

China, the United States, and WTO Reform

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China, the United States, and WTO reform: This proposition is almost equivalent to the Goldbach's conjecture in international trade: $1+1=2$, how to prove it? That is how to prove an equation that China + the United States = the success of WTO reform? From a formal logic perspective, China plus the United States is not necessarily a sufficient condition for the success of WTO reform: The WTO is not only China and the United States, but also has many other Members. However, without China and the United States joining the consensus, WTO reform will not succeed. In other words, cooperation or consensus between China and the United States is at least a necessary condition, or even a key necessary condition, for the WTO to get out of its predicament and successfully achieve its reform. That is to say, China and the United States are commonly referred to as the critical minority countries that will contribute to the success of the WTO reform. Therefore, can they reach a consensus, and what are the key issues which require them to reach a consensus to make this reform successful? First of all, China and the United States represent two different civilizations. Whether these two can compete and cooperate under WTO rules has become, to a certain extent, a prerequisite for a success of WTO reform, a necessary condition or at least a problem needs to be answered in the economic and trade relations of the two countries. Secondly, it is widely known that as China's economy and national strength continues to grow, as the world's second-largest and largest economies, China and the United States are

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This article is organized and written based on the author's proposition speech on the designated title at the WTO Law Society of China Law Society "2021 Annual Meeting of Commemorating the 20th Anniversary of China's Accession to the WTO" on December 10, 2021 in Beijing.

involved in an overall competition. As the main builder of the post-World War II system and the only post-Cold War superpower, the United States' economic and foreign policy of preventing and containing a rapidly rising China will inevitably affect and penetrate its stance on WTO reform. As the world's largest developing country, China will inevitably respond to the United States' efforts of containment with certain countermeasures. Will this competition between great powers surpassing its economic significance ultimately become unbearable for the WTO, which only focuses on the economy and trade, or will this competition between China and the United States result in developing WTO rules so that they can continue to promote international trade? The goal of world peace and common development of mankind may be a sufficient condition for answering the Goldbach's conjecture in international trade. This paper attempts to explain the above problems by considering three aspects.

I. DIFFERENCES AND COMMONALITIES BETWEEN CHINA AND THE UNITED STATES

Each country has its own history and cultural traditions, so no two countries are just alike. The differences between China and the United States are quite representative among all countries: In terms of political systems, China is a socialist country with the Chinese Communist Party as a leading party coordinating and consulting with other democratic parties of China, while the United States is a capitalist country where the Democratic Party and the Republican Party generally compete to run the federal government. In terms of economic systems, the United States has pursued a free market economy for most of its history, while China has implemented a socialist market economy with Chinese characteristics since its reform and opening up began in 1978. From the perspective of historical and cultural traditions along with ethnic composition, China is a country with a 5,000-year history and an ancient Eastern civilization that has maintained its youthful vitality when encountering globalized competition amidst the 21st century, while the United States is an immigrant country with a history of more than 200 years and a typical modern Western cultural heritage. Their main commonality is the similarity of their size. However, their population difference is very large. China has a population of 1.4 billion, making

it the world's largest country of population. The United States has a population of more than 300 million, much less of that of China. However, a country with this amount of population is still viewed as a highly populous place. These two countries have additional commonalities. Their total economic volume accounts for nearly half of the world's total, and they both play pivotal roles in the world in terms of technological innovation, digital economy, and service trade, while US take the lead in the world, China comes next to it in few of those areas.

Apart from China and the United States' different political systems and ideologies, do they have anything else in common? In other words, in modern civilization, among countries with different social systems, do human beings pursue common ideals, beliefs, and goals? I think that the answer is "yes". We will focus our analysis on the Sino-US economic and trade dispute, which is currently plaguing many experts in international trade and international economic law.

Historically, these two social systems (socialism and capitalism) attained national political and economic governance in different ways, and each has distinct characteristics. The Charter of the United Nations provides that nations, big or small, are equal. Therefore, acknowledging and respecting the historical and social realities of different countries and regions, as well as the independent paths and institutional choices of people throughout the world, are truly desirable. No matter which path, system, or ideology countries choose, all countries currently pursue the ideals and goals of security, prosperity, equality, freedom, democracy, justice, order, and the rule of law,¹ which are the common goals that different nations strive to achieve from an ultimate perspective. These ideals and goals represent specific connotations, the pathway and methods of achievement may vary in each country and social system. Therefore, they cannot be completely identical (due to spatial limitations, this article will not describe this in detail). For example, the interpretations, methods of achievement, as well as effects of realization of the core concepts and values of security, freedom, order, and the rule of law of nations have been apparently

¹ Wang Jisi, *The Ultimate Goal of World Politics*, CITIC Publishing Group, September 2018. This book interprets the diversity and unity of world politics, and proposes that security, wealth, faith, justice, and freedom are the five ultimate political goals of mankind across time and space.

different from each other during the global fight against COVID-19 pandemic.

However, this does not deny that people around the world love freedom, order and the rule of law, or pursue the ideals and goals of health and safety.

Therefore, even when considering sensitive issues such as core political systems, morality, values, and ideologies, human society has clearly demonstrated a pursuit of common values. However, throughout history, the means and methods for achieving these ideals and goals must be diverse and different. Human beings can more effectively develop and progress only when each civilization can learn from and complement each other to exemplify their positive aspects.

II. CAN WTO RULES ACCOMMODATE COMPETITION BETWEEN CHINA AND THE UNITED STATES

A. Do WTO Rules Restrict International Trade between Members Who Implement Different Political and Social Systems

Can countries with different political and social systems, such as China and the United States, develop international trade and exchange relations? Judging from the history of international trade, the answer is “yes”. Since the beginning of human history, trade has involved cultural communication and exchanges of goods. It is possible to accomplish this goal despite ethnic, religious, political, civilizational, and cultural differences. The Arabian countries that spread Islamic civilization to the rest of the world have long been an important commercial hub connecting major global trade routes, and have contributed extensively to the creation and dissemination of human culture. History has proved that international trade between countries and people representing different civilizations and cultures is beneficial for maintaining world peace and enhancing human well-being.² International trade can promote the development of exchanges, trust, and friendly relations between different civilizations

2 “By reinforcing and extending individual interests that are inherently anti-war, trade can expressly render war abandoned. It is no exaggeration to say that, as the main guarantee of world peace, the large-scale and rapid growth of international trade is the eternal guarantee of the uninterrupted progress of human thought, mechanism and personality”. See John Stuart Mill, *Several Principles of Political Economy for Social Philosophy*, London: John W. Parker, West Strand, 1848.

and countries. Conversely, trade restrictions tend to cause wars between countries. The core concept of the post-war international trade rules is that all countries have equal rights to enter the international market, as well as gain access to energy, raw materials, and other resources.³ This is an important principle for safeguarding post-war peace and order along with global economic reconstruction.

The WTO is essentially an international institution that manages the economic and trade relations, and does not interfere with the choice of political and economic systems of its Members.⁴ For instance, countries such as Cuba, Czechoslovakia (currently the separate countries of the Czech Republic and Slovakia), Hungary, Poland, China, Vietnam, and Laos,⁵ some of whom are still socialist countries, joined the General Agreement on Tariffs and Trade (GATT) and the WTO during different historical periods. Furthermore, reading the second paragraph of Clause 6.1 of the additional provisions of Article VI of GATT 1994 “Anti-dumping and Countervailing Duties”⁶ indicates that when drafting and negotiating the 1947 GATT, the Contracting Parties of GATT had anticipated that during anti-dumping investigations, special difficulties may affect price comparisons for exported products with normal values when those products originate from countries whose governments wholly or substantially monopolize trade and set all prices. Thus, the negotiating history tells that both GATT and WTO rules have predicted the possibility of conducting international trade between countries with fully planned economies and those with a market economy, indicating that from the very beginning, multilateral trade rules have not prohibited or prevented international trade between countries with

3 See Article IV of the 1941 Atlantic Charter on the arrangements for the post-war international trade order.

4 See The GATT 1947 and the second paragraph of the GATT 1994 Preamble: “Recognizing that the relationship between trade and the economic should be addressed with the aim of raising living standards, ensuring full employment, substantial and steady growth in real income and effective demand, and achieving voluntary and full utilization of the world to expand the production and exchange of goods”.

5 In history, about 20 GATT or WTO Members joined the GATT in 1947 and the WTO in 1995 as socialist countries. Cuba and Czechoslovakia were the founding Members of the GATT in 1947, and turned to the socialist system in the 1960s respectively. Poland, Hungary and other countries joined the GATT during the period of the implementation of the socialist system, and they remained Members of the WTO as transition economies. China, Vietnam, and Laos joined the WTO as socialist countries, which in a sense indicates that the GATT 1994 and WTO rules system evolved from the 1947 GATT has nothing to do with the national political and social systems implemented by WTO Members. Of course, China and Vietnam carried out extensive market economic reforms before joining the WTO.

6 See The GATT 1994 Article VI Anti-dumping and Countervailing Duties Ad Article. 6.1, second paragraph.

different political and economic systems.⁷

At the same time, it is worth noting that since 1978, China has implemented a comprehensive and in-depth economic reform and opening-up policy. Within the last century, its government has incorporated its tasks of constructing a socialist market economy and has provided that “building a country under the rule of law” in China’s Constitution.⁸ These opening up and economic and social reforms have been implemented for over 40 years and achieved significant results, playing an important role in promoting the growth of China’s economy and improvement in its people’s living standards. Therefore, even if their political and social systems differ, both China and the United States have applied their version of a market economy. Additionally, the economic system of each has unique characteristics and advantages. Judging from current discussions, WTO Members represented by the United States mainly focus on the relationship between the government and the market. From an economics perspective, the relationship between the market and state has differed drastically throughout history. For example, when the United States pursued Keynesian economics and neoliberal economics, its views on the state’s economic role were completely different. During Roosevelt’s New Deal,⁹ the 2008 financial crisis, and the COVID-19 pandemic, the US government had exercised far-reaching interventions in and exerted huge impacts on the market and economy. The social market economy implemented in the EU and the market economy in the United States are also quite different. Economists generally believe that the world lacks a pure market economy, and some believed that “the relationship between the state and the market is not the problem, rather the problem is whether economic policies can promote competition”.¹⁰ Therefore, although China

7 Can it be deduced from the above mentioned articles that the multilateral trading system established by GATT and WTO is an international rules system that is neutral in social and political systems from the beginning, which is a topic worthy of in-depth study.

8 Since the 14th Congress of the Communist Party of China in 1992, China started the construction of a market economy system. In 1999, Article 5 of the Chinese Constitution added a paragraph as the first paragraph: “The People’s Republic of China implements the rule of law and builds a socialist country under the rule of law”.

9 Economists believe that it is precisely because the United States during the New Deal period of Roosevelt imitated and copied the Soviet planned economic system model and implemented powerful state intervention measures in the economy that the American economy after the Great Depression was saved.

10 See Opinion, Luigi Zingales: The debate over markets versus the state is silly, obsolete and harmful to solving today’s challenges, *Market Watch*, Last Updated on December 18, 2021 at 3:54 p.m. ET, First Published on December 16, 2021 at 10:42 a.m. ET.

and the United States have different economic systems,¹¹ these two countries have many similarities due to their recognition of the basic systems and principles of market economic operations. Their protection of property rights and adherence to the principle of the rule of law are consistent since their market economies play a leading and decisive role in resource allocation. The relationship between the government and the market differs throughout history. Therefore, trade can be conducted between China and the United States, which have been foreseen by WTO rules and no restrictions are present to limit its operations.

B. Do Different Social Systems of China and the United States Hinder the Fair Competition under WTO Rules

In other words, whether countries with different social systems could fairly compete based on the WTO rules?

First of all, it is important to note that international trade consists of exchanges involving products and services from different countries. The quality of products and services as well as customer satisfaction are the core elements that determine the competitiveness of products and services. Therefore, it is possible to objectively assess a country's competitive strength in international trade. However, many factors influence the competitiveness of a country's products and services in international trade. These include the country's infrastructure, industrial support capacity, labor quality, rule of law, business environment, political stability, and efficient government operation, while cultural, institutional, and civilizational factors along with social systems may also play a role in a certain degree. Therefore, it is difficult to distinguish whether this competitiveness results from the effect of political institutions, ideologies, ownership structures, industrial and tax policies, or from the combined effect of other factors listed above. It can even be claimed that a country's competitiveness in international trade is its comprehensive strength and overall advantages manifested as its products and services. For example, the dollar's status as an

¹¹ China implements a socialist market economic system in which multiple ownership systems coexist. Private economy and foreign-invested enterprises account for 70%-80% of China's economy. The United States implements a capitalist market economy system with private ownership as the mainstay. There are also a few state-invested enterprises in scientific research and technology, especially in the fields including national defense, military industry, scientific expedition, and infrastructure.

international reserve currency gives the United States a natural advantage in importing and exporting goods and services that other countries with a non-convertible currency lack. Therefore, is it fair to argue that goods and services from other countries are unfairly competing with those from the United States in international trade? Moreover, is it necessary to revise international rules to allow non-reserve currency countries to take necessary measures to compensate for the exchange rate losses that these countries' goods suffer in international trade so that international trade can be conducted fairly? Furthermore, in international trade, each country has its own natural endowment advantages (including market factors such as natural resources, labor, land, economy, and technology) as well as institutional and cultural endowment advantages (institutional and cultural factors such as whether its political system is stable, whether its legal environment is healthy, whether its people accept openness). According to the theory of comparative advantage, this is just where the secret of international trade lies for promoting global economic development and people's well-being.

Second, in international trade, a certain system of rules is needed for determining how to define fair and equitable competition. The GATT and WTO are examples of this system providing rules for free competition and moderate protection. The existing WTO rules allow the implementation of necessary trade remedies if conditions are met when imported products harm domestic industries. In addition, some countries believe that these rules cannot meet the needs of domestic industrial remedies, while others believe that some Members have abused these rules and the trade remedies they have implemented have greatly exceeded the scope permitted under these rules. It is also important to identify which industry support policies that Members care about are within the rules as well as which rules should be clarified and developed. These are the issues that must be solved during WTO reform. In addition, if it is necessary to expand and develop other types of fair trade rules, these also must be discussed when implementing this reform.

If a country's trade involves engaging in behavior that human civilization and moral laws universally condemn, such as slavery, smuggling, and drug trafficking, it is naturally prohibited under international trade rules.

Finally, attempting to intervene in and change a country's chosen political and social system by revising international trade rules may exceed the scope of

the WTO's functions. This behavior is a suspected violation of the UN Charter's requirement not to interfere in other countries' internal affairs, and will not be feasible.

III. HOW THE WTO RULES ACCOMMODATE AND ADAPT TO THE COMPETITION BETWEEN CHINA AND THE UNITED STATES — RETHINKING WTO REFORM

Since the 11th WTO Ministerial Conference in late 2018, WTO reform seems to have become a consensus among WTO Members.¹² However, figuring out how to implement reforms, especially how the international trade rules system can adapt to changing global economic and technological development trends, and more effectively serve the interests of WTO Members, including the growth of emerging economies and the people of developing countries, as well as the competition between old and new economies, including China and the United States, is undoubtedly the greatest challenge the WTO has ever faced.

Therefore, the first priority for WTO reform is to establish its tasks and goals, as well as to clarify the missions and responsibilities of its two largest Members (China and the United States). Specifically, this involves the following points:

A. Remaining Updated, Developing Free Trade, Achieving Breakthroughs in New Fields, Enabling More Members to Participate in Decision-making, and Maintaining Vitality of Its Own

The WTO must first face the problem of ensuring its survival and development.

12 Although a consensus has been reached, a small number of Western countries led by the United States are still continuing to challenge existing rules. Since the General Council of the WTO held on July 26, 2017, the representative of the United States has started to criticize China's economic model, believing that the US has been treated unfairly by asking the WTO to start negotiations on systemic reform of the WTO at the 11th Ministerial Conference. On May 31, 2018, the three-way trade representatives of the United States, EU and Japan reached the "Basic Definition Document for EU-Japan-United States to Establish Stricter Industrial Subsidy Rules", "Joint Statement on Technology Transfer Policies and Practices" and "Regarding Market-oriented Conditions". The Joint Statement and other joint documents expressed the willingness and focus of the three parties to reform the WTO rules, and the WTO reform groups engaged by the EU, the United States, and Japan began to assemble and take action. In November 2018, China officially released the basic principles and specific propositions on the reform of the WTO, and on May 13, 2019, China formally submitted the "China's Proposal Document on the Reform of the WTO" to the WTO.

For a long time, its rules have not been systematically updated and upgraded, and have been unable to respond to the global economic and technological changes. For instance, the rules governing international trade in services are still based on the old industrial classification system that the United Nations formulated in the 1980s, which has long been unable to adapt to the status quo of industrial development in the digital age. In addition, mega bilateral and regional trade agreements are constantly being formed, and a strong tendency to marginalize the multilateral trade rules system has emerged. Therefore, the WTO first needs to adapt by negotiating and formulating international trade rules reflecting adaptations to recent developments, especially in new fields. Moreover, the WTO has achieved a breakthrough by developing free trade and enabling more Members to participate in decision-making, which has revitalized it and re-emphasized the central role of multilateral rules in world trade. On December 2, 2021, 67 WTO Members, which accounted for 90% of the total international trade in services, reached a joint statement on the “Domestic Rules on Services”, which was the first new regulation focusing on international trade in services within the past 24 years and was also the second time that the WTO updated its international rulebook since 2015, demonstrating significant progress. Similar results are expected in e-commerce and international investment facilitation. Furthermore, WTO Members are exploring legal ways of multilateralizing the outcomes of these negotiations. This could be a new way of updating and modernizing international trade rules in the future.

Promoting free trade and updating trade rules is not only necessary for the WTO’s development, but also creates a way to reduce the competition between China and the United States. It is the best method of promoting expanded participation that can resolve the tension affecting their international economic and trade relations.

B. Responding to Global Crises, Resolving Trade Related Externalities, Developing International Trade Rules, and Maintaining a Fair and Just International Trade Order

Moreover, climate change is a global crisis that mankind must face. Using the

delay in the reform of the WTO's multilateral rules as an excuse, some Members have begun designing and launching unilateral actions such as a "carbon border tax" to deal with the externalities resulting from climate change. The introduction of these measures may trigger new international trade disputes, which could worsen the overwhelmed dispute settlement mechanism. Therefore, the WTO should study how to establish new multilateral rules as well as how to provide rule guidance to avoid unnecessary international disputes in this field to avoid disordered competition and unilateral enforcement by certain Members. The issue of vaccine patents related to responding to international pandemics may be another international trade externality that requires proposing and enacting relevant multilateral solutions.

C. Focusing on Solving the Problem of Unbalanced Global Trade Development and Establishing an Inclusive, Fair and Just International Trade Rules System

Unbalanced development is the most pressing problem facing the modern world, and it exists within and among countries. This is the deep-seated reason explaining restrictions on the continued expansion of globalization. Countries must solve this problem by first addressing their own internal development imbalances. At the same time, they need to strengthen the inclusiveness of international trade rules and establish a more inclusive, fair, and just international trade order.

Since the 1970s, the international community has focused on establishing a fair and just international economic order. Countries have different interpretations of the meaning of "a fair and just international trade order", and this is undoubtedly a goal that mankind has pursued for a long time. To achieve this goal, WTO Members, especially large economies such as the United State, China and the EU, need to identify the concerns of their own as well as of others.

Historical experience has demonstrated that political tolerance, far-sight, wisdom, and courage are needed to build and reform the international order, and core WTO Members must play a leading role in this process. The experience that these Members have gained during international trade negotiations has persistently shown that as long as they have political will, they can find a technical solution even if these negotiations require successfully completing a

difficult and complicated process.

Therefore, China and the United States must rely on strong political will to determine how to derive the Goldbach's conjecture so they can successfully reform the WTO. To develop this political will, both sides need to lay a domestic political, economic, and public opinion foundation that supports international trade. Furthermore, strengthening communication and understanding between China and the United States as well as rebuilding consensus and trust are necessary prerequisites to forming a domestic consensus needed to support future expansion of international trade relations.

History tells us that none of the civilizations that have achieved success and led the development of global trends is not open-minded, visionary, and has not pursued ideals and justifiable goals. Only those civilizations that have pursued common human ideals can lead, and those who have attempted to pursue fragmented or closed institutional frameworks have all failed. Let us inspire WTO Members to seek rationality, return to multilateralism,¹³ stand on the right side of historical development, strengthen dialogue, expand exchanges, enhance communication, reshape political will, and form a public consensus, which are urgent this moment right now.

13 The British *Financial Times* published an article on December 10, 2021, China's 20th Anniversary as a Member of the WTO Stirs Mixed Emotions, calling on that the United States need to return to the multilateralism rationally if it hopes to win the competition with China.