

CONTENTS

Preface vii

Acknowledgments xi

List of Abbreviations xiii

Introduction 1

1 The Rise and Rise of China:
(And What Should Be Done About It) 14

2 Complaints against China:
(Euphoria Exits and Dysphoria Enters) 38

3 Dealing with Heterogeneity in the GATT/WTO:
Lessons from the Past for China 106

4 Unilateral Responses Do Not Work 147

5 Staying Idle Is No Solution 158

6 The Way Forward 174

7 The Time Is Now 193

Concluding Remarks: This Time It Is Different Indeed 209

References 219

Index 231

Introduction

China's accession to the World Trade Organization (WTO) has presented the increasingly globalized economic system with a conundrum. Are the contributions of China's high-growth, export-oriented economy a win-win—an unalloyed benefit for both the People's Republic and its trading partners? Or, as seems increasingly to be the prevailing opinion, has China's markedly different economic system, combined with its perceived tendency to bend or even break the rules of international trade, made it a problem that needs solving?

China's participation in the WTO has provided it with almost uninhibited access in 163 markets, the United States among them, and China has profited immensely from its participation in the world trading system. Recording unprecedented growth rates, it has transformed itself from a low-income, developing country to a global power in one generation. This is not, of course, due solely to its trade performance; China has long been a central player in global geopolitics and its economic potential has loomed large throughout East Asia and, indeed, the rest of the world. In recent years, that potential has been realized as China has profited from globalization to become a trade powerhouse. Its export-led growth model has perfectly positioned it to take advantage of the elimination of trade barriers for its products worldwide.

The rest of the world has profited from China's growth as well—at least in part. China's unprecedented export growth has benefited foreign consumers and stimulated capital gains for foreign investors. And yet, the silver

2 INTRODUCTION

lining of cheap Chinese consumer goods and corporate capital gains is tinged with gray. Accusations have surfaced and proliferated that China's success is due not only to its industry but also to other factors, and most notably, the suggestion that it simply does not play by the rules, whether by engaging in illegal subsidization or by counterfeiting, as just two examples. Such accusations are probably expressed most vociferously in Washington, D.C., but not only there. With varying degrees of vehemence, many of China's trading partners, especially the big players like the United States, the European Union, and Canada, have voiced their views of China's trading practices that range from general concern to pointed critique. Typically, these voices have criticized the extent of state involvement in the Chinese economy and argued for stricter enforcement of the current multilateral rules regulating international trade.

The Trump administration has preferred to take justice into its own hands. President Trump's decision to "take on" China has been making headlines since the summer of 2019, accompanied by a roller coaster of announcements of tariffs on specific products, followed by the imposition of some of them, retaliation by China, subsequent announcements veering toward peaceful resolution of the dispute, then renewed belligerence, and finally a deal. These are not dull times, as far as international trade news is concerned.

Of course, we are not here to judge the usefulness of similar tactics (antics?) when it comes to possible political exploitation. Our interests instead are the repercussions that similar actions have on the multilateral edifice of international trade. To us, what matters most is whether this is the most appropriate way to resolve the China issues.

But the world is not unanimous in criticizing China's trading practices. For one, there is a silent majority of trading nations, the smaller players, who have other fish to fry. Israel, for example, has not joined the chorus of critics. And then there are those, such as economist Dani Rodrik (2018), who claim that the current situation should not be of concern to the WTO at all, as China, its idiosyncratic elements notwithstanding, should simply be accommodated within the four corners of the current multilateral edifice. All the more so, the argument goes, since China's growth has contributed to the growth of many other nations. The world trade community, stakeholders and academics alike, have advanced various proposals to address the China problem. Some say, "Do nothing." Others advocate increased and stronger enforcement of existing rules. Still others insist, "Hit them where it hurts."

But to reach a long-term solution, we first have to decide if China is, in fact, acting outside the legitimate practices of world trade. In other words, what exactly is the “China problem”?

The China Problem: Myth and Reality

If China plays by the book, then there should be no problem—its trade practices, alien as they might appear to some since they are not consonant with trade practices followed by most market economies, should be accommodated like any other country’s. But considered from another angle, China must be doing something wrong; otherwise there would be nothing to complain about—“Where there is smoke, there is fire,” as the old adage has it. In the pages that follow, we understand the “China problem” as the sum of claims that various trading nations (and most comprehensively and loudly the United States) have mapped out.

A major difficulty in assessing the situation is that this problem is a moving target—claims continually appear, disappear, and reappear again. Let us take the accusation that China is a currency manipulator as just one example. The Trump administration branded China a manipulator, the president withdrew the accusation a few months later, he reintroduced it once again sometime later, and then the administration succeeded in reaching a deal with China.

Two complaints, however, surface with some regularity and have withstood the test of time: that Chinese state-owned enterprises (SOEs) benefit from unfair trade advantages and that Chinese companies (both private and state owned) impose forced technology transfer (TT) deals on foreign businesses as a condition for accessing the Chinese market. In this volume, we focus on these two claims, which are central both to the way the Chinese economic system operates and to the difficulty that foreign economic operators encounter in their dealings with Chinese firms inside and outside China.

How to Deal with China?

Essentially, we argue that the courses of action advanced to deal with the “China problem” are inappropriate or, at best, only partly efficient. We explain why bilateral solutions only advance short-term, narrow interests aiming to redress trade imbalances as opposed to systemic interests that address the cause of concern or effect change in the medium term. The

4 INTRODUCTION

world trading community's interests would be better served by a different approach—namely, amending the current trade law regime and bringing it into line with the original “liberal understanding” of the General Agreement on Tariffs and Trade (GATT). In our view, only a legislative amendment will allow the WTO membership to solve the problems posed by SOEs and forced TT. Implicitly, thus, we believe that there is merit in the concerns raised. We also believe, though, that the eventual solution to the current problems should not be China-specific. Concerns about SOEs and forced TT are not unique to China. Similar problems exist with regard to other current or potential WTO members. Multilateral solutions are, therefore, necessary. We argue that China, because of its size, simply exacerbated a problem that already existed.

To avoid misunderstandings as to the scope of our endeavor, we should emphasize that we do not purport to offer a complete blueprint to reform the WTO in all its dimensions. We leave this much-needed, but ambitious, task to others. Our goal is more modest. We seek simply to propose WTO reforms that we consider essential to lessen the tensions in the trading system arising from China's size and the nature of its economic system.

In the pages that follow, we will argue against the two extreme solutions to the “China problem”: unilateral measures against China to force a change of its economic regime on the one hand, and staying idle on the other. We concede that some of the concerns raised can be addressed through more active enforcement of the current WTO regime. When we say that some of the concerns about China can be handled effectively within the four corners of the existing WTO regime, we adhere to the view expressed elsewhere that a stricter enforcement of the Protocol of Accession for China might yield satisfactory results.

The bulk of the other concerns can only be addressed if new obligations are added to the current WTO regime. This is, in our view, particularly important, for even if we can imagine how a well-intentioned, imaginative WTO judgment might deflate the current state of uneasiness, such a judgment would be case specific. Furthermore, decisions made by WTO judges carry less weight than formal legislative amendments. In an era of doubt as to the legitimacy of the WTO Appellate Body, it is probably wiser (even though, we readily admit, more cumbersome) to opt for legislative solutions.

The GATT/WTO is, of course, the (legal) benchmark to judge the adequacy of the existing regime to address the two concerns mentioned above. As we explain in chapter 5 in detail, the GATT is an incomplete contract regulating trade transactions based on a “liberal understanding” of the law

and economy.¹ Suffice it to state for now that the GATT was part of the wider International Trade Organization (ITO) project, which contained disciplines on both state and private restraints to trade. The GATT was a chapter of the ITO (Chapter IV) and regulated only state barriers to trade.

The GATT entered into force on January 1, 1948, while awaiting the advent of the ITO. Even though the formal negotiation of all issues involved had been finalized, the treaty repeatedly failed to get through the U.S. Congress, and no other nation was prepared to ratify it without U.S. approval. Politics got in the way, and the ITO never saw the light of day. It never will, as the WTO has taken its place. The GATT disciplines, nevertheless, were part and parcel of a wider understanding on how to liberalize trade, which is predicated on respect for private rights and limited and controlled state intervention in the economy. This was explicitly contracted in the ITO, as we show in chapter 5.

But the obligations that were explicitly contracted in the ITO were almost never explicitly incorporated in the GATT text. Article XXIX is an exception, even though it only requests a best endeavor to observe the obligations. The implicit, rather than explicit, adherence to the ITO obligations on private rights and limited state intervention constitutes the “liberal understanding” of the GATT.

The GATT “liberal understanding” implicitly assumes that in all GATT/WTO members

- laws, contracts, and property rights will be enforced;
- the state will not undo contractual promises regarding trade liberalization through favoritism (pecuniary or otherwise) toward domestic agents; and
- investment will be liberalized.

None of this was ever translated into legal language in the GATT/WTO agreements, but it formed the essential background against which the multilateral trading system has been operating since its inception in 1948. All

1. In order to avoid any misunderstanding, we do not use the term “liberal understanding” throughout this volume in its possible ideological connotation. We use it simply, as equivalent to “market economy.” Market economies of course differ in the way they approach social policies, among other things. But they all share one common element: they represent an economic system, where (economic) decisions and the ensuing pricing of goods and services are, for all practical purposes, determined by the interactions of private individuals, citizens, and businesses alike. Government interventions are meant to address market failures and not to dictate the way each and every transaction in the economy should take place.

6 INTRODUCTION

the big players shared (or at least accepted) the liberal understanding of the law and economy. In Ruggie's (1982) account, this was the era of "embedded liberalism," the post-World War II era, where states were putting together an international system supporting free trade and market economies, while acknowledging the right to regulate in order to combat unemployment and support welfare policies at home. One might add that this was the quintessential reason why the multilateral rules operated so smoothly, despite the increasing number and heterogeneity of GATT/WTO members.

China was not the first, and it will likely not be the last, country to join the GATT/WTO with an economic system different from the liberal system that the main incumbent members have adopted. The GATT had to face a somewhat similar situation when socialist, non-market countries from Central and Eastern Europe joined the club. But these countries were small, and it was relatively easy to negotiate their accession through existing protocols, which imposed specific obligations on the acceding countries. Furthermore, their subsequent transformation into market economies linked to their accession to the European Union removed whatever problems might have existed during their initial years of participation in the world trading system.

Even when Japan wanted to join—a much bigger economy in which the state played a crucial role, even though it was not centrally planned—the GATT liberal understanding was not questioned. Japan was an outlier; it was far from sharing the liberal understanding when it joined the GATT under the protective aegis of the United States. This changed relatively soon afterward, when Japan acceded to the Organisation for Economic Cooperation and Development (OECD) a few years after it had joined the GATT. Through (or because of) its OECD membership, it endorsed the liberal understanding and aligned its regulatory regime to that of the Western countries that dominated the GATT.

India and Brazil, two large and important original signatories that might have been a thorn in the system's side, always accepted the GATT's basic tenets, each gradually welcoming the liberal understanding and thus avoiding clashes with other GATT/WTO members as their economies grew over time. India first in 1991, with the economic reform operated by Prime Ministers Rao and Singh, and Brazil with the adoption of Plano Real of 1994, steered by Presidents Franco and Cardoso, abandoned the heavily interventionist policies of the past and espoused the principles and practices of market economics for good.

In short, until the accession of China, the multilateral trading system was able to cope with increasing variety in economic systems among its members

with little difficulty. This was either because new members were fairly small or, if they were larger economies, because they shared (or subsequently accepted) the liberal understanding that was implicit in the original GATT text and that reflected the fact that its main architects were from the United States or Great Britain.²

This time, it is different. China is neither small nor willing to reform its one-party political system and everything it entails in terms of state participation in the working of the economy, as many of its partners had hoped it would have done within a relatively short period of time after joining the WTO.

Outline of the Book

Chapter 1 serves as background information so that the reader can better appreciate the concerns voiced against China. In this chapter, we provide some data regarding the development of the Chinese economy in recent years and discuss the reactions of the world community to the new situation. We will highlight the worldwide euphoria when China entered the WTO frame, the antithesis of the more recent dysphoria that is gaining pace across the industrialized world.

In chapter 2, we begin by examining the claims against China presented by the U.S. authorities (based on discussions in the Trilateral group, where officials of the European Union, Japan, and the United States participate), the most vehement critics of Chinese policies, and then focus on the central issues: SOEs and TT, which lie at the core of complaints against China's trade and investment regime. They represent the high-priority items for the Trilateral group³ but also for a few others and are therefore salient concerns of all of China's major trading partners.

2. See Irwin, Mavroidis, and Sykes 2008 and Tumlin 1984. Japan presented the world trading regime with challenges as a result of its monumental growth rates in the 1960s and 1970s. Complaints against Japan were raised not only at the moment it acceded to the GATT but also a few years after it had joined. Already at the moment of its accession, it managed to provoke a record number of invocations of the non-application clause. Eventually, however, Japan became "one of us," and its ascension to Quad status is the best proof to this effect. We will discuss the Japanese problem in detail.

3. Following the decision of the European Union, Japan, and the United States (the "Trilateral"), during the 11th WTO Ministerial Conference of the WTO, to work together and confront China, they have been focusing on these two issues. See USTR, Joint Statement by the United States, European Union, and Japan at MC II, December 12, 2017; USTR, Joint Statement of the Trilateral Meeting of the Trade Ministers of the United States, European Union and Japan, May 23, 2019.

8 INTRODUCTION

Most importantly, by addressing these two concerns, we will be in a position to understand whether the current legal regime applicable to China (that is, the multilateral trade law as reflected in the WTO agreements that bind all WTO members including China, and the Chinese Protocol of Accession, which contains China-specific obligations) suffices to address the concerns raised. If the answer to this question is yes, then we need to explore the reasons for underenforcement. If the answer is no, then we need to ask why the current regime is inadequate and what can be done about it. To determine the answer, we analyze SOEs and TT in terms of the legal regime applicable to China—the multilateral rules as well as the Chinese Protocol of Accession. The combination of these rules provides a benchmark for assessing the ability of China's current regime to deal effectively with the concerns voiced by the international community.

Our conclusion? In a nutshell, the current WTO rules on SOEs could, in principle, resolve at least some of the concerns raised by the United States and China's other trading partners, but such a resolution requires a more imaginative interpretation of the existing rules than the WTO has thus far been willing to concede. This entails a reorientation of the current case law, a demanding exercise by any account. Therefore, in our view, a clarification of the rules on SOEs, inspired by existing regulatory solutions at the bilateral and plurilateral level, would go a long way toward addressing the current concerns. A legislative amendment would, by spelling out the details, preempt discretion by the WTO judges and avoid the risk of unsatisfactory outcomes due to unclear rules. In other words, clearing up some of the haziness that has plagued rulings related to SOEs will go a long way toward bringing China into alignment with the goals and policies of the WTO.

With respect to TT, the situation is different: the current rules are not adequate to address the friction over forced TTs. This is largely because requests for TT by private agents are not covered in the current WTO agreements, since these agreements do not deal with private trade deals but exclusively with state barriers to trade. Since similar requests could occur elsewhere as well (and not only in China), an expansion of current agreements to include private TT deals is necessary. But such an expansion raises an important issue: if the concern about TT is new—that is, if it postdates the WTO members' negotiation with China that led to the conclusion of the Protocol of Accession—then it needs to be addressed now for the first time. If, conversely, the concern predates the negotiation, why has it not been addressed before? Is the concern about TT a new issue, specific to China? If these concerns have caused problems before, why were they

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 accounts⁴ 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.

10 INTRODUCTION

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

12 INTRODUCTION

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.

INDEX

- Abe, Shinzo, 55
 Acheson, Dean, 114n12, 174, 213
 administrative guidance, 91n71
 Agreement on Agriculture, 39, 120
 Agreement on Government Procurement (GPA): accession to, 108; challenge procedures, 188–89; China’s promise to join, 38–39, 67, 81; SOEs as public bodies and, 81
 Agreement on Trade Facilitation (ATF), 34, 36n43
 Ahn, Dukgeun, 187n15
 Aid for Trade initiative, 34
 Albright, Madeleine, 104
 Alford, William P., 190n21
 Allison, Graham, 30, 58n30, 217
 Amiti, Mary, 10, 58n30, 149
 Anderson, Robert D., 68
 Antidumping Agreement, 39
 APEC. *See* Asia-Pacific Economic Cooperation (APEC)
 Arab countries, protocols of accession for, 123–24
 Arrow, Kenneth, 20n16
 Asian Infrastructure Investment Bank (AIIB), 195, 204
 Asia-Pacific Economic Cooperation (APEC), 16, 20–22, 175
 Austria, 130
 Autor, David H., 62–63
 Bacchus, James, 54n25
 Bach, Christian, 19
 Baker, James A., III, 15n2
 Baldwin, Robert E., 161
 Barfield, Claude E., 133n42
 Barker, George, 23
 Barshefsky, Charlene, 26–28
 Bashan Conference, 20n16
 behind-the-border barriers. *See* non-tariff barriers (NTBs)
Belgian Family Allowances, 75
 Bell, Daniel A., 186n14
 Belt and Road Initiative, 195, 204
 Benelux countries, 130
 Berkowitz, Daniel, 193
 bilateral investment treaties (BITs), 91–92, 109n4, 110, 167, 182
 Blustein, Paul: China’s accession to the WTO, 15; Chinese currency valuation, U.S. congressional threat regarding, 65; forced technology transfer, anecdotal evidence regarding, 91n72; intellectual property rights, responses to violations of, 45; loyalty of Chinese courts to the party and the state, 191n24; multilateralism as the correct response to the China challenge, 215; reluctance to take action against China, examples of, 53n22; SASAC, reason for introduction of, 194; United States’ complaints about Chinese noncompliance, 39; U.S.-China Bilateral Agreement, 25, 26n27; Xi’s esteem for Mao and Deng, 203n15
 Bown, Chad P.: export-led growth by China, 142; globalization, cracks in the foundation of, 12; protectionism following the great recession, 34–35; Section 301, downgrading the use of, 56–57; “stick” strategy and research by, 10; tariffs on Chinese imports in the U.S., 66n41; unilateralism, reasons for unworkability of, 149; U.S.-China showdown, high stakes of, 148
 Brandt, Loren, 30, 197
 Branstetter, Lee, 47–48, 187n15
 Brazil, 6, 33–34, 130, 150, 152
Brazil–Taxation, 122
 Brødsgaard, Kjeld Erik, 197–98
 Brooke, Sir Alan, 55
 Brunnermeier, Marcus, 217–18
 Bulgaria, 113
 Bush, George H. W., 56, 58, 103, 137
 Bush, George W., 15
 Buts, Caroline, 216

- Campbell, Kurt M., 29, 147
- Canada: Japan, litigation against, 134; liberal understanding of GATT introduced in a proposal by, 162; the “Quad,” trade minister as member of, 33
- Canada–FIRA*, 75
- Canada–Softwood Lumber*, 165
- Canada–Wheat Exports and Grain Imports*, 76–80
- Canadian Wheat Board, 77
- Cao, Jin, 46
- Cardoso, Fernando Henrique, 6
- Cartland, Michael, 83n62
- Cass, Deborah, 23
- Central and Eastern European countries (CEECs), accession to the WTO of, 40–41, 116–17. *See also* Protocol of Accession (Poland)
- CFIUS. *See* Committee on Foreign Investment in the United States (CFIUS)
- challenge procedures, 188–91
- Charlton, Andrew, 66
- Charnovitz, Steve, 107n1, 122
- Chen, Hejing, 68
- Chen, Yu-Jie, 190n22
- Chen Yun, 17, 18n12
- China: APEC, participation in, 175; Belt and Road Initiative, 195, 204; Deng’s reforms, 14, 16, 18–20, 193, 209; foreign investment law (FIL), 182; Japan and, comparing GATT/WTO regime experiences of, 125, 129, 132n40, 140–46; judicial system and the rule of law in, 190–91; “Made in China 2025,” 200n10, 202; Mass Entrepreneurship Initiative, 181–82, 196n5; OECD, participation in, 175; reforms, current and future course of, 201–3; reforms of the 1990s, 193–94; renegotiation of the WTO, question of participation in, 207; solution to problems posed by (*see* World Trade Organization (WTO), proposed renegotiation of); State-Owned Assets Supervision and Administration Commission (SASAC) (*see* State-Owned Assets Supervision and Administration Commission (SASAC)); state-owned enterprises (SOEs) (*see* state-owned enterprises (SOEs)); Technology Import Export Regulation (TIER), 178–79, 181; tensions with trading partners, reasons for, 31–33; trade dispute with the United States (*see* U.S.–China trade dispute); Treaty of Peace and Friendship with Japan (1978), 16–17; “vertical democratic meritocracy” model of, 186n14; Xi’s enhancement of party/state control, 197–201; Xi’s rollback of reforms, 194–96. *See also* Deng Xiaoping; Xi Jinping
- China, complaints against, 38–40; addressing outside the WTO framework, strategies for, 54–59; Chinese services markets, inaccessibility of, 67; currency manipulation, 63–66; forced technology transfer (*see* forced technology transfer (TT)); foreign direct investment by China, 66–67; number of and responses to, 51; procurement practices, 67–68; state-owned enterprises (*see* state-owned enterprises (SOEs)); the two primary issues, 59–62; underenforcement of rules, 50–54; unemployment exacerbated by Chinese exports, 62–63; WTO disputes, 48–50, 82–89, 98–100
- China–Agricultural Products*, 89n67
- China Anti-Monopoly Law, 45n14
- China–Electronic Payments and Services*, 50n19
- China–Intellectual Property Rights*, 94n73
- China-Japan Working Group for the Exchange of Economic Information, 17n6
- China problem, the: adjudication in response to, 213–14; do nothing in response to, 2, 4, 211–13; forced technology transfer (*see* forced technology transfer (TT)); inclusiveness in response to, 212–13; legislative amendment as response to, 4 (*see also* World Trade Organization (WTO), proposed renegotiation of); myth and reality of, 3; state-owned enterprises (SOEs) (*see* state-owned enterprises (SOEs)); trade policy and, 1–2; unilateral response to, 2, 4 (*see also* Trump, Donald; unilateralism)
- China–Raw Materials*, 39
- China’s accession to the World Trade Organization (WTO): APEC participation as step toward, 20–22; bilateral negotiations leading to admission, 28; Deng’s reform agenda and, 16–20; economic successes following, 29–30; euphoria surrounding, 14–16, 102–4; GATT, preparation for rejoining, 21–23; impact on the WTO system, concerns about, 28–29n33; political reform and, 28–29; process of, 16–29; state-owned enterprises (SOEs) and, 70–71; U.S.–China Bilateral Agreement and, 25–28; Working Party on China’s Status as a Contracting Party to the GATT, 23; Working Party on the

- Accession of China to the WTO, 23–25. *See also* Protocol of Accession (China)
- China Transitional Review Mechanism (TRM), 94–95n73
- China–TRQs*, 88–89
- Chinese Communist Party (CCP): Central Organization Department, nomenklatura jobs determined by, 200; Deng's commitment to preserving the role of, 19; disdain for democracy among leaders of, 204; enhanced role in economic life (*dangjian* movement), 44n12, 199; hold on three key institutions maintained during 1990s reforms, 194; law as an instrument of, 190n21; mixed signals on rollback of reforms, 195; state involvement in the economy, support for, 12; as successor to the “Confucian party,” 203; Xi's commitment to rescuing, 203; Xi's reforms strengthening control of SOEs by, 197–202
- Chinese courts: patent enforcement before, 46; the rule of law and separation of powers in China, 190–91
- Chinese economy/economic system: positives and negatives of rapid growth, 31–37; slowing growth, estimates of, 31n38; special nature of as source of tension with trading partners, 31–32; state control of critical sectors, 211; WTO, growth after joining the, 29–30
- Chinese Ministry of Foreign Economic Relations and Trade (MOFERT), 21
- Chow, Gregory, 30, 43
- Chowdhry, Sonali, 154n8
- Churchill, Winston, 55, 127n30
- Cima, Elena, 94n73
- Clayton, William, 114n12
- Clifford-Elsey report, 68n47
- Clinton, William, 25, 28, 103–4
- Clinton-Hashimoto declaration, 104
- Clintworth, Gary, 20
- Commerce, U.S. Department of, 66, 83
- Committee on Foreign Investment in the United States (CFIUS), 47–48, 66, 215
- competition law: antitrust statutes, concerns about China's lack of, 45; flourishing of in original GATT signatory countries, 169; international, absence of, 78, 118, 122; international as a prerequisite for a disciplinary regime, 215; nondiscriminatory application of required by GATT, 138; private behavior to be addressed by domestic, 9, 48; technology transfer agreements and national, 180–81
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP): inviting China to join, 207; as new name for TPP, 54; renegotiation of WTO, usefulness for, 175; state-owned enterprises addressed in, 184–86. *See also* Trans-Pacific Partnership (TPP) Agreement
- “constructive vigilance,” 206n20
- contract responsibility system, 43
- convergence theory, 113n10
- Cooper, Richard N., 31n38
- Copelovitch, Mark, 105n80
- Court of Justice of the European Union (CJEU), 165–66
- Cousin, Violaine, 44
- covered agreements, 39
- CCP. *See* Chinese Communist Party (CCP)
- CPTPP. *See* Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- Crane, Phil, 26
- currency manipulation, 3, 63–66
- Czechoslovakia, 110–11
- Dallmeyer, Dorinda G., 133n42
- Dalton, Hugh, 147
- dangjian* movement, 44n12, 199
- Daniel, James, 66
- Davis, Christina L., 113
- democracy, Chinese leadership's view of, 204
- Deng Xiaoping: Gorbachev, negative opinion of, 19, 211; “hide your strength, bide your time” as saying of, 204; Japan's economy, emulation of, 9–10; reforms championed by, 14, 16, 18–20, 193, 209; reforms championed by, reaction of Western leaders to, 102–4; southern tours by, 205n19, 209; Soviet Communist Party, opinion of, 19; technology transfer, focus on, 90
- Depayre, Gérard, 83n62
- Diamond, Larry, 67, 206n20
- Dispute Settlement Body (DSB), 50, 52, 56, 82
- dispute settlement process of the WTO: as an alternative to the Section 301 process, 56–57; forced technology transfer, 47–48 (*see also* forced technology transfer (TT)); frustration with, 52; intellectual property rights, 45–47 (*see also* intellectual property (IP) rights); requirements for China compared to ex-Soviet bloc countries, 40–41; state-owned enterprises (SOEs), 41–45 (*see also* state-owned enterprises (SOEs))

234 INDEX

- Dispute Settlement Understanding (DSU), 48, 56–57, 107
- Dorn, David, 62–63
- Doshi, Rush, 217–18
- Drysdale, Peter, 21
- Dunkel, Arthur, 21
- Duterte, Rodrigo, 143n57
- EC-Bananas III*, 109n4
- Economic and Trade Agreement between the United States of America and the People's Republic of China, Phase One, 153–54
- economic reforms, Chinese: Deng's, 14, 16, 18–20; political reform following from, optimism about, 27–28; Xi's, 12, 45, 197–202; Xi's rollback of 1990s, 194–96, 205n19
- Economy, Elizabeth C., 190n20, 200n10
- Einstein, Albert, 38
- Eisenhower, Dwight D., 125–26, 170–71
- El Salvador, 28, 129, 144
- employment, impact of trade on, 62–63
- EU-Provisional Methodologies*, 214
- European Community (EC), 135–36
- European Union (EU): approach to China, 152; Central and Eastern European countries, accession of, 116–17; Chinese forced technology transfer, WTO complaint regarding, 98–100, 181; Chinese foreign direct investment, concerns regarding, 66–67; Court of Justice of the European Union (CJEU), 165–66; Japan, dispute about semi-conductors, 91n71, 133–36, 144n59; leadership position in the GATT/WTO regime, 33; Treaty on the Functioning of the European Union (TFEU), 165; Trump's approach to China, disagreement with, 151–52; WTO complaints against, number of, 33, 50
- EU-Vietnam Free Trade Agreement, 175, 186
- EU-Vietnam Investment Protection Agreement, 175
- Evenett, Simon, 190n19
- export-led growth: China's since joining the WTO, 29; origins of China's, 18; as strategies of Japan and China, 141–43
- Farah, Paolo Davide, 94n73
- Feenstra, Robert, 63
- Felbermayr, Gabriel, 154n8
- Feng, Ling, 30
- financial crisis of 2008–2009, 32
- Fisher, Jacky, 216
- forced technology transfer (TT): China's response to WTO actions regarding, 53; China's WTO obligations and, 92–98; Chinese behavior leading to, 90–92; nonviolation complaints and, 156–57; the Protocol of Accession and, 47; regulation of/response to, alternatives for, 47–48, 60–61; renegotiation of the WTO, to be addressed in, 176–82; technology transfer and, distinction between, 90; WTO complaints against China regarding, 98–100, 181. *See also* technology transfer (TT)
- foreign direct investment (FDI): in China, need for foreign technology and, 201; China's WTO obligations regarding, 92–94; concerns about Chinese, 66–67; Japan, gradual liberalization of policies by, 131–32
- foreign trade corporations (FTCs), 19
- former Soviet republics, WTO accession of, 117; investment, 123; pricing policies, 119–20; SOEs and privatization, 117–19; trading rights, 120–22
- Forsberg, Aaron, 125
- France, 130
- Franco, Itamar, 6
- Franklin, Benjamin, 158
- free trade agreements (FTAs): EU-Vietnam, 175, 186; protection of FDI, inclusion of, 92; Ukraine-EU, 117; United States-EU, distinction between WTO+ and WTOx clauses in, 171–72
- Friedman, Milton, 20n16
- Gamesa, 53n22
- GATT/WTO regime: accession to (*see* *Protocols of Accession for individual countries*); centrally planned economies in, 32, 112–16; Chinese and Japanese accession to, comparisons of, 125, 129, 132n40, 140–46; Czech transition to a non-market economy as a challenge to the liberal order, 110–11; evolving membership, leadership, and trade agenda as context for tensions with China, 33–37; Japan's experience in, lessons from, 6, 139–40; liberal economies, commitment to and the incorporation of nonliberal countries, 6–7, 104–5, 111–12 (*see also* World Trade Organization (WTO), proposed renegotiation of); liberal understanding underlying (*see* liberal understanding underlying the GATT); state involvement in trade and the economy, silence about, 68–70
- General Agreement on Tariffs and Trade (GATT): Article VI, amended to address

- the Czech economy, 110–11; Article XIX, regulation of trade impact on employment by, 63; Article XV.4, regulation of currency manipulation, 64–65; Article XVII, case law under, 74–82, 101, 119; Article XVII, regulation of state-owned enterprises, 60, 74, 89; Article XXXIII, the accession clause, 107–8, 111; Article XXXV, non-application clause, 129; China's original participation in, 1947–1950, 16; China's preparation for rejoining, 21–23; liberal understanding underlying (*see* liberal understanding underlying the GATT); regime neutrality and, 162–66; state involvement in trade/the economy and, 68–70 (*see also* state-owned enterprises (SOEs)); Structural Impediments Initiative (SII) and, 138; Working Party on China's Status as a Contracting Party, 23; world trading system, as umbrella for (*see* GATT/WTO regime)
- General Agreement on Trade in Services (GATS): conclusion of extended negotiations under, 34; Mode 3, Chinese obligations under, 92–93, 177; negotiation of, divide between developed and developing countries in, 162; nondiscrimination as a voluntary specific commitment under, 168n11; as product of 1980s unilateralism, 151; technology transfer, as an alternative for regulating, 60–61
- Generalized System of Preferences (GSP) schemes, 22
- Georgopoulos, Aris, 81, 189n18
- Gertler, Jeffrey L., 23, 28
- Gewirtz, Julian, 16, 20n16, 27, 28n32
- Gilbert, Richard, 180
- global financial crisis of 2008–2009, 32
- Goldman, Marshall I., 19n14
- Gorbachev, Mikhail, 19, 211
- GPA. *See* Agreement on Government Procurement (GPA)
- Graham, Lindsey, 65
- grantback, 180
- Greenspan, Alan, 25
- “Guiding Opinions of the Central Committee on Deepening the Reform of State-Owned Enterprises,” 195, 199
- Haass, Richard N., 195
- Haddad, Mona, 141–42
- Halverson, Karen, 23
- Hamada, Koichi, 139
- Han Fei Tzu, 196
- Hanson, Gordon H., 62–63
- Hardwick, Samuel, 21
- Harriman, Averell, 114n12
- Hearden, Patrick J., 162n4
- Herzstein, Robert, 28–29n33
- Hillmann, Jennifer, 10, 156
- Hoekman, Bernard M., 42n8, 81, 189n18, 192
- Holslag, Jonathan, 62n32
- Hoopes, Townsend, 213
- Horn, Henrik, 51, 171
- Howie, Fraser J.T., 71n51
- Howson, Nicholas Calcina, 205
- Hua Guofeng, 16
- Huawei, 50n20
- Hudec, Robert E., 166
- Hufbauer, Gary C., 63, 70
- Huijin, 45
- Hu Jintao, 193–94
- Hull, Cordell, 174
- Hungary, 114n12, 115
- Hu Yaobang, 16, 103
- IMF. *See* International Monetary Fund (IMF)
- India, 6, 33–34, 130–31, 150, 152
- Information Technology Agreements (ITA I and II), 34, 36n43
- intellectual property (IP) rights: protecting in China's Protocol of Accession, 45–47; size of the problem, 47; in the TRIPS Agreement, 161–62, 179–80
- International Monetary Fund (IMF): Chinese currency manipulation, complaints regarding, 65–66; currency manipulation, IMF-WTO agreement regarding, 64–65; membership in as part of Chinese openness strategy, 21
- international trade, organization of. *See* GATT/WTO regime
- International Trade Organization (ITO): competition law, attempt to enforce and internationalize, 180, 215; failure to approve the Charter, reasons for, 168–69; GATT and, relationship of, 5, 160–61; Havana Charter for, 108, 110n7, 167; liberal content in the Charter of, 167–68, 171; restrictive business practices, multilateral responses to, 9; Russian participation in, divisions within the U.S. administration on, 114n12
- IP. *See* intellectual property (IP) rights
- Iran, 151

236 INDEX

- Irwin, Doug: globalization, cracks in the foundation of, 12; ITO Charter not submitted for approval to the U.S. Congress, 168; property rights in the GATT, 163; Soviet Union invited to participate in GATT negotiations, 162n4; unilateralism as unworkable, reasons for, 149; U.S. negotiators' exasperation with U.K. counterparts during GATT talks, 170; U.S.-China showdown, high stakes of, 148
- Israel, 2
- Jackson, John H., 70, 161, 166
- Jakobson, Harold K., 166
- Janes, Harold, 217–18
- Janow, Merit E., 41
- Japan: Asian Infrastructure Investment Bank (AIIB), informal ties with, 204n18; China and, comparing experiences with the GATT/WTO regime of, 125, 129, 132n40, 140–46; complaints and measures against: backlash against economic growth, 133–34; complaints and measures against: multi-lateral, 134–36; complaints and measures against: unilateral, 136–39; European Union, dispute with, 91n71; GATT, accession to (*see* Protocol of Accession (Japan)); leadership position in the GATT/WTO regime, “Westernization” and, 33; lessons from the GATT/WTO experience, 139–40; post-war economic reform program in, 127n31; post-war geopolitical concerns regarding, 170–71; problem posed by, 7n2, 9–10; as a special case, 6, 124–25; Structural Impediments Initiative (SII) negotiations/agreement, 56, 58, 63, 131–32, 136–39; Treaty of Peace and Friendship with China (1978), 16–17; Trump's approach to China, disagreement with, 151–52; unfair trading nation, named as, 56, 58, 137
- Japan–Agricultural Products*, 134
- Japan–Alcoholic Beverages*, 134
- Japan External Trade Organization (JETRO), 17
- Japan–Film*, 156
- Japan–Leather (Canada)*, 134
- Japan–Leather I*, 134
- Japan–Semiconductors*, 134–35
- Japan–Silk Yarn*, 134–35
- Japan–SPF Dimension Lumber*, 134–35
- Japan–Tobacco*, 134–35
- Japan–Trade in Semiconductors*, 91n71, 97
- Jaravel, Xavier, 63n34
- Jegers, Marc, 216
- Jendrzejczyk, Mike, 104
- Jiang Zemin, 194
- Johnson, Chalmers, 133
- Kaifu, Toshiaki, 17n6
- Kashyap, Anil K., 139
- Kawasaki, 46
- Kazakhstan, Protocol of Accession for. *See* former Soviet republics, WTO accession of
- Kennan, George, 126, 127n31, 148
- Keynes, John Maynard, 69n47
- Kissinger, Henry, 216–17
- Klein, Lawrence, 20n16
- Kong, Qingjiang, 191n22
- Korea–Various Measures on Beef*, 76
- Kornai, Janos, 20n16
- Kostecki, Michel M., 113, 115n14
- Kroeber, Arthur R., 16–17, 32n39, 143, 200
- Kroenig, Matthew, 195
- Kurtz-Phelan, Daniel, 126, 170
- Lan, Luh, 44n12
- Lardy, Nicholas R.: China's economic growth, concerns about, 31; China's economic growth after joining the WTO, 29; Chinese economic growth 2019–2020, World Bank estimates for, 31n38; Chinese service markets, inaccessibility of, 67, 93; constraints on China imposed by APEC and the G20, insufficiency of, 175; Deng's reform strategy, 16; performance gap between Chinese private firms and SOEs, 182n8; Xi's rollback of reforms, 194–95
- Leddy, John, 51
- Leffingwell, Russell, 162n4
- Lei, Zheng, 191n25
- Lester, Simon, 54n25
- Leutert, Wendy, 198
- Levy, Phil, 58n30
- Li, Chen, 197
- Li, Zhiyuan, 30
- Liang, Wei, 23
- Liang, Yand, 149, 181n6
- Liao-Takasaka trade agreement (1962), 17n6
- liberal understanding underlying the GATT: China's violation of, 172; criticism of, 159–60; the (invisible) content of, 166–68; national security interests/geopolitical considerations and, 170–71; origins of, relationship of GATT to ITO and, 4–6, 160–62; regime neutrality and, 162–66; retaining without imposing on newly acceding countries, 168–71; translating

- into legal, contractual language (*see* World Trade Organization (WTO), proposed renegotiation of)
- Liebman, Benjamin, 190, 191n25
- Lighthizer, Robert E., 28n33
- Lin, Ching-Fu, 190n22
- Lin, Li-Wen, 199, 205
- Lindén, Åke, 21
- Lisbon Treaty, 116n17
- Liu, Ernest, 197n6
- Liu, Han-Wei, 190n22
- Liu Yongxing, 205
- Long Yongtu, 102n79
- Lovely, Mary E., 149, 181n6
- Lu, Zhiyao (Lucy), 63
- Luo Gan, 191n22
- Lyu, Shuping, 216
- Ma, Hong, 193
- Ma, Jack, 199, 211
- Mack, Chuck, 27
- Madden, Kirsten M., 196
- Maggi, Giovanni, 51
- Mao Zedong, 16, 190, 203n15
- Marshall, George C., 126
- Martin, Will, 19
- Maskus, Keith, 182
- Mason, Mark, 134
- Matsushita, Konosuke, 90
- Matsushita, Mitsuo, 138n52
- Mattingly, Daniel C., 190–91n22
- Mattoo, Aditya, 66, 208n21
- McGregor, Richard: Chinese concealment of state involvement in overseas investment, 192n26; Communist Party Central Organization Department, activities of, 200; law as an instrument of the Chinese Communist Party, 190n21, 191n22; Liu Yongxing, citation of, 205; meeting between Chen Yun and Tom Robinson, account of, 18n12; stronghold maintained by the Chinese Communist Party during the 1990s reforms, 194; Western belief that China was changing, 102–3; Xi as the right man to lead the reaction to privatization, 203–4
- McKenzie, Francine, 110n7, 113, 170
- McMahon, Dinny, 31, 71n51
- McNamara, Robert, 20
- Meade, James, 163
- Mearsheimer, John, 216
- Meiji (emperor of Japan), 132
- Merkel, Angela, 152n4
- Milhaupt, Curtis J., 44n12, 191n25, 199, 215
- Miller, Jennifer M., 126n29
- Mokyr, Joel, 203
- Moldova, 119n21
- Moore, Mike, 14, 102n79
- Moran, James P., 26–27
- multilateralism: renewing the commitment to (*see* World Trade Organization (WTO), proposed renegotiation of); by the Trump administration in communication to the WTO, 154–55
- National Development and Reform Commission (NDRC) of China, 88, 194
- Naughton, Barry, 198n7, 201
- negative integration, 145, 161–62
- Nelson, Douglas, 42n8
- Nishioka, Shuishi, 193
- non-market economy (NME): Czech transition to, 110; definition of by USMCA, 212; inclusion in the GATT/WTO regime, 6; Soviet bloc members treated as (no obligation to privatize), 111; treatment of China as, 39–41, 211; Vietnam as, 124
- non-tariff barriers (NTBs): difficulties of addressing, 34–36; negotiation of following the Tokyo and Uruguay rounds, 33–34
- nonviolation complaints (NVCs), 78, 149, 156–57, 181
- Nordstrøm, Håkan, 51
- Norway, 188
- NTBs. *See* non-tariff barriers (NTBs)
- NVCs. *See* nonviolation complaints (NVCs)
- Nye, Joseph S., Jr., 104
- Obama, Barack: Iran's nuclear weapons program, agreement regarding, 151; pivot towards Asia by, 55; the Trans-Pacific Partnership (TPP) Agreement and, 52, 55
- Obama administration: pivot towards Asia, 15n2; pressuring China through the Trans-Pacific Partnership (TPP) Agreement, 153
- OECD. *See* Organisation for Economic Cooperation and Development (OECD)
- Ohls, David, 105n80
- Oksenberg, Michael, 166
- Oman, 123
- Omnibus Trade and Competitiveness Act of 1988, “Super 301” provision, 136–37
- O'Neill, Tip, 19n15
- Organisation for Economic Cooperation and Development (OECD): China's participation in, 175; Japan's accession to, 6, 127, 131–32; state-owned enterprises (SOEs), understanding of, 42
- Ostry, Sylvia, 28n33

238 INDEX

- Overton, Sir Arnold, 163
 “Overton Report, The,” 163
- Pargendler, Mariana, 44n12
- Paris Agreement on climate change, 151
- Parsons, Craig A., 133n42
- Patrick, Hugh, 137–38
- Patterson, Stewart, 32, 103–4
- Paulson, Henry, 148
- Peerenboom, Randall, 191
- People’s Republic of China. *See* China
- Perkins, Dwight H., 31n38
- Phase One, 153–54
- Philippines, the, 143n57
- Plaza agreement, 133n42, 139
- Poland, 112–15
 political reform, economic reform and, 27–28
 Pollard, Robert A., 68–69n47, 114n12, 127, 162n4
 positive integration, 145, 169
 pricing policies, 119–20
 privatization: corporatization and, distinction between, 205; by former Soviet republics, 117–18; in Protocols of Accession, 111–12
- Protocol of Accession (China): Agreement on Agriculture, 39; China-specific obligations in, 8; China Transitional Review Mechanism (TRM) in, 94–95n73; hopes for, 40, 102–4; intellectual property (IP) rights, 45–47 (*see also* intellectual property (IP) rights); justiciable, obligations are, 39; limitations of, 11; obligations of compared to those for ex-Soviet bloc countries, 40–41; state-owned enterprises (SOEs), 41–43, 73–74, 80–82 (*see also* state-owned enterprises (SOEs)); state-owned enterprises (SOEs), reasons for inadequate treatment of, 100–105; tariff reductions before the initiation of negotiations, 128–29n32; technology transfer, forced, 47, 96–98 (*see also* forced technology transfer (TT)); technology transfer (TT)); TRIPS+ provisions, 53; uniform administration, transparency, and judicial review requirements under, 95–96; U.S.-China Bilateral Agreement, impact on, 25; violations of, WTO disputes regarding, 48–50; Working Party on the Accession of China, report of, 73–74, 96–97, 100. *See also* China’s accession to the World Trade Organization (WTO)
- Protocol of Accession (ex-Soviet bloc countries), 40–41
- Protocol of Accession (Japan): American national security interests and support for, 125–28; process of, 128–33; schedule of concessions, as example of, 109
- Protocol of Accession (Poland), 112–15
- Protocol of Accession (Vietnam), 112, 124
- Protocols of Accession: for Arab countries, 123–24; for Central and Eastern European countries, 116–17; for former Soviet republics (*see* former Soviet republics, WTO accession of); function of, 107–10; privatization in non-market economies, approach to, 111–12; state-owned enterprises (SOEs) as an instrument for regulating, 60; WTOx clauses, exclusion of, 171–72
- “public body”: in case law, inadequacy of, 214; complaints before the WTO and the issue of, 82–89; *versus* “private agent,” 80–82, 101; SOEs as, issue of, 60, 72, 183–84; technology transfer and, 98
- public/private distinction, Chinese understanding of, 26
- Puchniak, Dan W., 44n12
- Qiao Shi, 103
- Qin, Julia Ya, 96n74
- Qualcomm, 53n22
- Raballand, Gael J.R.F., 42
- Rawski, Thomas J., 197
- Reagan, Ronald, 151
- Redding, Stephen J., 10, 58n30, 149
- Reed, Daniel, 126
- regime neutrality, 162–66
- restrictive business practices (RBPs), 9, 138, 167, 169
- Rhao, P. V. Narasimha, 6
- Robinson, Tom, 18n12
- Rodrik, Dani, 2, 10, 159–60, 162
- Romania, 115
- Ross, Robert S., 143n57
- Rudd, Kevin, 30
- Ruggie, John, 6, 163n7
- Ruimin, Zhang, 211
- “rule of law initiative,” 28
- Russia: foreign direct investment (FDI), restrictiveness regarding, 201n13; lessons for China from, 211; price controls in, 119–20; privatization by, 117–18, 194; role of the party in, Deng and Xi’s criticism of, 19, 211; trading rights in, 121; U.S.-China trade deal, anticipated loser from, 154n8; WTO, joining the, 10, 115–17. *See also* former Soviet republics, WTO accession of; Union of Soviet Socialist Republics (USSR)

- Sager, Eric, 63n34
 Samsung, 50n20
 Sasahara, Akira, 63
 Saudi Arabia, 123
 Schell, Orville, 67, 206n20
 Schleifer, Andrei, 202
 Schumer, Charles, 65
 Scissors, Derek, 186n12
 SCM. *See* Subsidies and Countervailing Measures Agreement (SCM)
 Section 301 of the U.S. Trade Act of 1974:
 Japan, use against, 136–37; private parties, instrument for, 56n27; Special 301, 150;
 Super 301, 136–37, 150; as Trump’s alterna-
 tive for dealing with China, 52, 55–59;
 use of during the 1980s and 1990s, 56–57
 Segal, Adam, 159n3
 services, Chinese market for, 67
 Shan, Weijian, 58n30
 Shanghai Forum, 102
 Shepherd, Ben, 141–42
 Siemens, 46
 SIEs. *See* state-invested enterprises (SIEs)
 SII. *See* Structural Impediments Initiative
 (SII) negotiations/agreement
 Singh, Manmohan, 6
 Skinner, Kiron, 148
 Slobodian, Quinn, 162n4
 Smith, Alasdair, 134n43, 144n59
 Smith, Julianne, 152
 Smith, Walter Bedell, 170
 SOCBs. *See* state-owned commercial banks
 (SOCBs)
 SOEs. *See* state-owned enterprises (SOEs)
 Sokol, Daniel D., 196–97
 Soviet Union. *See* Union of Soviet Socialist
 Republics (USSR)
 Spearot, Alan, 187n15
 Special 301, 150
 special economic zones (SEZs), 18–19, 209
 Spencer, Herbert, 106
 Staiger, Robert W., 51, 66, 208n21
 state capital investment companies
 (SCICs), 45
 state capital operation companies (SCOCs), 45
 state-invested enterprises (SIEs): mentioned
 but not defined in China’s Protocol of
 Accession, 42, 80; U.S. administration
 adoption of the term, 84n63
 State-Owned Assets Supervision and
 Administration Commission (SASAC):
 concerns about at the time of accession,
 45; establishment and functions of, 44, 193;
 obligations regarding state interference to
 be addressed by, 100; state control of the
 economy, increase in, 193–94
 state-owned commercial banks (SOCBs),
 43, 45, 71, 182, 194
 state-owned enterprises (SOEs): antitrust
 and concerns about at the time of accession,
 45; bilateral China-U.S. trade disputes
 related to, 82–89; Chapter 17 of the TPP
 as approach to China’s, 55–56; China’s
 compared to those in the rest of the world,
 44, 59–60; in China’s Protocol of Acces-
 sion, 41–43, 73–74, 80–82, 100–101; China’s
 WTO obligations regarding, 71–82; con-
 tract responsibility system for, 43; cor-
 poratization and privatization of, 43–44;
 defining, issues associated with, 42, 80–82;
 dual-pricing system of, 18n10; in the Euro-
 pean Union, 17n8, 59; existing alternatives
 for regulation of, 60; in former Soviet
 republics, 117–19; “Guiding Opinions of
 the Central Committee on Deepening the
 Reform of State-Owned Enterprises,” 195,
 199; international legal framework for
 addressing, 68–71; magnitude of in the
 Chinese economy, 70n50; mergers, scaling
 up through, 196–97; nonviolation com-
 plaints as limited option for addressing,
 156–57; outside China, 17n8, 59, 70; as
 “public body” or “private agent,” issue of,
 80–89 (*see also* “public body”); renegotiation
 of the WTO, to be addressed in, 176–82;
 technology transfer and, 187; transformation
 of, township and village enterprises (TVEs)
 and, 18; treatment in the U.S.-China Bilateral
 Agreement, confidence about, 25–26;
 uncoordinated response in negotiations with
 China, 101–2; WTO Appellate Body decisions
 and, 183; Xi’s reforms and, 195–202
 state-owned financial institutions (SOFIs), 45
 state-trading countries (STCs), 109–10, 114n13
 state-trading enterprises (STEs): Article
 XVII of the GATT Agreement, addressed
 in, 69–70, 163–65; distinguishing between
 STE and non-STE portions for imports of
 grains, 88–89; in former Soviet republics,
 119; as a form of state-owned enterprises
 (SOEs), 59–60; obligations of, case law
 under Article XVII and, 75–82
 Steil, Benn, 170
 Steinberg, Richard, 28n33
 Stiglitz, Joseph, 66
 Structural Impediments Initiative (SII)
 negotiations/agreement, 56, 58, 63, 131–32,
 136–39

240 INDEX

- Subramanian, Arvind, 66
- Subsidies and Countervailing Measures Agreement (SCM): state involvement in the economy addressed in, 69–70; state-owned enterprises (SOEs), as an instrument for regulation of, 60, 71–73, 118; state-owned enterprises (SOEs) as “public bodies,” legal question of, 42, 60, 72, 82–88
- Suggested Charter for an International Trade Organisation of the United Nations, 110n7, 114n13, 163
- Sullivan, Jake, 29, 147
- Super 301, 136–37, 150
- Swenson, Deborah L., 30
- Sykes, Alan O., 66, 162n4, 163, 168, 170
- Szonyi, Michael, 203
- Taizo, Ishizaka, 131
- Taussig, Torey, 152
- taxation/tariffs: schedule of concessions signed as part of accession, 109; tariff-rate quotas (TRQs), 88–89; U.S. tariffs on Chinese imports, 2, 47, 58, 66, 149, 212
- Technology Import Export Regulation (TIER), 178–79, 181
- technology transfer (TT): Deng’s plans for, 90; distinction between forced technology transfer and, 90; evidentiary requirements for actions regarding, 53; forced (*see* forced technology transfer (TT)); Japan, as a non-issue for, 132; Phase One agreement on, 153; state-owned enterprises and, 187; treatment in the U.S.–China Bilateral Agreement, confidence about, 26
- Temasek (Singapore), 44n12
- Thoreau, Henry David, 14
- Thucydides’s trap, 58n30, 217
- Thurnbon, Elizabeth, 68
- Thurow, Lester, 142
- Tian Jiyan, 103
- TiSA. *See* Trade in Services Agreement (TiSA)
- Tomomi, Iwakura, 132
- township and village enterprises (TVEs), 17–18
- TPP. *See* Trans-Pacific Partnership (TPP) Agreement
- Trade in Services Agreement (TiSA), 207, 213
- Trade Policy Review Mechanism (TPRM), 95n73, 189n19
- trade-related aspects of intellectual property rights (TRIPS). *See* TRIPS Agreement
- trade-related investment measures (TRIMs), 60
- trading rights, 120–22
- Transatlantic Trade and Investment Partnership (TTIP) talks, 207
- Trans-Pacific Partnership (TPP) Agreement: advantages of, 54, 75; as Obama’s alternative for dealing with China, 52, 54–56, 153; as real world approach, 153; renaming of (*see* Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)); U.S. withdrawal from, 175
- Trilateral group: China, decision to confront, 7n3, 52; China’s forced technology transfer, concern regarding, 100; formation of, 101; homogeneity of compared to the “new Quad,” 34; joint statement about concerns with “third countries,” 38
- TRIPS Agreement: China’s obligations under, 94–97; Chinese violations of, WTO disputes regarding, 49–50; difficulties of litigating, 53–54; intellectual property rights, protection of, 161–62, 179–80; negotiation of, divide between developed and developing countries in, 162; as product of 1980s unilateralism, 151; technology transfer, as an alternative for regulating, 61
- Truman, Harry S., 68n47, 127n30
- Trump, Donald: currency manipulation, criticism of China based on, 63, 65–66; Phase One agreement hailed by, 153; Phase Two agreement to be signed by, 154; Section 301 employed by, 52, 56–59; tariffs on Chinese products, imposition of, 2, 47, 58, 66, 149, 212; trade wars, claimed ease of winning, 150; Trans-Pacific Partnership Agreement, withdrawal from, 56; unemployment, criticism of China due to, 62–63; unilateral bluster towards China, 147–49; WTO, willingness to sacrifice, 151–52
- Trump administration: belligerent strategy towards China, 55; China as a currency manipulator, accusations of, 3; China labeled a “strategic competitor” by, 143; multilateralism, communication to the WTO and, 154–55; unilateralism of, viii, 153
- Tumlr, Jan, 166
- Turkey–Textiles*, 109n4
- Tyson, Laura d’Andrea, 139
- Ukraine, Protocol of Accession for. *See* former Soviet republics, WTO accession of
- unilateralism: as extreme / “stick” response to the “China problem,” 10, 12; ineffectiveness of, 12, 59, 149–50; Japan, directed at,

- 136–39; Phase One agreement as product of, 153–54; of the 1980s compared to contemporary, 150–53; of the Trump administration, viii, 153; by the U.S., 38, 55, 57–58
- Union of Soviet Socialist Republics (USSR): economic policy and the role of the party, differences with China on, 19; GATT and, 110n7, 162n4; Poland's accession to GATT, reaction to, 113. *See also* former Soviet republics, WTO accession of; Russia
- United Kingdom (U.K.), 33, 130, 163
- United States-Mexico-Canada Agreement (USMCA), 185–86, 212
- United States (U.S.): alternatives to the WTO for pursuing complaints against China (*see* Section 301 of the U.S. Trade Act of 1974; Trans-Pacific Partnership (TPP) Agreement); Asian Infrastructure Investment Bank (AIIB), pushback against, 195; *Canada–Softwood Lumber* case, 165; *Canada–Wheat Exports and Grain Imports*, 76–78; as complainant against China in the WTO framework, 52; GATT and WTO, dominant position in, 33; Japan, post-war geopolitical concerns regarding, 170–71; Japan, trade frictions with, 133–39; Japan's accession to the GATT and, 125–28; Poland's accession to GATT, reaction to, 113; proposed renegotiation of the WTO, participation in, 206–7; trade liberalization and national security, link between, 170–71; U.S.-China Bilateral Agreement, signing of and optimism surrounding, 25–28; WTO complaints against, number of, 50–51. *See also* Trump, Donald
- Uno, Sôsuke, 137
- U.S. Trade Act of 1974, Section 301. *See* Section 301 of the U.S. Trade Act of 1974
- U.S. Trade Representative (USTR): Section 301 investigation of China, 57–58; unhappiness with WTO Appellate Body report, 87–88
- U.S.–*Antidumping and Countervailing Duties (China)*, 82–88
- U.S.-China Bilateral Agreement, 25–28; human rights absent from, 27–28
- U.S.-China Business Council, 27
- U.S.-China Chamber of Commerce, 27
- U.S.-China trade dispute: alternative views of, 159–60; complaints against SOEs before the WTO, 82–89; Economic and Trade Agreement between the United States of America and the People's Republic of China, Phase One, 153–54; magnitude/significance of, 58–59, 148; timing of, unfortunate, 159; U.S. administration's hubris regarding, 158–59
- U.S.-China Trade Policy Working Group, 159–60n3
- U.S.–*Countervailing Measures (China)*, 82–88, 213–14
- U.S.–*Fur Felt Hats*, 111n9
- U.S.-Japan Semiconductor Pact of 1985, 133, 144n59
- USMCA. *See* United States-Mexico-Canada Agreement (USMCA)
- Venables, Antony, 134n43, 144n59
- Vernon, Raymond, 90
- VERs. *See* voluntary export restraints (VERs)
- Vietnam: EU-Vietnam Free Trade Agreement, 175, 186; EU-Vietnam Investment Protection Agreement, 175
- Vietnam, Protocol of Accession, 112, 124
- Vogel, Ezra F.: China-Japan relations, 17n6–7, 125; Deng's pursuit of technology transfer, 90; Deng's reform strategy, 16, 19; economic change, resistance to, 18n12; high-speed railway in China, expansion of, 30; Japan's informal ties with the Asian Infrastructure Investment Bank, 204n18; the Meiji reforms in Japan, survival of, 132; Truman's refusal to divide Japan, 127n30
- voluntary export restraints (VERs), 134, 143–44
- von Platen, C. H., 115n14
- Walker, William O., 170
- Walter, Carl E., 71n51
- Wan, Zhongxin, 20
- Wang Shengjun, 191n22
- Wei Jingsheng, 191n24
- Weinstein, David E., 10, 58n30, 139, 149
- Weiss, Linda, 68
- Wen Jiabao, 32n39
- Westad, Odd Arne, 148, 204
- Whalley, John, 68
- White, Hugh, 216
- Wilf, Meredith, 113
- Wilgress, Dana, 110n7
- Will, George F., 174
- Williams, Brett, 23
- Wolf, Martin, 217
- Wolfe, Robert, 187
- Working Party on the Accession of China, report of, 23, 73–74, 99–100

242 INDEX

- World Bank: enforcement of Mass Entrepreneurship Initiative as problematic, 182; membership in as part of China's openness strategy, 21; state-owned enterprises (SOEs), report discussing, 42; trade increase from Belt and Road Initiative, estimate of, 204n17
- World Bank Independent Evaluation Group (IEG), 42
- World Trade Organization (WTO): accession to, 107–10 (*see also* *Protocols of Accession*); China's accession to (*see* China's accession to the World Trade Organization; Protocol of Accession (China)); China's obligations with respect to state-owned enterprises (SOEs), 71–82 (*see also* state-owned enterprises (SOEs)); creating a “good,” goal of, 152; currency manipulation, IMF-WTO agreement regarding, 64–65; dispute settlement process of (*see* dispute settlement process of the WTO); disputes involving China, 48–50, 82–89 (*see also* China, complaints against); Doha Round, China and concerns regarding, 36–37; liberal framework, criticism of, 159–60; negative integration, commitment to with one exception, 161–62; non-violation complaints, limits of adjudication using, 156–57; regulatory diversity in, 164; state involvement in trade/the economy and, 68–69 (*see also* state-owned enterprises (SOEs)); Subsidies and Countervailing Measures Agreement (*see* Subsidies and Countervailing Measures Agreement (SCM)); Trump administration communication to, 154–55; Trump's willingness to sacrifice, 151–52 (*see also* Trump, Donald); unilateralism, impact of U.S., 148, 150; Uruguay Round, length and conclusion of, 36; world trading system, as umbrella for (*see* GATT/WTO regime)
- World Trade Organization (WTO), proposed renegotiation of: avoiding Thucydides' trap, 217–18; China's participation in, question of, 216–17; competition law, need to be supported by, 215; connecting SOEs to transfer of technology, 187; enforcement, 176, 188–92; forced technology transfer, addressing the issue of, 176–82; multilateral regime as the winner from, 215; necessity of and prerequisites for, 205–8; plurilateral agreements as the path forward, 192; as solution to problems posed by China, 4, 172–76; state-owned enterprises, addressing the issue of, 182–86
- world trading system. *See* GATT/WTO regime
- Woznowski, Jan, 83n62
- WTO. *See* World Trade Organization (WTO)
- WTO Group on the Interaction between Trade and Competition Policies, 215
- Wu, Baiding, 216
- Wu, Mark: China's inexhaustible potential for evading obligations, 187; China's willingness to accept changes in global trading rules, pessimism regarding, 207; Chinese exports, growth of, 30; elements of Xi's reforms increasing the threat to the WTO, 199; incrementalism as the most realistic path forward, 192; Japan Inc., article recalling, 125; Trans-Pacific Partnership (TPP), argument supporting, 153
- Wyndham-White, Eric, 113–14
- Xi Jinping: appointment of Zhou Qiang to the Chinese Supreme Court, 191; China as blazing a trail for other developing countries, 204–5; crackdown on lawyers during the presidency of, 190n20; distinction between corporatization and privatization attributable to, 205; economic reforms instituted by, 12, 45; Gorbachev and the fall of the Soviet Communist Party, negative opinion of, 204, 211; party rule, commitment to rescuing, 203; reforms of, increased party/state control as goal of, 197–202; rollback of reforms by, 194–96, 205n19; state involvement in SOEs, increasing, 68, 140
- Ye Zhang, Zoey, 201
- Yoshida, Shigeru, 170
- Yu, Hong, 196, 200
- Yugoslavia, 114n11, 115
- Zeiler, Thomas W., 110n7, 128, 163n7, 170
- Zhang, Chenguo, 46
- Zhang, Hongsheng, 181n6
- Zhang, Shuguang, 20
- Zhang, Yansheng, 20
- Zhang, Zhanjiang, 216
- Zhao Ziyang, 21, 103
- Zheng, Wentong, 205
- Zhou Qiang, 191
- Zhu, Han, 54n25
- Zhu Rongji, 25, 27, 102n79, 103, 182n8
- Zoellick, Robert B., 216