Singapore Management University
Institutional Knowledge at Singapore Management University

Research Collection Yong Pung How School Of Law | Yong Pung How School of Law

7-2021

The role of law in Chinese value chains

Henry GAO
Singapore Management University, henrygao@smu.edu.sg

Gregory SHAFFER
University of California, Irvine

Follow this and additional works at: https://ink.library.smu.edu.sg/sol_research

Part of the Asian Studies Commons, International Trade Law Commons, and the Operations and Supply Chain Management Commons

Citation

GAO, Henry and SHAFFER, Gregory. The role of law in Chinese value chains. (2021). *Journal of Chinese Economic and Business Studies*.
Available at: https://ink.library.smu.edu.sg/sol_research/3274

This Journal Article is brought to you for free and open access by the Yong Pung How School of Law at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection Yong Pung How School Of Law by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylds@smu.edu.sg.

The Role of Law in Chinese Value Chains

Henry Gao & Gregory Shaffer[1]

(forthcoming *Journal of Chinese Economic and Business Studies*)

2021 July, https://doi.org/10.1080/14765284.2021.1943183

ABSTRACT:

Global Value Chains (GVCs) rely on division of labor within and beyond borders to minimize production costs and build regional and global value chains. Since starting its economic reform four decades ago, China has been highly successful in integrating its economy into regional and global value chains. This started with simple assembly and processing, then expanded to low-end labor-intensive manufacturing, and gradually moved up to technology-intensive and capital-intensive industries. Much has been written on global value chains and China, but little as regards their relation to law. Over time, China changed its laws and developed its legal system in ways that incentivized GVCs, including through attracting foreign investment, liberalizing its internal market, diversifying its exports, supporting the GVCs of foreign-based multinational companies, and (more recently) building outbound Chinese GVCs. This article analyzes the development of Chinese law, legal institutions, and international and transnational legal initiatives to support the development of GVCs, which we divide into five phases. The article does not idealize law in terms of "commitment" or "rule of law," but rather, in the legal realist tradition, views law as an important, contributing factor in economic change. It presents law as a signaling and coordinative device that serves to channel private conduct for business planning and coordination. The article provides insights for understanding current developments in the trading system and their implications for regional and global value chains in a world fraught with trade conflicts and the undermining of international institutions.

Global Value Chains (GVCs) have become critical components of international trade, especially with the rise of regional and global supply chains that rely on the division of labor within and beyond borders to minimize production costs. Although there is talk, particularly in the United States, of renationalizing economic production, there are substantial limits to renationalization given economic competition and the benefits that GVCs offer for efficient production, as well as the contributions they can make to countries' economic welfare. Since the start of its economic reform four decades ago, China has been highly successful in integrating its economy into regional and global value chains. This integration started with simple assembly and processing, then expanded to low-end labor-intensive manufacturing, and gradually moved up the value chain to technology-intensive and capital-intensive industries. Initially, the United States supported these developments in the context of the Cold War with the Soviet Union and China's adoption of market

[1] Henry Gao is Associate Professor, Singapore Management University; Gregory Shaffer is Chancellor's Professor, University of California, Irvine School of Law.

opening policies. Foreign-based multinational companies, in turn, greatly benefited from them, tapping into China's abundant, low-wage labor and cheap land. The resulting cross-border GVCs were led by foreign multinationals investing in and trading with China. Over time, however, China's economy expanded, and the government encouraged Chinese companies to enhance research and development and invest outward, giving rise to what may be viewed as Chinese-led, cross-border GVCs. By Chinese-led, we simply mean GVCs organized out of China.

Much has been written about China's integration into US-led GVCs, which some referenced as Chimerica when the two countries' economies became closely linked (Ferguson, 2008; Schularick, 2009). Less attention, however, has been given to Chinese law as part of the background that facilitated these GVCs. This article addresses how Chinese law developed over time in relation to GVCs, culminating in China's efforts to create Chinese-led GVCs, including through a web of trade and investment agreements complementing its Belt and Road Initiative and indigenous innovation policies. This article analyzes the development of Chinese law and Chinese transnational initiatives as a contributing factor in the development of GVCs. We divide our analysis into five phases. The legal changes are not clearly segmented in time, but through structuring our analysis in this way, we capture broad changes in China's legal ordering framework relating to GVCs.

1. *1978-1992*: Moving away from its former autarkic policies of self-reliance under Chairman Mao, China tried to establish linkages with the GVCs of major multinational corporations by attracting foreign investors to outsource low-end processing and assembly work to China.
2. *1993-2002*: As China became an increasingly important node for the GVCs of multinational companies, it sought to enhance the market for its exports through international law by negotiating its accession to the World Trade Organization (WTO), which it completed in December 2001.
3. *2003-2013*: Trying to diversify its trade from its traditional export markets such as the United States and European Union (E.U.), China gradually began to build its own GVCs by concluding free trade agreements and bilateral investment treaties with selected partners, and expanding its network of bilateral investment treaties as part of a "Go Out" policy where the government encouraged Chinese firms to invest abroad, facilitating Chinese-led GVCs.
4. *2013-2018*: With its growing economic clout, China cultivated new markets and built new Chinese-led, cross-border GVCs through initiatives such as the Belt and Road Initiative, the Asian Infrastructure Investment Bank and New Development Bank, new networks of bilateral and regional trade and investment agreements, and the Electronic World Trade Platform.
5. *2018-present.*: China-led GVCs became more critical with the decoupling from the United States and technology bans and restrictions against China, potentially heralding a world of fragmented, rival U.S.-led and Chinese-led GVCs dependent on underlying U.S. and Chinese technology.

This article traces China's development of legal support for GVCs across these five phases, which has helped to incentivize and channel investment and trade flows. This legal support includes domestic, international, and transnational law, including cross-border contracts and arbitration of disputes. Over time, China aimed not only to harness global value chains for its economic rise and internal development, but later to develop its own GVCs, now through its Belt and Road Initiative. The article places these developments in relation to shifts in the broader geopolitical context over time, highlighting the dramatic changes that have occurred.

The article does not idealize law in terms of "commitment" or "rule of law" values, but rather, in the legal realist tradition, views law as an important, contributing factor in economic change, which should be viewed as an instrument of policy. The article conceives of law as a signaling device which helps channel business planning and coordination. As Lon Fuller (1941) wrote regarding U.S. contract law, a central role for law is as a "channeling" device that facilitates private ordering. Relatedly, in assessing an earlier era of 19th century U.S capitalism, the realist legal historian Willard Hurst (1956) famously assessed the role of law in terms of "the release of energy." Later, when the law-and-society scholar Stewart Macaulay (1963) attempted to explain the fact that Wisconsin businessmen did not care very much about the details of contract law, he developed a complementary analytic concept in the realist tradition, which became known as "relational contracting." From a relational contracting perspective, businesses often adapt contracts without reference to the original contract in order to support ongoing, mutually beneficial relationships, since the ongoing relationships are more important for the contracting parties than formal legal "commitments." These concepts are the best way to view law in the Chinese context, which has served to facilitate coordination of GVCs in dynamic economic ordering.

Finally, we are not making a "functionalist" claim that Chinese law functionally "responded" to business demand for GVCs, or that changes in Chinese law "caused" the rise of GVCs. Our story is not an evolutionary, functionalist theory of Chinese law. Rather, we simply trace how Chinese law and GVCs developed in parallel, such that Chinese law is an important part of understanding the development of GVCs, both in its responsive and a constitutive aspects. Law, in other words, should not be ignored in the study of the development of GVCs, which is sometimes the case with economic and political analysis.

I. Phase 1: 1978-1992. Plugging into GVCs

Until forty years ago, the People's Republic of China was largely an outsider to the main GVCs in the world. China, a member of the Communist bloc since 1949, was cut off from trade with the Western world as the result of the Korean War. After its relationship soured with the Soviet Union in the early 1960s, China adopted an autarkic economic policy and prided itself as a self-sufficient country having no foreign debt. When Deng Xiaoping effectively assumed power in 1978, there was no foreign investment in China, and its foreign trade was only US$ 30 billion, with its exports concentrated mostly in primary commodities. Under Deng's leadership, all this was about to change.

Electronic copy available at: https://ssrn.com/abstract=3769434

1. Attracting foreign investment

At the third plenum meeting of the 11th Party Congress held in December 1978, the Chinese Communist Party resolved to shift its focus from mass movement and class struggle to the "Four Modernizations," which aimed to modernize agriculture, industry, national defense, and science and technology by the end of the century. Among the four, the key was the modernization of science and technology, as the other three — agriculture, industry, and national defense — all required advances in science and technology, which Deng famously called "the primary force of production." To achieve this goal, China started to attract foreign investment from a range of sources. In December 1979, China received its first foreign government loan: 50 billion Yen (around US$ 220 million) from Japan. In 1980, China restored its membership in the World Bank, IMF, and International Fund for Agricultural Development, and it started to receive loans from these international financial institutions. In 1979, China established the China International Trust Investment Corporation (CITIC). Headed by Rong Yiren, who would later become China's Vice-President in the 1990s, CITIC became China's main conduit for attracting foreign investment. Between 1980 and 1982, China signed five agreements with Japanese, French and American companies to jointly explore and drill offshore oil fields in its territorial waters.

The prospect and rapid inflow of foreign capital spurred China to enact foreign investment laws to provide greater legal certainty. In its negotiations with China, for example, GM requested the government to enact a foreign investment law. The senior leadership agreed, and the matter quickly entered the legislative process, with actual drafting starting in early 1979. Two major issues were discussed: the corporate income tax rate and the foreign equity cap. After much discussion, it was decided that the total tax rate would be 33%, which was slightly lower than the 35% tax rate prevailing in Southeast Asia. As for equity, it was initially suggested that China should follow the examples of other developing countries such as India and set the cap at 49% and require a three-fourth majority shareholder vote on major issues. Rong wrote to the Central Committee and suggested that these two provisions would not help to attract foreign investment as they did not reflect international practice. Deng agreed and asked that the two clauses be removed. The final version not only removed the cap, but also set a minimum of 25% foreign equity in a joint venture. This change, however, did not mean that foreign investment is allowed in all sectors since all such joint ventures had to be approved by the Chinese government. The National People's Congress passed the Sino-Foreign Equity Joint Venture (EJV) Law on July 1, 1979, which took effect a week later. The rapid speed of this radical legal change demonstrated China's eagerness to attract foreign investment.

Although the law was quite brief and had only fifteen articles, it was supplemented by implementing rules. In July 1980, the State Council promulgated administrative regulations on foreign EJV registration, labor requirements, and land use. In September 1980, the National People's Congress passed the EJV Income Tax Law, which provided newly-established EJVs with a 100% tax break for the first year, and a 50% tax break for the next two years.

The new laws created a signal that helped to reduce foreign investor skepticism, especially given the potential commercial prospects. Foreign capital began to enter China. On May 1, 1980, the first Sino-foreign EJV — Beijing Air Catering Co., Ltd — was established in Beijing. As of 1982, total actual utilized foreign investment in China amounted to US$ 12.6 billion, of which US$ 10.8 billion were loans. To further boost foreign investor confidence, China included a provision on the protection of foreign investment in its Constitution when it was amended in 1982:

"Article 18 [Foreign Enterprises]

(1) The People's Republic of China permits foreign enterprises, other foreign economic organizations, and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China.

(2) All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China."

Although many provisions in China's Constitution, such as regarding civil and political rights, remain dead letter, these provisions helped signal to foreign capital that China was open for business.

While the "marriage" with a local partner can help a foreign investor gain a foothold into the local market, it can also lead to conflicts. To meet investor demand to allow wholly owned investments, China enacted a new Law on Wholly Foreign-Owned Enterprises (WFOEs) in 1986, which allowed WFOEs subject to the restrictions under the Catalogue of Industries for Guiding Foreign Investment. To grant more autonomy to joint venture parties, China also adopted a new Law on Contractual Joint Ventures (CJVs) in 1988, which allowed parties to specify their respective rights and responsibilities by contract, as the initial EJV Law was rigid, requiring profits and losses to be divided according to the parties' equity shares.

2. Trading with the world

Between 1949 and 1954, the Common Program of the People's Political Consultative Conference served as China's interim constitution, pursuant to which China adopted a policy of controlled foreign trade and protectionism. The State Council formally adopted these policies in Interim Administrative Rules on Foreign Trade in 1950. The Chinese economy and foreign trade suffered from a series of setbacks, including the U.S.-orchestrated trade embargo against China in response to the Korean War, China's break-up with the USSR in the early 1960s, and the Cultural Revolution of 1966-1976. Despite its huge population, China's share of world exports in 1978 was less than 1%, and ranked only 32nd among countries (State Council Information Office, 2011). Most of these exports, moreover, were primary commodities and not manufactured products.

Learning from the successful examples of its neighbors, such as Japan, Korea and Singapore, China decided that one way to develop its economy was to participate in global production networks. This would help China earn much needed foreign exchange and provide employment to its people, who were unskilled and poor. On July 15, 1978, the State Council issued Interim Guidelines on Operating Export Processing and Assembly Business, which allowed "processing trade" — comprised of importing components, assembling them, and exporting the finished products (State Council, 1978). Sixteen days later, a Hong Kong businessman and the Taiping Handbag Factory in Dongguan, Guangdong signed China's first contract for processing trade (Wang, 2019). As China had an abundance of cheap labor and raw materials, labor-intensive industries involving simple processing and assembly began to thrive.

China also started to reform its foreign trade import and export system, which the state had monopolized until 1978. In the initial stages, the reform focused on breaking the highly-concentrated foreign trade regime and delegating the right to trade to local governments, departments, and designated foreign trade firms. In 1984, the State Council approved the Report on Foreign Trade System Reform by the Ministry of Foreign Economic Relations and Trade (MOFERT), which advocated two core principles for regulating trade (State Council, 1984). Under the first principle, the roles of government and firms were to be separated, with the ministry focusing on foreign trade administration, and the trade firms conducting their import and export businesses independently, subject to such trade administration. Under the second, a trade agent system would be established authorizing only licensed foreign trade firms to import and export products.

In 1988, the State Council issued a Decision on Several Questions on Accelerating and Deepening Foreign Trade System Reform, which further relaxed controls on foreign exchange, reduced the number of export products subject to central government control, and delegated to local governments the administration of local trading firms, opening up competition (State Council, 1988). The government selected light industrial products, crafts, and clothing as sectors under a pilot reform program. Under this program, the trading and manufacturing firms and the local government retained the majority of the earned foreign exchange, and the trading firms were responsible for profits and losses, without being subject to state planning. In 1990, the State Council issued a Decision on Several Questions on Further Reforming and Improving the Foreign Trade System, which abolished export subsidies for trade (which had been provided to generate needed foreign exchange) from January 1, 1991 and granted full autonomy to almost all trading firms except a few.

As the result of these reform measures, China's foreign trade grew rapidly, with total trade volume jumping from US$ 20.6 billion in 1978 to US$ 100 billion in 1988 (National Bureau of Statistics, 2009). China's rank in world exports leapt from 34th in 1978 to 13th in 1991, as its exports grew at an annual rate of 16.6% during this period. The structure of its exports also greatly improved, with the share of primary commodities reduced from 50.3% in 1980 to 22.5% in 1991, while that of is manufacturing products increased from 49.7% to 77.5%. Moreover, as China gained manufacturing experience in labor-intensive industries, it started to move up the value chain

of production in the mid-1980s into some capital-intensive industries, including electronics, home appliances, and machinery.

3. Bubbles of capitalism: Special Economic Zones

A third key component of China's economic reform was the establishment of Special Economic Zones (SEZs), which complemented its liberalization of foreign trade and investment. As the SEZs were designed to experiment with economic systems differing from the rest of China, central government authorization was needed. In April 1980, the People's Congress of Guangdong Province passed a Regulation on Guangdong Special Economic Zones, which the National People's Congress approved and promulgated in August. In November 1981, the NPC Standing Committee further authorized Guangdong and Fujian provinces to make local regulations for SEZs under their jurisdiction (Xiao, 2018). These regulations provided preferential policies for foreign-invested enterprises, such as longer duration and lower fees for land use rights, tariff exemptions for the import of raw materials, and a lower income tax rate of fifteen percent. The key restriction was that products manufactured in the SEZs must be exported and would be subject to regular tariffs if they were sold in the domestic market.

As China was closed off to the world market at the beginning of this phase, it did not have any laws conducive to GVCs. With the launch of economic reforms, however, China adopted laws and regulations that helped incorporate Chinese production in GVCs. These legal reforms were not just top-down, but also bottom-up, involving local regulatory experimentation and regional competition within China (Tan 2020). New Chinese trade and investment laws helped China build a more conducive legal framework. By reducing government control of trade and investment, the administrative reforms helped attract foreign investment, spur foreign trade, and facilitate the development of GVCs that became central in China's rapid growth as an export and manufacturing power.

II. Phase 2: 1993-2002. Entering the GVC World

Through its trade and investment liberalization measures in the late 1970s and 1980s, Chinese production became of growing importance to GVCs, especially for low-end, labor intensive manufacturing. Because these products are often subject to a myriad of tariffs, quotas, and non-tariff measures, China sought to restore its membership in the General Agreement on Tariffs and Trade (GATT) and thus reduce barriers to its exports. Although China was a founding member of the GATT in 1947, the Republican government in Taiwan withdrew from the agreement in 1950 for political and economic reasons (Gao, 2007). The People's Republic disputed the validity of Taiwan's withdrawal, but had no interest in participating in the GATT.

Following its economic opening in 1978, China began to reassess its position on GATT membership. In December 1982, key Chinese ministries and agencies jointly submitted to the State

Council a Request on the Participation in the GATT (Shi, 2011). The State Council approved the request in January 1983. After consulting the GATT Secretariat and following visits to Hungary, Pakistan, and Yugoslavia to learn about their experiences as GATT contracting parties, China decided to seek membership. In October 1983, China applied for accession to the Agreement regarding International Trade in Textiles, an agreement under the auspices of the GATT, and it became a member in January 1984. Then, on July 10, 1986, China submitted its application to resume its status as a GATT contracting party. On March 4, 1987, the GATT established a Working Party to handle the application (GATT, 1988). The process initially moved quickly, as the United States and other Western powers wanted to use China's example to encourage change within the Communist bloc. By the beginning of 1989, the Working Party was ready to start drafting an Accession Protocol (Gao, 2007). However, when China suppressed student protesters in Tiananmen Square on June 4, 1989, the West imposed sanctions on it, and the Working Party suspended its work.

For the next two and half years, the Working Party went into hibernation (Gertler, 2003; WSJ, 1993). It was not until 1992, at a time when the Fourteenth National Congress of the Communist Party made "Socialist Market Economy" the goal of reform, that the process resumed. When the PRC Constitution was amended in 1993 to incorporate the term "Socialist Market Economy," GATT members took notice. Many observers nonetheless were skeptical about China's willingness to embrace capitalism, reflected in the comment by Douglas Newkirk, then Assistant US Trade Representative, who retorted that "[t]he GATT was not written with a Socialist Market Economy in mind" (Bhala, 2000).

During the first half of the 1990s, China participated in the Uruguay Round negotiations in the hope that discussions on its status could be concluded in time for it to become a WTO founding member. The global political context, however, had changed radically since the 1980s now that the Cold War had ended. China had lost its symbolic value to the West to press for change in the communist bloc. Because former members of the bloc were also eager to join the GATT, the United States and other parties regarded China's terms for accession as a template for transition economies, and they insisted that China should be subject to more rigorous terms (Lardy, 2004). In addition, the Uruguay Round negotiations were demanding. For the first time in a multilateral trade agreement, negotiations included the areas of trade in services and trade-related intellectual property rights, as well as new agreements on non-tariff barriers, such as sanitary and phytosanitary measures. Countries concentrated their resources on these negotiations rather than on China's accession. Because China lacked experience in these new areas, it would face new challenges in the accession process.

China's continued rise as an exporter posed further challenges for its accession. China had become a major trading nation, as goods "Made in China" flooded many parts of the world. Both developed and developing countries felt the economic impact of Chinese exports in their domestic markets and for their exports. Letting China enjoy expanded market access opportunities without demanding significantly greater Chinese commitments, as well as China-specific safeguard mechanisms, became unthinkable. In parallel, as China's per capita income rose, trading partners,

and companies within them increasingly eyed China's relatively untapped domestic market. They thus demanded greater market access opportunities in China that extended beyond tariff concessions, which required extensive negotiations.

Even though China announced in 1994 that the negotiations should be completed by the end of the year (Yang, 2002), their end was nowhere in sight when the WTO was established on January 1, 1995. In December 1995, the GATT Working Party thus converted into a WTO Accession Working Party. In 1999 and 2000, China signed bilateral agreements with the United States and European Communities where it made significant commitments in order to obtain their approval of its accession. In November 2001, at the WTO's Fourth Ministerial Conference in Doha, Qatar, in the context of global upheaval following the September 11 terrorist attacks in the United States on the World Trade Center and Pentagon, WTO members finally accepted China's Accession Protocol. One month later, the National People's Congress Standing Committee approved the Accession Protocol and China became a Member of the WTO. For some commentators, this represented a de facto amendment to China's constitution and served to help lock in reforms (Ginsburg, 2009). China's accession, in turn, would spur the proliferation of GVCs that targeted global markets and China's growing domestic market.

In preparation for its WTO accession, China enacted its first Foreign Trade Law in 1994. The law affirmed the principle that "the state shall encourage the development of foreign trade," which Article 1 pronounced as the law's objective. The law repeatedly emphasized that the government shall "protect free foreign trade" and "allow the free import and export of goods and technologies". Such declarations were quite bold considering the government's earlier hostility to free trade and market opening because of sovereignty concerns. China's joining the WTO reflected a major shift in Chinese conceptions of sovereignty in relation to trade law (Carrai, 2019), which facilitated the proliferation of GVCs.

By acceding to the WTO, China formally benefitted from most-favored-nation treatment with WTO Members, subject to bound tariffs, which facilitated its integration into the world economy. China thus was no longer subject to annual review of "Permanent Normal Trade Relations" by the U.S. Congress, which greatly enhanced the predictability of its access to the U.S. market. Reciprocally, China reduced its tariffs to an average rate of 10% by 2008, with average industrial tariffs at 9.1% and agricultural tariffs at 15%.

As part of its accession to the WTO, China conducted a massive domestic legal reform to terminate, amend, and enact over 3,000 laws to comply with its WTO commitments. It created an "Office for the Clean-up of Laws and Regulations" to do so (Shaffer and Gao, 2018). For example, in line with the WTO Agreement on Trade-related Investment Measures (TRIMS), China amended its EJV and WFOE laws in 2000 to abolish the requirement that foreign firms must source raw materials and fuel locally and export all or most of their products (Shi, 2000). These reforms greatly facilitated China's incorporation into cross-border GVCs. In response, firms increasingly invested in China. When Chinese restrictions on foreign investment loosened, more foreign firms chose to invest on their own rather than with local joint venture partners. In 1997, the number of WFOEs exceeded the number of EJVs for the first time (Wang and Jiang, 2004). Shortly after,

WFOEs also overtook EJVs in terms of the amount of investment, with larger committed investments since 1998 and larger actual investments since 2000.

The influx of foreign imports increased competitive pressures on local firms, and prompted China to introduce trade remedies laws, which it borrowed from Western nations. While it already included some provisions on trade remedy measures in its 1994 Foreign Trade Law, China did not impose any measures until 1997 due to its relative discretion over tariffs (since it was not a member of the GATT), the lack of detailed rules for trade remedies, and the lack of lawyers familiar with this mechanism. Between then through 2020, China has initiated more than 292 anti-dumping investigations, making it one of the most frequent users of anti-dumping measures in the WTO (WTO, 2021). Observers maintain that China uses these laws in part to retaliate or threaten retaliation against government's that impose or consider imposing such measures on Chinese products (Wu, 2012; Freedman, 2012), thus further supporting Chinese exports produced through GVCs.

In an effort to integrate economic administration, the Central Government revamped its ministries in 1998 and merged the National Economic Commission and Internal Trade Ministry into the State Economic and Trade Commission (SETC) (Luo, 1998). The newly-formed SETC took over the jurisdiction of ten Ministries and Ministerial-level agencies — the Ministries of Coal Industry, Mechanical Industry, Metallurgical Industry, Internal Trade, Chemical Industry, Power Industry, the Light Industry Association, Textiles Industry Association, the National Petrol and Natural Gas Group Company, and the National Petrol Chemical Group Company. This restructuring reflected a shift in the government's regulatory philosophy, which no longer viewed these industries as silos that fulfil the defined needs of a planned economy, but as integrated components of production networks that demand inputs from many different sectors. Just as oversight of industrial production and internal distribution were combined into one agency, industrial and commercial firms were no longer segregated in terms of their business activities, further facilitating the integration and upgrading of China's GVCs.

China's trade bar, however, remained underdeveloped. As the *China Youth Daily* (Cui and Yan, 2001), a major national newspaper, lamented in late 2001, "Chinese lawyers familiar with international law, international trade law and WTO rules are extremely rare." For China to effectively engage with WTO law, including for the preparation and defense of its own regulations, it needed Chinese legal professionals to enhance their competency in English and in trade law. To promote such development, the Ministry of Justice issued an Opinion on "Accelerating the Reform and Development of the Legal Profession after China's Accession to the WTO" in August 2001. The ministry noted, "Chinese lawyers are weak in handling international legal business, and China lacks talents who can excellently handle foreign-involved legal services, and the lawyers' competitive capacity in the international legal service market are weak" (Ministry of Justice, 2001).

China's accession to the WTO became a catalyst for developing the Chinese legal profession, which would later be critical for Chinese-led GVCs. As Sida Liu (2016) writes, "after joining the WTO, more than a hundred new foreign law offices were established in Beijing and Shanghai, which significantly intensified the competition in the corporate law market. While elite

Chinese corporate law firms grew into megafirms with hundred or even thousands of lawyers, foreign law offices also localized by employing Chinese lawyers and developing localized expertise on practicing Chinese law." This, in turn, facilitated transnational legal ordering of trade through GVCs. As a general counsel of a major state-owned enterprise in China that is engaged in significant outbound work stated, "the WTO changed every side of our life. It changed our laws, habits and practices."

In sum, in this phase, China's reform of its the laws and regulations aimed to further intergrate China into the GVC world, especially through its accession to the WTO. The WTO prescribed detailed requirements in specific areas and provided the blueprint for China's fledgling regulatory framework, as the Chinese legal bar rapidly developed in parallel.

III. Phase 3: 2003-2013. Diversification of GVCs

The year 2003 was important for China's foreign trade regime in relation to GVCs. It witnessed many key events, including the establishment of the Ministry of Commerce, the first WTO case against China, the revision of the Foreign Trade Law, and the conclusion of China's first bilateral free trade agreement. On 25 March 2003, China merged its Ministry of Foreign Trade and Economic Cooperation and its State Economic and Trade Commission into a new Ministry of Commerce, known as MOFCOM. MOFCOM combined the administration of internal and foreign trade under one roof for the first time, signalling China's aim to integrate its economy with global and regional value chains.

As more foreign investors chose to invest in China through WFOEs rather than joint ventures, China felt the need to develop its own GVCs to move up the production value chain. To do so, it adopted new regulations to support industrial policy. An important example (although one that has been much less successful than others) is the integrated circuits sector, where various Chinese agencies, in an attempt to boost the design and production capacities of local firms, issued six regulations between June 2000 and December 2003 (Gao, 2005). The first and most important one is the Notice of the State Council Regarding Issuance of Certain Policies to Promote the Development of the Software Industry and Integrated Circuit Industry of June 24, 2000, popularly known as Document 18 because of its file number. In its fifty-three articles grouped in thirteen chapters, Document 18 lists several preferential policies on investments, taxes, technology development, exports, income distribution, human resources, government procurement, and intellectual property rights, aimed at developing China's software and integrated circuit industries. Article 41, for example, provided a rebate of any effective value-added tax (VAT) in excess of 6% for all integrated circuits manufactured within China. This provided them with an advantage over imported integrated circuits that are subject to the statutory VAT rate of 17%. On October 10, 2002, the Ministry of Finance and State Administration of Taxation issued a notice to expand the rebate to any effective VAT tax burden exceeding 3%. In parallel, Article 48 (together with a Notice of the Ministry of Finance, State Administration of Taxation Regarding Tax Policies for Imports of Integrated Circuit Products Domestically Designed and Fabricated Abroad) provided a

rebate of the effective VAT burden in excess of 6% for integrated circuits designed in China but fabricated abroad due to the lack of domestic technological capacity.

These incentives led to massive investments in China's domestic semiconductor industry, which totaled US$ 3.6 billion between 2000 to 2002 (Hufbauer, Wong and Sheth, 2006). This development concerned the U.S. Semiconductor Industry Association, which represented 85% of the industry. Fearing that the Chinese incentives could not only make China a serious rival, but also create global overcapacity and depress world prices, the association accused China of breaking WTO rules (Clendenin, 2003). The USTR filed a WTO case against China in 2004, which was the first against China (Gao, 2005). Four months later, China settled the case by acceding to most of the U.S. demands (WTO, 2004).

The temporary setback with its semiconductor measures did not deter China from trying to boost its domestic GVCs. Instead, China tried to provide legal safeguards to its GVCs through two tracks, one domestic and the other international. First, at the domestic level, China revamped its Foreign Trade Law in June 2003, which the National People's Congress formally enacted in April 2004. Most commentators focus on provisions implementing China's WTO commitments, such as those liberalizing the right to trade and introducing an automatic licensing system, which were important for GVCs. However, China also introduced provisions designed to protect the interests of Chinese firms domestically and abroad. For example, the law included a chapter introducing a new mechanism to investigate foreign trade barriers against Chinese products modeled after U.S. Section 301 of the 1974 Trade Act (Gao, 2010). Although this law was only formally used a few times, informally it signaled the development of public-private partnerships to defend China's export interests (Gao, 2014b). In parallel, to provide protection against imports, the law grouped together provisions on anti-dumping, countervailing duty, and safeguard investigations under a new chapter. Once more, they were modeled largely on U.S. and E.U. regulations. Through these trade remedy measures, China aimed to fend off dominant foreign firms and protect its domestic producers, which is an important part of China's strategy to develop its own GVCs. The chapter also included a catch-all provision providing that if any country violates a trade agreement and causes China's trade benefits to be nullified or impaired, China shall have the right to request compensation or suspend or terminate obligations under the agreement. China has used this provision in the U.S.-China trade war that the Trump administration launched in 2018.

Second, at the international level, China began to build its own network of free trade agreements (FTAs). These agreements not only helped to diversify China's exports, but also served to secure access to natural resources, raw materials, and parts and components essential for China's GVCs. China's choice of ASEAN as its first FTA partner under their Framework Agreement on Comprehensive Economic Cooperation, which took effect on July 1, 2003, illustrates this strategy. The bulk of ASEAN trade with China is intra-industry trade, with over half of ASEAN's exports to China falling under the product category of "Electrical machinery and equipment and parts thereof; sound recorders and reproducers; television image and sound recorders and reproducers, parts and accessories of such articles" (Tong, Chong and Keng, 2010). Thus, setting up an FTA with ASEAN helped Chinese firms build their own GVCs by securing tariff-free access to such

parts and components. Subsequently, China established FTAs with countries that are rich in natural resources, such as Australia, Chile, and Peru. These agreements helped Chinese firms gain ready access to key raw materials, such as coal, minerals, and metals, which are essential for China's GVCs, especially because China's rapid development led to the depletion of its domestic resources.

In parallel, China pursued a "Going Global" (or "Go Out") policy, where it encouraged Chinese firms to invest abroad, which would be supported by investment and trade agreements, coupled with transnational contracts and dispute resolution mechanisms, such as arbitration, in which Chinese lawyers developed new expertise (Naughton, 2018). Around 2005, China's outbound investment began to take off, soaring particularly in the wake of the global financial crisis of 2007-2008. By the end of this period, China had become one of the world's major senders of outbound investment as well as the top destination of foreign direct investment.

Overall, China significantly enhanced its legal capacity for international trade and investment matters in the public and private sectors during this phase. By the end of this period, China could go head to head, lawyer to lawyer, against the United States and Europe in WTO litigation (Shaffer and Gao, 2019). Indeed, China became the third most active user of the WTO dispute settlement mechanism after the United States and Europe. Through litigation, it shaped the interpretation of international trade law requirements, especially regarding antidumping and countervailing duty measures used by the United States to block Chinese imports, which soon would trigger a vigorous U.S. reaction.

In this phase, China's laws and regulations mainly served to protect the interests of Chinese firms in GVCs, move them up the value chain of production, secure access to raw materials and resources, and diversify Chinese export markets. Law at multiple levels supported China's pursuit of these goals, including multilateral agreements like the WTO, regional and bilateral trade and investment agreements, and domestic law reforms.

IV. Phase 4: 2013-2018. Building Chinese-led GVCs that Can Reshape the Trading System

After four decades of rapid development, China finally surpassed the United States to become the world's top trading nation in 2013 (Monaghan, 2014). However, in terms of value-added production, China still lagged behind the United States and other industrial powers. Indeed, U.S. and other foreign companies contribute much of the value added of many Chinese exports. According to a study of the Asian Development Bank in 2010, Chinese firms received only $7 of value from an iPhone with a retail price of $500 (Xing and Detert, 2010), while U.S. firms captured $331. The main reason was that China lacked core technology. In 2011, China's Minister of Science and Technology Wan Gang noted that China could not even manufacture the metal ball on the ballpoint pen, such that 90% of the balls were imported (Yu, 2011). Minister of Commerce Gao Hucheng (2014) confirmed this point in an op-ed in the People's Daily in March 2014, where he noted that even though high- and new-tech products accounted for 29.9% of China's exports in 2013, foreign-invested enterprises manufactured 73% of them.

In this fourth phase, China launched a domestic indigenous innovation policy with transnational ambitions, supported by upgraded domestic intellectual property laws and institutions, as part of a broader initiative to strengthen the rule of law to support economic growth (An, Hou and Zhang, 2019). In parallel, it continued to seek to diversity the markets for its products through new transnational and international initiatives, supported by treaties, contracts, and dispute settlement mechanisms. China would now use the legal capacity that it built during the third phase for WTO litigation for its new outbound initiatives. Moreover, China further enhanced its use of WTO dispute settlement to shape the understanding of WTO rules and defend its export interests. As an E.U. official (2017) at the E.U. mission in Beijing related to us in 2017, "China now knows how the WTO works. It does not hesitate to threaten bringing a WTO case…. For the Commission, it creates more challenges in the relationship. They know, and they know we know they know." In the process, China was affecting the international legal order for trade in ways aimed to support its GVCs.

China's exponential export growth increasingly led to trade frictions around the globe. The United States intensified its use of import relief measures against China under U.S. antidumping and countervailing duty laws. On December 2, 2013, the European Union imposed definitive anti-dumping and anti-subsidy measures on imports of solar panels from China, which affected more than 20 billion Euros of exports from China (European Commission, 2013). It represented China's largest trade dispute and signaled a worsening trade environment for China (Yu, 2015). Moreover, China's trade frictions were not confined to developed countries such as the United States and European Union, but increasingly involved developing countries. In 2012, Brazil alone had initiated thirteen new trade remedy investigations against Chinese products, which accounted for 81% of the global number of trade remedy investigations against China that year (Xue and Nie, 2013). In parallel, the United States, Europe, and Japan brought a series of WTO cases against China, placing it continuously on the defensive.

In an effort to "pivot to Asia" and contain China's growing importance in the region, the Obama administration negotiated a Trans-Pacific Partnership (TPP) Agreement with eleven other countries, which it concluded in October 2015 (United States Trade Representative, 2015). Many of the TPP rules were tailor-made for China and directly responded to developing WTO jurisprudence that had favored China, following cases that China successfully brought. For example, the TPP chapter on state-owned enterprises defined them according to their ownership (preferred by the United States), rather than in terms of the "exercise of government functions" (as held by the WTO Appellate Body). The TPP chapter explicitly prohibited state-owned enterprises from providing or receiving subsidies in relation to their commercial activities. The TPP also contained a "yarn-forwarding" rule, which requires the yarns used in textile and clothing products to be manufactured within TPP member states, thus cutting the supply chain for Chinese textile firms and significantly affecting the GVC for Chinese textile products.

Although the Trump administration subsequently withdrew the United States from the TPP in early 2017, and then launched a trade war against China in 2018, China responded by creating its own regulatory initiatives to safeguard, develop, and diversify its GVCs. Internally, China

massively subsidized domestic innovation in order to become less dependent on foreign technology and achieve technological leadership. Externally, China aimed to cultivate new markets and build alternative GVCs through its flagship Belt and Road Initiative, the creation of new international development banks, an expanded network of free trade agreements and bilateral investment treaties, and a new Electronic World Trade Platform. In the process, it appeared to be building a new Sino-centric trade order that would reduce U.S. leverage against it (Shaffer and Gao, 2020).

1. The Belt and Road Initiative (BRI)

China initially designed the BRI, formally proposed in 2013, as a way to circumvent U.S. containment of China through linking China's economy with the rest of the world, thus counteracting the U.S.-led TPP that had excluded China. Much has been written about the BRI, but we simply note the development of institutionalized dispute settlement here and the link between BRI contracts and standards (Shaffer and Gao, 2020). Given the number of BRI projects and the lack of legal certainty in many of the countries in which BRI projects are developed, China sought to enhance transnational dispute settlement options. BRI loan agreements, for example, tend to provide for arbitration in China under Chinese law, such as before the China International Economic and Trade Arbitration Commission (CIETAC) (Kidane, 2019). In 2018, China aimed to create an additional China-based option for BRI-related dispute settlement through a new international commercial court located in China. In June of that year, it established the China International Commercial Court under the Supreme People's Court (Erie, 2018). This international commercial court again reflects the localization of a Western legal model, that of the Commercial Court in London — which Singapore had earlier adopted in 2013. The extent to which it will be used for BRI dispute settlement in place of international commercial arbitration remains uncertain, but it signals ongoing Chinese investment in legal infrastructure to support GVCs (Shaffer and Gao, 2020).

Arguably the most important impact of BRI contracts is not formally legal, but rather in their promise to facilitate the adoption of Chinese standards through trade. China has established national standards that it requires manufacturers and service providers to use when entering China's market and that, in turn, Chinese companies use when exporting goods and services abroad (Polk, 2018). Given the size of China's market, it can use domestic standards to provide a competitive advantage for Chinese companies in its internal market. And given the number of infrastructure projects abroad that China finances, especially through the BRI, China is well-positioned to shape international and regional standards in practice, such as for telecommunications and other infrastructure. To the extent that the resulting Chinese products are protected by patents, copyrights, or trademarks, then foreigners will have to pay royalties to Chinese companies. Most worryingly for the United States, China gained the lead in developing 5G wireless technology. As an April 2019 report of the U.S. Defense Innovation Board notes (2019), "[t]he country that owns 5G will own many innovations of these innovations [such as for

autonomous vehicles and the Internet of Things] and set the standards for the rest of the world…. That country is currently not likely to be the United States."

2. Integrating Chinese Finance into GVCs, together with the Asian Infrastructure Investment Bank (AIIB) and New Development Bank

To support the expansion of Chinese DPNs, China in parallel created new financial institutions. On the one hand, China developed massive, state-owned, domestic development banks. They provide the bulk of its overseas finance of BRI infrastructure projects, subject to Chinese law and arbitration in China. On the other hand, China led the creation of two new international development banks. In 2013, it proposed the establishment of the AIIB (2019), which was formally created in January 2016 and is based in Beijing. In parallel, the BRICS countries (Brazil, Russia, India, China, and South Africa) created the New Development Bank in 2015, which is headquartered in Shanghai. Collectively, these institutional initiatives for development lending are critical for Chinese-led GVCs, and they are backed by Western-style loan agreements.

3. An expanded network of FTAs and BITs

Since 2013, China has also updated its network of free trade agreements and bilateral investment treaties (BITs). In the first decade of its FTAs, most of China's partners were smaller economies. This changed after 2013 when China signed FTAs with Australia, South Korea, Switzerland, all of which are among the top twenty economies in the world in terms of GDP and trade volume. As larger economies, these countries offer important markets for China's exports. As rich countries, they require higher product safety standards so that Chinese firms must improve the quality of their products, which in turn helped spur further upgrading of China's GVCs. Moreover, China entered negotiations to enhance its existing FTAs with ASEAN, Singapore, New Zealand, Pakistan, Chile, and Peru, so that the agreements not only add commitments in services and investment, but also expand into previously uncovered areas such as trade facilitation, e-commerce, and competition policy (MOFCOM, 2018). These new rules help Chinese firms adapt to the development of new international trade rules that originate under Western-led FTAs, such as the TPP, thus supporting the sustainability of China's GVCs.

China's network of bilateral investment treaties is even broader. In total, China has signed 125 bilateral investment treaties, with 107 in force, and an additional 23 treaties with investment provisions (TIPs), of which 19 are in force (UNCTAD, 2020). That is more than any other country except Germany. Its partners include all major economies in the world except the United States. China has significantly changed its approach to investment treaties (Berger, 2011). When China first signed them, it was an importer of foreign direct investment, and was correspondingly wary of making extensive investment commitments backed by international dispute settlement. It was only around 2005 that China's outbound investment began to take off, soaring particularly in the wake of the global financial crisis of 2007-2008. Since around 2008, a new generation of Chinese

bilateral investment treaties emerged that were more protective of foreign direct investment and thus more supportive of China's development of cross-border GVCs. These changes reflect China's shift from being the world's largest destination of foreign direct investment — it surpassed the United States in 2003, two years after joining the World Trade Organization (Poncet, 2007) — to becoming one of the world's major capital exporting nations. The same lawyers central for China's development of legal capacity for WTO dispute settlement have been integral for developing its investment law regime.

4. Indigenous Innovation

Critically, China aimed to move up the value chain of production within GVCs, while reducing dependence on U.S. and other foreign technology. In 2015, the government officially issued its Made in China 2025 plan. The plan (2015) sought to vault China up the value chain of industrial production to become a high-tech manufacturing power controlling core technology in ten key sectors by 2025. It aimed for China to achieve seventy percent self-sufficiency in high-tech industries by 2025, and a dominant position in global markets by 2049 — the hundredth anniversary of the People's Republic of China (McBride and Chatzky, 2018). To achieve these goals, the plan employed strategies — such as direct government intervention, massive subsidies, investments and acquisitions in foreign markets by state-owned enterprises, and technology transfers as a condition for doing business in China — that raised alarms in the United States and Europe. The Plan connects with the BRI in an effort to make the BRI "a high-tech road" using Chinese technology (Wang, 2016).

China supported this strategy with considerable institutional and legal development. China's State Intellectual Property Office is now considered to be "in the top tier of patent offices that will dominate the emerging system of global patent administration" (Drahos, 2010). The number of patent examiners in it rose from around 400 in 1996 (Sha, 2005) to around 5,000 in 2009 to over 11,400 in 2017 (State Intellectual Property Office, 2016). China is now the largest issuer of patents in the world, surpassing the United States (WIPO, 2017a). In 2017, it ranked second in terms of international patent applications and third in terms of international trademark registrations (WIPO, 2017b). Although the quality of most patents remains low, China is determined to enhance their quality and become a technological power. In parallel, China created specialized intellectual property divisions within courts and, in 2014, specialized intellectual property courts in Beijing, Shanghai, and Guangzhou (Kristie, 2017). In 2018, it further created new tribunals for defined technology-related intellectual property matters in ten provinces and two additional cities around the country, while stripping some Chinese courts of jurisdiction over these matters (Covington, 2018). It then established a specialized intellectual property court of appeal at the national level to foster uniform jurisprudence in intellectual property law. Litigation over intellectual property exploded before these courts. Paradoxically, China "has emerged as the world's most litigious country in the intellectual property area," with 16,010 new patent cases, 37,946 new trademark cases, and 137,267 new copyright cases reportedly filed in 2017 (Yu, 2019).

5. Electronic World Trade Platform (eWTP)

The BRI is not just about hard infrastructure. Electronic commerce and other services follow, in turn facilitating trade of Chinese products produced through Chinese GVCs. Alibaba Cloud is growing faster than Amazon outside of their home markets. Alibaba benefits from its dominance of China's internal market, which is the largest e-commerce market in the world. It is now expanding its reach globally.

At the World Economic Forum in Davos, Switzerland in January 2015, Jack Ma, the founder of Alibaba, first raised the idea of an "e-WTO" (Quinn, 2015). In February 2016, Ma changed the name of his proposal from the "e-WTO" to "eWTP ("Electronic World Trade Platform") to emphasize that the objective was to build a platform rather than an organization. At the Boao forum in March 2016, he emphasized that this eWTP would serve as a platform for the internet age that is "more open, fairer and freer" to benefit "the small and medium enterprises and the consumers of the world, especially the young". The G20 Trade Ministers Meeting Statement in July 2016 in Shanghai noted the proposal, as did the G20's Leaders' Communique at the Hangzhou Summit in 2017. In late 2017, the eWTP launched an 'Enabling E-commerce' initiative with the WTO and World Economic Forum (WTO, 2017).

According to Alibaba, eWTP is a platform to forge rules governing e-commerce, to exchange best practices, to build future facilities, and to achieve inclusive trade (Ali Research, 2017). There are three components to the eWTP ecosystem: legal, commercial, and technological. First, the eWTP aims to provide a platform for stakeholders to discuss and develop new rules and standards for the digital age, especially those directly related to e-commerce, such as digital customs border controls, tariff policy, data flow, the credit system, and consumer protection. Second, the platform facilitates commercial exchange and cooperation among stakeholders to build new infrastructure for the internet age, such as e-commerce platforms, finance and payment, logistics and storage, trade-related services, marketing, and education and training. Third, the platform aims to build a technological framework based on the internet, big data, cloud computing, the internet of things, and artificial intelligence to serve what is becoming a knowledge-based, data-driven economy. These three components are interconnected and interdependent, so that discussions regarding rules are to be based on practices at the commercial and technological levels, and the rules resulting from these discussions are to promote commercial cooperation and technological innovation.

In the long term, the eWTP hopes to achieve four objectives: the development of small, Medium & Micro Enterprise Businesses (SMMEs); inclusive trade; the globalization of consumption, and the development of young people. While the details of the eWTP remain a work in progress, Ma has suggested rules for tariff exemption for SMMEs having less than US$ one million of annual exports, 24-hour customs clearance, and expedited customs procedures and logistics (Sina Technology, 2016). The eWTP's focus is on tariff reduction and trade facilitation, which will benefit China's exporting firms and facilitate the expansion of its GVCs.

In this phase, China signed an increasing number of trade and investment treaties, and created new international and domestic institutions, laws, and regulations to support Chinese-led GVCs. In the process, it enhanced its technological capacity and engaged in e-commerce initiatives to advance China's ambitions in the digital age.

V. Phase 5: 2018-present. GVCs in the Context of a Trade War, Supply Chain Risks, and Technological Decoupling

The development of China as a node for global GVCs had economic and political repercussions elsewhere, and particularly in the United States. U.S. capital benefitted from these global GVCs in relation to labor, and inequality soared in the United States to levels not seen since the 1930s. Inequality also soared in China, but unlike in the United States, China's working and middle classes saw their incomes rise dramatically (Milanovic, 2016). These results contributed to a populist backlash in the United States that facilitated the election of President Trump. The Trump administration did not take significant trade actions against China in its first year, but the rumblings were clear. It imposed stringent investment controls on Chinese investment in the United States on national security grounds, such that Chinese investment plunged since its peak in 2017. The Trump administration followed these restrictions with the launching of a trade war, raising the average tariff applied to Chinese products from 3% to over 24% by September 2019, with the threat of further tariff hikes (Bown, 2019). China announced it would retaliate, raising its average tariff on U.S. products to 25.9%, up from 8% at the start of 2018, while reducing its tariffs on goods from the rest of the world to 6.7%. The U.S.-China trade war created consternation in cross-border GVCs, pressing many firms to reconsider their investments in China. In parallel, the United States weaponized global supply chains through denying or threatening to deny the sale of key components to Chinese competitors, such as semiconductors to Huawei, as well as to those producing semiconductors for Huawei in third countries (Farrell and Newman, 2019). By mid-2020, pressure for technological decoupling between the United States and China intensified.

As the Trump administration neutered the WTO dispute settlement system, increased tariffs on Chinese products, and blocked the export of U.S. technology to China, and as China retaliated against the United States with its own tariffs and export controls, and as talk of broader economic decoupling became part of U.S. internal political discourse, GVCs faced considerable uncertainty. The crisis significantly deepened with the outbreak of the COVID-19 pandemic, which started in China and led to severe economic recession in countries around the world. China fared relatively well economically compared to other countries in light of the pandemic, but it too suffered from its own lockdown and the collapse of global trade. As part of its longer term goal, but as accelerated in response to the pandemic and U.S. export controls and technological decoupling targeting Chinese firms, China started to focus more on developing its internal market, aiming to become less dependent on exports for economic growth.

Nonetheless, GVCs remain an important part of China's development strategy. Much of that strategy involves the ongoing pursuit of its initiatives discussed in Part IV, such as the BRI

and indigenous innovation policies, but now within a new geopolitical context. In light of growing geopolitical tension with the United States, China continued to develop new links with other countries through the BRI, supported by bilateral and regional trade and investment agreements and e-commerce initiatives. The result is the further development of China-led GVCs. Given the political tensions between the United States and China, we could see rival GVCs developing so that the analysis of GVCs could shift from a sole focus on economic efficiency that can give rise to mutual gains (Baldwin, 2016), to one on resilience in light of geoeconomic competition and rivalry involving strategic trade and zero-sum games (Roberts, Moraes and Ferguson, 2019). China is increasingly well-positioned to take on the United States in this competition through developing its own GVCs. It has diversified its export markets and built a huge domestic market so that its economy is less dependent on exports to the United States. While China is no longer the United States' top trading partner (replaced by Mexico and Canada), it has become the largest trading partner with more than two-thirds of the world's countries (Campbell and Sullivan, 2021). These countries' economic welfare is linked with China, so that it will be difficult for the United States to build solid coalitions against it.

V. Conclusion

Since its economic reforms in 1978, China has strategically used law to help develop its participation in GVCs. This process started with laws to open up China for trade and investment, which helped to integrate Chinese production into global value chains, and ultimately the world trading system through its WTO accession. Since then, China has revised its laws and regulatory frameworks to upgrade its GVCs at home and build China-led GVCs abroad. These efforts helped to boost its economy and move China up the value chain of global production. At the same time, however, China's rapid economic growth facilitated by GVCs, coupled with China's success in moving up the value chain of production through its massive subsidization policies and its acquisition and alleged theft and "forced transfer" of foreign technology, triggered backlash against China, especially in the United States. This reaction culminated in the Trump administration's push for "economic decoupling" in a new geopolitical context.

China overall embraced the economic paradigm of integrating GVCs domestically and globally, which its legal reforms helped to facilitate. Its economy initially benefitted from its opening to foreign-based GVCs in which China provided low-wage labor and cheap land. By 2003, China became the world's largest destination of foreign investment, surpassing the United States, just two years after China joined the WTO (Poncet, 2007).

As part of its "Going Global" policy in the 2000s, the government began to encourage Chinese firms to invest abroad (Naughton, 2018). China developed new legal infrastructure to complement its material infrastructure projects through the BRI and thus support China-led GVCs. That legal infrastructure provides coordinating devices to build and channel economic ties around the world. By 2016, Chinese outward foreign direct investment substantially surpassed inbound investment, contributing to the development of Chinese-led GVCs (UNCTAD, 2016).

Political backlash against China's rise has created considerable consternation for GVCs. Increased extra-legal, geopolitical pressures will decrease certainty for their development and adaptation going forward. GVCs nonetheless should remain critical for the new landscape of geopolitical competition, including through rival GVCs. They will continue to be supported by a combination of domestic, transnational, and international law.

The legal system in any country can serve to stimulate or impede economic development, trade, and investment. In our view, China's case is relatively special for two reasons, in addition to the sheer size of its hybrid economy. First, China actively used legal reforms as part of state planning to build its GVCs. It thus differed from a more market-oriented approach in many Western countries that rely predominantly on private contract and private property. It also differed from many developing countries in that China benefited from a stable, activist government, which made it possible to formulate and implement long-term plans to maximize the effects of legal reforms on the development of GVCs.

Second, China nonetheless selectively enforced its laws, and especially environmental, labor, and intellectual property laws. It is for this reason that many argue that the shift of production to China was supported by non-enforcement of labor and environmental law, which had detrimental social effects outside of China, leading to increased inequality and social precarity within countries such as the United States. It is beyond this article's scope to address these issues, but we end with two final points. On the one hand, these gaps in the law and legal enforcement are not unique to GVCs in China. They can be found to varying extents not only in many areas of Chinese law, but also outside of China, as law and society scholarship has long noted. On the other hand, China nonetheless has bolstered its regulations and enforcement mechanisms over time, such as in the area of intellectual property law, which has helped contribute to the development of Chinese-led GVCs.

References

Ali Research. 2017. "Shijie Dianzi Maoyi Pingtai Changyi (eWTP) 2017 Niandu Baogao]." p. 3. i.aliresearch.com/img/20170323/20170323182812.pdf.

An, J., W. Hau, and Y. Zhang. 2019. "China's Rule of Law in New Era: The Rise of Regulation and Formalism." *Journal of Chinese Economic and Business Studies* 17:3, 313-318, DOI: 10.1080/14765284.2019.1672418.

Asian Infrastructure Investment Bank. 2021. "Our Story So Far." https://www.aiib.org/en/about-aiib/who-we-are/timeline/index.html.

Baldwin, R. 2016. *The Great Convergence*. Cambridge: Harvard University Press.

Berger, A. 2011. "The Politics of China's Investment Treaty-making Programme." In *The Politcs of International Economic Law*, edited by Tomer Broude, Marc L. Busch and Amelia Porges, 162-185, Cambridge: Cambridge University Press.

Bhala, R. 2000. “Enter the Dragon: An Essay on China's WTO Accession Saga.” 15 *Am. U. Int'l L. Rev*. 1469, 1480.

Bown, C. 2019. “The Guns of August.” *PIIE*.

Campbell, K.M, and J. Sullivan. 2021. “Competition without Catastrophe.” *Foreign Affairs*, https://www.foreignaffairs.com/articles/china/competition-with-china-without-catastrophe, at 99.

Carrai, M.A. 2019. “Sovereignty in China.” 204-212. Cambridge: Cambridge University Press.

Clendenin, M. 2003. “Value-added tax deemed anticompetitive by Semiconductor Industry Association.” Retrieved October 05, 2020, from https://www.eetimes.com/document.asp?doc_id=1137570.

Covington. 2018. “Establishing 15 IP Tribunals Nationwide, Chinese Courts Further Concentrate Jurisdiction over IP Matters.” https://www.cov.com/en/news-and-insights/insights/2018/03/establishing-15-ip-tribunals-nationwide-chinese-courts-further-concentrate-jurisdiction-over-ip-matters.

Cui, L. & Q. Yan, 2001. “Yang Lushi Qiangtan Zhongguo Zhan Bentu Lushi: Shuilai Da WTO Guansi [Foreign Lawyers Entering China to Compete with Local Lawyers: Who will Litigate the WTO Cases?]”, Zhongguo Qingnian Bao [China Youth Daily], Dec. 10, 2001.

Defense Innovation Board. 2019. “The 5G Ecosystem: Risks & Opportunities for DoD.” (April 2019), p.7.

Drahos, P. 2010. “The Global Governance of Knowledge.” 233. Cambridge: Cambridge University Press.

Erie, M. 2018. “The China International Commercial Court: Prospects for Dispute Resolution for the ‘Belt and Road Initiative.’” *ASIL Insights* 22, no. 11.

European Commission. 2013. “EU imposes definitive measures on Chinese solar panels, confirms undertaking with Chinese solar panel exporters.” https://europa.eu/rapid/press-release_IP-13-1190_en.htm.

Farrell, H. and A. Newman. 2019. “Weaponized Interdependence: How Global Economic Networks Shape State Coercion.” *International Security* 44.1: 42-79.

Ferguson, N. 2008. Team “Chimerica.” *The Washington Post*, November 17.

Freedman, J.M. 2012. “China Floods the WTO with Tit-for-Tat.” *Bloomberg*, https://www.bloomberg.com/news/articles/2012-06-07/china-floods-the-wto-with-tit-for-tat.

Fuller, L. 1941. “Consideration and Form.” *Columbia Law Review*, vol. 41(5), 799-824.

Gao, H. 2005. “Aggressive Legalism: The East Asian Experience and Lessons for China”. In *China’s Participation in the WTO*, edited by Henry Gao & Don Lewis, 329-334. London: Cameron May.

Gao, H. 2010. “Taking Justice into Your Own Hand: The TBI Mechanism in China.” *Journal of World Trade* 44, no. 3 (2010). https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/44.3/TRAD201002

3, 651.
Gao H., 2014a. "Cong Maoyi Daguo Maixiang Maoyi Qiangguo (Gao Hucheng: From a Big Trader to Trading Power)", *Peopole's Daily*, http://www.mofcom.gov.cn/article/ae/ai/201403/20140300504229.shtml.
Gao, H. 2014b. "Public-Private Partnership: The Chinese Dilemma." *Journal of World Trade* 48, no. 5 (2014), 985.
Gao, H.S. 2007. "China's Participation in the WTO: A Lawyer's Perspective." *Singapore Year Book of International Law* 11: 41-74, at 42-43.
GATT, "Working Party on China's Status as a Contracting Party." *L/6191/Rev.l 25*. February 1988.
Gertler, J. 2003. "China's WTO Accession—The Final Countdown." In *China and the World Trading System: Entering the New Millennium*, edited by Deborah Z. Cass et al, (Cambridge: Cambridge University Press, 2003), 55-67.
Ginsburg, T. 2009. "The Judicialization of Administrative Governance: Causes, Consequences and Limits", in *Administrative Law and Governance in Asia*, edited by Ginsburg, Tom and Albert H.Y. Chen 10. Abingdon: Routledge.
Hufbauer, G., Y. Wong, and K. Sheth. 2006. "US-China Trade Disputes." *Washington, DC: Institute for International Economics* 56.
Hurst, J.W. 1956. *Law and the Conditions of Freedom in the Nineteenth-Century United States*. Madison: University of Wisconsin Press.
Kidane, W.L. 2019. "Agreements and Dispute Settlement in China-Africa Economic Ties," in *China-Africa and Economic Transformation*, eds. Arkebe Oqubay and Justin Yifu Lin (2019): 216.
Lardy, N.R. 2004. "Integrating China Into the Global Economy." *Washington: The Brookings Institution* 63.
Liu, S. 2016. "The Changing Role of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists," in *The New Legal Realism: Studying Law Globally*, eds. Heinz Klug and Sally Engle Merry (2016).
Luo G. 1998. "Guanyu Guowuyuan Jigou Gaige Fangan de Shuoming (1998 Nian) (Guide on the State Council's Institutional Reform Program)" in website of China's National People's Congress, 6 March 1998, http://www.npc.gov.cn/wxzl/gongbao/1998-03/06/content_1480093.htm.
Macaulay, S. 1963. "Non-Contractual Relations in Business: A Preliminary Study." *American Sociological Review* 28: 55.
McBride, J. and A. Chatzky. 2018. "Is 'Made in China 2025' a Threat to Global Trade?" *Council on Foreign Relations*, 2018. https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade.
Ministry of Justice. 2001. Opinions of the Ministry of Justice on Accelerating the Reform and Development of the Legal Profession after China's Accession to the WTO, *Sifatong* (Mar. 8, 2001).

MOFCOM. 2018. "Shangwubu Guojisi Fuzeren Jiedu Zhongguo - Xinjiapo Ziyou Maoyi Xieding Shengji Yidingshu (The head of the International Department of the Ministry of Commerce interprets the upgraded protocol of the Sino-Singapore Free Trade Agreement)", 12 November 2018, http://fta.mofcom.gov.cn/article/singaporetwo/singaporetwonews/201811/39342_1.html

Monaghan, A. 2014. "China Surpasses US as World's Largest Trading Nation", *The Guardian*, 10 January 2014, https://www.theguardian.com/business/2014/jan/10/china-surpasses-us-world-largest-trading-nation.

National Bureau of Statistics. 2009. "Opening Up (Duiwai Kaifang)."11 September 2009, http://www.gov.cn/test/2009-09/11/content_1415347_3.htm.

Naughton, B. 2018. *The Chinese Economy: Adaptation and Growth*. Cambridge, MA, and London: MIT Press.

Pan, J. 2016. "Special Interview with Ma Yun: 2016, Don't forget Yours Roots, Don't Fear the Future [Zhuanfang Ma Yun: 2016 Buwang Chuxin, Buwei Jianglai]", in *Qianjiang Evening News* (Qianjiang Wanbao), 5 February 2016, http://biz.zjol.com.cn/system/2016/02/05/021015532_01.shtml.

Polk, A. 2018. "China Is Quietly Setting Global Standards," *Bloomberg*, May 7, 2018, https://www.bloomberg.com/opinion/articles/2018-05-06/china-is-quietly-setting-global-standards.

Poncet, S. 2010. "Inward and Outward FDI in China." http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.5100&rep=rep1&type=pdf.

Quinn, J. 2015. "Alibaba can become bigger than Walmart, says founder," in *The Telegraph*, 23 Jan 2015, http://www.telegraph.co.uk/finance/financetopics/davos/11365479/Alibaba-can-become-bigger-than-Walmart-says-founder.html.

Roberts, A., H.C. Moraes, and V. Ferguson. 2019. "Toward a Geoeconomic Order" in *International Trade and Investment. Journal of International Economic Law* 22, no. 4 (November 25, 2019): 655–76. https://doi.org/10.1093/jiel/jgz036.

Schularick, M. 2009. "How China helped create the macroeconomics backdrop for financial crisis," *Financial Times*, February 24.

Sha S. 2005. "Jiedu Zhongguo Zhuanli Shenchayuan (Decoding Chinese Patent Examiners)", in *China Intellectual Property*, Issue 9, at http://www.chinaipmagazine.com/journal-show.asp?665.html.

Shaffer, G. and H. Gao. 2019. "China's Rise: How It Took on the U.S. at the WTO", *Illinois Law Review* (2019), 117.

Shaffer, G. and H. Gao. 2020. "A New Chinese Economic Order?" *Journal of International Economic Law* 23, no. 3 (2020): 607–35. https://doi.org/10.1093/jiel/jgaa013.

Shi, G. 2000. "Guanyu Zhuanghua Renmin Gongheguo Zhongwai Hezi Jingying Qiyefa Xiuzhengan" (Caoan), "Zhonghua Renmin Gongheguo Zhongwai Hezuo Jingying Qiyefa Xiuzhengan" (Caoan) "He Zhonghua Renmin Gongheguo Waizi Qiyefa Xiuzhengan" (Caoan) "De Shuoming (Explanation of the Amendment to the Law of the People's

Republic of China on Chinese-Foreign Joint Ventures" (Draft), "The Amendment to the Law of the People's Republic of China on Chinese-Foreign Cooperative Enterprises" (Draft) and "The Amendment to the Law of the People's Republic of China on Foreign-funded Enterprises" (Draft) (Guangdong Province Special Economic Zone Regulations))", in website of China's National People's Congress, 23 October 2000, at http://www.npc.gov.cn/wxzl/gongbao/2000-10/23/content_1481411.htm.

Shi, G. 2011. *The Negotiation History of China's Accession to the WTO [Zhongguo Jiaru Shijie Maoyi Zuzhi Tanpan Licheng]*. Beijing: People's Publishing House.

Sina Technology. 2016. "Ma Yun: Let eWTP Free Trade Benefit 80% of the SMEs Worldwide [Ma Yun: Rang eWTP Ziyou Maoyi Huiji Quanqiu 80% Zhongxiao Qiye]." http://finance.sina.com.cn/chanjing/gsnews/2016-09-04/doc-ifxvqcts9409758.shtml.

State Council Information Office. 2011. "White paper on China's Foreign Trade", December 7, 2011, http://www.china.org.cn/government/whitepaper/node_7143951.htm.

State Council. 1978. "Kaizhan Duiwai Jiagong Zhuangpei Yewu Shixing Banfa (Interim Guidelines on Operating Export Processing and Assembly Business)", 15 July 1978.

State Council. 1984. "Zhonghua Renmin Gongheguo Guowuyuan Gongbao (Bulletin of the State Council of the People's Republic of China)," 1984, Vol. 25, at http://www.gov.cn/gongbao/shuju/1984/gwyb198425.pdf.

State Council. 1988. "Guowuyuan Guanyu Jiakuai He Shenhua Duiwai Maoyi Tizhi Gaige Ruogan Wenti De Guiding (Provisions of the State Council concerning Expediting and Deepening the Reform of the Foreign Trade System)", *Guofa* [1988] # 12, at http://www.gov.cn/zhengce/content/2012-02/21/content_5165.htm.

State Council. 2015. "Guowuyuan Guanyu Yingfa Zhongguo Zhizao 2025 de Tongzhi (State Council Notice on Issuing the Made in China 2025 Plan)", *Guofa* (2015) #28, 8 May 2015, http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm.

State Intellectual Property Office of the P.R.C. 2016. "Annual Report," 43, 2016, http://www.sipo.gov.cn/gk/ndbg/2016/201705/P020170505541250020396.pdf.

Tan, Y. 2020. "Disaggregating 'China, Inc.': The Hierarchical Politics of WTO Entry", *Comparative Political Studies* 53(13): 2118-2152.

Thomas, K. 2017. "Assessing Intellectual Property Compliance in Contemporary China: The World Trade Organisation TRIPS Agreement". Palgrave Macmillan.

Tong, S., C. Chong, and S. Keng. 2010. "China-ASEAN Free Trade Area in 2010: A Regional Perspective." 2010, EAI Background Brief No. 519, 7. https://research.nus.edu.sg/eai/wp-content/uploads/sites/2/2017/11/BB519.pdf.

UNCTAD. 2016. "World Investment Report 2016."

UNCTAD. 2020. "China: Bilateral Investment Treaties (BITs), Investment Policy Hub," *Investment Policy Hub* (visited Oct. 8, 2020).

United States Trade Representative. 2015. "Summary of the Trans-Pacific Partnership Agreement, Executive Office of the President," 10 April 2015, https://ustr.gov/about-

us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership.

Wang, W. 2019. "Jianzheng Lishi Zhicheng Maoyi Zouxiang Shijie (Witnessing history and trading with the World)." in *Pheonix Weekly*, Issue 691, at http://www.ifengweekly.com/detil.php?id=7965.

Wang, Y. 2016. "The Belt and Road Initiative: What Will China Offer the World in its Rise" (2016), 12. *Beijing: New World Press*.

Wang, Y. and J. Jiang. 2004. "Beijingshi Waishang Zhijie Touzi de Duzi Hua Qushi Ji Dongyin (The Trend and Motivation of Sole Proprietorship in Beijing's Foreign Direct Investment)", *Guoji Jingji Hezuo (International Economic Cooperation)*, Issue 7, 20 December 2004, http://tech.sina.com.cn/it/2004-12-20/1010479583.shtml.

WIPO. 2017a. "Who Filed the Most PCT Patent Applications in 2017?" *World Intellectual Property Organization*.

WIPO. 2017b. "Who Filed the Most Madrid Trademark Applications in 2017?," *World Intellectual Property Organization*, http://www.wipo.int/export/sites/www/ipstats/en/docs/infographic_madrid_2017.pdf; "Who Filed the Most PCT Patent Applications in 2017?," World Intellectual Property Organization, https://www.wipo.int/export/sites/www/ipstats/en/docs/infographic_pct_2017.pdf.

WSJ. 1993. "China's Entry Into GATT Is Stalled by Thorny 'Socialist Market Economy'", *Wall Street Journal* (3 March 1993).

WTO. 2001. "Anti-dumping Initiations by Reporting Member 01/01/1995 - 31/12/2020, 2001," https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf.

WTO. 2017. "World Economic Forum and eWTP launch joint public-private dialogue to open up e-commerce for small business," https://www.wto.org/english/news_e/news17._

Wu, M. 2012. "Antidumping in Asia's Emerging Giants." 53 *Harv. Int'l L.J.* 101, 104 (2012).

Xiao, D. 2018. "Guomen shi Ruhe Dakai de: Zhongguo Duiwai Kaifang de Qibu Guocheng (How Did China Open? The Initial Process of China's Reform and Opening Up)", *CPC History Studies* [Zhonggong Dangshi Yanjiu], Vol. 2018 Issue 4, at 33.

Xing, Y., and N. Detert. (2010). "How the iPhone Widens the United States Trade Deficit with the People's Republic of China." ADBI Working Paper No 257. *Tokyo: Asian Development Bank Institute*.

Xinhua. 2016. "Alibaba's Jack Ma proposes new global e-commerce platform (2016).," 24 March 2016. http://www.chinadaily.com.cn/bizchina/boaoforumforasia/2016-03/24/content_24065122.htm.

Xue, B., and C. Nie. 2013. "Shangwubu: Zhongguo Cheng Zao Maoyi Jiuji Diaocha Zuiyanzhong Guojia (MOFCOM: China was the most severely investigated nation on trade remedies)", *Jingji Cankao Bao* (Economic Information Daily), 9 April 2013, http://finance.people.com.cn/n/2013/0409/c1004-21064014.html.

Yang, G. 2002. *Zhongguo Jiaru WTO Falu Wenti Zhuanlun (Legal Problems on China's Accession to WTO)*. Beijing: Law Press.

Yu, C. 2015. “EU-China Solar Panels Trade Dispute: Settlement and challenges to the EU,” *European Institute for Asian Studies*, June 2015, http://www.eias.org/wp-content/uploads/2016/02/EU-Asia-at-a-glance-EU-China-Solar-Panels-Dispute-Yu-Chen.pdf.

Yu, P.K. 2019. “Building Intellectual Property Infrastructure along China’s Belt and Road.” *Penn Law: Legal Scholarship Repository*, 2019, 313. https://scholarship.law.upenn.edu/alr/vol14/iss3/1/.

Yu, X. 2011. “Ministry of Science and Technology: Make ‘China Ballpoint’ for 38 Billion Chinese Pen (Kejibu: Wei 380 yizhi zhongguo Bi Dazao ‘Zhongguo Zhuxin’)”, *Xinhua*, 17 March 2011. https://www.cas.cn/xw/kjsm/gndt/201103/t20110317_3086830.shtml.