BETWEEN MARKET ECONOMY AND
STATE CAPITALISM

One major issue facing the world trading system today is how to deal with the challenge of China’s state capitalism. Many commentators believe that the existing WTO rules are insufficient and, thus, new rules are needed. This book challenges this conventional wisdom. Through meticulous studies and fresh analysis of the commitments in China’s WTO accession package, existing rules on state capitalism in WTO agreements and recent attempts to make new rules on these issues at bilateral, regional and multilateral levels, this book argues that existing WTO rules, especially those on subsidies, coupled with China-specific rules in its accession protocol, do provide feasible tools to counter China’s state capitalism. This book also discusses the reasons for the lack of usage of these rules and provides concrete policy suggestions on how the rules may be better utilized, as well as how to conduct constructive negotiations on new rules in the WTO and beyond.

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Processes of economic regionalisation and globalisation have intensified over the last decades, accompanied by increases in the regulation of international trade and economics at the levels of international, regional and national laws. At the same time, significant challenges have arisen with respect to economic liberalization, rule-based systems of trade and investment, and their political and social impacts. The subject matter of this series is international economic law, in this contemporary context. Its core is the regulation of international trade, investment, finance and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labour, environment and culture, as well as sustainable development. These areas are horizontally interconnected and vertically linked at the international, regional and national levels. The series also includes works on governance, dealing with the structure and operation of international organisations related to the field of international economic law and the way they interact with other subjects of international and national law. The series aims to include excellent legal doctrinal treatises, as well as cutting-edge interdisciplinary works that engage law and the social sciences and humanities.

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Barnali Choudhury

The Law and Politics of WTO Waivers: Stability and Flexibility in Public International Law
Isabel Feichtner

African Regional Trade Agreements as Legal Regimes
James Thuo Gathii

Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals
Christiane R. Conrad

Non-Discrimination in International Trade in Services: ‘Likeness’ in WTO/GATS
Nicolas F. Diebold

The Law, Economics and Politics of Retaliation in WTO Dispute Settlement
Edited by Chad P. Bown and Joost Pauwelyn

The Multilateralization of International Investment Law
Stephan W. Schill

Trade Policy Flexibility and Enforcement in the WTO: A Law and Economics Analysis
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BETWEEN MARKET ECONOMY AND STATE CAPITALISM

China’s State-Owned Enterprises and the World Trading System

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CONTENTS

List of Figures and Tables xii
Foreword xiii
GREGORY SHAFFER
Preface and Acknowledgements xv
Table of Cases xvii
List of Abbreviations xxii

1 China, State Capitalism and the World Trading System 1
  1.1 Introduction 1
  1.2 State Capitalism, State-Owned Enterprises and China 4
  1.3 International Regulation of State-Owned Enterprises 7
  1.4 The Structure of This Book 9

  2.1 Introduction 13
  2.2 SOE Reform in China: 1978–2012 13
    2.2.2 Phase 3 (1993–2002): Privatisation, Corporatisation and Modernisation 17
    2.2.3 Phase 4 (2003–2012): Creation of National Champions 19
  2.3 The Current Reform: Elements, Progress and Issues 23
    2.3.1 Classification of SOEs 24
    2.3.2 Corporate Governance 26
    2.3.3 Ownership Diversification 29
    2.3.4 Restructuring and Reorganisation 34
    2.3.5 State Asset Management System 38
  2.4 A Summary of Current Status and Future Reform 39
  2.5 Conclusion 41
3 State Capitalism in China’s Accession to the WTO: Concerns and Solutions 42
  3.1 Introduction 42
  3.2 China and the GATT 42
  3.3 Resumption of GATT Contracting Party Status 46
  3.4 WTO Accession 52
  3.5 Concerns and Solutions on China’s State Capitalism Model 53
    3.5.1 The Role of SOEs 54
    3.5.2 Pricing Policies and Distortions 57
    3.5.3 Industrial Policies and Subsidies 61
    3.5.4 Trading Rights 64
  3.6 Conclusion 67

4 The Limits of General WTO Rules 69
  4.1 Introduction 69
  4.2 The Limitations of GATT/WTO Rules in Challenging State Capitalism 69
    4.2.1 Non-discrimination and State Trading Enterprises 71
    4.2.2 Tariffs and Import Monopoly 77
    4.2.3 Quantitative Restrictions and State Trading Enterprises 79
    4.2.4 Transparency 80
    4.2.5 Anti-dumping 87
  4.3 Conclusion 95

5 The Potential of WTO Rules on Industrial Subsidies and China-Specific Obligations 97
  5.1 Introduction 97
  5.2 China’s WTO-Plus Obligations on State-Owned Enterprises 97
  5.3 WTO Subsidy Rules and China-Specific Obligations 102
    5.3.1 Covered Types of Subsidies: Financial Contributions and Income/Price Support 102
    5.3.2 Public Body 111
    5.3.3 Benefits Conferred 114
    5.3.4 Specificity 119
    5.3.5 Concluding Remarks 125
  5.4 Conclusion 125

6 Emerging Approaches to Regulating State-Owned Enterprises: The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Post-CPTPP Free Trade Agreements 127
  6.1 Introduction 127
  6.2 An Overview of SOE Rules in Free Trade Agreements 128
## CONTENTS

<table>
<thead>
<tr>
<th>6.3 The CPTPP SOE Chapter</th>
<th>133</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3.1 Definition of SOE</td>
<td>133</td>
</tr>
<tr>
<td>6.3.2 Substantive Obligations: Non-discrimination and Commercial Considerations</td>
<td>137</td>
</tr>
<tr>
<td>6.3.3 Non-commercial Assistance</td>
<td>139</td>
</tr>
<tr>
<td>6.3.4 Transparency</td>
<td>141</td>
</tr>
<tr>
<td>6.3.5 Exceptions and Non-conforming Measures</td>
<td>145</td>
</tr>
<tr>
<td>6.4 Development of SOE Rules in Post-CPTPP Free Trade Agreements</td>
<td>148</td>
</tr>
<tr>
<td>6.5 Conclusion</td>
<td>153</td>
</tr>
</tbody>
</table>

### 7 Tackling China’s State Capitalism: WTO Litigation and Trade Negotiation 154

<table>
<thead>
<tr>
<th>7.1 Introduction</th>
<th>154</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.2 WTO Litigation</td>
<td>154</td>
</tr>
<tr>
<td>7.2.1 Does WTO Litigation Work?</td>
<td>156</td>
</tr>
<tr>
<td>7.2.2 Which Cases?</td>
<td>158</td>
</tr>
<tr>
<td>7.2.3 Is There Enough Evidence?</td>
<td>166</td>
</tr>
<tr>
<td>7.2.4 How to Bring Them?</td>
<td>167</td>
</tr>
<tr>
<td>7.3 Trade Negotiation</td>
<td>170</td>
</tr>
<tr>
<td>7.3.1 Bilateral Negotiation</td>
<td>170</td>
</tr>
<tr>
<td>7.3.2 Multilateral Negotiation</td>
<td>172</td>
</tr>
<tr>
<td>7.4 Conclusion</td>
<td>183</td>
</tr>
</tbody>
</table>

### 8 Conclusion: The Potential of Multilateralism 185

Index 192
FIGURES AND TABLES

Figure
2.1 SOE classifications  26

Tables
2.1 List of industries and State ownership  31
2.2 List of central SOE mergers between January 2013 and December 2020  35
This book is sorely needed. A single vision regarding China and the trading system has become the norm in Washington, in which the US–China trade relationship is viewed in zero-sum terms. That is dangerous.

Not long ago, many powerful figures promoted a single vision for trade that focused on squeezing efficiency out of the global economy to reduce consumer costs. When workers’ wages were squeezed, and their jobs became more precarious, that vision emboldened populist, nativist politicians. They helped trigger a new singular vision, one where security specialists dominate trade policy and governments increasingly invoke national security exceptions, including as pretexts. Countries have legitimate national security concerns regarding trade in certain sectors. But aggressive attempts to block China’s rise through generalised trade protectionism on national security grounds will not only fail, it will exacerbate conflict and thus reduce security. When security exceptions become the norm, the rule of law is undermined – nationally and internationally.

The world is messier than captured in single visions. China engaged in major economic reforms. Even though it has since backtracked, there are divisions within China as to how to proceed on economic policy, just as there are in the United States. Viewing China reductively and only as a ‘threat’ is counterproductive; it simply will empower nativist, reactionary forces in China.

This book helps to explode the myth that the challenges of the world trading system can be reduced to China and its economic system, on the one hand, and the failure of the World Trade Organization to discipline China, on the other. Among the central challenges that the world faces today – if we are not to blow or burn up this earth – is how to manage the US–China economic and trade relationship. To do that, we need trade rules that govern the interface between the US and Chinese economic
This book shows how the multilateral trading system already offers tools that can be used to challenge China’s practices when they contravene agreed rules and thus manage the interface. Unilateral protectionist policies in the United States neither changed China nor helped the United States. This book proposes a different approach where the United States and others engage with the multilateral trading system and the dispute settlement mechanism that they helped forge. It offers hope. That hope, however, depends on enhancing trust between the United States, China and others, which, in turn, will inform the policy choices they make. Our future lies in the balance.

Gregory Shaffer
Chancellor’s Professor of Law and Political Science
University of California, Irvine

This book is a milestone of our ongoing research project which explores the ways to address the longstanding and mounting challenges posed by China’s state capitalism to the multilateral trading system and its trading partners. We started the project in 2017 and have published several articles to ensure timely engagement in the academic and policy debate over the relevant issues, including (1) ‘Building a Market Economy through WTO-Inspired Reform of State-Owned Enterprises in China’, published in the *International & Comparative Law Quarterly*, (2) ‘Subsidizing Technology Competition: China’s Evolving Practices and International Trade Regulation’, published in the *Washington International Law Journal*, (3) ‘WTO Reform and China: Defining or Defiling the Multilateral Trading System’, published in the *Harvard International Law Journal*, (4) ‘Rethinking the (CP)TPP as a Model for Regulation of Chinese State-Owned Enterprises’, published in the *Journal of International Economic Law*, and (5) ‘China’s Changing Perspective on the WTO: From Aspiration, Assimilation to Alienation’, published in the *World Trade Review*. Chapters 2, 3, 4, 5 and 6 of this book have used materials published in these articles.

Due to the outbreak of the COVID-19 pandemic, we were significantly delayed in delivering this book. However, compared with five years ago, China’s state-led economic model has become an even more important and controversial issue and will remain central to international trade policymaking at bilateral, plurilateral and multilateral fora in the years to come. From this perspective, we believe this book arrives at a better time.

Colin Picker, Andrew Mitchell and Junji Nakagawa encouraged us to turn the project into a book. With their encouragement, we submitted a book proposal to Cambridge University Press. Joe Ng, Acquisition Editor (Social Science), has since provided tremendous guidance and assistance in various matters from the review of the book proposal to the completion, promotion and publication of this book. Three anonymous reviewers provided valuable and constructive comments and suggestions on the...
book proposal, allowing us to improve the structure and content of this book. Over the years, we have benefited enormously from intellectual dialogues with many experts and friends in the international trade law community, especially those with Gregory Shaffer, Mark Wu, Robert Howse, Joost Pauwelyn, Jennifer Hillman, James Bacchus and Simon Lester on topics relating to this book.

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Our sincere gratitude must also go to Dr Xue Bai for her excellent research assistance throughout this project and Carley Bartlett for her editorial comments on each chapter of this book.

Last, but not least at all, we are deeply indebted to our respective families. Without their generosity, patience and tireless support, it would have been impossible for us to devote time to this book.
### TABLE OF CASES

<table>
<thead>
<tr>
<th>Short Title</th>
<th>Full Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>Detailed Description</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Region - Industry</td>
<td>Case Description</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Country – Category</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
## ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB</td>
<td>Appellate Body</td>
</tr>
<tr>
<td>AD</td>
<td>anti-dumping</td>
</tr>
<tr>
<td>AD Agreement</td>
<td>Anti-Dumping Agreement</td>
</tr>
<tr>
<td>AP</td>
<td>Protocol on the Accession of China</td>
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<tr>
<td>APA</td>
<td>Administrative Procedure Act</td>
</tr>
<tr>
<td>Baosteel</td>
<td>Baosteel Group Corporation</td>
</tr>
<tr>
<td>CAI</td>
<td>China–EU Comprehensive Agreement on Investment</td>
</tr>
<tr>
<td>Caihong</td>
<td>Caihong Group Corporation</td>
</tr>
<tr>
<td>CETC</td>
<td>China Electronics Technology Group Corporation</td>
</tr>
<tr>
<td>Chengtong</td>
<td>China Chengtong Holdings Group Limited</td>
</tr>
<tr>
<td>China Grain</td>
<td>China Grain and Logistics Corporation</td>
</tr>
<tr>
<td>China Hi-Tech</td>
<td>China Hi-Tech Group Corporation Limited</td>
</tr>
<tr>
<td>China Shipping</td>
<td>China Shipping (Group) Company</td>
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<tr>
<td>Chinatex</td>
<td>Chinatex Corporation Limited</td>
</tr>
<tr>
<td>CICT</td>
<td>China Information and Communication Technologies Group Corporation</td>
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<tr>
<td>CITS</td>
<td>China International Travel Service Group Corporation</td>
</tr>
<tr>
<td>CNAGCG</td>
<td>China National Arts and Crafts (Group) Corporation</td>
</tr>
<tr>
<td>CNBM</td>
<td>China National Building Materials Group Corporation</td>
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<tr>
<td>CNEC</td>
<td>China Nuclear Engineering and Construction Corporation</td>
</tr>
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<td>CNNC</td>
<td>China National Nuclear Corporation</td>
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<tr>
<td>CNR</td>
<td>China CNR Corporation Limited</td>
</tr>
<tr>
<td>CNV</td>
<td>Constructed Normal Value</td>
</tr>
<tr>
<td>COFCO</td>
<td>China National Cereals, Oils and Foodstuffs Corporation</td>
</tr>
<tr>
<td>COSCO</td>
<td>China Ocean Shipping (Group) Company</td>
</tr>
<tr>
<td>COSCOCS</td>
<td>China COSCO Shipping Corporation Limited</td>
</tr>
<tr>
<td>CPC/Party</td>
<td>Communist Party of China</td>
</tr>
<tr>
<td>CPI</td>
<td>China Power Investment Corporation</td>
</tr>
<tr>
<td>CPTPP</td>
<td>Comprehensive and Progressive Agreement for Trans-Pacific Partnership</td>
</tr>
<tr>
<td>CSIC</td>
<td>China Shipbuilding Industry Company</td>
</tr>
<tr>
<td>CSR</td>
<td>CSR Corporation Limited</td>
</tr>
</tbody>
</table>
LIST OF ABBREVIATIONS

CSSC China State Shipbuilding Corporation
CWB Canadian Wheat Board
EC European Communities
Erzhong China National Erzhong Group Corporation
EU European Union
FIEs foreign-invested enterprises
FTAs free trade agreements
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
Guodian China Guodian Corporation
HKCTS China Travel Service (HK) Group Corporation
Huafu China Huafu Trade and Development Corporation
IAs investigating authorities
IPO Initial Public Offering
IPR intellectual property rights
ITO International Trade Organization
LPMO Livestock Products Marketing Organisation
MCC China Metallurgical Group Corporation
MFN most-favoured-nation
MIC 2025 made in China 2025
Minmetals China Minmetals Corporation
MOFCOM Ministry of Commerce
MOFET Ministry of Foreign Economic and Trade
MPIA multi-party interim appeal arbitration arrangement
Nam Kwong Nam Kwong (Group) Company Limited
National National Cotton Reserves Corporation
Poly Group China Poly Group Corporation
PRC People’s Republic of China
R&D research and development
RCEP Regional Comprehensive Economic Partnership
ROC Republic of China

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LIST OF ABBREVIATIONS

SASAC  State-Owned Assets Supervision and Administration Commission
SCICs  State capital investment companies
SCIOs  State capital investment and operation companies
SCM  Agreement on Subsidies and Countervailing Measures Agreement
SCOCs  State capital operation companies
Shenhua  Shenhua Group Corporation Limited
Sinograin  China Grain Reserves Corporation
Sinolight  Sinolight Corporation
Sinoma  China National Materials Group Corporation Limited
Sinomach  China National Machinery Industry Corporation
Sinotrans  Sinotrans Group Limited
Group
SNPTC  State Nuclear Power Technology Corporation Limited
SOEs  State owned enterprises
SPS  sanitary and phytosanitary
STEs  State trading enterprises
TBT  technical barriers to trade
TPP  trans-Pacific partnership
TPRM  trade policy review mechanism
TRIPs  Agreement on Trade-Related Aspects of Intellectual Property Rights
US  United States
USMCA  United States–Mexico–Canada agreement
USSR  Union of Soviet Socialist Republics
USTR  United States trade representative
VAT  value-added tax
WISCO  Wuhan Iron and Steel (Group) Corporation
WPR  report of the Working Party on the Accession of China
WTO  World Trade Organization
Zhen Rong  Zhuhai Zhen Rong Company