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### **World Trade Re-Organization: Reforming Canada's Trade Relations with China**

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#### **Abstract**

Some World Trade Organization (“WTO”) members have lost faith in the WTO’s multilateral trade system, perceiving that China violates WTO obligations and principles. This paper explores WTO members’ main complaints against China, including that China 1) privileges domestic industry and companies; 2) steals intellectual property (“IP”) and forces technology transfer; and 3) misuses WTO mechanisms like antidumping duties and developing country status. The nature of China’s denials will be explored, as will examples of recent WTO disputes between Canada and China which demonstrate these tensions and nuance them. Many tensions originate from China’s status as a mixed socialist-market economy, which showcases the need for WTO reform. This paper concludes by recommending policies to alleviate some tensions in an attempt to re-legitimize the WTO in the eyes of China’s critics, which is especially important as Canada is leading talks for WTO reform.

Keywords: Canada-China relations, policy recommendations, rules of trade, trade facilitation, WTO

## 1. Introduction

World Trade Organization (“WTO”) tensions between China and Canada have attracted more attention in recent years. Some tensions stem from Chinese government interference and subsidies to domestic industry, intellectual property (IP) theft and technology transfer practices, and leveraging WTO mechanisms to their own benefit. All these practices have attracted complaints from WTO members. China denies wrongdoing. In Part 2, this paper will explore these tensions. I will then in Part 3 analyze these tensions through recent WTO litigation between Canada and China: one, an antidumping case wherein China levied duties despite weak evidence and methodology to demonstrate dumping; and two, a ceasing of Canadian canola imports into China due to political tensions. These cases buttress the mainstream narrative that China uses WTO mechanisms for its own private gain – sometimes at the expense of WTO principles. Indeed, as will be analyzed in Part 4 of this paper, many WTO tensions stem from China’s mixed market-socialist economy, which allows China to benefit both from government interference in key strategic industries and free-market principles leading to multilateral trade privileges. Such tensions have led some states to question the WTO’s ability to ensure fair trade and rapid dispute resolution.

Globalism, however, cannot be reversed and Canada benefits from global trade and supply chains, including those with China, as demonstrated by Canada’s import and export of key medical supplies during the COVID-19 pandemic. Any suggested WTO reforms must aim to re-legitimize the WTO and maintain a multilateral trade system for Canada’s benefit. China’s WTO participation, with enhanced WTO accountability measures, could encourage China’s continued evolution towards a market-economy,<sup>1</sup> and WTO legitimacy will make it more likely that other states will buy into such a process. In short, China’s participation in the WTO is critical if Canada and its allies seek to maintain a fair multilateral trade regime.

In Part 5 of this paper, I will recommend policies for Canada’s stance on WTO reform, including by 1) treating different Chinese industries as developed or developing (I will suggest potential attributes to determine industry status); 2) enhancing efficiency of dispute resolution, transparency, and monitoring functions so China is accountable to their WTO commitments; and 3) recognizing Canada’s need to prepare for future WTO tensions by diversifying trade partners and leveraging opportunities of northern trade routes. These proposed policies aim to re-legitimize the WTO and maintain a multilateral trade system for Canada’s benefit.

## 2. WTO-China Tensions

When joining the WTO, China accepted WTO standards and revised their domestic laws to reflect those standards.<sup>2</sup> With this promising start, WTO members believed that China's WTO membership would help China's evolution towards an "open and market-oriented approach to economy and trade."<sup>3</sup> However, in the years since, the international community has claimed that China does not respect its WTO commitments. China denies these claims. Canada is leading WTO reform discussion,<sup>4</sup> which necessitates an exploration of tensions driving reform so that any reform may address those tensions.

### *a. Privileging Chinese industry and companies*

Some WTO members claim that China privileges domestic industry despite their WTO commitments. For example, China failed to join the Government Procurement Agreement ("GPA"), even though the WTO encourages member states to do so. The GPA advances the National Treatment Principle, which means giving others the same treatment as one's own nationals, by "mutually open[ing] government procurement markets among [WTO] parties."<sup>5</sup> WTO members have rejected China's GPA offers, saying China's offers do not go far enough in "scope and coverage"<sup>6</sup> for the types of government procurement open to WTO parties. In other words, WTO members believe that accepting China's GPA offers would be to the advantage of Chinese firms at the expense of its trading partners.

WTO members further complain that Chinese State-Owned Enterprises ("SOEs") are advantaged by the Party-State's interference in SOE management and investment via the State-owned Assets Supervision and Administration Commission ("SASAC").<sup>7</sup> SASAC, as a shareholder, influences SOE decisions for political reasons, which violates WTO commitments against privileging any vendor or state.<sup>8</sup>

WTO members also protest against China's failure to eliminate and reduce production and export subsidies, including those to SOEs.<sup>9</sup> China particularly subsidizes the production of steel, glass, paper, and automobiles,<sup>10</sup> which can lower production costs and give domestic firms competitive business advantages over foreign firms. Claims abound that SOEs have access to cheap bank loans in China, allowing SOEs to outbid foreign competitors.<sup>11</sup> Subsidies, a global trade surplus, and manipulation to keep renminbi value low can together distort trade.

WTO members have accused China of subsidizing foreign companies which manufacture in China.<sup>12</sup> The US argues that this practice counters the WTO *Agreement on Subsidies and Countervailing Measures*, which prohibits subsidies contingent on using domestic goods over imported goods.<sup>13</sup>

#### i. China's response

China has affirmed its commitment to joining the GPA and opening their domestic government procurement markets. China recently submitted its seventh offer to join the GPA, after having begun the entry negotiation process in 2007. The seventh offer is more expansive in scope, as for the first time it added the military sector. The Chinese Ministry of Finance said its seventh offer was a move to accelerate China's attempts to join and demonstrated China's commitment to the WTO.<sup>14</sup> China claims their most recent offers respond to international community comments on previous offers,<sup>15</sup> but that negotiating partners should be practical in their expectations in order to rapidly conclude negotiations.<sup>16</sup>

China contends that after a period of SOE reform, SOEs are now – or will be – managed more like private enterprises despite government ownership. China claims that its SOE reform aims to turn SOEs into independent self-managed, self-disciplined entities responsible for profits and losses.<sup>17</sup> Many SOEs are now standard, joint-stock, or mixed-ownership companies. The Ministry of Commerce of the People's Republic of China ("MOFCOM") has said that the WTO can accommodate different local conditions, including China's trade model which includes SOEs.<sup>18</sup>

China denies that they violate WTO rules by providing special subsidies to Chinese SOEs. MOFCOM says subsidies to "cash-starved domestic companies is a practical way for them to seek and gain new market growth points" and that any disputes will be resolved under WTO rules.<sup>19</sup> Some Chinese academics compare Chinese subsidies to American tax breaks.<sup>20</sup> When accused of subsidizing their auto industry, China pointed out American government subsidies to General Motors and Chrysler, which helped with the American auto industry's recovery from the 2008 economic crisis.<sup>21</sup>

#### b. *Technology transfer and IP theft*

China is accused of neglecting its WTO obligation to protect IP rights<sup>22</sup> with laws and regulations that undermine foreign IP-holders' ability to freely negotiate market-based contracts.

Joining the WTO required China's recognition of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS").<sup>23</sup> TRIPS protects intellectual

property, including copyright, patents, and trademarks.<sup>24</sup> WTO members accuse China of violating TRIPS.

For example, the European Union (“EU”) and United States (“US”) have alleged that China violates TRIPS by forcing technology transfer. Even though technology transfer is at first glance consensual and enshrined in bilateral contracts, Chinese regulations facilitate technology transfer from foreign to Chinese companies. China requires foreign companies to produce locally and/or enter joint venture (“JV”) agreements with Chinese companies to access certain markets (like theatres<sup>25</sup>, auto industries, or wind turbines<sup>26</sup>). Even when JV agreements are not mandated by regulation, foreign companies often need to form JVs to navigate the complicated Chinese legal and regulatory landscape.<sup>27</sup> The regulations on Chinese companies in certain industries require technology transfer from foreign partners to form JVs<sup>28</sup> and Chinese law requires technology transferred to the JV to be to China’s benefit.<sup>29</sup>

Further, China has historically been alleged to impose different rules for foreign technology imports than it does for Chinese companies, contrary to the WTO National Treatment Principle. This principle is also found in TRIPS, and requires equal treatment of imported and domestically produced goods.<sup>30</sup> The *Regulations for the Implementation of the Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures*, which were in force until early 2020, included performance measures for transferred technology<sup>31</sup>, which counters China’s WTO *Accession Protocol* commitment to not enforce contractual clauses with performance requirements.<sup>32</sup> The *Regulations* also provided that Chinese companies could use transferred technology from foreign firms even after technology transfer agreements expired.<sup>33</sup> Chinese companies were not subject to similar requirements. The effects of the new regulations, *Regulation on the Implementation of the Foreign Investment Law of the People’s Republic of China*, remain to be seen.

WTO members also claim that China steals IP. In 2020, the American Federal Bureau of Investigation accused China of stealing IP and data to compete against foreign firms globally and domestically.<sup>34</sup> Theft may occur through phishing or espionage,<sup>35</sup> both of which allow Chinese actors to steal or reverse-engineer foreign technology and export it for profit.<sup>36</sup> Additionally, if foreign companies register IP in China, they must rely on the Chinese legal system to protect their IP. The Chinese legal system can be confusing for foreigners who are not familiar with it, and courts may not provide robust IP protection particularly in certain rural centers.<sup>37</sup>

The United States also argues that China, against their WTO obligations, creates trade barriers: China limits their adoption of foreign IP protection standards and instead

implements different compulsory standards.<sup>38</sup> This complaint may become more relevant as China aims to promulgate their own international standards.<sup>39</sup>

#### i. China's response

China responds that accusations of forced technology transfers and theft are unfounded, saying that “such accusations are conjured up by desperate US politicians looking to score points...technology transfers between Chinese firms and their foreign partners happen on a consensual basis.”<sup>40</sup>

China notes that their *Foreign Investment Law*, which came in force on January 1, 2020, protects against forced technology transfer and IP theft. Article 22 specifies that “the State shall protect the IP rights of foreign investors and foreign-funded enterprises, and protect the legitimate rights and interests of holders of IP rights.”<sup>41</sup> The article also provides that during foreign investment processes, “no administrative department...shall force any transfer of technology by administrative means” and technology cooperation shall be pursued based on free will and business rules.<sup>42</sup>

At a recent WTO meeting, China reaffirmed its commitment to TRIPS and turned the tables back on the US. The official accused the US of failing to honour TRIPS since the US has not implemented remedies for a 2004 WTO ruling which found that the US had violated foreigners' IP rights in trade.<sup>43</sup>

Further, China denies they steal IP for technology advancement.<sup>44</sup> China has responded to these complaints by alleging that such American reports are “fabricated on the willful distortion of selective facts and dubious evidence that either cannot be verified or be admitted in any credible dispute proceeding.”<sup>45</sup> The Chinese Ministry of Foreign Affairs has said that China never participates in or supports theft of commercial secrets, and in turn accused the US government of hacking and spying on foreign companies, governments, and individuals.<sup>46</sup>

#### c. Misuse of WTO mechanisms

Finally, members of the international community complain that China misuses WTO mechanisms.

Rather than using WTO trade remedies – including antidumping and countervailing duty investigations – to protect Chinese industry from unfair trade practices, some states argue that China uses these remedies as political responses to dissuade other states from exercising their WTO rights.<sup>47</sup> Some countries, when they complain to the WTO, say they fear Chinese retaliation through trade sanctions.<sup>48</sup>

Some WTO members further argue that China misuses WTO “developing country” status since China’s GDP and share of exports are among the highest globally. Countries classifying themselves as “developing” have “special and differentiating” treatment at the WTO, which translates to special rights and extra leniency,<sup>49</sup> including longer periods to implement commitments, softer tariff cuts, and procedural advantages in WTO dispute resolution.<sup>50</sup> They can also provide certain export subsidies<sup>51</sup> and implement stringent requirements for market entry,<sup>52</sup> including by retaining tariffs and quotas on imports by delaying their implementation of WTO agreements. China maintaining their developing country status thus advantages domestic Chinese producers. However, as the US points out, China’s exports are not only from “low-wage manufacturing sectors”. Indeed, China ranks first globally for exports of high-technology products.<sup>53</sup> “Developing country” status allows China to justify protecting domestic industry at the expense of other WTO members,<sup>54</sup> even though China’s economy is arguably as powerful as developed nations’ economies.

#### i. China’s response

MOFCOM responds that China’s antidumping measures align with Chinese laws and WTO rules.<sup>55</sup> China argues they exercise “caution and restraint in taking trade remedy measures.”<sup>56</sup> MOFCOM further contends that during antidumping investigation processes, China protects “legitimate interests and rights of all stakeholders” including by collecting comments from the state who has been alleged to be dumping.<sup>57</sup>

China believes their Non-Market Economy (“NME”) status should have expired in 2016, but due to pressure has let its WTO challenge against its NME status lapse.<sup>58</sup> Still, it is worth highlighting that China is subject to harsher antidumping duties as an NME.<sup>59</sup> China thus may apply antidumping duties to even the duties playing field, especially since they disagree with their NME status. This issue will be explored later in this paper.

In response to critiques about “developing country” status, MOFCOM called China “the largest developing country in the world.”<sup>60</sup> MOFCOM responds to critiques by noting that China’s per capita GDP is ranked low at 71<sup>st</sup> in the world, and despite this, China exceeds its WTO developing country obligations as China’s tariff levels are lower than other developing members and are closer to the levels of developed states.<sup>61</sup> China thus argues any advantages derived through their WTO developing country status are legitimate and minimal.

### **3. Recent Canada and China Disputes at the WTO**

There have been two recent disputes between Canada and China at the WTO. In both, Canada complained and China responded. Analyzing past WTO disputes between

Canada and China is imperative to identify and alleviate tensions between the two countries so that Canada may continue to benefit from multilateral trade and diplomacy with China.

*a. Anti-Dumping Measures on Imports of Cellulose Pulp from Canada*

In 2017, a WTO panel determined that China violated WTO rules when MOFCOM levied antidumping duties between 13-24% on cellulose pulp imported from Canada.<sup>62</sup>

Three years prior, Canada filed a request for consultations with China at the WTO, arguing that these antidumping duties were inconsistent with the *Anti-Dumping Agreement* and the *General Agreement on Tariffs and Trade* (“GATT 1994”).<sup>63</sup> Under GATT 1994, antidumping duties are permitted if: one, a product has been sold at less than its normal value in the importing country or the product has been dumped by exporting firms; and two, the dumping causes or threatens material injury to an established industry in the territory.<sup>64</sup> To determine material injury per WTO standards, the *Anti-Dumping Agreement* required China to prove the dumped imports caused suppressed or depressed prices in the domestic market.<sup>65</sup>

China’s response ultimately failed because they could not demonstrate that the Canadian imports *caused* decline in domestic prices; rather, they only showed correlation.<sup>66</sup> MOFCOM has used the same methodology, “parallel price trends”, in WTO litigation in attempt to show domestic prices and subject import prices fluctuate in the same way over a period of time.<sup>67</sup> The WTO gives discretion regarding methodology, but China has been unsuccessful in other cases where they used a parallel price trends methodology, which may demonstrate a weakness in the methodology;<sup>68</sup> this may be a mechanism Chinese authorities use to protect domestic industry via antidumping duties, despite weak legal claims and evidence.<sup>69</sup> Thus, China arguably misuses this trade remedy.

However, we must nuance our understanding: WTO complaints often result from local industry pressuring governments to file litigation before a WTO panel or to respond politically (leading to WTO complaints from other states). In the cellulose pulp case, domestic pulp producers in China were hurting economically. Analysis from Canadian economist Michael Stone suggests that lowered prices for cellulose pulp were not due to dumping Canadian exports, but rather due to a price drop in competitive materials (meaning that there was less demand for pulp) and an increase in Chinese cellulose pulp production.<sup>70</sup> The cost of pulp production is higher in China relative to other countries, making China’s producers increasingly less competitive as pulp prices



normalized.<sup>71</sup> Going forward, Canada and China could coordinate production to avoid excess capacity and harm to local industry based on each country's relative strengths. Production of pulp is expensive in China, which demonstrates that Canada and China will both benefit from global supply chains if each specializes in efficient production of different goods.

*b. Measures Concerning the Importation of Canola Seed from Canada*

In 2019, China suspended imports of canola seed from two Canadian companies and implemented enhanced inspection on all other Canadian canola companies because of alleged pests in Canadian canola. Canada argued China's actions countered WTO principles due to unsubstantiated evidence and scientific principles, and differential treatment between WTO members with same or similar conditions (thus violating the most-favoured-nation principle).<sup>72</sup> To date, the dispute has not been officially resolved.

Canadian policy experts and media argue that the canola dispute is retaliation for political disputes between the Canadian and Chinese governments, specifically the arrest of Huawei executive Meng Wanzhou by Canadian authorities.<sup>73</sup> Compounding this was that at the time, the Canadian government was weighing whether to ban Huawei 5G technology from Canada due to potential security risks.<sup>74</sup> Many Canadian politicians speculated that Huawei 5G technology had security "bugs" as justification for a Huawei ban; in response, the Chinese authorities alleged bugs in Canadian canola to justify suspending imports.

The Canada-China canola dispute should be read as an example of China misusing trade sanctions as political pressure, contrary to WTO principles.<sup>75</sup> While Canada-China canola trade has largely normalized, any future retaliatory sanctions from China stand to harm Canadian producers and industry. Despite this, Canada should not bend to political pressure from China when making foreign policy decisions. Canada should further diversify trade partners while pushing for WTO reform that includes more rapid dispute resolution processes. These suggestions will be explored further in this paper.

#### **4. China: A socialist market economy**

China has not achieved a market economy as exists in Canada, which has caused tensions at the WTO. While the Chinese economy "embraces market-oriented dynamics, it is not strictly a free-market system" because of hierarchized relationships between business and the state.<sup>76</sup>

Since 1974, China has gradually reformed its economy by introducing market elements such that it is no longer strictly a planned economy.<sup>77</sup> Such ongoing reform has already included privatization of many SOEs, managing for economic incentives, and efficient allocation of SOE assets into the larger economy.<sup>78</sup> There has been a push to turn more Chinese SOEs into “mixed ownership” firms, wherein equity is held jointly by the state and private shareholders.<sup>79</sup> There are also continued general trends towards state asset privatization, including by having SOE management make decisions based on commercial considerations rather than direct Party-State control.

However, in conjunction with reform, the Chinese Party-State has learned to exercise influence both within and outside ownership stakes in business. In a recent speech to the 19<sup>th</sup> Party Congress, President Xi Jinping said that China is committed to party authority in conjunction to growth of Chinese industry.<sup>80</sup> In line with these principles, within the economy there are links between the state, Communist Party, and firms; these links are often informal, but they can be very powerful.<sup>81</sup> For example, the government has links to powerful members of the private sector, provides financial support to firms, and supervises and interviews managers for compliance with matters of state interest.<sup>82</sup> Under a 2020 regulation, SOEs are now required to maintain a role for the Party in corporate governance.<sup>83</sup> Even within the private context, the Party-State has indicated that they intend for similar corporate representation in private enterprises. Ye Qing, the Vice Chairman of the All-China Federation of Industry and Commerce, has indicated that in the future the Party-State might enjoy oversight and control over human resource decisions in private companies, while also being able to audit internal behaviour. Ye also indicated that the Party-State should “clarify its role in the corporate governance structure of private companies”,<sup>84</sup> which may indicate that – much like SOEs – private enterprises will be required to leave space for Party officials on their boards.

With these interconnected relationships, the Party-State exercises influence over firms regardless of its ownership stake.<sup>85</sup> Market forces do play an influential and important role in the Chinese economy, but so too does the Party-state;<sup>86</sup> rather than an invisible hand operating in China, the Party-State’s hand can be heavy when it wishes to exercise influence, demonstrated by President Xi’s commitment to supporting SOEs over private enterprise in industries the Chinese state has deemed to be strategic.<sup>87</sup> Yet, China remains a dynamic and fluid state, as the balance between socialism and market orientation shifts depending on domestic and international trends.<sup>88</sup> China refers to this mix between socialism and market economy as “socialism with Chinese characteristics” or a “socialist market economy.”<sup>89</sup>

China's mixed socialist-capitalist system has implications for global trade, including at the WTO. China's membership in the WTO was granted with the hope that the Chinese economy would mature into a market economy as exists in Canada, the EU, or the US.<sup>90</sup> Thus, China's mixed economy has led to two particular and related complications at the WTO.

First, it is difficult for the WTO to track whether subsidies to domestic Chinese industries are against WTO rules. This is due to the lack of strict divide between public entities and private firms. Under WTO rules, "public bodies" cannot generally subsidize industries. However, private enterprises are not prohibited from providing subsidies under WTO rules, allowing a non-public Chinese entity (like a private bank) to provide subsidies or preferential loans even when such entity has links to the government.<sup>91</sup> Such links to the Party-State make it difficult to determine whether a private firm is, in principle, a "public body" for WTO purposes. The difficulty extends to other realms: even if China had no laws requiring technology transfer for market entry, if firms with links to the Party-State put such conditions in their private contracts with foreign firms, then it is unclear whether China is complying with WTO obligations.

Second, China is classified as an NME at the WTO, which has effects for antidumping cases against China. When China joined the WTO, it agreed to accept NME status until 2016. China allowed an appeal of their NME status at the WTO to lapse, and therefore China still has NME status.<sup>92</sup> China's NME status makes it easier for states to impose antidumping tariffs against China, given the assumption that state intervention can distort domestic prices, leading to inaccuracy between domestic and export market prices. China's NME status allows complaining countries to select a third-country comparator given the risk of domestic market distortion, which gives complainants "wider latitude in determining the level of antidumping duties against NMEs because of the flexibility in selecting the third-country comparator."<sup>93</sup> As discussed, China's disagreement with their NME status may lead to China's implementation of anti-dumping duties in attempts to even the playing field, rather than China's continued market liberalization.

## **5. Policy recommendations**

As Canada is taking a lead in WTO reform discussion,<sup>94</sup> it is worth outlining policy recommendations for Canada's stance on WTO reform as it relates to China. In line with the below policy recommendations, Canada should continue to support multilateral trade at the WTO and China's membership to it; Canada benefits from multilateral trade and China's historical compliance with WTO judgements stands to allow the WTO to influence China, as a dynamic state, to become more market oriented.<sup>95</sup>

*a. Adopt an asymmetrical approach*

Canada should support an asymmetric trade policy approach towards China at the WTO based on relative development of Chinese industries. This policy would capture China's NME and developing country status.

An asymmetric policy requires assessing trade with China on two levels: whether it involves developed industry or developing industry. Any transactions involving business in developing industries could retain the "developing country" benefits China currently enjoys at the WTO. However, transactions involving business in China's developed industries would not be entitled to "developing country" status. China's reliance on developing country status at the WTO has advantaged it by allowing some industry subsidization and tariff retention, thus allowing developed Chinese industries to continue growth at the expense of foreign trading partners. Treating developed and developing industry differently will allow for industries in need to benefit from "developing" status while also ensuring China does not exploit WTO rules for the benefit of industries which are world leading.

Tests should be developed to determine which industries are classified as "developed" or "developing." Attributes could be, for example, China's self-proclamation of industries in which they aim to lead, company performance in target sectors, and relative GDP by sector. Further attributes should be considered and developed at future WTO meetings. In any case, approaching China as if it has two different developmental levels – developing and developed – would alleviate some current tensions at the WTO involving China's continued use of developing country status.

Canada should also support the WTO using an asymmetric policy regarding China's NME status. The WTO should treat private firms linked to the Party-State as "public bodies" which thus hold NME status. However, those firms which are classified as private enterprises with no or very limited links to the Party-State should not be classified as part of an NME. These firms should be rewarded with rights for their free-market principles. Such policy would encourage more liberalization in China, as purely private enterprises operating with free-market principles would benefit financially: antidumping tariffs cannot be so easily levied against firms without NME status, thus also benefitting Chinese economy. Thus, the WTO could be used as a tool to encourage China's continued shift to a free market economy.

*b. Increase WTO legitimacy: dispute resolution, negotiation, transparency*

As noted by the Ottawa Group, WTO resolution processes as well as monitoring and transparency should be reformed.<sup>96</sup>

Countries like the US have lost faith in the WTO, as China has managed to benefit both from free-market trade and a mixed socialist-capitalist system domestically. Yet, the WTO helps to moderate member states: bilateral sanctions in lieu of multilateral trade would stand to push the Chinese government to support domestic companies, thus increasing the socialist aspects of China's mixed economy to the detriment of fair multilateral trade.<sup>97</sup>

Reform should target the lengthy WTO dispute resolution process; if a dispute is not resolved bilaterally, the WTO process takes years. In the interim before a resolution, during the dispute resolution process, China can continue to benefit from trade practices that are against WTO rules,<sup>98</sup> including continued use of foreign IP, tariffs, or embargos (like with Canadian canola). The WTO should implement tighter timeframes for each step of the dispute resolution process and adhere to the timelines unless both parties to a dispute otherwise agree. Canada should back the proposal that monetary compensation should be provided to the wronged party if the offending state is not complying or providing trade-related compensation,<sup>99</sup> which would protect Canadian interests when it comes to antidumping and IP. Note that such proposal would need consent from WTO members.

Transparency and monitoring functions should also be enhanced. Countries over time have neglected to comply with obligations to notify the WTO, including regarding subsidies. Transparency is needed for WTO legitimacy so that implementation of agreements and resolutions of disputes and negotiations can be monitored, and new rules can be negotiated based on accurate information of state subsidies.<sup>100</sup> In this way, China's legitimate subsidies can be parsed out from non-legitimate subsidies, thus streamlining the complaints system. Fewer illegitimate complaints will be brought before the WTO, and enhanced reporting and transparency could help WTO states manage global supply chains.

Enhanced monitoring functions at the WTO can act as a deterrent for China's violation of foreign IP rights. As it stands, China remains largely undeterred; China thus continues to benefit from IP gained through forced technology transfer despite WTO members complaining about such practices.<sup>101</sup> Such reforms would contribute to procedural justice – balancing both efficiency and justice – at the WTO, which in turn would legitimize the WTO.<sup>102</sup>

### *c. Diversify and Defend*

Canada should develop diverse trade relationships while also defending our own trade interests to benefit from WTO processes.

Canada should continue to diversify trade relationships, including with and beyond China. Canada effectively has four borders: with the US to the south, with the EU to the east, with Asia to the west, and our northern arctic border. Canada should look to all four borders and develop strategies or trade relationships with states in each; thus, if trade relations sour with China either temporarily or more long-term, Canada has options.

Thus, Canada should also derive advantages from our northern border. With melting glaciers, new trade routes are opening through Canada's Arctic passage. China is preparing for these opportunities, as they identify the "Polar Silk Road" as future trade routes in their 2018 Arctic Policy.<sup>103</sup> Canada should be aware that such routes may be subject of future WTO complaints, as Canada claims sovereignty over internal waters in the Arctic<sup>104</sup> and China claims these routes will be subject to free passage per their reading of international law.<sup>105</sup>

## 6. Conclusion

This paper has addressed claims and counterclaims regarding China's non-respect of WTO commitments. The paper has also explored recent WTO disputes between Canada and China and how China's status as a mixed market-socialist system may affect WTO reform. In response, this paper has proposed policy recommendations for WTO reform as it relates to China. Ultimately, Canada should support the WTO and efforts to re-legitimize it. Globalization is difficult to reverse and global supply chains benefit Canada, meaning that China will likely continue to be a key trading partner for Canada. China's continued WTO participation, with enhanced WTO accountability measures, stands to encourage China's continued evolution towards a market-economy. WTO legitimacy will ensure other states buy into such a process. Ultimately, China's participation in the WTO is critical for a fair multilateral trade regime benefitting Canada and other states alike.

## Endnotes

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<sup>1</sup> James Bacchus, Simon Lester & Huan Zhu, "Disciplining China's Trade Practices at the WTO: How WTO Complaints Can Help Make China More Market-Oriented" (15 November 2018) Policy Analysis 856, *CATO Institute*, online (pdf): <<https://www.cato.org/publications/policy-analysis/disciplining-chinas-trade-policies-wto-how-wto-complaints-can-help>>.

<sup>2</sup> China joined the WTO in 2001. See United States Trade Representative, "2018 Report to Congress on China's WTO Compliance" (2019) at 8, online: Executive Office of the President

of the United States <<https://china.usc.edu/sites/default/files/article/attachments/2018-report-chinas-WTO-compliance.pdf>>.

<sup>3</sup> *Ibid.*

<sup>4</sup> Global Affairs Canada, “Joint Communiqué of the Ottawa Ministerial on WTO Reform” (2018), online: Government of Canada <<https://www.canada.ca/en/global-affairs/news/2018/10/joint-communique-of-the-ottawa-ministerial-on-wto-reform.html>>.

<sup>5</sup> World Trade Organization, “Agreement on Government Procurement” (2020), online: WTO <[https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)>.

<sup>6</sup> United States Trade Representative, “2015 Report to Congress on China’s WTO Compliance” (2015) at 14, online: Executive Office of the President of the United States <<https://china.usc.edu/sites/default/files/article/attachments/2015-Report-to-Congress-China-WTO-Compliance.pdf>>.

<sup>7</sup> *Supra* note 2 at 100.

<sup>8</sup> World Trade Organization, *Accession of the People’s Republic of China* (held on 21 November 2001), WTO Dec WT/L/432, online: WTO <<http://worldtradelaw.net/misc/ChinaAccessionProtocol.pdf.download>> at Art 6(1).

<sup>9</sup> *Ibid.* 10. See specific provision in WTO *Agreement on Subsidies and Countervailing Measures* (Uruguay Round Agreement), online: WTO <[https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)> at Art 3.

<sup>10</sup> Stephen Ezell, “Top 9 False Promises That China Made in Joining the World Trade Organization” (2015) online: Innovation Files <<https://www.innovationfiles.org/top-9-false-promises-that-china-made-in-joining-the-world-trade-organization/>>.

<sup>11</sup> Margaret Cornish, “Behaviour of Chinese SOEs: Implications for Investment and Cooperation in Canada” (2012) Canadian International Council at 12.

<sup>12</sup> World Trade Organization, *China – Measures Concerning Wind Power Equipment* (held on 22 December 2010), WTO Doc G/L/950, online: WTO <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds419\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds419_e.htm)>.

<sup>13</sup> *Supra* note 9.

<sup>14</sup> Xinhua News Agency, “China submits 7th offer to join government procurement agreement at WTO” (2019), online: Xinhua <[http://www.china.org.cn/business/2019-10/22/content\\_75325914.htm](http://www.china.org.cn/business/2019-10/22/content_75325914.htm)>.

<sup>15</sup> World Trade Organization, “China submits revised offer for joining government procurement pact” (2019), online WTO <[https://www.wto.org/english/news\\_e/news19\\_e/gpro\\_23oct19\\_e.htm](https://www.wto.org/english/news_e/news19_e/gpro_23oct19_e.htm)>.

<sup>16</sup> Ministry of Commerce People’s Republic of China, “Regular Press Conference of the Ministry of Commerce (April 12, 2018)” (2018) online: MOFCOM <<http://english.mofcom.gov.cn/article/newsrelease/press/201804/20180402733489.shtml>>.

<sup>17</sup> Ministry of Commerce People’s Republic of China, “Beijing vows to stick to neutrality in dealing with State-owned enterprises” (2018) online: MOFCOM <<http://english.mofcom.gov.cn/article/counselorsreport/europereport/201810/20181002795984.shtml>>.

<sup>18</sup> Ministry of Commerce People’s Republic of China, “MOFCOM Holds Press Briefing on the Relevant Issues about the Reform of the WTO” (2018) online: MOFCOM <<http://english.mofcom.gov.cn/article/pressconferenceinyears/2018/201811/20181102810628.shtml>>.

<sup>19</sup> Ministry of Commerce People’s Republic of China, “MOFCOM: China’s Subsidies Comply with WTO Rules” (2015) online: MOFCOM <<http://english.mofcom.gov.cn/article/counselorsreport/americandoceanreport/201502/20150200897968.shtml>>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Ministry of Commerce People’s Republic of China, “Campaign politics should not victimize China-U.S. trade ties: (2012) online: MOFCOM

<<http://english.mofcom.gov.cn/article/newsrelease/counseloroffice/westernasiaandaficareport/201209/20120908346104.shtml>>.

<sup>22</sup> *Supra* note 8 at Art 8(a).

<sup>23</sup> *Ibid* Art 2(A)(2).

<sup>24</sup> World Trade Organization, *Trade-Related Aspects on Intellectual Property Rights* (Uruguay Round Agreement), online: WTO <[https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_02\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_02_e.htm)> at preamble.

<sup>25</sup> Dezan Shira & Associates, “China Investment Roadmap: The Entertainment Industry” 152 China Briefing at 12.

<sup>26</sup> Keith Bradsher, “How China Obtains American Trade Secrets”, *New York Times* (2020) <<https://www.nytimes.com/2020/01/15/business/china-technology-transfer.html>>.

<sup>27</sup> *Ibid*.

<sup>28</sup> For example, China only allows foreign automobile manufacturers to operate domestically if they form JVs with Chinese companies, none of which can be foreign owned. This creates a de facto requirement for foreign companies to transfer technology to their joint venture partner. See *Supra* note 2 at 115.

<sup>29</sup> World Trade Organization, *China – Certain Measures on the Transfer of Technology Request for Consultations by the European Union* (submitted on 8 January 2019) WTO Doc WT/DS549/1/Rev.1

<<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/549-1R1.pdf&Open=True>> at page 5. See also WTO, *China – Certain Measures Concerning the Protection of Intellectual Property Rights Request for Consultations by the United States* (submitted on 26 March 2018) WTO Doc WT/DS542/1

<<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/542-1.pdf&Open=True>>.

<sup>30</sup> *Supra* note 24 at Art 3.

<sup>31</sup> Arts 5, 41 *Regulations for the Implementation of the Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures* (People’s Republic of China).

<sup>32</sup> *Supra* note 8 at para 7.3.

<sup>33</sup> *Supra* note 31 at Art 46(4).

<sup>34</sup> Christopher Wray, “The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States”, Remark, (2020) Hudson Institute.

<sup>35</sup> See alleged espionage on Nortel, a Canadian company, by Chinese actors. Nortel eventually went bankrupt at least partly due to being underbid by Chinese company Huawei. Sam Cooper, “Inside the Chinese military attack on Nortel”, *Global News* (2020) <<https://globalnews.ca/news/7275588/inside-the-chinese-military-attack-on-nortel/>>.

<sup>36</sup> Carl Roper, *Trade Secret Theft, Industrial Espionage, and the China Threat* (Boca Raton: CRC Press 2014) at 178-179.

<sup>37</sup> *Ibid* at 193.

<sup>38</sup> U.S.-China Economic and Security Review Commission, “2020 Report to Congress of the U.S.-China Economic and Security Review Commission” (2020) at 107, online: <[https://www.uscc.gov/sites/default/files/2020-12/2020\\_Annual\\_Report\\_to\\_Congress.pdf](https://www.uscc.gov/sites/default/files/2020-12/2020_Annual_Report_to_Congress.pdf)>.

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<sup>40</sup> Ministry of Commerce People’s Republic of China, “Commentary: Washington’s trade bullying: lies and fallacies” (2019) online: MOFCOM

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<sup>41</sup> Art 22 *Foreign Investment Law of the People’s Republic of China* (People’s Republic of China).

<sup>42</sup> *Ibid*.



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- <sup>44</sup> Russel Flannery, “China Theft of US Information, IP One of Largest Wealth Transfers In History: FBI Chief”, *Forbes* (2020) <<https://www.forbes.com/sites/russellflannery/2020/07/07/china-theft-of-us-information-ip-one-of-largest-wealth-transfers-in-history-fbi-chief/?sh=a13636644406>>.
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- <sup>49</sup> World Trade Organization, “Who are the developing countries in the WTO?”, online: WTO <[https://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm)>.
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- <sup>54</sup> *Supra* note 2 at 20.
- <sup>55</sup> Ministry of Commerce People’s Republic of China “Minister of Commerce Zhong Shan Meets the Press at the “Ministers’ Corridor” during the 2020 NPC, CPPCC Annual Sessions” (2020) online; MOFCOM <<http://english.mofcom.gov.cn/article/newsrelease/significantnews/202005/20200502967446.shtml>>.
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- <sup>60</sup> *Supra* note 52.
- <sup>61</sup> *Supra* note 17.
- <sup>62</sup> WTO, *China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada Report of the Panel* (submitted on 25 April 2017) WTO Doc WT/DS483/R.
- <sup>63</sup> *Anti-Dumping Agreement (Implementation of Article VI of the GATT)* (entered into force 15 April 1994), Marrakesh Agreement at Art VI.
- <sup>64</sup> General Agreement on Tariffs and Trade, 1994 (entered into force 15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1A [GATT 1994] at Art VI(1).

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- <sup>79</sup> *Ibid* at 4.
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- <sup>82</sup> *Supra* note 78 at 11-12.
- <sup>83</sup> Scott Livingston, “The Chinese Communist Party Targets the Private Sector” (8 October 2020), *Center for Strategic & International Studies*, online (pdf): <[https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/201008\\_Livingston\\_CCP%20Targets%20Private%20Sector\\_WEB%20FINAL.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/201008_Livingston_CCP%20Targets%20Private%20Sector_WEB%20FINAL.pdf)>.
- <sup>84</sup> *Ibid.*
- <sup>85</sup> *Supra* note 78 at 2.
- <sup>86</sup> *Supra* note 76.
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- <sup>90</sup> *Supra* note 2.
- <sup>91</sup> *Supra* note 76 at 301-302.
- <sup>92</sup> *Supra* note 58.
- <sup>93</sup> *Supra* note 76 at 305.
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<sup>97</sup> See, for example, Huawei: Zak Doffman, “Huawei Just Gave You A Stunning New Reason To Switch Phones” *Forbes* (2020)

<<https://www.forbes.com/sites/zakdoffman/2020/12/13/huawei-just-gave-you-a-reason-to-switch-to-apple-iphone-or-samsung-android-alternatives/?sh=2e19fc56d3b1>>.

<sup>98</sup> I.e., antidumping measures, tariffs, use of IP through forced technology transfer or theft.

<sup>99</sup> Cecilia Albin, “Using Negotiation to Promote Legitimacy: An Assessment of Proposals for Reforming the WTO” 84:4 *Intl Affairs* (Royal Inst of Int Affairs) 757 at 772.

<sup>100</sup> Matthew P Goodman, Chen Dongxiao et al “Perspectives on the Global Economic Order in 2019: A U.S.-China Essay Collection” Center for Strategic and International Studies 11 at 30 online <[https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/191008\\_PerspectivesGlobalEconomicOrder2019.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/191008_PerspectivesGlobalEconomicOrder2019.pdf)>.

<sup>101</sup> See China’s use of solar wind turbines at *Supra* note 11. See also *Supra* note 26.

<sup>102</sup> *Supra* note 99.

<sup>103</sup> *China’s Arctic Policy* People’s Republic of China.

<sup>104</sup> See *United Nations Convention on the Law of the Sea*, 10 December 1982 UNTC 31363 Arts 2 and 7 (16 November 1994). See also Canada’s *Oceans Act* SC 1996, c 31, s 5.

<sup>105</sup> *Supra* note 103.