

BOOK REVIEWS

Paolo Davide Farah and Elena Cima (eds.), *China's Influence on Non-Trade Concerns in International Economic Law*, Abingdon: Routledge, 2016, 548pp, ISBN 9781409448488, £115.00
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The increasing importance of China's role in the global economy is hard to overstate. As the world's largest economy in terms purchasing power parity, and second largest in terms of nominal gross domestic product, China's domestic and international policies have a considerable impact on its trading partners.¹ China's integration into the global trading system is most explicitly illustrated by its membership of the World Trade Organization (WTO) and rise to a leading exporter and importer of foreign direct investment.² Yet, detailed studies on the panoply of issues that China's trade and investment policies raise are fewer than expected.³ It is into this space that *China's Influence on Non-Trade Concerns in International Economic Law* steps.

As an edited collection of 37 chapters, four forewords, and over 500 pages, this book offers a cornucopia of perspectives on China's international economic policies and their relation to numerous non-trade concerns. The book is structured into four general parts examining respectively: public policy objectives and the role of state and non-state actors; sustainable development and environmental challenges; fundamental rights and cultural diversity; and public health and food safety. The book focuses mostly on the interaction between non-trade concerns and world trade law, but investment law and to a lesser extent intellectual property are also given considerable attention.

While the choice of China as a focus is timely and pertinent, it is also useful in a wider sense, as a study of China and its non-trade policies serves as a nexus for a range of different themes found in international law more broadly. In particular, we can note the recurring challenge of fragmentation and inter-regime contestations,

¹ As of April 2017. See the IMF World Economic Outlook, available at www.imf.org/external/pubs/ft/weo/2017/01/weodata/index.aspx (accessed 14 June 2017).

² Statistics on foreign direct investment are available from UNCTAD, available at www.unctad.org/en/Pages/DIAE/FDI%20Statistics/FDI-Statistics.aspx (accessed 14 June 2017).

³ Note, however: X. Zhang, *International Trade Regulation in China* (2006); B. Eichengreen, Y.C. Park, and C. Wyplosz (eds.), *China, Asia, and the New World Economy* (2008); F. Snyder, *The EU, The WTO and China* (2010); W. Shan and J. Su (eds.), *China and International Investment Law* (2015).

the relationship between developing and developed countries, and the importance of providing detailed China-specific studies that move beyond generalized accounts of China as a special case characterized by either its Communist or Confucian traditions.⁴

Questions relating to fragmentation and diversity in international law, more narrowly viewed as linkages between trade and ‘non-trade’ issues frequently recur in the book.⁵ Sindico and Gibson’s contribution (‘Soft, Complex, and Fragmented International Climate Change Practice: What Implications for International Trade Law?’), for example, frames questions of trade law’s interaction with climate change policies through a concern for unified, or at least, non-conflictive legal regimes, complicated by the prevalence of soft law instruments in the field.⁶ Accompanying these more general chapters are those more closely focused on China and the relationship between trade and cultural aspects of media, bringing China’s obligations under UNESCO, human rights law, intellectual property, and WTO or investment law into sharp focus.⁷ The interaction between these complementary but also competitive regimes can be seen in China’s unique mix of global influence, desirable market, and widespread and rigorously enforced programme of censorship.⁸

Another theme to which contributors return is China’s status as a developing country and, in particular, the relationship between the developed world and China’s policies as a developing yet powerful global trader. Here the customary expectations that developing countries are hostile to the introduction or imposition of non-trade concerns (in particular, labour rights and environmental protection) by developed countries as a form of either quasi-imperialism or attempt to undermine competitiveness are turned subtly.⁹ By examining China’s experience, what appears is a more nuanced situation, where domestic concerns shape macroeconomic perspectives. For example, in ‘The Development of NGOs in China’, Huang gives an account of non-governmental organizations, the very terminology of which (*fei zhengfu*), presents concerns for some in China implying anarchic (*wu zhengfu*) or anti-governmental (*fan zhengfu*) positions.¹⁰ This is not provided as an explanation for China’s position to the exclusion of the more common concerns raised by both developing and anti-democratic governments, but rather as a factor to be taken into account when examining the role of Chinese NGOs in climate change policy (in this case-study).¹¹ Similarly, the relationship between economic development and environmental

⁴ For common accounts and their context, see Z. Longxi, ‘The Myth of the Other: China in the Eyes of the West’, (1988) 15 *Critical Inquiry* 108–31.

⁵ For a general overview: M. Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L682 (2006).

⁶ P.D. Farah and E. Cima (eds.), *China’s Influence on Non-Trade Concerns in International Economic Law* (2016), Ch. 8 at 134–6.

⁷ *Ibid.*, Ch. 22, 23, 24.

⁸ Already the indirect subject of litigation at the WTO: Panel Report China — Measures Affecting Trading Rights and Distribution Services For Certain Publications and Audiovisual Entertainment Products, adopted 19 August 2009, WT/DS363/R.

⁹ For a brief overview of the key issues: V.A. Leary, ‘The WTO and the Social Clause: Post-Singapore’, (1997) 8 *European Journal of International Law* 118–22.

¹⁰ Farah and Cima, *supra* note 6, at 226

¹¹ Farah and Cima, *supra* note 6, at 233–4.

protection, a common concern in the literature on sustainable development, takes on a particular perspective within the Chinese context: China's rapid industrialization and urbanization have brought with them considerable environmental challenges, not least pollution, deforestation, reduction in biodiversity, and acidification.¹² And yet, recent government policy has sought to link a change in the importance of environmental protection to economic policy through a tradition of harmonious existence within the Confucian tradition.¹³

By offering a range of different studies on the interaction between non-trade concerns and trade law within China, this collection deepens the analysis of China-specific studies considerably, not only offering insights into the Chinese system and its effect on China's policies at the WTO or investment negotiations but also into the variations *within* China. The contribution by He on 'China's Environmental Legislation and its Trend Towards Scientific Development', in particular, teases out variations across the regions and local governance structures in China,¹⁴ as does the detailed study on the challenges to environmental protection requirements and sustainable development in the exploitation of shale gas in China.¹⁵ Not only do these contributions provide interesting insights into China's system, but they also demonstrate the benefit of country-specific studies that step beyond the necessarily more general observations that broader categorization such as 'developing', 'Global South', 'periphery', and so on, have. It is interesting from a Chinese perspective, but also provides a salutary lesson for the possibilities of study elsewhere.

The attention has thus far been on the chapters which focus on China's legal system or its internal regimes. There are, however, also a number of contributions which take a more traditional perspective from the international level. In some instances, they serve to introduce a new topic, such as sustainable development or public health,¹⁶ whereas in others they provide a wider view on a relevant topic though not explicitly linked to the Chinese experience.¹⁷ Within the context of the wider project, they work well as they relate to the themes developed in each Part, yet when viewed individually they serve well as more general assessments of the issues examined outside of a China-specific context.

While the collection does an admirable job of introducing and examining a number of key issues in trade and non-trade policies, there are necessarily limitations with the form. By offering a range of perspectives from environmental lawyers, trade specialists, political scientists, and others, the structure does not lend itself to an early comprehensive critical analysis of the very distinction on which it is based: namely the relationship between trade and non-trade concerns. A number of the contributions identify the overlap between the categories, not only in terms

¹² For an overview, see United Nations Environment Programme (unep), *China's Green Long March: A Study of Renewable Energy, Environmental Industry and Cement Sector*, UNEP Joint Report (2013).

¹³ Discussed as part of Hu Jintao's 'harmonious society': Farah and Cima, *supra* note 6, at xxvi.

¹⁴ Farah and Cima, *supra* note 6, at 185ff.

¹⁵ Farah and Cima, *supra* note 6, Ch. 16: P.D. Farah and R. Tremolada, 'A Comparison Between Shale Gas in China and Unconventional Fuel Development in the United States: Water, Environmental Protection and Sustainable Development'.

¹⁶ For example, Farah and Cima, *supra* note 6, Ch. 8, 27.

¹⁷ For example, Farah and Cima, *supra* note 6, Ch. 18, 26.

of practical effect¹⁸ but also conceptually.¹⁹ Yet, the divide between that which is trade and ‘non-trade’ is not self-evident.²⁰ While the WTO has taken its view in the Doha mandate,²¹ historical analysis demonstrates the fluidity of the divide, and the hidden assumptions and power asymmetries that such a division encourages.²² Though some contributions implicitly acknowledge such a relational struggle, a more explicit introduction to the distinction and its place in the study would have been welcome. This said, given the nature of such a large project, it is perhaps necessary that the distinction between trade and non-trade issues be limited by the strictures that the orthodox literature (including the WTO’s own position) takes. And by examining not only trade law but also investment law, intellectual property, and corporate social responsibility *inter alia*, the contours of the relationship can be compared across chapters. One of the virtues of the book is that as an edited collection of such scope it works remarkably well as a cohesive whole rather than an assortment of insights.

China’s Influence on Non-Trade Concerns in International Economic Law offers a wide range of studies on the interaction between trade and investment related issues and non-trade topics both in the Chinese legal system and where China is an actor on the international plane. While some chapters will be of greater interest to some than others, there is little doubt that the editors have done an extraordinary job in producing an excellent entry into a fertile area of study of critical importance.

Gregory Messenger*

Caroline Henckels, *Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy*, Cambridge University Press, 2015, pp. 225, ISBN 9781107087903, £69.99 (hardback).

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This interesting book addresses an important, complex, and relevant topic. It examines the approach taken (or which should be taken) by investment tribunals when balancing competing interests, such as the protection of foreign investments on the one hand and the host state’s autonomy on the other, in disputes concerning state liability for the adoption of measures aimed at promoting public welfare.¹ The book deals with several ways in which decisions of investment tribunals may

¹⁸ Farah and Cima, *supra* note 6, at 44–53.

¹⁹ For example, Farah and Cima, *supra* note 6, Ch. 12.

²⁰ A.T.F. Lang, ‘Reflecting on “Linkage”: Cognitive and Institutional Change in The International Trading System’, (2007) 70 *The Modern Law Review* 523–49.

²¹ Farah and Cima, *supra* note 6, at 20–2.

²² A paradigmatic example of *méconnaissance*: P Bourdieu, *Outline of a Theory of Practice* (1977), 164–8.

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¹ For another point of view on the book, cf. the review of C.E. Foster, ‘Is Investment Treaty Arbitration “Review”? Reviewing Caroline Henckels’ Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy’ (Cambridge University Press, 2015), available at www.ssrn.com/abstract=2814893 or at [dx.doi.org/10.2139/ssrn.2814893](https://doi.org/10.2139/ssrn.2814893) (accessed 26 October 2017).