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Heng WANG

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THE FEATURES OF CHINA'S RECENT FTA AND THEIR IMPLICATIONS: AN ANATOMY OF THE CHINA-KOREA FTA

*Heng Wang**

ABSTRACT

The paper analyzes the following questions from a Chinese perspective: what are the characteristics of the China-Korea FTA? And what are their underlying considerations and implications? It argues, first, that the China-Korea FTA is characterized by expanded coverage, highlighted focus on services and investment, increased non-trade concerns of competition and environment, and enhanced good governance norms. Generally the features are not fully developed largely due to the gentle pace of the China-Korea FTA. Among the features, good governance is more salient than others. Second, these features may be attributable to a variety of factors, particularly the response to trade practice and disputes, the impact of other trade agreements, and the need of economic transformation of China. Third, these characteristics may face challenges particularly those regarding the implementation and interpretation of relevant obligations. Finally, these traits may represent some of the future direction of China's FTAs, and the goal

* Associate professor, Faculty of Law, the University of New South Wales, Australia. Sincere thanks to colleagues at the Joint Asian International Economic Law Conference in July 2015 (co-sponsored by the Asian WTO Research Network, the Asian International Economic Law Network, and the Australia and New Zealand Society of International Law), and the conference on the Korea-China FTA in June 2015 (co-sponsored by the Chinese Society of International Economic Law, the Korean Society of International Economic Law, and the Korea Legislation Research Institute) for their insights; to the reviewer, Profs. Dukgeun Ahn, Jaemin Lee, Kiyoun Sohn, Sujin Kong, and Doo Su Kim for their critical comments; to Zhenyu Xiao and Nathan Thomas for their help; and to the editors for their excellent work. The author can be reached at heng.wang1@unsw.edu.au.

of a high-level FTA will remain a guiding force. New development will be made in areas such as services and investment. Besides relevant initiatives of China, mega FTAs may have more impact.

KEYWORDS: *China–Korea FTA, features, mega FTAs, good governance, non-trade concerns, services, investment*

I. INTRODUCTION

With the negotiations starting in 2012,¹ the China–Korea Free Trade Agreement was signed in June 2015.² It became the biggest FTA concluded by China at the time of its signing.³ The FTA covers nearly \$300 billion in trade in goods and services, and could be the largest one in trade terms among the FTAs Korea signed with its major trading partners.⁴ It is reported that “at the opening level, the percentage of trade liberalization for bilateral trade in goods will cover over 90% tax items and 85% trade value.”⁵ Korea was the third largest trading partner country of China,⁶ and has become the second largest trading partner of China in the fourth quarter of 2015.⁷ The China–Korea trade volume exceeds the sum of the volume of Korea–U.S. and Korea–E.U. trade.⁸ Furthermore, it is deemed to provide “an all-round cooperative platform for the two countries to seek new growth engines”⁹, and enhances the bilateral relationship. The China–Korea FTA may be regarded as an initial step towards Northeast Asian regional integration.¹⁰

Generally speaking, the China–Korea FTA has made some progress, as will be discussed in the following parts of this article. However, it is not a “deep” FTA similar to the mega or larger FTAs, such as the Trans-Pacific Partnership (hereinafter “TPP”), and the E.U.–Canada Comprehensive Economic and Trade Agreement (hereinafter “CETA”). Compared with the U.S.–Korea Free Trade Agreement (hereinafter “KORUS FTA”), the depth of trade and investment liberalization remains limited, including the pace of tariff liberalization (e.g., lower percentage of agricultural products whose tariffs is to be eliminated), maintained tariffs on manufacturing goods (e.g.,

¹ S. Korea, *China Formally Sign Free Trade Deal*, YONHAP NEWS AGENCY (June 1, 2015), <http://english.yonhapnews.co.kr/national/2015/06/01/95/0301000000AEN20150601001552320F.html>.

² *China, S. Korea Sign FTA as New Growth Engine*, XINHUANET (June 1, 2015), http://news.xinhuanet.com/english/2015-06/01/c_134287692.htm.

³ Yonhap, *supra* note 1.

⁴ JEFFREY J. SCHOTT ET AL., AN ASSESSMENT OF THE KOREA–CHINA FREE TRADE AGREEMENT 1, <https://www.piie.com/publications/pb/pb15-24.pdf>.

⁵ *Business Review 2015: Positive Progress Made in FTA Construction*, CHINA FTA NETWORK (Feb. 1, 2016), http://fta.mofcom.gov.cn/enarticle/enrelease/201601/30414_1.html.

⁶ *Zhongguo Hanguo Ziyou Maoyi Xieding 50 Wen [50 Questions of China–Korea FTA]*, CCTV (June 1, 2015), <http://m.news.cntv.cn/2015/06/01/ARTI1433136728385679.shtml>.

⁷ *Zhonghan Zimao Xieding zhu Hanguo Yuesheng Zhongguo Dierda Maoyi Huoban [China–Korea FTA helps Korea Become the Second Largest Trading Partner of China]*, CHINA FTA NETWORK (Feb. 21, 2016), http://fta.mofcom.gov.cn/article/fzdongtai/201601/30354_1.html.

⁸ *Gao Hucheng to Cooperate for the Prosperity of Regional Development with the Help of the China–Korea Free Trade Agreement*, CHINA FTA NETWORK (June 12, 2005), http://fta.mofcom.gov.cn/enarticle/enkorea/enkoreanews/201506/22055_1.html.

⁹ *China, South Korea Sign FTA Deal*, XINHUANET (June 1, 2015), http://www.china.org.cn/world/2015-06/01/content_35708706.htm.

¹⁰ Nakgyoon Choi, *Impacts and Main Issues of the Korea–China FTA*, 28 KOR. ECON. 29, 33 (2012).

automobiles, electronics, steel, petrochemical goods), and the lack of certain investment provisions (e.g., pre-establishment protection under national treatment).¹¹ Moreover, some investment rules of the China–Korea FTA are less detailed and strict than those of the KORUS FTA, such as the performance requirements.¹² It may reflect the difference of negotiation positions of China and the United States (hereinafter “U.S.”) in the FTA negotiations (e.g., the technology transfer issue in investment¹³). For intellectual property, the China–Korea FTA incorporates some obligations that deserve attention, such as the protection of technological measures,¹⁴ genetic resources, traditional knowledge and folklore.¹⁵ However, the China–Korea FTA is largely based on the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter “TRIPS Agreement”), and does not contain many substantial WTO-plus obligations compared with the U.S. FTAs that are not without controversy.¹⁶ For environment, the China–Korea FTA incorporates the most comprehensive environmental chapter of China’s FTAs, and contains a loose commitment to maintain environment protection in the investment chapter.¹⁷ This is not common in China’s previous FTAs and is bolstered by a similar but binding provision in the environment chapter.¹⁸ The environment chapter nevertheless is excluded from the China–Korea FTA dispute settlement system.¹⁹ There furthermore is no chapter on labor under the China–Korea FTA and few articles deal with labor issues, except the provisions on people mobility.²⁰

For dispute settlement, the China–Korea FTA provides for investor-state dispute settlement (hereinafter “ISDS”), which follows customary procedures,²¹ and which covers services and financial services to the extent that they relate to a covered investment.²² The state-to-state dispute settlement under the China–Korea FTA is not unique, and largely

¹¹ SCHOTT, *supra* note 4, at 4, 6, 11.

¹² Free Trade Agreement Between the Government of the Republic of Korea and the Government of the People’s Republic of China art. 12.7, S. Kor.–China, June 1, 2015 [hereinafter China–Korea FTA]; Free Trade Agreement Between the United States of America and the Republic of Korea, art. 11.8, June 30, 2007 [hereinafter U.S.–Korea FTA].

¹³ Technology transfer is not provided in the China–Korea FTA as performance requirements but is provided in the U.S.–Korea FTA art. 11.8.1(f).

¹⁴ China–Korea FTA, *supra* note 12, art. 15.8.

¹⁵ *Id.* art. 15.17.

¹⁶ For discussion of intellectual property provisions of FTAs, see, e.g., Michael Handler & Mercurio Bryan, *Intellectual Property*, in *BILATERAL AND REGIONAL TRADE AGREEMENTS: COMMENTARY AND ANALYSIS* 324, 324-63 (Simon Lester et al. eds., 2d ed., 2016).

¹⁷ China–Korea FTA, *supra* note 12, art. 12.16.

¹⁸ *Id.* art. 16.5.2.

¹⁹ *Id.* art. 16.9.

²⁰ See, e.g., China–Korea FTA, art. 11.2 (protect of domestic labor force), Annex 11-A, Section A, ¶ 10 (labor market testing).

²¹ SCHOTT, *supra* note 4, at 12.

²² China–Korea FTA, *supra* note 12, art. 12.18.

follows the rules of the WTO dispute settlement system except for the lack of an appellate body. Having said that, the China–Korea FTA is generally more detailed than past FTAs of China in state-to-state dispute settlement, including a separate code of conduct for panelists and moderators²³ rather than the reference to the WTO counterpart rules of conduct as the China–Switzerland FTA (hereinafter “CSWFTA”) does.²⁴ Deeper liberalization of trade and investment may be achieved in the subsequent negotiations of the China–Korea FTA.

Insufficient attention has been given to the features of China's FTAs,²⁵ and the research regarding the features of the China–Korea FTA based on its anatomy is lacking. The China–Korea FTA provides an amazing case study for recent trends in China's FTAs, in the sense that it is a very recent FTA concluded by China with its top trading partner. Its characteristics compared with China's previous FTAs are of great significance to understand China's FTAs and their future development. Meanwhile, it is noteworthy that while some development underlying certain features have been included in China's FTAs for the very first time (e.g., expanded coverage to electronic commerce, two separate chapters on financial and telecommunications services), other developments are not new, but usually contain more detailed or higher requirements. Based on an anatomy of China-Korea FTA, the article endeavors to analyze its features, which could represent the trend of China's FTAs.

This article analyzes the following research questions from the Chinese perspective: what are the characteristics of the China–Korea FTA? And what are their underlying considerations and implications? Due to the large number of provisions in China's FTAs, the focus is the comparison with the CSWFTA that was concluded immediately before the China–Korea FTA. Other FTAs concluded by China and WTO rules will be referred to when appropriate. Four characteristics will be discussed in parts II to V, and part VI concludes.

II. EXPANDED COVERAGE

The China–Korea FTA is deemed to involve the “most comprehensive areas”²⁶ among China's FTAs. In some areas, there is congruence with the

²³ China–Korea FTA, *supra* note 12, Annex 20-B.

²⁴ Free Trade Agreement Between the People's Republic of China and the Swiss Confederation art. 15.4.8(d), China–Switz., July 6, 2013 [hereinafter CSWFTA].

²⁵ For relevant scholarly works, see, e.g., Guiguo Wang, *China's FTAs: Legal Characteristics and Implications*, 105 AM. J. INT'L L. 493, 501 (2011); Francis Snyder, *China, Regional Trade Agreements and WTO Law*, 43 J. WORLD TRADE 1, 54-55 (2009); Jun Zhao & Timothy Webster, *Taking Stock: China's First Decade of Free Trade*, 33 U. PA. J. INT'L L. 65, 65, 99, 105, 107-08 (2011).

²⁶ *China – ROK FTA Negotiations Completed*, CHINA FTA NETWORK (Mar. 11, 2015), <http://fta>.

CSWFTA but it is exceeding previous FTAs. For instance, it contains a stand-alone competition chapter, which is not the case either in the most recent China–Australia FTA (hereinafter “ChAFTA”) or China’s FTAs concluded before the China–Iceland FTA that came into effect in 2014. In comparison with the CSWFTA, a number of new coverage areas can be found.

A. New Coverage Related to Digital Trade and New Technology

The China–Korea FTA enters the realms of electronic commerce, intellectual property, customs procedures and trade facilitation (hereinafter “CPTF”), origin rules, technical barriers to trade (hereinafter “TBT”) measures,²⁷ and dispute settlement.²⁸ In the CSWFTA, these provisions are much fewer and seem to exist mainly in CPTF, including advance electronic submission and processing of information regarding goods for clearance.²⁹

It notably is the first time for China’s FTAs to cover electronic commerce. Helping businesses to explore opportunities in digital trade, the electronic commerce chapter deals with digital trade hallmarks, including electronic authentication and signatures,³⁰ paperless trading,³¹ and data message.³² Although it has not attracted much attention, the expansion and development of electronic commerce discipline is an important stepping-stone at least for the Asian trade system that is to be fortified through the China–Japan–Korea FTA and the Regional Comprehensive Economic Partnership (hereinafter “RCEP”). As electronic commerce is intrinsically connected with trade in services and goods, novel elements contained within the China–Korea FTA can be an interesting seed for new legal norms for electronic commerce to develop.

Concerning intellectual property, new coverage includes electronic rights management information,³³ copyright issues on the internet,³⁴ the protection of technological measures regarding copyright,³⁵ electronic trademark application and processing,³⁶ as well as electronic databases.³⁷ Regarding CPTF, the coverage extends to the application of information

mofcom.gov.cn/enarticle/enrelease/201503/20754_1.html.

²⁷ China–Korea FTA, *supra* note 12, art. 6.14.1.

²⁸ *Id.* Annex 20-A, ¶ 2.

²⁹ CSWFTA, *supra* note 24, art. 4.7.5(a).

³⁰ China–Korea FTA, *supra* note 12, art. 13.4.

³¹ *Id.* art. 13.6.

³² *Id.* art. 13.8.

³³ *Id.* art. 15.9.1.

³⁴ *Id.* art. 15.28.

³⁵ *Id.* art. 15.8.

³⁶ *Id.* art. 15.14.2(a).

³⁷ *Id.* art. 15.14.2(b).

technology in paperless trading,³⁸ advance electronic submission and processing of information.³⁹ The FTA also covers the acceptance of the origin certificate electronically signed by the authorized body,⁴⁰ and an electronic origin data exchange system,⁴¹ among others. Generally, the new coverage facilitates business transactions and helps to reduce trade costs.

B. New Coverage Associated with Other Considerations

Other extended coverage can be found in, among other areas, economic cooperation, trade remedies, intellectual property, TBT, and competition. Local economic cooperation has not been addressed in China's FTAs before. It will explore new liberalization that may be expanded nationwide.⁴² Taking a pragmatic bottom up approach, it has a two-fold effect on the FTA, helping to address the issue of FTA implementation by local governments, and testing the water for future liberalization.

Trade remedies rules extend to surrogate value methodology and zeroing issues in anti-dumping investigation. China's FTAs are always linked to its full market economy status, and nearly all of China's FTA partners have recognized China's market economy status.⁴³ Korea has accorded China the status of a market economy since 2005.⁴⁴ Closely related to market economy status, it is of practical importance to proscribe the methodology of surrogate value in anti-dumping procedures. The China–Korea FTA forbids “a methodology based on surrogate value of a third country” in determining the dumping margin during the anti-dumping process.⁴⁵ Neither surrogate price nor surrogate cost can be used in determining normal value and export price. Such proscription is not found in China's previous FTAs. It is related to Article 15(a)(ii) of China's Accession Protocol to the WTO (hereinafter “Accession Protocol”), under which surrogate prices and costs could be used to calculate Chinese dumping margins, and which expire 15 years after the accession. Different views exist on whether China is automatically allowed market economy status after the expiry of this article.⁴⁶ As a substantial development in

³⁸ *Id.* art. 4.12.

³⁹ *Id.* art. 4.14.2(a).

⁴⁰ *Id.* art. 3.15.2(e).

⁴¹ *Id.* art. 3.27.

⁴² *Id.* art. 17.25.3.

⁴³ Peter K. Yu, *Sinic Trade Agreements and China's Global Intellectual Property Strategy*, in *INTELLECTUAL PROPERTY AND FREE TRADE AGREEMENTS IN THE ASIA-PACIFIC REGION* 247, 259 (Christoph Antons & Reto M. Hilty eds., 2015).

⁴⁴ *ROK Grants China Market-Economy Status*, CHINA DAILY (Nov. 17, 2015), http://www.china-daily.com.cn/english/doc/2005-11/17/content_495399.htm.

⁴⁵ China–Korea FTA, *supra* note 12, art. 7.7.4.

⁴⁶ Gary Clyde Hufbauer & Cimino-Isaacs Cathleen, *Is China a Market Economy?*,

terms of a legal requirement, this FTA provision restricts the discretion of investigation authorities and is subject to the FTA's dispute settlement system.

Furthermore, although expressed in "soft" language,⁴⁷ the practice of zeroing is specifically repudiated in dumping margin determination. Since certain Chinese and Korean exports have been subject to the controversially applied zeroing practice of the U.S., both countries have been vocal for the inclusion of an explicit prohibition of zeroing practice in the Anti-dumping Agreement.⁴⁸ These provisions on zeroing and surrogates appear to reflect and confirm both countries' position and practice.

The intellectual property chapter extends to utility models,⁴⁹ folklore,⁵⁰ and certain aspects of well-known trademark protection (e.g., the determination of well-known trademarks and the related limitation on the registration and use of certain trademarks).⁵¹ Different from the CSWFTA, visually perceptible signs will not constitute a condition for trademark registration.⁵² The latter is also provided in China's Trademark Law amendment in 2013.⁵³

The TBT chapter extends to consumer product safety,⁵⁴ marking and labeling,⁵⁵ and the cooperation on TBT issues of products with new technology or new features.⁵⁶ Examples of other extended coverage include competition policy (e.g., principles of competition law enforcement⁵⁷ and notification of enforcement activities⁵⁸), the treatment of certain goods involving the Outward Processing Zone (hereinafter "OPZ"),⁵⁹ and film co-production.⁶⁰

EASTASIAFORUM (July 28, 2015), <http://www.eastasiaforum.org/2015/07/28/is-china-a-market-economy/>.

⁴⁷ China–Korea FTA, *supra* note 12, art. 7.7.5.

⁴⁸ Negotiating Group on Rules, *Proposal of the People's Republic of China on the Negotiation on Anti-dumping*, at 3, WTO Doc. TN/RL/W/66 (Mar. 6, 2003); Negotiating Group on Rules, *Proposal on Prohibition of Zeroing – Paper from Brazil; Chile; Columbia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Switzerland and Thailand*, at 1-3, WTO Doc. TN/RL/W/113 (June 6, 2003).

⁴⁹ China–Korea FTA, *supra* note 12, art. 15.16.

⁵⁰ *Id.* art. 15.17.

⁵¹ *Id.* arts. 15.13.1, 15.13.3.

⁵² *Id.* art. 15.11.2; CSWFTA, *supra* note 24, art. 11.7.1.

⁵³ Shang Biao Fa [Chinese Trademark Law] (promulgated by the Standing Comm. Nat'l's People's Cong., Aug. 23, 1982, effective Mar. 1, 1983; rev'd by the Standing Comm. Nat'l's People's Cong., Aug. 30, 2013), art. 8.

⁵⁴ China–Korea FTA, *supra* note 12, art. 6.9.

⁵⁵ *Id.* art. 6.11.

⁵⁶ *Id.* art. 6.8.4.

⁵⁷ *Id.* art. 14.3.

⁵⁸ *Id.* art. 14.7.

⁵⁹ *Id.* art. 3.3.

⁶⁰ *Id.* Annex 8-B.

C. Conclusion

Foremost, the China–Korea FTA explores new areas (e.g., electronic commerce) and expands rules in the CSWFTA (e.g., trade remedies). Expanded coverage is particularly obvious in the chapters on electronic commerce, intellectual property, CPTF, and origin rules. Having said that, many new rules, including those on electronic commerce and folklore, are in their initial stage. It is noteworthy that the China-Korea FTA does not cover certain areas as mega regionals, such as state-owned enterprises, and labor.

Second, related to the centripetal forces of formulating a high-level and full-scale FTA in the future, new coverage is often linked with the removal of trade and investment barriers. The provisions related to digital trade and new technology are common to other countries' FTAs. Most other new coverage seems to arise from special concerns of the parties (e.g., OPZ, the treatment of products in anti-dumping investigation, film co-production, folklore).

Last but not least, the coverage is not always clear. For instance, it remains to be seen how the FTA text and schedules extend against a backdrop of new technological innovation, which can possibly be clarified in subsequent negotiations to provide better predictability.

III. HIGHLIGHTED FOCUS ON SERVICES AND INVESTMENT

Increased focus on services and investment are reflected in the current rules and a forward work program of the China–Korea FTA. For the first time in China's FTAs, two separate chapters on financial and telecommunications services are established, and a services-investment linkage clause is used to bridge investment and services. They are further developments in these areas.

A. Current Rules and Institutions

Similar to the China–Korea FTA, most of the previous Chinese FTAs have two chapters on services (one on services and one on people mobility). Financial and telecommunications services are subject to these general rules in older FTAs, but get special attention in the China–Korea FTA, whose two newborn chapters are better tailored to address complex issues in these crucially important sectors. Resembling larger FTAs, financial services are not subject to the chapter on services trade,⁶¹ but are governed by the financial services chapter. Financial services chapter contains

⁶¹ *Id.* art. 8.2.2(e).

provisions similar to the chapter on services trade (e.g., national treatment, market access) and important sector-specific clauses (e.g., payment and clearing system). Some of these rules, such as the provision on recognition of prudential measures, closely follow the General Agreement on Trade in Services (hereinafter “GATS”).⁶²

Telecommunications are subject to the services trade chapter and more importantly to the telecommunications chapter that applies to measures affecting trade in telecommunications services.⁶³ Compared with the financial service chapter, it has a 5-sector rule structure, and contains more sector-specific provisions such as competitive safeguards,⁶⁴ universal service,⁶⁵ and dispute resolution including judicial review.⁶⁶ The telecommunications chapter prevails over other chapters in case of discrepancy.⁶⁷ The special character of telecommunication regulations is maintained.

In contrast to the separation between investment and services rules in older FTAs, the China–Korea FTA inserts a clause on services-investment linkage. It echoes the converging trends of the jurisprudence in investment law and trade law in areas such as regulatory space.⁶⁸ Investment rules apply to measures affecting services and financial services provided through commercial presence, including provisions on minimum standard of treatment, expropriation and compensation, transfers, subrogation, and ISDS, as well as three annexes on customary international law, expropriation, and transfers.⁶⁹ Measures affecting financial services are also subject to investment articles on special formalities and information requirements, and denial of benefits.⁷⁰ However, investment provisions affect services only when they “relate to a covered investment.”⁷¹ If the investor makes a claim under the ISDS and the respondent resorts to the prudential carve out provision in the financial services chapter, a prior consultation will be conducted upon the respondent’s request.⁷²

The China–Korea FTA furthermore contains an investment chapter and an annex to the chapter on people mobility that addresses investment

⁶² *Id.* art. 9.8; CSWFTA, *supra* note 24, Annex VI, art. 12; General Agreement on Trade in Services, Annex on Financial Services, ¶ 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1B, 108 Stat. 4809, 1869 U.N.T.S. 183 [hereinafter GATS].

⁶³ China–Korea FTA, *supra* note 12, art. 10.1.1.

⁶⁴ *Id.* art. 10.6.

⁶⁵ *Id.* art. 10.8.

⁶⁶ *Id.* art. 10.12.

⁶⁷ *Id.* art. 10.2.

⁶⁸ Markus Wagner, *Regulatory Space in International Trade Law and International Investment Law*, 36 U. PA. J. INT’L L. 1, 86 (2014).

⁶⁹ China–Korea FTA, *supra* note 12, art. 12.18.

⁷⁰ *Id.* art. 12.18.2.

⁷¹ *Id.* arts. 12.18.1, 12.18.2.

⁷² *Id.* art. 9.13.

facilitation. Some of previous Chinese FTAs have short investment chapters. The CSWFTA has an investment promotion chapter with two articles dealing with investment promotion and review of the investment legal framework. Although still a short one, this more detailed investment chapter highlights investment promotion and protection. It requires the admission of investment and the provision of favorable conditions for investors to make an investment,⁷³ including national treatment, most-favoured-nation (hereinafter “MFN”) treatment, and minimum standard of treatment. Under minimum standard treatment, qualified investment should be accorded the “customary international law minimum standard of treatment of aliens”. Furthermore, the concepts of “fair and equitable treatment” and “full protection and security” do not require the treatment to exceed the aforementioned minimum standard or the granting of more substantive rights.⁷⁴ These two concepts are further elaborated. Generally such approach is similar to that in U.S. FTAs signed after the North American Free Trade Agreement (hereinafter “NAFTA”), particularly after the Interpretative Note issued by the NAFTA Free Trade Commission in 2001.⁷⁵ It seems that customary international law has not been expressly referred to in China’s previous FTAs as the benchmark for minimum standard of treatment.⁷⁶

A number of other chapters, including those on environment,⁷⁷ competition,⁷⁸ and intellectual property,⁷⁹ are closely related to services and investment. The people mobility chapter is intrinsically linked to services provided through the presence of natural persons. The electronic commerce chapter focuses more on services, supported by the fact that general exceptions are incorporated in GATS.⁸⁰ The economic cooperation chapter, which outlines future development directions, largely deals with investment and services in particular.⁸¹ The increasing focus on services and investment is reflected in institutional arrangements. Four committees on trade in services, financial services, movement of natural persons, and investment,⁸² will promote the development of services and investment.

⁷³ *Id.* art. 12.2.

⁷⁴ *Id.* arts. 12.5.1, 12.5.2.

⁷⁵ RALPH H. FOLSOM ET AL., *INTERNATIONAL TRADE AND ECONOMIC RELATIONS IN A NUTSHELL* 353 (5th ed. 2012); Joshua P. Meltzer, *Investment*, in *BILATERAL AND REGIONAL TRADE AGREEMENTS: COMMENTARY AND ANALYSIS* 245, 267 (Simon Lester et al. eds., 2nd ed., 2016).

⁷⁶ China–Korea FTA, *supra* note 12, art. 12.5.1.

⁷⁷ *See, e.g., id.* arts. 16.5.2, 16.7.2(a).

⁷⁸ *Id.* arts. 14.8.1, 14.9.3, 14.13.

⁷⁹ *See, e.g., id.* arts. 15.2.2, 15.11.1.

⁸⁰ *Id.* art. 21.1.2.

⁸¹ For instance, *id.* art. 17.5.1 (trade and investment promotion in agriculture and food), 17.9.3(a) (facilitation of investment flows among SMEs), 17.24.2(b)(iv) (facilitation of investment opportunities for pharmaceuticals), 17.23.4 (facilitation of cooperation in broadcasting and audio-video services), 17.25.2 (pilot cooperation project on investment and services).

⁸² *Id.* arts. 19.4.1(b), 19.4.1(c), 19.4.1(d), 19.4.1(e).

Other committees, including the committee on economic cooperation, may also be relevant.

B. Subsequent Negotiation

For the first time, China commits to subsequently negotiate services and investment based on a negative list approach and the granting of pre-establishment national treatment. For services provided by commercial presence, more detailed rules will be developed to fuse with investment provisions. The negative list approach covers the pre-establishment stage of investment and services trade,⁸³ with a combined reservation lists concerning chapters on services trade, financial services, and investment.⁸⁴ These chapters include (i) Annex I containing a list of current non-conforming measures, (ii) Annex II compiling a list of (sub)sectors or activities in which current or new restrictive non-conforming measures are permitted, and (iii) Annex III containing a list similar to that in Annexes I and II for financial services.⁸⁵ It seems to be inspired by and resembles the approach taken by other FTAs, particularly FTAs involving the U.S.⁸⁶ Investment rules will be extended to the pre-establishment stage of the investment covering “all kinds of investment”, including services provided through commercial presence.⁸⁷

For services supplied through cross-border supply and consumption abroad, a chapter on cross-border services trade is to be established that will incorporate a future MFN provision.⁸⁸ In parallel, the future MFN provision, along with clauses on transfer of information and new financial services, will be inserted into the financial services chapter.

Investment provisions will be further negotiated, including definition, scope, national treatment, MFN treatment, minimum standard of treatment, expropriation (e.g., indirect appropriation, including its considerations and exceptions⁸⁹), transfer, performance requirements (e.g., “high level” commitments covering pre-establishment and post-establishment stages⁹⁰), senior management and board of directors, non-confirming measures, and ISDS.⁹¹

⁸³ *Id.* Annex 22-A, ¶ 3.

⁸⁴ *Id.* Annex 22-A, ¶ 4.

⁸⁵ *Id.* Annex 22-A, ¶¶ 4, 13.

⁸⁶ Lilian Richieri Hanania, *Cultural Diversity and Regional Trade Agreements — The European Union Experience with Cultural Cooperation Frameworks*, 7 ASIAN J. WTO & INT’L HEALTH L. & POL’Y 423, 431 (2012).

⁸⁷ China–Korea FTA, *supra* note 12, Annex 22-A, ¶ 14.

⁸⁸ *Id.* Annex 22-A, ¶¶ 10, 11.

⁸⁹ *Id.* Annex 22-A, ¶ 17.

⁹⁰ *Id.* Annex 22-A, ¶ 16.

⁹¹ *Id.* Annex 22-A, ¶ 15.

C. Conclusion

First, enhanced regulation of financial services and telecommunications is evidenced by the inclusion of two tailored chapters containing sector-specific rules. Financial services fall outside the scope of the services trade chapter, and the telecommunications chapter will prevail in case of divergence with other chapters. The unique character of these sectors is better preserved.

Second, a link between investment and services rules is established. Both rules can concurrently apply to measures affecting services, including financial services, offering better protection to investors in service sectors and promoting services trade. Concerning the relationship among different FTA chapters, the interaction between services and investment is most obvious, and most inter-chapter rules are related to services.

Third, services rules and their interaction with investment will be further developed, with the potential to be a high-level system comparable with larger FTAs in the long term. The FTA may shift from a GATS-inspired agreement to a NAFTA-inspired one with limited interaction.⁹² This will probably be further affected by latest “deep” FTAs, including the TPP. Investment rules here still lag behind bilateral investment treaties (hereinafter “BITs”) and larger FTAs in areas such as environmental provisions.⁹³ It remains to be seen how they will be developed. As an example, an umbrella clause exists in the China–Korea BIT of 2007 and the China–Japan–Korea Investment Agreement⁹⁴ but not in the FTA. Such omission of the umbrella clause is common in international investment agreements concluded in 2014,⁹⁵ and could be an intentional one given the difficulties of an expanded scope of investment clauses to non-treaty obligations and the unpredictability arising from possible conflicting interpretations by investment tribunals.⁹⁶

⁹² Marie-France Houde et al., *The Interaction Between Investment and Services Chapters in Selected Regional Trade Agreements* 7 (OECD, OECD Trade Policy Working Paper No. 55, 2007), available at <http://211.253.40.86/mille/service/ers/20000/IMG/000000012408/JT03229309.pdf>.

⁹³ See, e.g., 2012 U.S. MODEL BILATERAL INVESTMENT TREATY art. 8.3(c), <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.

⁹⁴ Agreement Among the Government of Japan, the Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment art. 5.2, Japan–S. Kor.–China, May 13, 2012 [hereinafter CJKIT]; Agreement on the Encouragement and Reciprocal Protection of Investments Between The Government of the Republic of Korea and the Government of the People's Republic of China art. 10.2, S. Kor.–China, Sept. 30, 1992, 1739 U.N.T.S. 287 (entered into force on Dec. 4, 1992).

⁹⁵ United Nations Conference on Trade and Development, *Recent Trends in IIAs and ISDS*, http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d1_en.pdf (last visited Aug. 25, 2015).

⁹⁶ United Nations Conference on Trade and Development, *Investment Policy Framework for Sustainable Development*, <http://investmentpolicyhub.unctad.org/Upload/Documents/Investment%20Policy%20Framework%20for%20Sustainable%20Development%202015.pdf> (last visited Aug. 20, 2015).

Finally, the focus on services and investment stem from at least two major considerations. One is the impact of other major FTAs. The other is China's desire to attract inbound investment and protect outbound investment, and to develop the service sector that is deemed to be "the main direction for China's economic transformation and restructuring."⁹⁷

IV. INCREASED NON-TRADE CONCERNS OF COMPETITION AND ENVIRONMENT

A. *Non-trade Concerns*

The engagements regarding investment, goods and service sectors entail a balance between trade and non-trade concerns. Non-trade concerns involve environment, competition, labor, intellectual property, health, and investment, among others.⁹⁸ In the China–Korea FTA, few stipulations are provided for certain non-trade concerns (e.g., labor), and non-trade concerns here include safety, health, environment, national security, consumer welfare, food security, and intellectual property.

Provisions dealing with non-trade concerns can be found in general exceptions and other clauses. Article XX⁹⁹ of the General Agreement on Tariffs and Trade 1994 (hereinafter "GATT") and GATS Article XIV¹⁰⁰ are incorporated in six chapters dealing with trade in goods, and chapters on services trade, financial services, telecommunications, and electronic commerce. Non-trade concerns, such as health, will be considered in these exceptions.¹⁰¹ General exceptions shall apply to these chapters, and have a broader scope of application than under WTO law. For instance, GATT Article XX does not apply to the TBT Agreement,¹⁰² but can apply to TBT rules of the China–Korea FTA. However, general exceptions may be of limited relevance for dispute settlement of a number of chapters (e.g., the TBT chapter and the chapter on sanitary and phytosanitary (hereinafter "SPS") measures) that are not subject to the FTA dispute settlement system.

Other clauses include the provisions on TBT measures (e.g., consumer product safety¹⁰³), SPS (e.g., health considerations¹⁰⁴), telecommunications

⁹⁷ *China Eyes Service Trade for Balanced Growth*, XINHUANET (May 28, 2012), http://www.china-daily.com.cn/business/2012-05/28/content_15405967.htm.

⁹⁸ Andrew T. Guzman, *Global Governance and the WTO*, 45 HARV. INT'L L. J. 302, 306 (2004).

⁹⁹ China–Korea FTA, *supra* note 12, art. 21.1.1.

¹⁰⁰ *Id.* art. 21.1.2.

¹⁰¹ For the recent analysis of non-trade values and exceptions, see generally e.g., Henrik Andersen, *Protection of Non-Trade Values in WTO Appellate Body Jurisprudence: Exceptions, Economic Arguments, and Eluding Questions*, 18(2) J. INT'L ECON. L. 383 (2015).

¹⁰² Appellate Body Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, ¶ 5.56, WTO Doc. WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R (adopted Aug. 7, 2014) [hereinafter *China — Rare Earths*].

¹⁰³ China–Korea FTA, *supra* note 12, art. 6.9.

(e.g., consideration of “overall public interest”¹⁰⁵ and “a legitimate public policy objective” as the basis of measure limiting technologies and standards¹⁰⁶), electronic commerce (e.g., the protection of personal information¹⁰⁷), intellectual property (e.g., health and environment concerns in patents protection,¹⁰⁸ intellectual property and public health,¹⁰⁹ and *ordre public* or morality¹¹⁰), economic cooperation (e.g., food security and fisheries cooperation,¹¹¹ public health in the sector of pharmaceuticals, and medical devices and cosmetics¹¹²), competition (e.g., consumer welfare and protection¹¹³), and investment (e.g., expropriation for the public purpose¹¹⁴ and non-discriminatory regulatory measures for lawful public welfare¹¹⁵). They are based on and developed from WTO rules. Some provisions reiterate the language of the WTO agreement including the TRIPS Agreement.¹¹⁶ Competition and environmental concerns get more attention compared with China's previous FTAs.

B. Competition

Competition comes as a stand-alone chapter only in China's FTAs with Korea, Switzerland, and Iceland. The competition chapters of China's FTAs with Switzerland and Iceland are largely the same and contain six short articles, which recognize the importance of competition issues and call for cooperation. The China–Korea FTA is similar in certain aspects including setting competition as one of the objectives of the FTA,¹¹⁷ the independence of domestic competition law enforcement or its agency,¹¹⁸ and the non-applicability of the dispute settlement system.¹¹⁹ Since the

¹⁰⁴ *Id.* art. 5.1(a).

¹⁰⁵ *Id.* art. 10.10.4.

¹⁰⁶ *Id.* art. 10.14.2.

¹⁰⁷ *Id.* art. 13.5.

¹⁰⁸ *Id.* art. 15.15.2.

¹⁰⁹ *Id.* art. 15.5.

¹¹⁰ *Id.* art. 15.15.2; Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 27.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1C, 108 Stat. 4809, 1869 U.N.T.S. 299 (entered into force on Jan. 1, 1995) [hereinafter TRIPS Agreement].

¹¹¹ China–Korea FTA, *supra* note 12, arts. 17.5.1, 17.6.

¹¹² *Id.* art. 17.24.1.

¹¹³ *Id.* arts. 14.1, 14.6.2.

¹¹⁴ *Id.* art. 12.9.1(a).

¹¹⁵ *Id.* Annex 12-B, ¶ 3(b).

¹¹⁶ *Id.* art. 15.15.2; TRIPS Agreement, *supra* note 110, art. 27.2.

¹¹⁷ China–Korea FTA, *supra* note 12, art. 1.2(c); CSWFTA, *supra* note 24, art. 1.1.2(d); Free Trade Agreement Between the Government of Iceland and the Government of the People's Republic of China art. 2.1(c), Ice.–China, Apr. 15, 2013 [hereinafter China–Iceland FTA].

¹¹⁸ China–Korea FTA, *supra* note 12, art. 14.11; CSWFTA, *supra* note 24, art. 10.3; China–Iceland FTA, *supra* note 117, art. 62.3.

¹¹⁹ China–Korea FTA, *supra* note 12, art. 14.12.2; CSWFTA, *supra* note 24, art. 10.6; China–Iceland FTA, *supra* note 117, art. 62.6.

promotion of fair competition in the markets is one of the five listed objectives of the China–Korea FTA,¹²⁰ competition concerns can be read to exist throughout the FTA.

The China–Korea FTA goes further regarding competition than previous ones. First, competition concerns are addressed in various chapters including those on competition, economic cooperation, and telecommunications. The competition chapter covers a broader range of areas including the prevention of anti-competitive business practices of enterprises, competition policies implementation, and cooperation.¹²¹

With respect to economic cooperation, the promotion of fair competition in the steel market is highlighted.¹²² The thrust of most telecommunications rules is to maintain fair competition, such as the prohibition of anti-competitive practice by major suppliers of public telecommunications networks or services.¹²³ The independence and impartiality of a telecommunications regulatory body is ensured,¹²⁴ and the universal service obligation needs to be administered in a “competitively neutral” way.¹²⁵ Competition concerns also exist in the encouragement of competition among telecommunications services suppliers in the allocation of spectrum for non-government telecommunications services.¹²⁶

Second, as clarified in the objectives of the competition chapter, a balance among trade liberalization, economic efficiency, and consumer welfare is needed. In particular, consumer welfare rarely appeared in previous China’s FTAs and is valued in the competition policy.¹²⁷ Under this policy, cooperation on consumer protection law will be strengthened and information exchange will be facilitated.¹²⁸

Third, competition law enforcement appears to be a focus of the competition rules of the China–Korea FTA. Its national treatment clause may even benefit the citizens of non-parties.¹²⁹ Parties shall not only maintain competition laws and enforcement authorities, but also take appropriate actions to forbid anti-competitive business practices.¹³⁰ With respect to competition law enforcement, the principles of transparency, non-discrimination, and procedural fairness are underlined.¹³¹ It offers

¹²⁰ China–Korea FTA, *supra* note 12, art. 1.2(c).

¹²¹ *Id.* art. 14.1.

¹²² *Id.* art. 17.8.2(c).

¹²³ *Id.* art. 10.6.1.

¹²⁴ *Id.* arts. 10.7.1, 10.7.2.

¹²⁵ *Id.* art. 10.8.

¹²⁶ *Id.* art. 10.10.4.

¹²⁷ *Id.* art. 14.1.

¹²⁸ *Id.* art. 14.6.2.

¹²⁹ *Id.* art. 14.3.2.

¹³⁰ *Id.* art. 14.2.

¹³¹ *Id.* art. 14.3.1.

market actors national treatment regarding competition law enforcement,¹³² and provides them the opportunity to present evidence for defense and to seek review of decisions through administrative reconsideration or litigation.¹³³ Transparency requirements apply to rules, decisions, and orders.¹³⁴ Early-stage notification of the enforcement activity and consultation on competition issues is also provided.¹³⁵

C. Environment

Environment is highlighted in the preamble, a stand-alone chapter, and other chapters. As reiterated in the preambles and environment chapters of the China–Korea FTA and CSWFTA, social development, economic development, and environmental protection are mutually reinforcing or supportive constituents of sustainable development.¹³⁶ A similar expression exists in the preamble of the China–New Zealand FTA but not in the ChAFTA preamble. The China–Korea FTA and CSWFTA adopt or incorporate provisions related to environment that is same as or similar to the WTO counterpart. Following the TRIPS Agreement, inventions may be excluded from patentability due to environmental concerns.¹³⁷ Both FTAs incorporate the TBT Agreement,¹³⁸ including its stipulations related to environmental concerns.¹³⁹ Urgent environmental protection problems fall under the exceptions for comment collection requirements of the proposed TBT measures.¹⁴⁰ Going beyond China's services commitments under the WTO, further liberalization of environmental services by both FTAs is provided through the mode of commercial presence. Under these additional commitments, wholly foreign-owned enterprises can be established in China to provide sewage services, solid waste disposal services, cleaning services of exhaust gases, noise abatement services, and sanitation services.¹⁴¹

Besides these new commitments, the China–Korea FTA also goes beyond WTO norms, particularly in its environment chapter. Thus far, the

¹³² *Id.* art. 14.3.2.

¹³³ *Id.* arts. 14.3.3(a), 14.3.3(b).

¹³⁴ *Id.* art. 14.4.

¹³⁵ *Id.* arts. 14.7, 14.8.

¹³⁶ *Id.* art. 16.1.1; CSWFTA, *supra* note 24, art. 12.1.2.

¹³⁷ China–Korea FTA, *supra* note 12, art. 15.15.2; CSWFTA, *supra* note 24, art. 11.8.2; TRIPS Agreement, *supra* note 110, art. 27.2.

¹³⁸ China–Korea FTA, *supra* note 12, art. 6.3; CSWFTA, *supra* note 24, art. 6.2.

¹³⁹ Agreement on Technical Barriers to Trade, preamble, arts. 2.2, 2.10, 5.4, 5.7, ¶ L of Annex 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1868 U.N.T.S. 120 (entered into force on Jan. 1, 1995) [hereinafter TBT Agreement].

¹⁴⁰ China–Korea FTA, *supra* note 12, art. 6.7.1; TBT Agreement, *supra* note 139, art. 5.7.

¹⁴¹ China–Korea FTA, *supra* note 12, Annex 8-A-2, 80-87; CSWFTA, *supra* note 24, Appendix 1 to Annex VII, 25-26.

China–Korea FTA and CSWFTA are the only two Chinese FTAs that contain an environmental chapter. They emphasize the implementation of multilateral environmental agreements (hereinafter “MEAs”) in domestic laws and practices,¹⁴² preventing trade or investment promotion at the expense of lowering environment protection.¹⁴³ Although environment chapters cannot be enforced through FTA dispute settlement,¹⁴⁴ the objective of sustainable development is highlighted and “integrated and reflected” in the trade relationship.¹⁴⁵ Compared with the CSWFTA, the environment chapter of the China–Korea FTA generally sets higher requirements except that environmental standards “should” — rather than “shall” — not constitute trade protectionism.¹⁴⁶ It further prohibits a decrease in environmental protection.¹⁴⁷ Higher or additional requirements exist in the review of the FTA’s impact on environment,¹⁴⁸ the effective enforcement of environmental measures,¹⁴⁹ “adequate and sustainable” financing necessary for rule implementation,¹⁵⁰ and a Committee on Environment and Trade to oversee the implementation.¹⁵¹

Going beyond the CSWFTA, more environmental provisions appear in the investment, intellectual property and economic cooperation chapters. Both parties shall refrain from encouraging investments by lowering environmental measures through waiving or derogating from environmental measures.¹⁵² Narrower in coverage, it resembles NAFTA Article 1114.2, which is virtually the same but also applies to health and safety requirements. Along with its counterpart in the environment chapter, the proscription of lower environmental protection to attract trade and investment helps to avoid “the race to the bottom”. Cooperation on the transfer of environmentally friendly technologies is encouraged.¹⁵³ On a related note, the China–Korea FTA requires “sustainable and responsible fishing” and calls for the cooperation on environment industry.¹⁵⁴

The China–Korea FTA seems to respect regulatory autonomy and refrains from going too far in interfering in domestic regulation, recognizing the sovereign right to set environmental protection levels and

¹⁴² China–Korea FTA, *supra* note 12, art. 16.4.3; CSWFTA, *supra* note 24, art. 12.2.1.

¹⁴³ China–Korea FTA, *supra* note 12, art. 16.5.2; CSWFTA, *supra* note 24, art. 12.2.2.

¹⁴⁴ China–Korea FTA, *supra* note 12, art. 16.9; CSWFTA, *supra* note 24, art. 12.7.3.

¹⁴⁵ China–Korea FTA, *supra* note 12, art. 16.1.2; CSWFTA, *supra* note 24, arts. 1.1.2(h), 12.1.3.

¹⁴⁶ China–Korea FTA, *supra* note 12, art. 16.1.3; CSWFTA, *supra* note 24, art. 12.2.2.

¹⁴⁷ China–Korea FTA, *supra* note 12, art. 16.5.2.

¹⁴⁸ *Id.* art. 16.6.

¹⁴⁹ *Id.* art. 16.5.1.

¹⁵⁰ *Id.* art. 16.8.5.

¹⁵¹ *Id.* arts. 16.8.3, 16.8.4.

¹⁵² *Id.* art. 12.16.

¹⁵³ *Id.* art. 15.30(d)(iii).

¹⁵⁴ *Id.* arts. 17.6.2(b), 17.18.2(d).

development priorities,¹⁵⁵ and refraining from authorizing extraterritorial environmental law enforcement.¹⁵⁶

Meanwhile, one sees that stricter environmental requirements start to being imposed, focusing on environmental measures enforcement and a broadening of the scope of environmental rules. The effective implementation of MEAs and domestic environmental measures is required,¹⁵⁷ and it will affect trade and investment. Environmental standards cannot be abused as disguised trade protectionism.¹⁵⁸ A best endeavor clause calls for a high level of environmental protection in laws and policies, which is expected to keep improving.¹⁵⁹ The environment chapter applies to various measures, including laws and regulations addressing environmental issues.¹⁶⁰ It can be broadly interpreted to cover any measure dealing with the environment. As environmental protection is highlighted in the preamble, one may also argue that environment rules have a broad scope of application and may affect every aspect of the agreement.

D. Conclusion

First, trade liberalization and investment protection are subject to more scrutiny to balance competing values, in which competition and environmental concerns receive greater attention. Besides two stand-alone chapters, relevant rules are highlighted or appear in other chapters. They start to impose concrete requirements that focus on good governance.

Second, compared with China's previous FTAs, a broader range of measures is governed by competition and environmental rules, and enforcement disciplines are emphasized. Competition rules help to promote trade and investment, while also protecting economic efficiency and consumer welfare. The environment chapter strives to strike a balance between stricter disciplines and regulatory autonomy. Although both chapters do not provide for enforceable rights or obligations through the FTA dispute settlement mechanism, they nevertheless assist in defining bilateral trade rules. These competition and environmental rules can substantially affect trade and investment.

Last but not least, remaining at an initial stage compared with larger FTAs, non-trade concerns clauses are declaratory with a limited number of substantial rights and obligations. Competition rules have not addressed certain issues including cross-border consumer protection. For instance, he

¹⁵⁵ *Id.* art. 16.3.1.

¹⁵⁶ *Id.* art. 16.5.3.

¹⁵⁷ *Id.* arts. 16.4.3, 16.5.1.

¹⁵⁸ *Id.* art. 16.1.3.

¹⁵⁹ *Id.* art. 16.3.2.

¹⁶⁰ *Id.* art. 16.2.

environment chapter does not deal with public participation,¹⁶¹ nor does it address access to remedies and procedural guarantees.¹⁶² However, these rules, if properly implemented and developed, have the potential to benefit outsiders and take on broader implications, since they may lead to changes in domestic law that usually does not differentiate with respect to nationality in its application.

V. ENHANCED GOOD GOVERNANCE NORMS

Good governance requirements can be found throughout the China–Korea FTA and can be classified into four major types: even-handedness, efficiency and effectiveness, due process, and transparency. Transparency rules, as broadly classified in the China–Korea FTA, consist of two categories: rules in the chapter on transparency (Blanket Provisions) that apply to the whole FTA with few exceptions; and rules in other chapters (Sectoral Provisions) that apply to specific areas. This part focuses on good governance at the national and local levels.

Good governance norms and, in particular, transparency requirements in the China–Korea FTA generally set higher requirements than those in the CSWFTA and WTO law. Meanwhile, some norms are more lenient than those of China's previous FTAs, including the 90-day time limit requirement on the issuance of advance ruling,¹⁶³ compared with a 60-day requirement in the China–New Zealand FTA regarding tariff classification.¹⁶⁴ As another example, different from the CSWFTA,¹⁶⁵ the China–Korea FTA does not contain a provision on measures at the border in SPS chapter that requires the prompt notification of reasons for the detention due to inconsistency with SPS requirements. Given the large number of good governance requirements, this part does not intend to compare every single requirement between the China–Korea FTA and the CSWFTA. Neither does the analysis differentiate the new development from stipulations that exist in the CSWFTA. Instead, typical examples in four key areas of investment, transparency, trade in goods, and services trade, are analyzed.

The investment chapter of the CSWFTA is a short one consisting of only two articles, including an article on information provision.¹⁶⁶ Almost

¹⁶¹ Free Trade Agreement Between the Republic of Korea and the United States of America art. 20.7, S. Kor.–U.S., *first signed on* June 30, 2007 (entered into force Mar. 15, 2012) [hereinafter KORUS FTA].

¹⁶² E.U.–Canada Comprehensive Economic and Trade Agreement art. X.6, E.U.–Can., *published on* Sept. 26, 2014 [hereinafter CETA].

¹⁶³ China–Korea FTA, *supra* note 12, art. 4.10.2.

¹⁶⁴ Free Trade Agreement Between the Government of the People's Republic of China and the Government of New Zealand art. 52.2(e)(i), China–N.Z., Apr. 7, 2008 (entered into force Oct. 1, 2008) [hereinafter China–New Zealand FTA].

¹⁶⁵ CSWFTA, *supra* note 24, art. 7.8.

¹⁶⁶ *Id.* art. 9.2.1.

none of the good governance norms for investment under the China–Korea FTA are found in the CSWFTA, including the obligations to publish regulations affecting investment in advance,¹⁶⁷ and to consider comments on investment regulations.¹⁶⁸

The transparency chapter is not found in China's recent FTAs with Switzerland and Iceland. Regarding the transparency chapter, China's FTAs with Korea, Australia and New Zealand are nearly the same and set the highest requirements among the FTAs concluded by China. The provisions in the transparency chapter of the China–Korea FTA apply to the entire FTA, including competition. It goes beyond the China–New Zealand FTA, which does not deal with competition that much. For other FTAs with a transparency chapter, the transparency chapter of the China–Korea FTA sets higher standards than China's FTAs with Costa Rica, Pakistan, Peru, and Chile. For instance, it calls for the publication of proposed measures in advance, and the opportunity for interested persons of the other party to comment on these measures. These requirements are lower or absent in China's FTAs with Costa Rica and Chile.¹⁶⁹ Moreover, enhanced transparency in the application of SPS measures is set as an objective of the SPS chapter in the China–Korea FTA,¹⁷⁰ but not in the CSWFTA.

Regarding trade in goods, good governance norms in anti-dumping and countervailing measures are stricter. In the CSWFTA, the notification of received anti-dumping application needs to be made before the initiation of an anti-dumping investigation, and no settlement meeting opportunity with the other party concerning the anti-dumping application is mentioned.¹⁷¹ Under the China–Korea FTA, such time limit is at least seven days before investigation initiation and a meeting opportunity is mentioned.¹⁷² Furthermore, due consideration and response to comments in the final determination on anti-dumping and countervailing measures¹⁷³ also goes beyond the CSWFTA and WTO law.

For services trade, stricter than the CSWFTA, the China–Korea FTA requires the relevant FTA committee to be informed of new or changed services trade measures at least annually,¹⁷⁴ and prompt response needs to be made to information requests concerning services trade measures or

¹⁶⁷ China–Korea FTA, *supra* note 12, art. 12.8.4(a).

¹⁶⁸ *Id.* art. 12.8.4(b).

¹⁶⁹ *Id.* arts. 18.1.2(a), 18.1.2(b); Free Trade Agreement Between the Government of the People's Republic of China and the Republic of Costa Rica art. 129.2(a), 129.2(b), China–Costa Rica, Apr. 8, 2010 (entered into force Aug. 1, 2011); Free Trade Agreement Between the Government of the People's Republic of China and the Republic of Chile art. 73.2, China–Chile, Nov. 18, 2005 (entered into force Oct. 1, 2006).

¹⁷⁰ China–Korea FTA, *supra* note 12, art. 5.1(b).

¹⁷¹ CSWFTA, *supra* note 24, art. 5.2.2.

¹⁷² China–Korea FTA, *supra* note 12, art. 7.8.1.

¹⁷³ *Id.* art. 7.7.2.

¹⁷⁴ *Id.* art. 8.8.3.

international agreements.¹⁷⁵ The clause on publication of relevant service measures in the China–Korea FTA¹⁷⁶ removes the exception of emergency in the GATS and CSWFTA,¹⁷⁷ and the publication is to be made promptly. As mentioned above, four types of good governance requirements will be analyzed here.

A. Even-handedness

Even-handedness requirements include (at least for the purpose of this paper) non-discrimination,¹⁷⁸ consistency, objectiveness, equitableness, good faith, and competition-related obligations.¹⁷⁹ Among them, non-discrimination and consistency are highlighted.

Non-discrimination is set as a principle for intellectual property and competition law enforcement,¹⁸⁰ and is required regarding the issuance of identification numbers in the compulsory marking or labeling of products,¹⁸¹ scarce telecommunications resources allocation,¹⁸² Tariff Rate Quota (hereinafter “TRQ”) administration measures and implementation,¹⁸³ the administration of universal services in telecommunications,¹⁸⁴ and the procession of applications submitted by financial service providers.¹⁸⁵ Some non-discrimination requirements apply to WTO-extra areas including national treatment regarding competition law enforcement¹⁸⁶ and investment.¹⁸⁷ Additionally, risk management in customs procedures shall not constitute “arbitrary or unjustifiable” discrimination.¹⁸⁸

Regarding consistency, measures of general application affecting issues subject to the FTA need to be administered in a consistent way under the Blanket Provisions.¹⁸⁹ Sectoral Provisions insist on the consistency of customs procedures and practices,¹⁹⁰ as well as of TRQ administration

¹⁷⁵ *Id.* art. 8.8.4.

¹⁷⁶ *Id.* art. 8.8.1.

¹⁷⁷ GATS, *supra* note 62, art. III.1; CSWFTA, *supra* note 24, art. 8.9.1.

¹⁷⁸ Susan Ariel Aaronson & M. Rodwan Abouharb, *Does the WTO Help Member States Improve Governance?*, 13(3) WORLD TRADE REV. 547, 548 (2014).

¹⁷⁹ DDG Singh: *Competition Policy is an Essential Element of Good Governance*, WTO, https://www.wto.org/english/news_e/news13_e/ddg_24apr13_e.htm (Apr. 24, 2013); Aaronson & Abouharb, *supra* note 178, at 553.

¹⁸⁰ China–Korea FTA, *supra* note 12, arts. 15.2.1, 14.3.1.

¹⁸¹ *Id.* art. 6.11.3(c).

¹⁸² *Id.* art. 10.10.1.

¹⁸³ *Id.* art. 2.14.2.

¹⁸⁴ *Id.* art. 10.8.

¹⁸⁵ *Id.* Annex 9-A, ¶ 4(a).

¹⁸⁶ *Id.* art. 14.3.2.

¹⁸⁷ *Id.* art. 12.3.

¹⁸⁸ *Id.* art. 4.13.2.

¹⁸⁹ *Id.* art. 18.3.

¹⁹⁰ *Id.* art. 4.3.1.

measures and implementation.¹⁹¹ The requirement of consistency applies to the implementation of laws and regulations (domestic rules) concerning customs on a best endeavor basis, which aims at the “inconsistent matters” in the implementation by regional customs authorities.¹⁹² The “uniform and consistent administration” of the chapter on rules of origin and origin implementation procedures is highlighted as well.¹⁹³

Competitive neutrality and objectiveness are imposed for universal service,¹⁹⁴ the allocation of scarce telecommunications resources and the administration of measures affecting services and financial services.¹⁹⁵ Other requirements call for equitable and good faith processing of applications made by financial service providers.¹⁹⁶

B. Efficiency and Effectiveness

Efficiency requirements are imposed on post clearance audit¹⁹⁷ and information technology supporting customs operations.¹⁹⁸ Comparable requirements exist for the identification number used in marking and labeling that must be issued “without undue delay”,¹⁹⁹ and for the timely administration of allocation procedures of scarce telecommunications resources.²⁰⁰ A concrete time limit is set for certain circumstances, including the issuance of advancing ruling by customs authorities.²⁰¹ Best endeavor clauses are provided for the expeditious processing of financial service providers’ applications,²⁰² and for the response to an information exchange request in 60 days.²⁰³ Furthermore, denial or late reply by the customs to an origin verification visit request could lead to denial of preferential tax treatment.²⁰⁴

Effectiveness requirements usually co-exist with efficiency and adequacy requirements. The effective and efficient implementation of origin rules and origin implementation procedures is guaranteed.²⁰⁵ Adequate and effective protection is provided as a principle for intellectual property,²⁰⁶

¹⁹¹ *Id.* art. 2.14.2.

¹⁹² *Id.* art. 4.4.

¹⁹³ *Id.* art. 3.28.4(b).

¹⁹⁴ *Id.* art. 10.8.

¹⁹⁵ *Id.* arts. 8.7.1, 9.6.2, 10.10.1.

¹⁹⁶ *Id.* Annex 9-A, ¶ 4(a).

¹⁹⁷ *Id.* art. 4.16.

¹⁹⁸ *Id.* art. 4.12.

¹⁹⁹ *Id.* art. 6.11.3(c).

²⁰⁰ *Id.* art. 10.10.1.

²⁰¹ *Id.* art. 4.10.2.

²⁰² *Id.* Annex 9-A, ¶ 4(a).

²⁰³ *Id.* art. 6.14.1.

²⁰⁴ *Id.* arts. 3.23.5(d), 3.23.5(e).

²⁰⁵ *Id.* arts. 3.27, 3.28.4(b).

²⁰⁶ *Id.* art. 15.2.1.

and applies to the protection of copyright and related rights,²⁰⁷ as well as industrial designs.²⁰⁸ It echoes the need to foster adequate and effective protection of intellectual property rights that is considered in the preamble of the TRIPS Agreement. Similarly, “adequate legal protection and effective legal remedies against the circumvention” are needed for technological measures related to copyright.²⁰⁹

C. Due Process

Due process is an established course for judicial proceedings or other governmental activities to protect the rights of individuals.²¹⁰ It consists of two major categories, the right to challenge administrative decisions,²¹¹ and the right to a fair hearing²¹² and a fair administrative proceeding.

The right to challenge administrative decisions is granted to market actors. A Blanket Provision requires the prompt review of administrative actions.²¹³ Sectoral Provisions grant access to the administrative and judicial review of administrative determinations by customs services,²¹⁴ and of sanctions or remedies in competition law investigations.²¹⁵ Moreover, the opportunity to contest or appeal a refusal to register a trademark,²¹⁶ and the judicial review of a determination or a decision regarding telecommunications by an “impartial and independent” adjudicator is provided.²¹⁷

The right to a fair hearing and a fair administrative proceeding includes, among others, notice, an opportunity for parties to present their position, and a consultation and meeting opportunity. Blanket Provisions set requirements for administrative proceedings and the review of final administrative actions.²¹⁸ The impartiality and reasonableness requirement is imposed on the administration of measures subject to the FTA.²¹⁹ In administrative proceedings, affected persons have the right to receive a reasonable notice including the description of the proceeding nature, the legal basis, and the issues in dispute,²²⁰ and a reasonable opportunity to

²⁰⁷ *Id.* art. 15.6.1.

²⁰⁸ *Id.* art. 15.20.1.

²⁰⁹ *Id.* art. 15.8.1.

²¹⁰ *Due Process*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/due+process> (last visited Sept. 22, 2015).

²¹¹ Aaronson & Abouharb, *supra* note 178, at 566.

²¹² BRYAN A. GARNER, BLACK'S LAW DICTIONARY 575 (9th ed. 2009).

²¹³ China–Korea FTA, *supra* note 12, art. 18.4.1.

²¹⁴ *Id.* art. 4.9.

²¹⁵ *Id.* art. 14.3.3(b).

²¹⁶ *Id.* art. 15.14.1(b).

²¹⁷ *Id.* art. 10.12.(b).

²¹⁸ *Id.* arts. 18.3, 18.4.

²¹⁹ *Id.* art. 18.3.

²²⁰ *Id.* art. 18.3(a).

present facts and arguments when possible.²²¹ For the review of final administrative actions, parties to the proceeding enjoy a reasonable opportunity to substantiate their position,²²² and a right to a decision established on evidence and record.²²³ Here the impartiality and independency of tribunals from administrative enforcement authorities must be ensured.²²⁴

In terms of Sectoral Provisions, they also call for procedural fairness. The principle of procedural fairness needs to be followed in competition law enforcement;²²⁵ in particular, it emphasizes an opportunity for affected parties to present their objections in a competition law investigation process.²²⁶ In the same vein, a fair system concerning proceedings affecting goods of the other party “should” be in place for anti-dumping and countervailing duties.²²⁷ It specifically forbids arbitrariness or protectionism in anti-dumping measures,²²⁸ and provides for a consultation and meeting opportunity at the different stages of trade remedy process. For instance, regarding the proposed price undertakings in anti-dumping and countervailing investigation, consideration of and opportunity for meetings with exporters or the other party are ensured.²²⁹ Before the initiation of investigation, a meeting with the other party concerning the anti-dumping application is possible.²³⁰ As a WTO-plus obligation, it provides the legal basis for the consultation opportunity that was often given in practice but was not provided in China’s previous FTAs. Consultation with the other party on the countervailing duty application is required,²³¹ but it has been provided under Article 13.1 of the Agreement on Subsidies and Countervailing Measures.

Due process requirements also target disguised trade restrictions in risk management in customs procedures,²³² and the implementation of post clearance audits cannot bring “unwarranted or unjustified” requirements on traders.²³³ The recourse to a telecommunications regulatory body for telecommunication dispute resolution is available.²³⁴ The applicant has an opportunity to respond to communications from trademark authorities.²³⁵

²²¹ *Id.* art. 18.3(b).

²²² *Id.* art. 18.4.2(a).

²²³ *Id.* art. 18.4.2(b).

²²⁴ *Id.* art. 18.4.1.

²²⁵ *Id.* art. 14.3.1.

²²⁶ *Id.* art. 14.3.3(a).

²²⁷ *Id.* art. 7.7.2.

²²⁸ *Id.* art. 7.7.3.

²²⁹ *Id.* arts. 7.9.2, 7.9.3.

²³⁰ *Id.* art. 7.8.1.

²³¹ *Id.* art. 7.8.2.

²³² *Id.* art. 4.13.2.

²³³ *Id.* art. 4.16.

²³⁴ *Id.* arts. 10.12.(a)(i), 10.12.(a)(ii).

²³⁵ *Id.* art. 15.14.1(b).

Transplanting GATS requirements, impartiality and reasonableness are required for the administration of measures affecting services and financial services.²³⁶

D. Transparency

The balance between transparency and the protection of confidential information is maintained in areas including anti-dumping and countervailing investigations,²³⁷ state trading enterprises,²³⁸ and investment.²³⁹ These confidentiality requirements are used to protect business sensitive information, privacy, and the public interest, or to ensure law enforcement.

Transparency serves as an objective for the SPS chapter,²⁴⁰ and as a principle for the intellectual property chapter²⁴¹ and for the competition law enforcement.²⁴² Transparency is required for the administration of universal service obligations, of allocation procedures of scarce telecommunications resources,²⁴³ and for the implementation of TRQ administration measures.²⁴⁴ Similar requirements apply to the system regarding anti-dumping and countervailing proceedings, but to a lesser extent, as the term “should” is used.²⁴⁵ Transparency requirements are calibrated for financial services to focus on enhanced regulatory transparency,²⁴⁶ and for customs procedures and practices to combine transparency with predictability.²⁴⁷ Most transparency norms can be segmented into publication, information provision, and the ability to comment upon trade or investment measures.

1. Publication. — The Blanket Provisions consist of prompt and advance publication requirements. For the former, measures concerning “any” matter covered by the FTA shall be promptly published or made available in another manner.²⁴⁸ For the latter, these proposed measures need to be published in advance “[t]o the extent possible”,²⁴⁹ except for financial services under which proposed regulations and their purposes

²³⁶ *Id.* arts. 8.7.1, 9.6.2; GATS, *supra* note 62, art. VI.1.

²³⁷ China–Korea FTA, *supra* note 12, art. 7.7.2.

²³⁸ *Id.* art. 2.11.2.

²³⁹ *Id.* art. 12.8.5.

²⁴⁰ *Id.* art. 5.1(b).

²⁴¹ *Id.* art. 15.2.1.

²⁴² *Id.* art. 14.3.1.

²⁴³ *Id.* art. 10.8, 10.10.1, 10.10.4.

²⁴⁴ *Id.* arts. 2.14.2.

²⁴⁵ *Id.* art. 7.7.2.

²⁴⁶ *Id.* art. 9.6.1.

²⁴⁷ *Id.* art. 4.3.1.

²⁴⁸ *Id.* art. 18.1.1.

²⁴⁹ *Id.* art. 18.1.2(a).

need to be published in advance.²⁵⁰

Two Sectoral Provisions are based on and to be applied with Blanket Provisions. “Further to” the Blanket Provisions, they require prompt publication of regulatory decisions and public availability of certain measures concerning telecommunications, as well as the publication of certain materials and measures regarding people mobility.²⁵¹

Other Sectoral Provisions on publication are highlighted in areas such as investment, and often extend to judicial and regulatory decisions and procedures. Compared with the Blanket Provisions, they set more stringent requirements, or elaborate their scope and impose same or lower requirements. A best endeavor clause calls for a reasonable interval between the publication of and the entry into force of domestic rules that may materially affect the implementation of investment chapter.²⁵² Advance publication is required for measures “of general application” affecting matters subject to the investment chapter.²⁵³ Prompt publication requirement applies to adopted technical regulations and procedures²⁵⁴ domestic rules, administrative procedures and rulings, judicial decisions of general application, as well as relevant international agreements concerning or affecting investment.²⁵⁵

Setting a moderate requirement, procedures of TRQ and related information need to be published on an internet site in a timely way,²⁵⁶ and the names and addresses of investment authorities need to be readily available.²⁵⁷ Certain sectoral rules only demand publication, but without the promptness requirement of the following documents: (i) final judicial decisions and administrative rulings of general application relating to intellectual property right enforcement,²⁵⁸ (ii) domestic rules regarding competition policy,²⁵⁹ and (iii) domestic rules, administrative rulings of general application, and relevant international agreements on government procurement.²⁶⁰ Similarly, procedures for interconnection negotiations with major telecommunications suppliers shall be publicized.²⁶¹ For electronic commerce, a best-effort obligation is imposed on the parties for

²⁵⁰ *Id.* art. 9.6.3(a).

²⁵¹ *Id.* arts. 10.13, 11.6.

²⁵² *Id.* art. 12.8.2.

²⁵³ *Id.* art. 12.8.4(a).

²⁵⁴ *Id.* art. 6.7.4.

²⁵⁵ *Id.* art. 12.8.1.

²⁵⁶ *Id.* Annex 2-A-1, ¶ 3.

²⁵⁷ *Id.* art. 12.8.1.

²⁵⁸ *Id.* art. 15.22.1.

²⁵⁹ *Id.* art. 14.4.1.

²⁶⁰ *Id.* art. 17.14.

²⁶¹ *Id.* art. 10.4.4.

the public availability of trade administration documents by electronic means.²⁶²

2. Information Provision. —

(a) Information provision between FTA parties. — The Blanket Provisions target the relationship between the FTA parties, but Sectoral Provisions extend to the relationship between these parties and interested persons. Under the Blanket Provisions, the other party must be notified if actual or proposed measures of a party might “materially” affect the FTA operation or “substantially” affect the other party’s interests,²⁶³ and a party must provide relevant information to and reply to questions from the other party on those measures.²⁶⁴

Under the Sectoral Provisions, both parties shall give notice and respond to questions concerning trade restrictions, trade remedies, and investment, among other criteria. Against the backdrop of WTO natural resources disputes, a proposed export prohibition or restriction on energy and mineral resources under GATT Article XI:2(a) must be notified in writing “as far in advance as practicable” including its reasons, nature and proposed duration.²⁶⁵ Besides the notification of the initiation of a bilateral safeguard investigation, consultation must be held “as far in advance of applying a safeguard measure as practicable.”²⁶⁶ The FTA also requires the notification of the receipt of anti-dumping application no later than seven days before the initiation of anti-dumping investigations.²⁶⁷ The origin determination and the verification visit result must be notified to the customs of the other party, which “to the extent possible” includes legal authority and fact findings in writing.²⁶⁸ Moreover, the parties need to respond to questions on investment measures,²⁶⁹ provide information on objectives of and rationale for existing or proposed technical regulations and procedures upon request,²⁷⁰ and ensure “maximum transparency possible” regarding information on individual cases of state trading enterprises.²⁷¹

(b) Information by FTA parties to market actors. — Sectoral obligations to provide information to interested persons can be categorized into three groups. The first and most common requirement is the usually written disclosure of reasons of decisions, including an explanation of reasons of a decision denying access regarding interconnection,²⁷² the

²⁶² *Id.* art. 13.6.1.

²⁶³ *Id.* art. 18.2.1.

²⁶⁴ *Id.* art. 18.2.2.

²⁶⁵ *Id.* art. 2.8.2.

²⁶⁶ *Id.* art. 7.2.1.

²⁶⁷ *Id.* art. 7.8.1.

²⁶⁸ *Id.* art. 3.23.3(e).

²⁶⁹ *Id.* art. 12.8.3.

²⁷⁰ *Id.* art. 6.7.2.

²⁷¹ *Id.* art. 2.11.2.

²⁷² *Id.* art. 10.13(c).

prompt notification to the importer of reasons of goods detention concerning TBT norms,²⁷³ a communication to the applicant of reasons for refusing to register a trademark,²⁷⁴ reasoned decisions in the trademark opposition and cancellation proceedings,²⁷⁵ and administrative decisions concerning competition laws with fact findings and legal basis.²⁷⁶

Stricter disclosure requirements are imposed for anti-dumping and countervailing duties. The disclosure shall (i) cover “all essential” facts and considerations underlying the decision to apply measures, (ii) be “full and meaningful”, (iii) be made “immediately” after provisional measures and before the final determination, (iv) be a written one, and (v) set out “sufficient” time for interested parties to comment.²⁷⁷ Certain disclosures are made upon request, including the reasons for denying the equivalence of technical regulations upon request of the other party,²⁷⁸ and the reasons for negative decisions on telecommunications licensing.²⁷⁹ Other disclosures are made “to the extent possible”, such as the identification of legal basis and fact findings in origin verification visit outcome.²⁸⁰

The second requirement is the notification of the status of administrative decisions, including timely notification to the financial service applicant when administrative decisions could not be made in 180 days,²⁸¹ the disclosure of verification result to exporters and producers in a reasonable period,²⁸² and the best endeavor provision of information on application status and decisions on movement of natural person.²⁸³

The third requirement is the explanation of information that is requested or reviewed, including the notification to exporters and producers of the nature of information to be verified and requested information,²⁸⁴ the availability of information reviewed by the customs to interested persons,²⁸⁵ and the response to interested persons’ inquiries concerning applications and procedures of people mobility.²⁸⁶

3. *Comment and consultation.* — Under a Blanket Provision, a “reasonable” comment opportunity shall, “[t]o the extent possible”, be available to the other party and its interested persons on proposed measures

²⁷³ *Id.* art. 6.12.

²⁷⁴ *Id.* art. 15.14.1(a).

²⁷⁵ *Id.* art. 15.14.1(d).

²⁷⁶ *Id.* art. 14.4.2.

²⁷⁷ *Id.* art. 7.7.2.

²⁷⁸ *Id.* art. 6.5.2.

²⁷⁹ *Id.* art. 10.9.2.

²⁸⁰ *Id.* art. 3.23.3(e).

²⁸¹ *Id.* art. 9.6.8.

²⁸² *Id.* art. 7.10.2.

²⁸³ *Id.* art. 11.6.3.

²⁸⁴ *Id.* art. 7.10.1.

²⁸⁵ *Id.* art. 4.10.3.

²⁸⁶ *Id.* art. 11.6.2.

that concern any issue subject to the FTA.²⁸⁷ It is stricter for financial services in which the buffer of “[t]o the extent possible” is removed.²⁸⁸

The Sectoral Provisions require a reasonable opportunity for the public to comment on investment-related regulations,²⁸⁹ the collection of comments from the other party within a period of no less than 60 days on proposed technical regulations and procedures.²⁹⁰ They lead to the consideration of comments before adopting regulations,²⁹¹ as well as due consideration of comments and endeavored response to comments on request respectively.²⁹² Here the due consideration requirement uses best-endeavor languages and is softened by the term “should”.

Comment obligations are stricter for trade remedies. After allocating sufficient time for comments by interested parties on disclosed facts and considerations underlying anti-dumping and countervailing decisions, the parties shall “take due consideration of” these comments and “make due responses” in final determinations.²⁹³

Finally, the public hearing in trade remedies²⁹⁴ is considered, and the consultation with industry by the host country is facilitated regarding the evolution of telecommunications policy, rules, and standards.²⁹⁵ Here the industry refers to the providers that come from one party but supply public telecommunications network or services within the host country.

E. Conclusion

First, focusing on trade practice and the administration of measures, good governance norms can be classified into even-handedness, efficiency and effectiveness, due process, and transparency. For even-handedness, non-discrimination and consistency are the core requirements. Due process norms concentrate on the right to challenge administrative decisions, and the right to a fair hearing and an administrative proceeding. Transparency norms cover publication and information provision, as well as comment and consultation. To sum up, transparency, and to a lesser degree, a right to a fair hearing and a fair administrative proceeding, non-discrimination, and efficiency, are highlighted in the FTA.

²⁸⁷ *Id.* art. 18.1.2(b).

²⁸⁸ *Id.* art. 9.6.3(b).

²⁸⁹ *Id.* art. 12.8.4(b).

²⁹⁰ *Id.* art. 6.7.1.

²⁹¹ *Id.* art. 12.8.4(b).

²⁹² *Id.* art. 6.7.3.

²⁹³ *Id.* art. 7.7.2.

²⁹⁴ *Id.* art. 7.11; As an element of the transparency norm, there are provisions of public hearing in WTO rules such as Article 3.1 of the Agreement on Safeguards, see Friedl Weiss & Steiner Silke, *Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison*, 30(5) *FORDHAM INT'L L. J.* 1545, 1583 (2007).

²⁹⁵ China–Korea FTA, *supra* note 12, art. 10.15.

Second, a two-tier norm system exists for transparency as well as certain even-handedness and due process norms, and transparency is set as an objective or a principle in certain areas. This system consists of Blanket Provisions and Sectoral Provisions, which complement each other. Sectoral Provisions are highlighted in areas including trade remedies and investment, and may have a broader scope. For instance, the Sectoral Provisions on publication often extend to judicial and regulatory decisions and procedures. Sectoral Provisions may be based on²⁹⁶ or replace blanket ones. Blanket Provisions can be stricter than Sectoral Provisions in requiring promptly publication of measures,²⁹⁷ but it remains open as to which rules shall prevail.

Third, good governance norms often develop from WTO obligations,²⁹⁸ and seem to be commensurate with the openness of specific areas. Setting higher requirements, the China–Korea FTA (i) enables narrowly applied WTO transparency norms to apply throughout the FTA (e.g., reasonableness, objectiveness, and impartiality requirements of GATS Article VI:1;²⁹⁹ review and correction of administrative actions relating to customs matters in GATT Article X:3(b)³⁰⁰), (ii) imposes stricter requirements if their application scope remains the same as the WTO counterpart (“full and meaningful” disclosure of “all essential” facts and considerations underlying anti-dumping and countervailing decisions³⁰¹ rather than disclosure of essential facts;³⁰² regarding the objectives of and rationale for technical regulations and procedures, information provided³⁰³ rather than a notified “brief indication”³⁰⁴), or (iii) inserts new requirements (possible public hearings in anti-dumping and countervailing investigations³⁰⁵). The foregoing can be linked with the practice. For instance, the disclosure of essential facts in trade remedy investigation is among the issues in *China — Autos (U.S.)*.³⁰⁶

²⁹⁶ *Id.* arts. 10, 12, 10.13, 11.6 (“[f]urther to” corresponding articles in Chapter 18 on transparency).

²⁹⁷ *Id.* arts. 14.4.1, 17.14.

²⁹⁸ The commitments of the transparency clause in China’s Accession Protocol are also recognized. *Id.* art. 9.6 n.3.

²⁹⁹ *Id.* art. 18.3.

³⁰⁰ *Id.* arts. 18.4.1, 18.4.3.

³⁰¹ *Id.* art. 7.7.2.

³⁰² Agreement on Subsidies and Countervailing Measures, art. 12.8, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1869 U.N.T.S. 14 (entered into force on Jan. 1, 1995); Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, art. 6.9, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1868 U.N.T.S. 201 (entered into force on Jan. 1, 1995).

³⁰³ China–Korea FTA, *supra* note 12, art. 6.7.2.

³⁰⁴ TBT Agreement, *supra* note 139, arts. 2.9.2, 2.10.1, 5.6.2, 5.7.1.

³⁰⁵ China–Korea FTA, *supra* note 12, art. 7.11.

³⁰⁶ Panel Report, *China — Anti-dumping and Countervailing Duties on Certain Automobiles from the United States (China — Autos)*, ¶¶ 7.58, 7.69–7.86, WTO Doc. WT/DS440/R (adopted June 18, 2014).

Good governance norms seem to be corresponding with the openness of the prescribed area. These norms are stricter in WTO-covered areas including trade remedies, TBT measures, customs procedures, telecommunications, financial services, origin rules, and intellectual property. More transparency norms can be found in trade remedies, investment, and TBT measures. In chapters with Sectoral Provisions, the requirements for government procurement are more lenient, and China is in the process of acceding to the WTO Agreement on Government Procurement. By comparison, as a WTO-extra area, the environment chapter is among the few chapters without Sectoral Provisions.

Finally, although new requirements such as competitive neutrality are inserted, there is much room for the development of good governance norms including Sectoral Provisions on due process and transparency. The environment chapter does not contain rules for public participation as exist in the KORUS FTA. As another example, it is not rare to find current requirements tempered with buffers and flexibilities like, “to the extent possible”,³⁰⁷ “should”, or “endeavor to”,³⁰⁸ which limit the effects of good governance norms.

VI. CONCLUSION

First, as a WTO-based FTA, the China–Korea FTA shows characteristics of expanded coverage, a highlighted focus on services and investment, increased non-trade concerns of competition and environment, and enhanced good governance norms, albeit to varying degrees.³⁰⁹

The feature of enhanced good governance norms is more salient than others, but generally the features are not fully developed. Transparency gets more attention, and a two-tier norm system exists for transparency as well as certain even-handedness and due process norms. Non-trade concerns of competition and environment are not striking, partially due to the fact that they involve regulators other than the authorities responsible for trade, and also because the progress in the multilateral trade system remains limited. Having said that, the gentle pace of China–Korea FTA is the major reason why the characteristics are generally not prominent. Similar with previous FTAs, the China–Korea FTA reflects the piecemeal, gradual, and pragmatic approach of China in upgrading the FTA rules. Quite a number of FTA rules copy or remain at the same level with the WTO counterpart, such as the consultation opportunity before the countervailing duty investigation.³¹⁰

³⁰⁷ China–Korea FTA, *supra* note 12, arts. 3.23.3(e), 4.4.

³⁰⁸ *Id.* arts. 6.7.3, 7.7.2.

³⁰⁹ This article takes a Chinese perspective, but generally these features can also be found in other FTAs of Korea.

³¹⁰ *See, e.g.,* China–Korea FTA, *supra* note 12, art. 7.8.2.

To a certain extent, the China–Korea FTA is a high level one compared with China's previous FTAs, and is more legalistic and rule-based regarding areas such as competition. However, for these features and other aspects (e.g., tariff reduction,³¹¹ rules for behind-the-border measures, and dispute settlement), it is not comparable with larger regional or mega FTAs including Korea's FTAs with the E.U. and U.S.³¹² In subsequent negotiations, the gap may be reduced and the policy and regulatory focus could be broader. If so, these features could be further developed.

Second, these features may be attributable to a variety of factors, particularly the response to trade practice and disputes (e.g., digital trade, new technology, the confirmation of both countries' position on zeroing, the fact disclosure requirement in *China — Autos (U.S.)*), the impact of other trade and investment agreements (e.g., the negative list approach and pre-establishment national treatment in China–U.S. BIT negotiations), and the need of economic transformation of China (e.g., the increasing focus on services). WTO rule development (e.g., the Agreement on Trade Facilitation) and reshaping (e.g., the prohibition of the surrogate value methodology) play a less important role here. Instead, both parties' willingness to strengthen cooperation and China's desire to enhance the FTA level seem to play a crucial role.

Third, these features may face challenges. A main challenge is how to effectively ensure the compliance with and to interpret relevant obligations. It is not rare that the China–Korea FTA offers a degree of flexibility for FTA parties regarding the best-effort obligations. Domestic implementation, including the implementation at the local government level, deserves attention. As another example, it remains to be seen whether there is a discrepancy between the enforcement measures existing on the books and the actual levels of, and resources distributed to, enforcement of intellectual property rights.³¹³ The interpretation of the FTA could also be a problem. The relationship between different chapters of this FTA, and between the FTA and domestic law is not always clear. For instance, measures affecting financial services need to be administered in a "reasonable, objective, and impartial" way,³¹⁴ while domestic legal requirements are respected.³¹⁵ If domestic legal requirements fail to meet these requirements, it remains open as to which one prevails. Since the China–Korea FTA does not

³¹¹ See CCTV, *supra* note 6; *The KORUS Advantage: A Basic Guide for US Companies to the Contents of the KORUS FTA*, AMERICAN CHAMBER OF COMMERCE IN KOREA AND US KOREA BUSINESS COUNCIL, <https://www.uschamber.com/sites/default/files/legacy/international/files/KORUS%20Advantage%20Final.pdf>.

³¹² *Asia Trade Update*, MAYER BROWN CONSULTING (2015), <https://www.mayerbrown.com/files/Publication/fcfd8ba1-eb87-4515-bb4f-f5b71502a99c/Presentation/PublicationAttachment/99f4037f-a491-48fb-aa82-f9594ae9cc7a/MBC-AsiaTradeUpdate-Newsletter-FebMar2015.pdf>.

³¹³ Handler & Bryan, *supra* note 16, at 362.

³¹⁴ China–Korea FTA, *supra* note 12, art. 9.6.2.

³¹⁵ *Id.* art. 9.6, n. 3.

expressly include an exemption for intellectual property rights as provided in the China–Japan–Korea Investment Agreement,³¹⁶ it is not absolutely clear whether the failure to protect intellectual property is always subject to the ISDS. A similar situation may exist for the prudential measures in financial services which is provided in the financial service chapter³¹⁷ but is not expressly exempted from the ISDS, as in the China–Japan–Korea Investment Agreement.³¹⁸

Finally, in spite of Chinese FTAs' malleability,³¹⁹ these features of the China–Korea FTA are likely to represent some of the future direction of China's FTAs. The China–Korea FTA marks an important development regarding new norms, which are more important than tariff reduction in the long run. It is believed to lay the foundation for the development of the China–Japan–Korea FTA, the RCEP, and even a Free Trade Area of the Asia-Pacific.³²⁰ More progress is to be made regarding services and investment, which is highlighted by the guideline of subsequent negotiations and could be based on China's ongoing investment treaty negotiations. In future FTAs, China's trade and investment negotiation outcome (e.g., China's BIT negotiations, and the RCEP) is likely to be incorporated. As another example, environmental provisions probably will be strengthened given external pressures (e.g., BIT negotiations with the U.S. and E.U., global climate change talks) and internal incentives.

Against the backdrop of larger and mega FTAs, the goal of a high-level FTA³²¹ is the driving force behind the China–Korea FTA and will remain a guiding force for China's future FTAs. Overall, WTO norms will remain highly relevant, although the majority of them have already been considered and the WTO negotiations are beleaguered. Besides negotiations on the accession of China to the Agreement on Government Procurement as indicated in the FTA, other multilateral or plurilateral negotiations within and outside the WTO will be relevant, including those on the Information Technology Agreement, the Environmental Goods Agreement, and the Trade in Services Agreement. On a related note, FTAs can potentially affect WTO negotiations.³²² Other larger or mega FTAs may have more impact, including the TPP and the Transatlantic Trade and Investment Partnership, whose provisions deal with legal issues related to

³¹⁶ CJKIT, *supra* note 94, art. 15.12(a).

³¹⁷ China–Korea FTA, *supra* note 12, art. 9.5.

³¹⁸ CJKIT, *supra* note 94, art. 15.12(b).

³¹⁹ Zhao & Timothy, *supra* note 25, at 99.

³²⁰ See CCTV, *supra* note 6.

³²¹ *The Korean Business Circle Holds a Reception to Celebrate the Signing of China–Korea FTA*, MINISTRY OF COMMERCE OF CHINA (June 2, 2015, 9:01 AM), http://english.mofcom.gov.cn/article/z_t_chinakoreafta/news/201506/20150601019382.shtml.

³²² China scheduled liquid-crystal display (LCD) panels in the China–Korea FTA. A newsletter indicated that China declined to include LCDs in its tariff concessions, as per Korea's request, in the negotiation to expand the ITA. See also Mayer Brown Consulting, *supra* note 312, at 2.

these features. Actually the TPP negotiation has been “a major driver” in accelerating the China–Korea FTA negotiation.³²³ Larger FTAs have affected the China–Korea FTA, such as minimum standard of treatment in investment as discussed above. Looking at the China–Korea FTA rules regarding trademarks as another example, the provision on exceptions to trademarks rights is not commonly found in China’s previous FTAs, and seems to be affected by the E.U.–Korea FTA.³²⁴ The provisions on trademarks, including well-known trademarks, resemble those in the KORUS FTA, although they are not as strict.³²⁵ Of course, other factors including Chinese initiatives (e.g., the Silk Road Economic Belt and the 21st Century Maritime Silk Road initiatives), and the needs of the parties to FTAs, will have an effect.

The China–Korea FTA is one of China’s most developed FTAs. It is a springboard to a competitive Chinese FTA in the long term. However, it is not an easy task going along this road. The trajectory of China’s FTAs will be worth watching closely to see whether and to what extent they follow or differ from the rules of new mega FTAs, as well as what impact this may have on future multilateral or plurilateral negotiations.

³²³ Dukgeun Ahn, *Systemic Issues for the Post MC-9 WTO System*, 9(2) ASIAN J. WTO & INT’L HEALTH L. & POL’Y 367, 374 (2014).

³²⁴ This provision is not found in China’s FTAs with Switzerland, New Zealand, and Iceland. It is included in Korea’s FTAs with China and E.U. and the TRIPS Agreement. China–Korea FTA, *supra* note 12, art. 15.12; Free Trade Agreement Between the European Union and the Government of the Republic of Korea art. 10.17, E.U.–S. Kor., Sept. 16, 2010; TRIPS Agreement, *supra* note 110, art. 17.

³²⁵ For example, the China–Korea FTA differs from the KORUS FTA as it does not state that scent could constitute a trademark. China–Korea FTA, *supra* note 12, arts. 15.11.2, 15.13; KORUS FTA, *supra* note 12, arts. 18.2.1, 18.2.6, 18.2.7, 18.2.8.

REFERENCES

Books

- FOLSOM, RALPH H. ET AL. (2012), *INTERNATIONAL TRADE AND ECONOMIC RELATIONS IN A NUTSHELL*, 5th ed.
- GARNER, BRYAN A. (2009), *BLACK'S LAW DICTIONARY*, 9th ed.

Articles

- Aaronson, Susan Ariel & M. Rodwan Abouharb (2014), *Does the WTO Help Member States Improve Governance?*, 13(3) *WORLD TRADE REVIEW* 547.
- Ahn, Dukgeun (2014), *Systemic Issues for the Post MC-9 WTO System*, 9(2) *ASIAN JOURNAL OF WTO AND INTERNATIONAL HEALTH LAW AND POLICY* 367.
- Andersen, Henrik (2015), *Protection of Non-Trade Values in WTO Appellate Body Jurisprudence: Exceptions, Economic Arguments, and Eluding Questions*, 18(2) *JOURNAL OF INTERNATIONAL ECONOMY LAW* 383.
- Choi, Nakgyoon (2012), *Impacts and Main Issues of the Korea–China FTA*, 28 *KOREA ECONOMY* 29.
- Guzman, Andrew T. (2004), *Global Governance and the WTO*, 45 *HARVARD INTERNATIONAL LAW JOURNAL* 302.
- Handler, Michael & Mercurio Bryan (2016), *Intellectual Property*, in *BILATERAL AND REGIONAL TRADE AGREEMENTS: COMMENTARY AND ANALYSIS* 324 (Simon Lester et al. eds. 2nd ed.).
- Meltzer, Joshua P. (2016), *Investment*, in *BILATERAL AND REGIONAL TRADE AGREEMENTS: COMMENTARY AND ANALYSIS* 245 (Simon Lester et al. eds. 2nd ed.).
- Richieri Hanania, Lilian (2012), *Cultural Diversity and Regional Trade Agreements — The European Union Experience with Cultural Cooperation Frameworks*, 7 *ASIAN JOURNAL OF WTO AND INTERNATIONAL HEALTH LAW AND POLICY* 423.
- Snyder, Francis (2009), *China, Regional Trade Agreements and WTO Law*, 43 *JOURNAL OF WORLD TRADE* 1.
- Wagner, Markus (2014), *Regulatory Space in International Trade Law and International Investment Law*, 36 *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW* 1.
- Wang, Guiguo (2011), *China's FTAs: Legal Characteristics and Implications*, 105 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 493.
- Weiss, Friedl & Steiner Silke (2007), *Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison*, 30(5) *FORDHAM INTERNATIONAL LAW JOURNAL* 1545.
- Yu, Peter K. (2015), *Sinic Trade Agreements and China's Global*

Intellectual Property Strategy, in INTELLECTUAL PROPERTY AND FREE TRADE AGREEMENTS IN THE ASIA-PACIFIC REGION 247 (Christoph Antons & Reto M. Hilty eds.).

Zhao, Jun & Timothy Webster (2011), *Taking Stock: China's First Decade of Free Trade*, 33 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 65.

Cases

Appellate Body Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WTO Doc. WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R (adopted August 7, 2014).

Panel Report, *China — Anti-dumping and Countervailing Duties on Certain Automobiles from the United States*, WTO Doc. WT/DS440/R (adopted June 18, 2014).

Treaties

Agreement Among the Government of Japan, the Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment, Japan–S. Kor.–China, May 13, 2012.

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1868 U.N.T.S. 201 (entered into force on January 1, 1995).

Agreement on Subsidies and Countervailing Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1869 U.N.T.S. 14 (entered into force on January 1, 1995).

Agreement on Technical Barriers to Trade, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1A, 1868 U.N.T.S. 120 (entered into force on January 1, 1995).

Agreement on the Encouragement and Reciprocal Protection of Investments Between The Government of the Republic of Korea and the Government of the People's Republic of China, S. Kor.–China, September 30, 1992, 1739 U.N.T.S. 287 (entered into force on December 4, 1992).

Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1C, 108 Stat. 4809, 1869 U.N.T.S. 299 (entered into force on January 1, 1995).

European Union–Canada Comprehensive Economic and Trade Agreement, E.U.–Can., published on September 26, 2014.

Free Trade Agreement Between the European Union and the Government of the Republic of Korea, E.U.–S. Kor., September 16, 2010.

- Free Trade Agreement Between the Government of Iceland and the Government of the People's Republic of China, Ice.–China, April 15, 2013.
- Free Trade Agreement between the Government of the People's Republic of China and the Government of New Zealand, China–N.Z., April 7, 2008 (entered into force October 1, 2008).
- Free Trade Agreement Between the Government of the People's Republic of China and the Republic of Costa Rica, China–Costa Rica, April 8, 2010 (entered into force August 1, 2011).
- Free Trade Agreement Between the Government of the People's Republic of China and the Republic of Chile, China–Chile, November 18, 2005 (entered into force October 1, 2006).
- Free Trade Agreement between the Government of the Republic of Korea and the Government of the People's Republic of China, S. Kor.–China, June 1, 2015.
- Free Trade Agreement Between the People's Republic of China and the Swiss Confederation, China–Switz., July 6, 2013.
- Free Trade Agreement between the Republic of Korea and the United States of America, S. Kor.–U.S., first signed on June 30, 2007 (entered into force March 15, 2012).
- General Agreement on Trade in Services, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 1B 108 Stat. 4809, 1869 U.N.T.S. 183.

Internet Sources

- 2012 United States Model Bilateral Investment Treaty, <http://www.state.gov/r/pa/prs/ps/2012/04/188199.htm>.
- Asia Trade Update*, MAYER BROWN CONSULTING (2015), <https://www.mayerbrown.com/files/Publication/fcfd8ba1-eb87-4515-bb4f-f5b71502a99c/Presentation/PublicationAttachment/99f4037f-a491-48fb-aa82-f9594ae9cc7a/MBC-AsiaTradeUpdate-Newsletter-FebMar2015.pdf>.
- Business Review 2015: Positive Progress Made in FTA Construction*, CHINA FTA NETWORK (February 1, 2016), http://fta.mofcom.gov.cn/enarticle/enrelease/201601/30414_1.html.
- China eyes service trade for balanced growth*, XINHUANET (May 28, 2012), http://www.chinadaily.com.cn/business/2012-05/28/content_15405967.htm.
- China, S. Korea Sign FTA as New Growth Engine*, XINHUANET (June 1, 2015), http://news.xinhuanet.com/english/2015-06/01/c_134287692.htm.
- China, South Korea Sign FTA Deal*, XINHUANET (June 1, 2015), http://www.china.org.cn/world/2015-06/01/content_35708706.htm.
- China – ROK FTA Negotiations Completed*, CHINA FTA NETWORK (March

- 11, 2015), http://fta.mofcom.gov.cn/enarticle/enrelease/201503/20754_1.html.
- DDG Singh: Competition policy is an essential element of good governance*, WTO, https://www.wto.org/english/news_e/news13_e/ddg_24apr13_e.htm (April 24, 2013).
- Gao Hucheng To Cooperate for the Prosperity of Regional Development with the Help of the China-Korea Free Trade Agreement*, CHINA FTA NETWORK (June 12, 2005), http://fta.mofcom.gov.cn/enarticle/enkorea/enkoreanews/201506/22055_1.html.
- Hufbauer, Gary Clyde & Cimino-Isaacs Cathleen, *Is China a Market Economy?*, EASTASIAFORUM (July 28, 2015), <http://www.eastasiaforum.org/2015/07/28/is-china-a-market-economy/>.
- ROK Grants China Market-Economy Status*, CHINA DAILY (November 17, 2015), http://www.chinadaily.com.cn/english/doc/2005-11/17/content_495399.htm.
- S. Korea, China Formally Sign Free Trade Deal*, YONHAP NEWS AGENCY (June 1, 2015), <http://english.yonhapnews.co.kr/national/2015/06/01/95/0301000000AEN20150601001552320F.html>.
- SCHOTT, JEFFREY J. ET AL., AN ASSESSMENT OF THE KOREA – CHINA FREE TRADE AGREEMENT 1, <https://www.piie.com/publications/pb/pb15-24.pdf>.
- Due Process*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/due+process> (last visited September 22, 2015).
- The Korean Business Circle Holds a Reception to Celebrate the Signing of China – Korea FTA*, MINISTRY OF COMMERCE OF CHINA (June 2, 2015, 9:01 AM), http://english.mofcom.gov.cn/article/zt_chinakoreafta/news/201506/20150601019382.shtml.
- The KORUS Advantage: A Basic Guide for US Companies to the Contents of the KORUS FTA*, AMERICAN CHAMBER OF COMMERCE IN KOREA AND US KOREA BUSINESS COUNCIL, <https://www.uschamber.com/sites/default/files/legacy/international/files/KORUS%20Advantage%20Final.pdf>.
- United Nations Conference on Trade and Development, *Investment Policy Framework for Sustainable Development*, <http://investmentpolicyhub.unctad.org/Upload/Documents/Investment%20Policy%20Framework%20for%20Sustainable%20Development%202015.pdf> (last visited August 20, 2015).
- United Nations Conference on Trade and Development, *Recent Trends in IIAs and ISDS*, http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d1_en.pdf (last visited August 25, 2015).
- Zhongguo hanguo ziyou maoyi xieding 50 wen [50 Questions of China – Korea FTA]*, CCTV (June 1, 2015), <http://m.news.cntv.cn/2015/06/01/ARTI1433136728385679.shtml>.

Zhonghan zimaao xieding zhu hanguo yuesheng zhongguo dierda maoyi huoban [China – Korea FTA helps Korea Become the Second Largest Trading Partner of China], CHINA FTA NETWORK (February 21, 2016), http://fta.mofcom.gov.cn/article/fzdongtai/201601/30354_1.html.

Others

Houde, Marie-France et al. (2007), *The Interaction Between Investment and Services Chapters in Selected Regional Trade Agreements*, 55 OECD TRADE POLICY WORKING PAPER. <http://211.253.40.86/mille/service/ers/20000/IMG/000000012408/JT03229309.pdf>.

Negotiating Group on Rules, Proposal of the People's Republic of China on the Negotiation on Anti-dumping, WTO Doc. TN/RL/W/66 (March 6, 2003).

Negotiating Group on Rules, Proposal on Prohibition of Zeroing — Paper from Brazil; Chile; Columbia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Switzerland and Thailand, WTO Doc. TN/RL/W/113 (June 6, 2003).

Shang Biao Fa [Chinese Trademark Law] (promulgated by the Standing Committee of the National People's Congress, August 23, 1982, effective March 1, 1983; revised by the Standing Committee of the National People's Congress, August 30, 2013).