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SUPPLEMENTAL ADDENDUM

# The Law of the World Trade Organization (WTO)

## TRIPS Agreement and the Domestic Legal Orders of Emerging Economics

Petros C. Mavroidis  
George A. Bermann  
Mark Wu

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# **THE LAW OF THE WORLD TRADE ORGANIZATION (WTO)**

## **SUPPLEMENTAL ADDENDUM ON THE TRIPS AGREEMENT AND THE DOMESTIC LEGAL ORDERS OF EMERGING ECONOMIES**



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# INTRODUCTION

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This supplement is intended as a companion to our original volume. It picks up where that volume left off, following Chapter 43.

We have added three additional chapters to Part Five which discusses the reception of WTO law in representative national legal orders. These chapters focus on the emerging economies: China, India, and Brazil. Their importance in international trade, the Doha Round negotiations, and the WTO regime is increasingly evident.

In addition, we have added a Part Six, which focuses on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Several students provided research assistance in the preparation of these chapters: Andrea Ernst, Hanon Jhung, Carlos Oliveira, Matthew Parker, and Manik Suri. We thank them for their efforts.

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## **PART 5**

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# **THE WTO AND DOMESTIC LEGAL ORDERS (CONT'D)**

■ ■ ■

## CHAPTER 44

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# CHINA IN THE WORLD TRADE ORGANIZATION

■ ■ ■

### 1. INTRODUCTION

In 1978, the leaders of the People's Republic of China embarked on an ambitious program of economic reform. The program amounted to a radical reversal of the past three decades of economic policy under the Communist regime. Over the next decade, China began a shift away from the centrally-planned economy toward a "mixed" model, known as "socialism with Chinese characteristics." This new model has emphasized the importance of market competition and strong connections with the global economy. At the same time, the state continues to play an active role in setting an overall strategy for economic development, allocating resources, and pushing certain industrial policies.

Unlike other transitional economies, the Chinese approach has been gradualist, with a careful sequencing of steps related to liberalization. It has also been pragmatic, seeking results rather than insisting on adherence to a strict ideology. Nevertheless, Chinese leaders have not been timid about undertaking economic reforms when they feel that such reforms are necessary for guaranteeing continued rapid growth and social stability.

The results have been spectacular. Over the past three decades, the living standard of hundreds of millions of Chinese has improved dramatically. Many have been lifted out of poverty. China's economy recently surpassed Japan's to become the second largest in the world. It remains the world's fastest-growing major economy, having achieved double-digit growth rates for much of the past thirty years. China has accumulated the world's largest currency reserves and is becoming an increasingly sophisticated manufacturer as it moves up the value chain.

Trade and investment have played an important part of this success story. Following the examples of Japan, South Korea, and Taiwan, China sought to achieve economic growth through an export-led strategy. Initially, China relied on special economic zones (SEZs) and technology parks to attract foreign investment in manufacturing and export

processing. The combination of attractive tax and other incentives, low wages, and a productive labor force attracted many manufacturers. Over the years, they have increasingly shifted parts of their operations to China. For years, China has remained among the top destinations for foreign investment. This foreign investment has served as a source of employment, technology transfer, and access to global marketing and distribution chains. At the same time, China has encouraged the development of its own manufacturing enterprises, in both the state-owned and private sectors. Today, domestic Chinese companies are important suppliers of a wide range of products, including textiles, electronics, household appliances, and solar panels.

In 1986, China notified the GATT, of which it had been a founding member, that it would like to resume its status as a GATT contracting party.<sup>1</sup> A working party to examine China's status was formed in 1987, and shortly thereafter, China began meeting with other GATT members about the terms under which it would rejoin the GATT. This process was hampered by geopolitical events (especially in the years following the Tiananmen Square incident).<sup>2</sup> In addition, in many countries, firms worried about Chinese competitors mounted strong industry-led opposition. As a result, the process of negotiating China's accession exceeded a decade, during which time the WTO was formed. Finally, in December 2001, China acceded to the WTO. The terms of accession negotiated with various WTO Members are spelled out in the Protocol on the Accession of the People's Republic of China.<sup>3</sup>

China's accession to the WTO has been overwhelmingly positive for China. Although certain terms of China's accession are discriminatory,<sup>4</sup> overall, the guarantee of MFN access to major export markets and rules-based predictability has helped spur further export-led growth for Chinese manufacturers. In 2009, China overtook Germany to become the world's leading source of exports. It is also the world's second largest importer. From an overall volume of trade perspective, China stands second, behind only the United States. Total merchandising exports and imports are now the equivalent of 44 percent of GDP, up from less than

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<sup>1</sup> China was one of the 23 original signatories to the GATT in 1948. The government which signed the GATT was that of the Nationalist Party (Kuomintang), which fled to Taiwan the following year after its forces were largely defeated by the Communists on the mainland. Both the Nationalists and Communists continued to claim to be the legitimate government of China. From Taiwan, the Nationalist government announced China's intention to leave the GATT system in 1950. This withdrawal, however, was never formally recognized by the Communist government on the mainland.

<sup>2</sup> Because China was not a member of the GATT, countries were not obligated to provide it with MFN treatment. As a result, some countries made MFN conditional on certain requirements, including those related to human rights. Opponents to China's accession worried that this important source of leverage would disappear.

<sup>3</sup> See WTO Doc. WT/L/432 of 23 November 2001.

<sup>4</sup> For example, see the China-specific safeguards discussed in the Safeguards chapter.