is responsible for readjusting tariff rates subjected to the approval of the State Council,<sup>62</sup> but in this Regulation, and even in the whole tax law system of China, there is no provision specifying the mechanism for citizens to participate in tax legislation.<sup>63</sup> And in practice, no announcement has been publicized for soliciting comments from the general consumers regarding any adjustment of tariff rates. Thus, somewhat unfortunately, the story seems to be that only a few officials in the Chinese government can determine the pocket of more than a billion Chinese consumers who are most concerned with the collecting of customs duties.

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<sup>55</sup> For instance, the NPC or the SCNPC may make a decision to empower the State Council to develop administrative regulations as actually needed on certain matters, unless otherwise specified by this Law. (Legislation Law of the PRC 2015, Art. 9)

<sup>56</sup> LIU Xin, Xingzheng Lifa Yanjiu [A Study on Administrative Legislation], p. 122 (2003)

<sup>57</sup> Legislation Law of the PRC 2015, Art. 5.

<sup>58</sup> Legislation Law of the PRC 2015, Art. 67 & 83.

<sup>59</sup> See ZENG Huaqun and others (eds.), WTO Yu Zhongguo Waimao Fa De Xin Lingyu [The WTO and New Areas of China's foreign Trade Law], p. 28 (2006)

<sup>60</sup> CUI Hao, *Study on the Effectiveness of Public Participation in Administrative Legislation*, 4 Faxue Luntan [Legal Forum] 145, pp. 149-50 (2015)

<sup>61</sup> ZENG Huaqun, *supra* note 59, p. 29

<sup>62</sup> Regulation on Import and Export Duties of the PRC 2013, Art. 4. This provision has constituted a violation of Art. 8(1) of Legislation Law of the PRC 2015, which requires that the determination of tax rates shall be governed by laws (rather than regulations). Supposedly, the Regulation on Import and Export Duties will be amended in the future, but now it is still effective.

<sup>63</sup> The NPC Adjusted Its Legislation Plan and Tax Legalism Needs to Be Detailed (2015), <http://finance.qq.com/a/20150811/007269.htm> (last visited Mar. 17, 2016)

Though in all countries citizens are more restricted in negotiating and concluding foreign treaties than in domestic legislation, the situation in China looks worse. Just as China's foreign trade policy is a direct outcome of the Protocol on China's WTO accession, a treaty can cause significant influence on many domestic and foreign-related affairs. Accordingly, without wide participation in the process of negotiating and signing foreign trade treaties, citizens cannot be said as an influencing party in the formulation of foreign trade policies. In the US, the President's fast track authority expired in 2007 and has not been renewed, indicating that the Congress have more power to amend or annul trade agreements negotiated by the President with other nations.<sup>64</sup> In the Europe Union, since the entry into force of the Lisbon Treaty, the Europe Parliament has brought a much needed element of democratization and open political debate in EU trade policy making.<sup>65</sup> In China, however, issues relating to trade agreements remain assumed to be a domain of high authorities. According to the *Law of the PRC on the Procedure of the Conclusion of Treaties*, the State Council is the statutory organ to examine and decide on the draft treaty in Chinese, while the SCNPC has the power to make final decision on the final ratification and abrogation of treaties.<sup>66</sup> There is no provision regarding solicitation of public opinions. In view of the less representation of the SCNPC, Chinese people are too far from being able to control the negotiation and conclusion of foreign trade agreements. A telling example is the proposed China-Japan-Korea Free Trade Agreement, which is believed will benefit the people of each country but, due to political disputes, will not be seen in the immediate future.<sup>67</sup>

### ***B. Judicial Review***

An independent and impartial judicial system is essential for safeguarding citizens' legitimate rights and interests. XI Jinping pointed out that "the judicial system is the last line of defense for maintaining a fair and just society".<sup>68</sup> Petersmann even asserts that courts of justice are responsible for challenging the ubiquity of "governance failures" in international relations<sup>69</sup>. However, China's judicial system is still far from being a competent body to

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<sup>64</sup> Eli J Kirschner, *Fast Track Authority and Its Implication for Labor Protection in Free Trade Agreements*, 44 Cornell Int'l L. J. 385, p. 415 (2011).

<sup>65</sup> Youri Devuyt, *European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements*, 12 J. Int'l Business & L. 259, p. 264 (2013)

<sup>66</sup> Law of the PRC on the Procedure of the Conclusion of Treaties 1990, Art. 3.

<sup>67</sup> Darren Bean, *China-Japan-Korea Free Trade Agreement*, 6 J. East Asia & Int'l L. 597 pp. 598-99 (2013)

<sup>68</sup> XI Jinping, Introduction on the Decision of the CCCCPC to Comprehensively Advancing Rule of Law (2014), <http://politics.people.com.cn/n/2014/1029/c1001-25926928-3.html> (last visited Mar. 17, 2016)

<sup>69</sup> Petersmann, *supra* note 46

protect justice against the government's potential abuse of powers, just because of its lack of independence.

During China's thousands years of autocratic monarchy period, there is no separation between the power of the judiciary and that of governmental officials<sup>70</sup>; consequently, the history of the litigation system serves as a disincentive for the Chinese people to resort to litigation to solve their disputes.<sup>71</sup> During the first thirty years of the PRC, law was an instrument of politics and sometimes "replaced by a precarious balance between policy considerations and the capricious will of the rulers",<sup>72</sup> thus courts had no impact upon the people's lives.<sup>73</sup> Even after the rule-of-law blueprint has been set up over thirty years of economic reform, China's judicial system is still widely criticized for its lack of impartiality, independence and authority. Fundamental obstacles to an independent judicial system persist because local governments and the CCP exercise power over the courts' personnel and financial arrangements, and because the CCP's policies override laws.<sup>74</sup> Although in recent years a judicial reform aimed at decreasing the influence that local governments have on the court system is underway, the prospect remains unclear, especially in consideration of the persistence of the CCP's leadership.<sup>75</sup>

China's accession to the WTO gave rise to a higher requirement on its judicial system. The Protocol on the Accession stipulates: China shall have certain tribunals responsible for the prompt review of certain WTO-related administrative actions; such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement.<sup>76</sup> It also requires that an opportunity for appeal to a judicial body shall be guaranteed in any cases.<sup>77</sup> In short, China provides a guarantee for all specific administrative cases to be reviewed by an impartial and independent judicial body. In accordance with this requirement, the Supreme Court of China promulgated in 2002 three judicial interpretations, respectively regarding the adjudication of

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<sup>70</sup> Sam Hanson, *The Chinese Century: An American Judge's Observations of the Chinese Legal System*, 28 Wm. Mitchell L. Rev. 248, p. 250 (2001)

<sup>71</sup> Graig R Avino, *China's Judiciary: An Instrument of Democratic Change*, 22 Pennsylvania State Int'l L. Rev. 369, pp. 373-74 (2003)

<sup>72</sup> HE Weifang, *China's Legal Profession: The Nascence and Growing Pains of A Professionalized Legal Class*, 19 Columbia J. Asian L. 138, p. 145 (2005)

<sup>73</sup> XIN Chunying, *What Kind of Judicial Power Does China Need?* 1 Int'l J. Constitutional L. 58, p. 60 (2003)

<sup>74</sup> Veron Mei-Ying Hung, *China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform*, 52 Am. J. Comp. L. 77, p. 82 (2004)

<sup>75</sup> For details of the judicial reform, refer to, The Court Reform Plan Outline of the Supreme People's Court of the PRC (2015), <http://www.court.gov.cn/fabu-xiangqing-13520.html> (last visited Mar. 17, 2016)

<sup>76</sup> Protocol on the Accession of the PRC 2001, Art. 2(D)(1).

<sup>77</sup> *Ibid.* Art. 2(D)(2).

administrative cases in international trade, antidumping, and countervailing. A common provision contained in these interpretations is that those cases shall be handled by an intermediate court at least, as the court of the first instance,<sup>78</sup> which is meant to guarantee the impartiality and independence of the adjudication. Yet till this day, no WTO-related administrative case has emerged from China's judicial system, though a number of cases have been submitted to the DSB of the WTO. This implies that despite the judicial interpretations, individuals and groups do not believe that their WTO-related rights and interests can be protected by China's judicial system.

The Protocol on China's Accession to the WTO makes it clear that the administrative actions subject to judicial review include those relating to administrative rulings of general application.<sup>79</sup> According to China's Administrative Litigation Law, however, the Peoples Court does not accept complaints against administrative rulings with general binding force.<sup>80</sup> Chinese scholars generally refer to this Article as the legal source of non-actionability of abstract administrative actions.<sup>81</sup> This means that Chinese citizens are not entitled to protect their rights and interests against illegitimate abstract administrative actions in foreign trade area, by resorting to the judicial system.

### III. FUNDAMENTAL VALUES DIFFERENT FROM THE WEST

Section 1 demonstrates that along with the evolution of China's foreign trade system, private interests in this realm have been progressively recognized. Section 2 reveals that Chinese people are not entitled to, and have scarcely participated in, the legislation and judicial review in foreign trade area. Hence, the overall picture is that despite a widely recognized private interests, Chinese citizens have less access to, and supposedly, less concern with, foreign trade governance. China's foreign trade system underlies an up-down mechanism that features a high dominance by the government and less participation by citizens. This is fairly far from the constitutionalisation blueprint depicted by Petersmann. Just as "Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of

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<sup>78</sup> The Supreme People's Court's Interpretation Concerning Several Questions about Adjudication of Administrative Cases Relating to International Trade 2002, Art. 5; The Supreme People's Court's Interpretation Concerning Several Questions about Adjudication of Administrative Cases Relating to Antidumping Investigation 2003, Art. 5; The Supreme People's Court's Interpretation Concerning Several Questions about Adjudication of Administrative Cases Relating to Countervailing Investigation 2003, Art. 5.

<sup>79</sup> Protocol on the Accession of the PRC 2001, Art. 2(D)(1).

<sup>80</sup> Administrative Litigation Law of the PRC 2015, Art. 13.

<sup>81</sup> See, e.g., JIANG Mingan, *Xingzheng Fa Yu Xingzheng Susong Fa* [Administrative Law and Administrative Litigation Law], p. 480 (3rd ed., 2007)

one nation can suit another”,<sup>82</sup> so is China’s foreign trade governing mechanism rooted in China’s indigenous social values. Following are two points that this article considers is most relevant.

### ***A. A Centralized System***

Historically, China is a centralized bureaucratic state, partly due to the domination of Confucianism. In this day, China still constitutes a peculiar model of political system under the post-World War II international order created by the US and its partners; this has much to do with its one party system. After it defeated the Kuomintang in 1949, the CCP became the core of Chinese political system, controlling the power of every aspect, from economy, society, military, to judiciary, and of every level, from various local governance to central governance. Although following the opening-up the CCP has shifted its emphasis to economic development and accordingly withdrawn its power from many areas, it still conducts a comprehensive leadership in China’s social life. By purporting “a represent of the fundamental interests of the overwhelming majority of the Chinese people”,<sup>83</sup> the CCP obtained an ostensible legacy for its ruling. Indeed, there exists in China some other important tunnels that are not popular in western countries for the CCP to solicit public opinions, like *Zhengzhi Xieshang* (Political Consultation), *Xin Fang* (Petition), and *Jijian Jubao* (Disciplinary Inspection Clues). Just as the Chinese words “*Guojia*” (country) implies that a country is also a family, so does the theory of the CCP seem to demonstrate that the CCP is the patriarch of the large Chinese family while all other social strata, groups, and individuals are its children.

Although China has made progress in advancing the rule of law over decades, China is still far from being a rule-of-law society in the western sense. Admittedly, a large number of legal codes have been promulgated in China, but most of them have not been realized in practice and the people’s thoughts.<sup>84</sup> The constitutional provision acknowledging the people as the source of all power looks superficial in consideration of the non-actionability of the Constitution in Chinese courts and the CCP’s overwhelming leadership in China. In contrast, some normative documents of the CCP provides that the CCP is responsible for selecting and appointing the leading cadres in the SCNPC, the State Council, the Supreme Court, the Supreme Procuratorate, and the counterparts at various local levels,<sup>85</sup> and that the CCP conducts the

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<sup>82</sup> Charles Louis de Secondat Montesquieu, *The Spirit of the Laws* (Anne M. Cohler and others tr., China Social Science Pub. House 1999)

<sup>83</sup> Zhongguo Gongchan Dang Dangzhang [Constitution of the CCP] 2012, General Outline.

<sup>84</sup> Some Chinese scholars observed that nearly 80% of all Chinese laws had never been applied by Chinese courts. See, e.g., Zhou Wangshen, *The Reasons for the Difficulty of Law Implementation*, 3 *Fazhi Yu Shehui Fazhan* [Law and Social Development] 16, p. 17 (2003)

<sup>85</sup> Dang Zheng Lingdao Ganbu Xuanba Renyong Gongzuo Tiaoli [Regulations on the Work of Selection and Appointment of Leading Cadres of the CCP 2014], Art. 2.1 & 4.

full and comprehensive leadership in political, economic, cultural, and social development at various local places.<sup>86</sup> The CCP is, in essence, the power center in the whole Chinese society that is irreplaceable by any other political force.

Generally speaking, the phrase “*Waijiao Wu Xiao Shi*”,<sup>87</sup> firstly spoken by the late Chinese Premier ZHOU Enlai, is still applicable to China’s diplomatic work this day. Chinese diplomacy, especially the decision of major foreign affairs, is still subject to a strict political control by the CCP, with individuals and civil forces causing only a marginal effect.<sup>88</sup> However, with the development of modern informational and communicational techniques, the general public are more willing and convenient to express their opinions on specific foreign affairs, and accordingly China’s foreign policies are more and more influenced by citizens’ participant willing. For instance, during the negotiation for China’s WTO accession, the negotiating personnel of the Chinese government not only conducted arduous negotiation with the WTO’s Working Party on China and a number of member states, they also spent much time reconciling the requirements of domestic institutions, which restricted their discretionary power.<sup>89</sup>

China’s distinctive political regime determines that its foreign trade policies are formed less democratically than in some western economy like the EU. Although there are also competing interest groups and increasingly influential public opinions within China, the highly centralized, authoritarian mode of governance make it much easier for Chinese leaders to move expeditiously in creating new foreign trade policies by participating in world governance. Paradoxically, the less democratic mode does not render Chinese people unhappiness with the government’s overall decision during the past three decades; rather, most elderly people, even those benefited the least from the openness and reform, would not like to revert to the life thirty years ago.

### ***B. Group Orientation***

As opposed to the individual-oriented liberalism characteristic of many of the western nations, emphasis is put on collective life rather than to the individual in China.<sup>90</sup> Group orientation has been embedded into Chinese culture for thousands of years. Chinese society generally treasures the wellbeing of the family and, by extension, that of the nation; so Chinese

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<sup>86</sup> Zhongguo Gongchan Dang Difang Weiyuanhui Gongzuo Tiaoli [Regulation on the Work of the Local Committee of the CCP] 2015, Art. 3.

<sup>87</sup> It means there is no trifle for foreign affairs.

<sup>88</sup> WANG Yizhou, *Civil Society and Chinese Diplomacy*, 3 Zhongguo Shehui Kexue [Social Science of China] 28, p. 36 (2000)

<sup>89</sup> Margaret M Pearson, *The Case of China’s Accession to GATT/WTO*, in David M Lampton (ed.), *The Making of Chinese Foreign and Security Policy in the Era of Reform*, pp. 337-71 (2001)

<sup>90</sup> Lening Zhang, *Crime Prevention in a Communitarian Society: Bangjiao and Tiao-Jie in the PRC*, 13 Justice Quarterly 199, p. 202 (1996)

people have been taught to emulate their ancient role models who would be the first to bear hardships and the last to enjoy themselves.<sup>91</sup> This group-oriented ethical standard indicates that Chinese culture stresses individuals' subordination to groups and accordingly the harmony of collective life. Confucian ethics emphasizes that the monarch is of the highest power in the country and patriarchs in families. The basic unit under the patriarchal clan system is families rather than individuals. Under such a group-oriented culture, Chinese people tend to passively accept the political regime rather than add their own will to it. This explains why Chinese people are generally satisfied with their current life though they did not participate into the decision making of China's opening-up and WTO accession, and why China has no signs of political unrest on the whole for a long time though various interest subjects are emerging from the fast developing economy.

Chinese dialectics, which is also related to the group oriented culture, stresses heavily on the complementarity between parts. Much alike to Hegel's theory, Chinese dialectics considers that all things are composed of two poles, *Yin* (darkness) and *Yang* (light); but Chinese dialectics thinks that the two poles are complementary rather than competing, and that the cosmos is in essence harmonious.<sup>92</sup> Also, from China's diplomatic perspective, there is not an assumed enemy on the world and maintaining a friendly bilateral and multilateral relationship is given priority for most of the time.<sup>93</sup> This helps explain why China has always called for mutual respect and mutual learning rather than a total westernization in order to maintain peace for the world.

#### IV. CONCLUSION

From a historical perspective, foreign trade operation in China has evolved from complete state monopoly to progressive private expansion, with private interests being progressively recognized. From a legal perspective, however, Chinese citizens are still extremely restricted in democratically participating in the legislation of foreign trade policies and in safeguarding their liberal foreign trade rights through judicial protection, though a seemingly comprehensive legal code system have been established in China especially following its accession to the WTO. In all, foreign trade policy in China remains the domain of strict political control, with individuals and civil forces causing only a marginal effect.

Drawing on the experience of some Eastern Europe countries in acceding the GATT during the 1960s-70s, some scholars have predicted that China's

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<sup>91</sup> This comes from a well-known Chinese verse "Xian Tianxia Zhi You Er You, Hou Tianxia Zhi Le Er Le" written by FAN Zhongyan.

<sup>92</sup> QIN Yaqing, *Chinese Culture and Its Impact on Foreign Policy Making*, 5 *Guoji Wenti Yanjiu* [International Studies] 21, p. 29 (2011)

<sup>93</sup> *Ibid.* p. 31

accession to the WTO might result in mass unrest or the CCP's power loss.<sup>94</sup> However, after more than a decade, no signs have emerged that indicates the existence of social instability and political turmoil in today China. Instead, China has showcased a more robust image to the world by actively participating into the establishment of a new world economic order. The process of China's integration into the World demonstrates that China has accepted part of the western values constantly spreading on the globe during the last century, but rejected those that are fundamentally contradictive to its indigenous values. From the view of China, the constitutionalisation pathway proposed by Petersmann can only lead to utopia.

As China rises onto the world stage, it will also attempt to extend its own values to the global sphere. This article does not mean to suggest that all the western values are trashes or all the Chinese values are gems. But, in a global society where China possesses one fifth of the mankind and plays an increasingly important role, a theory of global economic governance totally based on western background seems to be implausible. As is pointed out by Russell, there is something of the ethical qualities cherished by China that the modern world most desperately needs, like the pacific temper.<sup>95</sup> Likewise, theorists of international economic law should learn something from China.

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<sup>94</sup> See, e.g., Halverson, *supra* note 32, p. 319

<sup>95</sup> Bertrand Russell, *The Problem of China*, p. 176 (Central Compilation & Translation Press, 2011)