





















not addressed? Where did the system go wrong? Whatever the answer, we believe that only a negotiation of new rules can help solve the problem of private impediments to trade.

That private impediments could hinder trade liberalization was, of course, common knowledge when the GATT was being negotiated. Therefore, as we will show in more detail later, the ITO, under the aegis of which the GATT was originally supposed to come, contained a chapter dealing with multilateral responses to restrictive business practices (RBPs) by private agents. The degree of state involvement in the workings of the economy varies across trading nations. In principle, however, the original members shared a commitment to the market economy, and thus private impediments would be addressed by domestic competition laws.

The introduction of competition discipline in China is quite recent, and even today, China remains a country with substantial state involvement in the workings of the national economy. Countries with similar substantial involvement, ranging from Japan of the 1950s to Soviet bloc countries like Hungary and Poland, joined the GATT before China did. The parallels with their accession processes are not only relevant but warranted indeed.

For these reasons, in chapter 3, we will be discussing the experience of countries with similarities to China and the ways their accession processes unfolded. We will see that China presented the incumbents with a novel issue: even among similarly situated countries, China was something new. Before its accession, GATT incumbents had only dealt with small countries with heavy state involvement in the economy (like Hungary and Poland) or with big countries with less pronounced state involvement in the market (like Japan) but never with such a huge country that had, at the same time, such extensive state control over its economy.

In the same chapter, we will provide a more detailed discussion of the Japanese accession to the GATT, a choice predicated on a variety of reasons. For starters, the reaction to China's participation in the WTO is reminiscent of the hostility toward the accession of Japan to the GATT in the 1950s and the subsequent attempts to resolve the "Japan problem." Recent complaints against China are very similar to earlier complaints against Japan. Almost identical arguments were raised against the destructive nature of the Japanese "mercantilist trade and investment regime." Furthermore, reliable historical accounts<sup>4</sup> support the argument that Japan's organization of its economy was one of the paradigms that Chairman Deng, the

4. Vogel (2011; 2019) has analyzed this issue probably more comprehensively than anyone else.

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man credited with the transformation of the Chinese economy, aspired to emulate.

Japan has, of course, fully integrated into the ranks of the Western world. This does not, however, mean that, as in the case of Japan, one should expect changes in China soon—we will, in fact, demonstrate the opposite. We want to show the differences between the two countries and why the factors that influenced the transformation of Japan into a market economy are absent in China. We will explore the differences and the similarities between the two situations and draw conclusions.

Other countries with different economic systems have largely aligned themselves with the global trading system, of course, but China differs from these as well. For example, in the WTO era incumbents did have to face a request for accession by Russia and some other ex-Soviet bloc countries that have not joined the European Union and by Arab countries with heavy state involvement in the workings of their economies. Both sets of countries, however, are closer to the smaller ex-Soviet bloc countries that had joined the GATT than they are to China. As a result, although some lessons can be drawn from earlier experiences, the reader should not expect “lock, stock, and barrel” types of solutions here. China is singular, and it requires singular responses. In chapters 4 and 5, we focus on these responses—the courses of action advanced elsewhere, both by the United States and by academia.

In chapter 4, we will be dealing with unilateral threats and tariff increases as the “stick” meant to induce cooperative behavior by China. Relying on the existing research by Bown (2019) and Amiti, Redding, and Weinstein (2019), among others, we will explain why this strategy has already proved to be inefficient. But this is not the end of the story; if similar courses of action are followed in the future as well, countries confronting China risk facing countermeasures and a further weakening of the multilateral regime.

Finally, we will also examine the limits of enforcement of the current regime. Our main conclusion is that where clear rules have been agreed upon (as in the case of regulation of export taxes), complainants against China have scored their biggest victories. Imaginative proposals, such as that of Jennifer Hillman (2018), to pursue nonviolation complaints (NVCs) against China, a legal instrument of ambiguous efficacy anyway, are, in our view, not a recipe for success.

In chapter 5, we will address the thesis of Dani Rodrik (2018) according to which the WTO regime should accommodate players with divergent preferences when it comes to regulating their national economy. Consequently,

the argument goes, the world trading community should stay idle and desist from trying to persuade China to change. We disagree. By doing nothing, problems will persist, and, more important, it is not true that the GATT/WTO regime was designed to fit every country—it is predicated on the “liberal understanding” that we discussed earlier.

Why, then, did the Protocol of Accession not include terms inspired from this “liberal understanding,” which could have been tailor-made for China? In part, we will argue, there was exuberance—the widespread expectation that China would quickly transform into a market economy. In part, it was because there is only so much one can achieve through a Protocol of Accession.

The GATT/WTO regime was not designed with countries like China in mind. The framers of the GATT all shared the quintessential characteristics of market economies. This is what the implicit “liberal understanding” of the GATT amounts to. On the other hand, Protocols of Accession cannot serve as a means to impose choices regarding the organization of a country’s national economy. To prove this point, we will investigate the statutory language regarding the objective function of Protocols of Accession as well as their practice. We will explain why, the legitimacy of claims regarding underenforcement of the Chinese Protocol of Accession notwithstanding, transforming China into a market economy through its Protocol of Accession was legally and policy-wise not an option. It is in this context that we will compare China’s Protocol of Accession to the WTO with earlier GATT accession protocols for countries with significant state involvement in their trade regime.

Our discussion of the issues up to this point will lead us to conclude that none of the courses of action proposed so far can help the world trading community solve the “China problem.” If the world trading community is serious about addressing SOEs and forced TT, then it would be well-advised to change its course of action.

Chapter 6 offers proposals on how to improve WTO rules to deal with China (and other countries with some similar features). We will consider what is actually possible—rather than ideal—in terms of legislative reforms, borrowing from existing examples to which China is most likely to acquiesce rather than devising new rules altogether. Our proposals are counterpoints to the two radically opposed solutions that have been put forward to deal with the existing clashes between the WTO regime and China’s economic regime: on the one hand, demands that China radically change its economic regime to conform to Western ideals; on the other, that the WTO stay out of

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the controversy and that its members accept that they must accommodate China's state-controlled economy. We reject both of these proposals.

We argue that there is a third way that is more promising. In order to retain its principles and yet accommodate China, the WTO needs to translate parts of its implicit liberal understanding into explicit treaty language. We advance specific proposals to this effect that, if adopted, would induce China to change its economic behavior even as it retains its economic regime. In other words, the solution to the problem posed by China to the international trading system is not to demand a change in its economic regime but to induce a change in its economic behavior. In particular, we envisage a situation where China is able to retain its SOEs but where they behave in a market-friendly manner.

We will discuss separately, in chapter 7, the recent pushback against market-oriented reforms that President Xi has masterminded and executed. China today seems a long way from the aspirations to transform into a market economy by 2016 that accompanied its accession process. It is, in our view, an additional reason to strengthen the current multilateral framework so that it acts as a counterbalancing force to constituencies arguing for heavier state (i.e., Chinese Communist Party [CP]) involvement in the economy. If the framework is not strengthened, it may be too late to forestall the CP from instituting even stricter state controls than already exist in China.

Our volume ends with a call for renewed commitment to multilateralism. Unilateral action has increasingly proved to be ineffective. It is time to try the carrot instead of the stick. We do not intend to discuss all the mishaps that the world trading system is currently experiencing, but we would be remiss if we turned a blind eye to the fact that China is a contributing factor.

Globalization has seemed for years to be a fact of life—a new fundamental and permanent foundation for the world economy. But China's accession to the WTO has revealed potential cracks in that foundation. As Bown and Irwin conclude in their excellent article:

The fall of the Berlin Wall and the collapse of communism opened up Eastern Europe and the former Soviet Union to global markets. The reforms of Deng Xiaoping did the same for China. But only in the unipolar moment, which began in 2001, when China joined the WTO, were open markets truly global. Now, the period of global capitalism may be coming to an end. What many thought was the new normal may turn out to have been a brief aberration. (2019, 136)

If there is still some hope to prove this (increasingly realistic) statement wrong, we argue, it is through a return to the values that helped establish the post–World War II multilateral edifice. Although in this book we concentrate narrowly on the “China problem,” it is not a problem that is self-contained. Instead, it has profound implications for the economic ties that bind countries together in a globalized world—or the barriers that thrust them apart. In short, we view this work as a contribution to the much larger project of reinvigorating the multilateral regime.

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