Understanding Chinas' Trade Legal Reforms in the backdrop of WTO–A cross-national study

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Introduction

1.1 **Topic**

When China signaled to the international community its aspiration to join the WTO and initiated the accession negotiation in the fall of 1986, few individuals realized the far reaching impact of this decision on China's legal system. After numerous rounds of bilateral negotiations and ministerial negotiations covering a time span of 15 years, China was granted a seat proper in "the United Nation of world trade" in 2001. If this event could be viewed as an acknowledgment of China's subscription to the WTO laws in letter, then China's competency in implementing these laws turned out to be one of the hot topics in the many years that followed. From 2000 onwards, a wealth of literature surfaced detailing the influence of WTO on China. Among them, Magarinos, Long and Francisco (2003) provide a one-stop reference point for the general relationship between the WTO and China. Chan (2009) uses his work to illustrate the policy impact of the WTO regime on China's foreign direct investment (FDI) regulation. Two books from Chen, Duncan (2010) and Song, Chen (2006) focus on the prospect of Chinese agriculture in the post-WTO era. In contrast to these single volumes, a considerable amount of articles in recent years have also appeared in academic journals, detailing the influence of the WTO legal regime upon the China's trade laws reforms in the post-WTO era. The internal logics of these articles vary, but the majority of the scholarship tends to portray China in a recipient position of international treaty. This kind of narrative style, however, is both self-explanatory and simplistic. Self-explanatory because as the main seat of authority in international trade, the WTO figures prominently in harmonizing international trade laws and monitoring their enactments in the member states. Simplistic in that it tends to eclipse the roles and functions of diverse actors from the member states in the process of implementation and legal reforms. Factors such as sate authority and corporate actor are all important determinants in both the assimilation and actualization of WTO trade laws and rules. These factors do not necessarily reflect identical interests all the time

and the interplay between them under many circumstances contribute to different patterns of legal reforms. Different areas of legal reforms, different timing of legal reforms and different targets of legal reforms are just few examples. The current literature which prioritizes the role of supernational factor thus faces the issue of credibility due to their understudy of these influential factors.

My research is partly inspired by the recent development in the theory of regional integration. Traditionally, two schools of theories: neo-functionalism and inter-governmentalism are used to explain the progress of regional integration. They are at variance with each other in their emphasis on the key momentum behind regional integrations. Neo-functionalism tends to underline the role of supernational and subnational actors, while the inter-governmentalism highlights the personal choice of national leaders and national government. This traditional dichotomy, however, increasingly loses ground as recent researches reveal that policymaking actually happens simultaneously at subnational, national and supernational level (Solis, 2010, p.214). My research follows the same line of argument by granting the foreground to actors at national and sub-national level. By doing so, this research aims to complement the WTO-centered literature to gain a better understanding of the post-WTO legal reform in China.

1.2 **Research question**

To what extent does China's accession to the WTO lead to domestic legal reforms?

The mandate of WTO enables it to induce substantial changes in the legal system of its member states. Currently, the bulk of WTO laws concentrate on the regulation of three aspects of global trade, i.e. transnational trade of goods and service, foreign investment (FDIs) and trade related intellectual property rights (TPIPR). This research focuses on China's trade laws reform in the backdrop of its entry into the WTO.

1.3 **Central Argument**

Following the pluralistic approach, my central argument is: in the process of localization of WTO laws in China, legal reform (the effect variable) is seldom attributable to the existence of a single causal variable (the sufficient and necessary cause). Rather, my corollary is that the WTO-related legal reforms result from the influences of multiple factors with each of them warranting individual examination. This research identifies four such constituents. State preferences and costs of entry are two factors falling in the authority of national government. Corporate actor represents the influences from industry which has a vested interest in trade liberalization. Local norm system is included to examine WTO-induced legal reforms in light of accommodation between local and foreign norms. Finally, this research also attempts to create some generalizable conclusions of these factors in the diffusion of international laws. For this end, I use the method of cross-national comparison in the qualitative research tradition.

1.4 **Layout of the thesis**

This research paper is divided into seven parts. The Introduction Section provide an overview of the research background and acquaints readers with the research question. The second section is used for literature review, where I provide a brief account and evaluation of alternative explanations of China and Japan's WTO compliance behaviours. The fourth section details the multilevel governance theory and justifies its applicability to the current research. In the fifth section, four hypotheses are developed from the four factors in the central argument section. In the sixth section, the influence of the four factors in China's post-WTO trade laws reforms is concretized by operationalization: a process in which a concept is firstly converted to variables and then to indicators. The seventh section is used for the cross-national comparison and is divided into four parts. In each part, different aspects of China and Japan's post-WTO trade laws reform are analyzed by paying attention to one causal variable. The eighth section concludes the paper.

What other academicians say about the topic – a pool of alternative explanations from selected peer-reviewed journals

As an integral part of critical social inquiries, researchers are asked to take into account his peers' ideas. The topic of WTO-induced legal reforms is multifaceted in nature and here I concentrate on two aspects. This review is divided into two parts. The first part concerns alternative propagation mechanism of WTO laws. The second part relates to alternative causal variables for a state's decision to use WTO dispute settlement machinery.

The communication mechanism of WTO laws is an important, yet rarely canvassed area of WTO-induced legal reforms. In most literatures on WTO-induced trade laws reforms, the communication mechanism of WTO laws and rules are rarely tackled. For many, it is a futile question. The communication of WTO laws and regulations are thought to take place naturally through official documents such as WTO Agreement and Protocol of Accession. It is only until recently that some researchers begin to acknowledge the involvement of civil society in this process.

In his study on the disseminations of the rule of laws and other WTO principles in China, Kellogg's study contends that civil groups may facilitate this process (2012, p.53). The term "civil" is used here mainly to denote two kinds of groups. The first kind is activist groups dedicated to promoting the rule of law. As Chinese government turns from indoctrinator of ideology to regulator of economy, Chinese society becomes much freer than before. Meanwhile, grassroots groups which subscribe to Western rule of law gain in power. These groups are instrumental in spreading the rule of laws and other WTO principles in China.

The second kind comprises senior intellectuals like academicians and legal professionals. Compared with the first group, its role in acquainting China with WTO rules are more direct and influential. In China and Japan, government sets up advisory

bodies to enhance quality of legislations and policymaking. China's State Council, for example, convenes experts in international laws and trade for consultation on an irregular base. The attitude of these experts on WTO principles like trade liberalization and marketization is considered an important formative factor in WTO-induced legal reforms.

Another aspect of WTO-induced legal reform concerns a member state's adoption of WTO's dispute settlement machinery. As an integral part of the WTO Agreement, member states are expected to use WTO adjudication to solve their trade disputes. For this end, the GATT and the succeeding WTO provides a comprehensive legal framework known as the Dispute Settlement Mechanism (DSM). Meanwhile, studies indicates states' inclination to use WTO arbitration vary markedly across countries (Naoi, 2009, p.421).). In this research, I contribute a state's adoption of WTO legalism mainly to corporate actors' interest. Other factors uncovered by this research like diplomatic relation are also crucial determinant. In the second section of this review, I will briefly discuss the impact of international relation in this regard.

International relations between WTO members could be used to predicate their attitude towards WTO adjudication. Davis & Shirato (2007, p.276), for example, argues that a state is more likely to resort to WTO DSM against the other if their diplomatic relation is amicable. Conversely, a state is unlikely to resort to WTO DSM against the other if their diplomatic relation is tense. To support this argument, they use Japan as an example.

From 1995 to 2002, Japan filed eleven cases at the WTO and seven of them are against the USA. In contrast, Japan filed no complaints against China albeit "there were several clear examples of (China's) WTO-inconsistent policies" (Davis & Shirato, 2007, p.312). In explaining this discrepancy, Davis and Shirato highlight Japan's diplomatic relations with these two states. In the case of the USA, Japan is said to "have little fear that a WTO dispute will disrupt bilateral relations given the

strong alliance between the two countries" (Davis & Shirato, 2007, p.297). In comparison, Japan is very cautious about initiating WTO actions against China in view of the fragile diplomatic relation between these two countries (Davis & Shirato, 2007, p.306). As a matter of fact, Sino-Japan relation is historically troubled by issues like treatments of WWII legacies and territorial disputes.

The multilevel governance model: a pluralistic perspective of transnational governance

As mentioned in the introduction section, my central argument is based on the multiple-causality mechanism, which relates China's trade laws reforms to multiple factors. In this research, I acknowledge not only the steering role of international organization like the WTO, but influences from factors at national and subnational level. To better account for this viewpoint, this research implements the multilevel governance theory.

3.1 **Two variants of multilevel governance**

In their retrospective work on the evolution of multilevel governance, Hooghe & Mark (2003, p.11) equate the concept of multilevel governance with polycentric governance, a term used initially in the metropolitan management in North America. As the only example of supernational authority, the rise of the EU helps expand the utility of this concept from public management to international relations. In the EU context, multilevel governance is originally employed to describe EU structural policy. "a system of continuous negotiations among nested governments at several territorial tiers – supernational, national, regional and local" that was distinctive of EU structural policy. Since then, the scope of this concept has gradually expended to encompass the EU as a whole (Hooghe & Mark, 2003, p.3 & p.4). Today, transnational governance is accepted as a generic term and used for varied purposes (Hooghe & Mark, p.11). Hooghe & Mark also envision two variants of multilevel governance, which are termed as type I and type II.

Type I finds its intellectual foundation in federalism, which features power allocation amidst a limited number of governments at limited levels. Generally speaking, the structuring of this kind of multilevel governance feature general purpose jurisdictions, which means each level of authority is matched to bundled and politically related responsibilities. Its membership is nonintersecting, which means the boundaries between the upper and lower level of membership (which is usually territorial) do not intrude into each other. It normally only features a limited levels of governments but its internal structure and jurisdiction, once settled, are expected to last for a long period of time. Last but not least, the jurisdiction of this kind of multilevel governance usually follows the model of trias politicas, which included legislature, executive and a court system (Hooghe & Mark, 2003, p.8)

In contrast, type II embraces many levels of jurisdictions and each level many task-specific jurisdictions. This arrangement is designed to ensure the principle is served by multiple, competitive agents in an attempt to enhance efficiency. Its memberships include probable interpenetrations between higher and lower governments. Finally, this variant of multilevel governance promises greater flexibility in operations due its pliable structure design (Hooghe & Mark, 2003, p. 10-p.11).

3.2 **WTO trade laws reforms through the lens of multilevel governance, a brief analysis**

Through the comparison of the two models, I contend that WTO-induced laws reforms could be better understood in light of type I.

In the first place, type I multilevel governance concentrates on bundled policies. The term “bundle” means relevant and interconnected. It further distributes jurisdictions within limited levels of governments. In the context of this research, the bundled

policies mainly encompass WTO laws on transnational trade, FDIs and TPIPR (Trade Related Intellectual Property Rights). This governance process involves primarily three tiers of governance: the institution at Geneva which spells out the laws, Beijing government entrusted the responsibility to restructure its legal systems and domestic industries which have a say in trade laws reforms. Here I include the corporate actors as a constitutive of governance by reference to Engma's study (2006, p.168). According to him, the interaction between corporations and their counterparts should not be viewed as "a one-way street" in which corporations may only response reactively to extrinsic stimulus. In reality, corporation may actively participate in the governance process either through presentation or lobbying. The final element of this process is local norm systems, which may contribute to or hamper the localization of international laws. As argued by Djelic and Sahlin-Andersson (2006, p. 21), the analysis of transnational institutional change should not only concentrate on the interactions between institutions but on the cultural and normative forces which shape the process in a more nuanced and diffusive manner.

In the second place, the diffusion of WTO laws does not blur the traditional boundary between supernational and national authority. In the process of enactment of WTO laws, each member of this governance still retains its original identity. Both the case of China and Japan confirm this viewpoint.

In the third place, type I multilevel governance is noted for the stability of its structure and jurisdiction. The longevity of WTO and its predecessor GATT (General Agreement of Trade and Tariff) attest to this viewpoint. As one of the first policy moves made by the UN to coordinate international trade, GATT serves the world without interruptions from 1947 to 1944. When the GATT was upgraded to GATT 1994, it becomes an integral part of the WTO Agreement. Today it is safe to say that no other institutions with similar authority and scope of jurisdiction like WTO would emerge in the foreseeable future.

Finally, the jurisdiction of WTO follows the tripartite political system, which confirms Hooghe and Mark's judgment. Corresponding to the legislature is the WTO Ministerial Conference, which deliberates principles of international trade and passes new laws. In the position of executive stands the Director-General (the current holder of this position is Mr. Pascal Lamy). WTO also installs quasi-court system to arbitrate over trade disputes between its member states. This is commonly known as the Dispute Settlement Body.

Hypotheses

The type I model of multilevel governance lays down the base for four hypotheses, which correspond to the four independent/causal variables in the central argument section:

Firstly, I posit that there is a degree of fit between the imported laws and the Chinese political milieu. Specifically, the more these WTO laws align with China's current policies and practices, the more likely they materialize by legal reforms.

Secondly, I posit that there is the issue of adjustment cost. In this research, it is used to measure political and fiscal prices incurred by the Chinese government and economy. Specifically, the less disturbing and undesirable this transitional process is, the more likely WTO laws would be assimilated into the Chinese legal order,

Thirdly, I posit that different industries have divergent interests in WTO-induced legal reforms. Specifically, the more internationally oriented an industry, the more likely it will endorse WTO-induced legal reform. Also, the more institutionally dominant and financially privileged an industry, the more likely the legal reform would be carried out in its interests,

Fourthly, I posit that the more the WTO rules are in line with Chinese local normative values, the more likely they result in legal reforms.

In sum, state preferences, costs of entry, corporate actors and norms system constitute the four independent variables. The dependant variables are different aspects of reforms in China's international trade regime. In this research, legal reforms include not only revisions of China's current legal order but new legislations in line with the WTO standards. The installation of anti-dumping and anti-subsidies laws is one example.

From being abstract to concrete, the process of operationalization

State preferences

In the four independent variables listed above, state preferences and costs of entry are concepts traditionally relating to national authority. In the context of WTO-induced trade laws reforms, state preferences is used to describe the varying degree of importance state authority attach to different areas of legal reforms. State preferences could be normative in nature as states comply consciously with international laws. State's preference could also be pragmatic as state authorities use the compliance of WTO laws as a policy vehicle to solve pressing domestic issues. In the latter case, state preferences are frequently granted to those legal reforms which have the most potential to serve the national interests. Logically, the concept of state preferences is operationalized with two variables: high importance and low importance.

High importance can be further concretized with three indicators in the different stages of legal reforms: in the negotiation phase leading up to the WTO membership, high importance typically translates into greater concession and shorter grace period. These are common tokens of a state's willingness to initiate legal reforms in a certain direction. In the actual implementation of WTO treaty, high importance usually leads to significant revisions of current legal order and rapid legal reforms. Conversely, low importance usually leads to limited concession and longer adaptation period. In the actual implementation of WTO treaty, low importance retards the WTO-induced legal

reforms.

Costs of entry

In his article detailing the implication of international organizations on their member states, Wang (2004, p.477) maintains "the choice made by members of the international community are all made with costs". In this research, costs of entry means the various interests and privileges that a member state of the WTO relinquishes to gain access to the harmonized international market. For the operationalization of this concept, I propose three variables to mirror the cost incurred by a member state at the economic, institutional and political levels. Economic costs are usually rooted in the obligatory opening of domestic markets and the dismantling of former protectionist mechanisms. They are typically tangible and quantifiable. In contrast, institutional costs are associated with the human and financial resources a state commits in overhauling its legal system and restructuring its administrative institutions. Finally, accession to the WTO also mandates constitutional revisions in some (though not all) member states. This frequently happens in cases where a member state still lacks the legal infrastructure to honour its commitment to the rule of laws and free market economy. Theoretically speaking, there is reverse correlation between costs of entry and actualization of legal reforms. i.e. high costs of entry retard legal reforms while low costs of entry speed up legal reforms. As a consequence: retarded legal reform and accelerated legal reform could be used as indicators in this research.

Corporate actors

To further appraise the roles of subnational players in WTO-induced legal reforms, this research uses corporate actor as one example. Corporate actors are a sector of industry, whose common interests, ability for collective action and clout with regard to national economy enable them to exert considerable influence in the course of WTO-induced legal reforms. Much scholarship on political economy maintains a distinction between export-oriented industry and import-competing industry due to

their divergent interests in trade liberalization (Solis, 2010, p.210, Naoi, 2009, p.423). Generally speaking, industry which is large in size, has a high degree of concentration and a high degree of trade/export dependence tends to lend strong support to WTO-induced legal reforms. This may urge government to legalize its trade regulations in light of WTO rules. It can also play a catalytic role in the government's choice of the WTO Trade Settlement Dispute Mechanism to facilitate its expansion overseas. In contrast, import-competing sector is more inclined to rely on protectionism and governmental stewardship to safeguard its fragile standing and interest in the domestic market. Thus, the concept of corporate actors is operationalized with two variables: export-oriented industry and import-competing industry. Promotion or hindrance of (WTO) legalism is used in the analysis section as indicators to measure these two variables.

Local norm systems

As an organization committed to the liberalization of international trade, the rule of laws and transparency are two quintessential norms underpinning the WTO system. WTO-induced legal reforms could accordingly be interpreted as a process of local reception and assimilation of international norms. Local norm systems are viewed as a causal factor here as norm systems in different states display different capacities to absorb these Western liberal ideas. This research attempts to analyses the implementation of WTO norms in the context of local cultural and political tradition. Two variables: compatibility and incompatibility are used to address different degrees of complementarity between local and international norms. Compatibility between local and WTO norms can translate into indicators such as inclusive observance of the WTO Agreement and complete legal reform. Incompatibility between local and WTO norms is usually associated with indicators like partial observance of WTO treaty and incomplete legal reform.

Below is a chart to present the operationalization process in a graphic way.

Concept	Variables	Indicators
State preferences	1. High importance 2. Low importance	1) greater concession in trade regulation; 2) shorter grace period; 3) hefty legal reforms
Costs of entry	1.Political costs 2. Institutional costs 3. Economical costs	(when the cost are high) No legal reform or incomplete reform, (When the costs are low) Relatively complete legal reform,
Corporate actors	1. Export-oriented industry 2. Import-competing industry	Export-oriented industry prompts the adoption of WTO legalism Import-competing industry impedes the adoption of WTO legalism
Local norm systems	1.Comptibility between local and WTO norms 2. incompatibility between local and WTO norms	(Compatibility) Inclusive observance of WTO treaties and complete legal reforms (Incompatibility) Partial observance of WTO treaties and incomplete legal reforms

Analysis

6.1 Standards of case selection and case collection

Based on the research design and the qualitative research method, this research purports to explain key causal mechanisms underlying China's post-WTO legal reforms by four sets of cross-societal case studies. The total number of cases is eight (four for China and four for Japan). The standards of case selection should fulfill the following requirements to maximize the legitimacy of analyses:

Firstly, cross-national case study in general is organized around the comparison of identical industrial sectors to generalize outcome. In this research, this rule would be respected with the exception of costs of entry study. In it, the juxtaposition of several sectors in China and the agriculture sector in Japan is illustrative because they reflect the differing competencies of the Chinese and Japanese polity to weather the transition costs.

Secondly, the selection procedure should heed whether the case is sufficiently representative to deduce generalizable conclusion.

Thirdly, the selection procedure should heed whether the selected cases are unduly concentrated on a certain aspect of legal reforms. The dispersion of cases is more favourable than monolithic utilization of one aspect of Chinese/Japanese trade laws reforms to reach final conclusions.

Based on the three criteria of case selection, the legal reforms to internationalize China and Japan's financial service sectors in light of the GATS are chosen to exemplify the significance of state preferences in WTO-induced trade laws reforms,

China and Japan are burdened to a different degree by their accessions to the WTO.

As a developing state lacking many essential features of free market economy, China is in face of a transition cost much higher than Japan. Multiple sectors of Chinese economy: agriculture, manufacturing and service were expected to pay dearly in the initial few years after China's accession to the WTO. In comparison, WTO Agreement mainly affects the interests of Japan's inefficient agriculture. The second section will evaluate China and Japan's WTO compliance behaviours in light of these costs.

Literature on political action has long since recognized the influences of corporate actors in building international trade order. This research further proves corporate actors also figure importantly in the localization of international laws. Motivated by desires to maximize their sectoral interests, corporate actors may exert strong influence on a state's post-WTO legal reforms. The codification of anti-dumping laws in China and the adoption of legalism in Japan are used to demonstrate the roles of corporate actors in this process.

Finally, WTO-induced trade laws reforms is also a process of accommodation between domestic and international norms. A state's WTO compliance behaviour could partly be explained by the local norm system's ability to absorb trade liberalization principles of the West. In this research, two norms of liberalism tradition: transparency and the rule of laws are selected to evaluate the roles of local norm systems in China and Japan's post-WTO trade laws reforms.

6.2 State preferences

China

Background brief

In retrospect, nowhere else is China's resolution to embrace the global trade regime more manifest in its restructuring of the financial service sector. Although the liberalization of international trade of service was incorporated into the WTO regime only at the Uruguay round in the mid 1990s, China quickly turns to one ardent

advocate of liberalization of trade of service. This could be partly affirmed by the extensive obligations contained in the Schedule of Specific Commitments on Service, an appendage document to the Protocol of China's Accession (Kim, 2002, p. 435).

In terms of the scope and range of China's market access commitment to foreign provisions of financial service, WTO extracted from China far more concessions than from most advanced economies (Qin, 2003, p.729). In the realm of securities market, foreign securities traders are allowed to own 33 percent ownership in joint-venture fund management companies and their holding may further increase to 49 percent after three years upon the mutual agreement of partners. Foreign security underwriters are also promised 33 percent initial holdings in joint-venture investment banking industry to underwrite domestic securities under the principle of national treatment. Meanwhile, their rights in trading securities denominated in foreign currencies are legalized. The liberalization of Chinese insurance industry also renders foreign participants immense business prospect by gradually phasing out restrictions on locations and products. They can now underwrite large-scale risks such as satellite launching and possess maximally 50 percent of shares in life insurance companies. In non-life insurance market, foreigners can retain shares up to 51 percent and open subdivisions. The legal reform in Chinese commercial banking represents another breakthrough: within two years upon China's accession, more foreign banks were able to engage in limited retail banking both in RMB and foreign currencies. By the year of 2006, foreign banks were finally accorded national treatment like their domestic counterparts. Any lingering restrictions on locations and customers of foreign banking are banned once for all (Ji & Thomas, 2002, p. 680, Qin, 2003, p.730). These provisions are unusual in nature also because they are typically granted only to favourable trading partners in FTAs.

Analysis

To account for China's manifold obligations in the areas of financial service, relatively reduced adaptation period, I would like to grant the primacy to state

preferences. In order to establish a correlation between the causal variable (state preferences) and effect variable (China's post-WTO legal reforms in trade of financial service), process tracing will be employed to examine the evolution of China's financial service regulations. In this research, process tracing is not used to unearth the principle of equifinality. As expressed in the central argument, state preferences is considered as one necessary condition variable, which helps partly explain China's post-WTO legal reforms. Rather, I would like to count on the process tracing as a multiple checking system to underpin a number of theoretically predicable intermediary institutional changes (Checkel, 2005, p.15). If I could prove state preferences feature constantly in every stage of the legal reform process, then it would be safer for me to establish the causal mechanism. The same analysis methodology is also applicable in the case of Japan.

Modern securities transaction took off in china in late 1990s when China set up two securities exchanges in Shanghai and Shenzhen (one Economic Special Zone in China). According to Wong (2006, p.389), the rationale behind China's decision to open securities market is to recruit capital "through the marriage of capitalism and socialism" Securities exchanges in China primarily function as fundraising vehicle to support the SOEs (State Owned Enterprises).

Meanwhile, Chinese government also began to issue a few governmental and companies bonds to finance its deficits and infrastructure projects. Non-governmental participations in the securities market remained low even in 2001, with only 20 percent of the total listed shares are tradable. The bulk of shares are either held by governments or legal persons (Ji & Thomas, 2002, p.675 & 676). China's securities and bonds markets have long been recognized as policy markets. The fluctuations and prospects of these markets do not reflect actual performance of companies but government's perception of certain companies' utility in fulfilling its policies. As a result, there is a general lack of transparency and proper legal frameworks to offer shareholders protection against insider trading and manipulations (Ji & Thomas, 2002,

p. 676).

To build a more specialized and market-oriented insurance sector, China firstly divested the People's Insurance Company of China (PICC) from the People's Bank of China (PBC) in 1984. As the only state owned insurance company, the dominating status of the PICC was preserved well into the 1990s. Compared with China's decisive opening up of other areas of national economy, Chinese government assumes a rather cautious stance regarding the entry of foreign underwriters. Back then, it only franchised few foreign insurance contractors to participate in China's domestic insurance business and subjected them to onerous checks and limitations regarding services and investment options. All these practices seriously restricted foreign agents' operations and profitability (Ji & Thomas, 2002, p. 676).

In terms of China's banking industries, relative more progresses were made in the early 1980s. By 1985, an independent banking system emerged from the shadow of planned economy. It includes one central bank and nine district branches. Meanwhile, Chinese government made efforts to commercialize its banking system. In this context, "commercial" means making the operations of banks more sensible to profits and losses instead of commands from government (Ji & Thomas, 2002, p. 677).

Despite undergoing significant transformation in the 1980s and 1990s, China's banking sector is widely recognized to be one of the weakest links of the national economy. Compared with robust reforms and marked progresses in agriculture and industry, the performance of China's commercial banking is under par. Its potential to support the national economy is far from being realized. Transnational study shows that banking in china was still a state monopoly; the range of their products is limited and quality of their service is poor. Meanwhile, the policy role assigned to large state owned banks to finance unproductive SOEs resulted in mounting non-performing loans. The cumulative levels of NPL from the four largest state-owned banks in the fourth quarter of 2001 reportedly reached RMB 1.8 trillion. This equals to 26 per cent

of their loan portfolios and 20 per cent of China's GDP (Ji & Thomas, 2002, p.678).

One inference from the information above highlights the curtailing effects of China's hybrid political economy and the nascent nature of China's financial service sector. In face of the escalating competitions from abroad in the post-WTO era, the fate of China's financial service hinges on China' efforts to press ahead with legal and regulations reforms (Ji & Thomas, 2003, p. 679). Theoretically, this could be further elaborated with the aid of Wang's two waves of reforms in economic globalization theory. In his article detailing the impact of WTO on state sovereignty, Wang (2004, p. 475) divides the process of economic globalization into two stages. The first wave is called the first generation reform and the second the second generation reform. According to him, the unanimous adoptions of market economy by most members of the international community constitute the first generation reform while the establishment of legal framework for the fulfillment of market potential constitutes the second. Viewed in this perspective, the quintessence of China' WTO strategy is to use WTO-induced legal reforms (the second generation reform) to advance domestic economy reforms (first-generation reform). Also, China's decisions to adopt and transplant WTO laws and norms were made at the initiative of Chinese government itself (Wang, 2004, p.477). This reverse interpretation and operationalization of economic globalization theory is striking both in its novelty and uncertainty. This finding is also confirmed by many other researches. Kim (2002, p.439), Qin (2007, p. 721), Thomas & Ji (2002, p.673) all highlight Chinese leaders' reliance on increased foreign competition to vitalize China's financial service industry. Premier Zhu Rongji, for example, believed China's financial industry would benefit from the WTO due to inflows of foreign talents, expertise and capital. He was generally credited with the substantial concessions China made during the negotiations (Thomas & Ji, p.679 & 682).

State preferences may also have a direct bearing on the efficiency of China's post-WTO trade laws reforms. Decisive trade laws reforms under the auspice of state authority may drastically alter former practices and change the trade environment in

China. As a consequence, foreign traders often benefit enormously from business opportunities which previously deny them. One such hallmark event is Huarong Asset Management Company (a subdivision of the ICBC)'s public auction of distressed state assets in 2004. For the first time in history, foreign establishments were allowed to bid vis-à-vis Chinese firms under the principle of national treatment. Finally, $ 1.3 billion were sold to a group headed by Morgan Stanly (Ji & Thomas, 2003, p. 678).

Japan

Background brief

Compared to China's belated admission into the WTO, Japan joined the General Agreement of Tariffs and Trade (GATT) in 1955. After it approved the expanded GATT agreement in 1994, it became a member of the WTO six years ahead of China in 1995 (WTO, 2013, "Membership information" section, para.1). Unlike China, which is widely considered to be an authoritarian state (Lai, 2010, p. 820, Dimitrov, 2008, p. 24, Fukuyama, 2008, para.7), Japan today is a stable democracy in the form of constitutional monarchy. The real rulership is accorded to the Prime Minister, who must command sufficient support from the Diet (parliament of Japan) to govern. To correlate Japan with China is expected to amplify the weight of explanations. If a hypothesis on post-WTO legal reforms is verified both in China and Japan, the underlying mechanism could be strengthened. If under some circumstances divergences do occur, they provide the starting point for further investigation.

In 1996, partly as a signal to honour Japan's commitment to the GATS (General Agreement of Trade in Service), Prime Minister Ryutaro Hashimoto announced Japan would embark on drastic financial liberalization. Under the motto of "modern, international and transparent", this Japanese "big bang" proposed a legal overhaul of the financial service industry. It is five years in duration (1996-2001) and covers virtually all significant financial institutions and their operations. Foreign exchange rules, for example, were amended to allow more flexible outflow of foreign currency. Japanese depositors can now take advantage of foreign banking to earn higher

interests. Rules regarding cash inflows were revised to facilitate market entry of foreign capital. In the securities sector, many new measures were institutionalized to create a level playing ground and to stimulate competitions. These measures include: extensive decontrols of brokerage commission, bigger selection of over the counter financial products, relaxed regulations on trading of financial derivatives and decreased transaction costs of securities. In the insurance sector, local and foreign contractors were guaranteed more autonomy in pricing policy and products design. Finally, Japan would significantly lower the threshold of market access by dismantling restrictions on new financial institutions, including financial holding companies (Lincoln & Litan, 1998). These legal reforms are expected play a crucial role in enhancing international competitions and reestablishing Tokyo as a global financial center.

Analysis

Under the influence of mercantilism, Japanese government maintained a heavy regulation and control of the financial service industry well into the 1970s. Changing economic condition at the end of that decade, however, increasingly led some liberal politicians to challenge the virtue of the old system. As a consequence, administration over foreign currencies was eased and operations of banks gradually expanded (Lincoln & Litan, 1998). However, many big commercial banks in Japan used this opportunity to exploit real estate and soon engaged in impudent lending. Their discretion is believed to fuel the rampant speculations in stock market and real properties market during the 1980s. When the bubble finally bursted in 1990, major banks in Japan were saddled with mounting non performing loans and their reputations tarnished. This crisis provided additional fodder to the reformists in the Diet. They claimed the chance to avoid long-term recessions hinges on the restructuring of Japan’s financial service. This objective could be achieved by means of marketization and increased foreign participations. Since GATT 1947 does not provide any explicit guidelines for foreign provision of service (especially financial service), Japanese financial market is traditionally less internationalized than London

and New York. After Japan's ratification of the GATS as a part of the GATT 1994, liberals such as Ryutaro Hashimoto quickly seized it as instrument to advance their policies (Lincoln & Litan, 1998).

In this research, it is easy to identify WTO-induced trade laws reforms partly with state preferences. Japan's obligation to honour the WTO Agreement also opens a new window for leading politicians to exercise influence over the course of domestic politics. Besides, the utilitarian role of these legal reforms in solving domestic issues is very clear. In his study on shifts of national norms, Goldstein (as cited by Cortell & Davis, 2005, p.24) suggests failures of current practices or institutions as key incentive for elites to seek remedy in new norms. If his theory is sensible, then the bad debt fiasco in the 1980s surely provided the decision makers internal condition and stimulus to upgrade Japan's financial service industry. When they eyed international organizations for improved legal templates, the WTO provided the GATS as a policy option. In conclusion, the meaning of Japanese Big Bang is twofold: in the domestic setting, it is legal revisions in Japan's regulatory institutions and style. In the external setting, it is in line with the spirits of GATS. As a legal reform, Big Bang mainly resulted from state preferences while WTO played a secondary and normative role in the process.

6.3 **Costs of entry**

China's (and to a similar degree, Japan's) decision to embrace a highly competitive international trading regime is not without costs, and in many circumstances it leads to pains during the transitions. In this research, costs of entry are the price paid by WTO member states in return for their access to the global market. In the hypothesis section, I forecast there is a negative correlation between costs of entry and WTO-induced trade laws reforms. In other words, big costs of entry impede or inhibit legal reforms while small costs of entry stimulate legal reforms. To facilitate analysis,

I operationalize this concept to three variables by stratifications, i.e. the economic costs, the institutional costs and constitutional/political costs.

The economic costs is a variable used to quantify those perceptible, measurable economic losses a state incurs. Intensified market competition, flooding of foreign products, pressures from trading partners to widen imports while moderate exports can increase economic costs.

At the intermediary level is the institutional costs. A state must possess sufficient financial resources and institutional capacity to launch WTO-induced legal reforms. This variable is used to map these costs.

Finally, entry to some (though not all) international organizations mandates significant changes in the constitutional order or basic political arrangement of the entrant state. I here use the variable of constitutional costs. The WTO, for example, could constrain substantively a state's authority to legislate and tax through the national treatment and other requirements (Wang, 2004, p.477).

China

Background brief

China's obligation to the general WTO Agreement and its commitments to various WTO-plus clauses in the Protocol make it to pay a much higher price than other developing countries. In terms of economic cost, China was predicated to sustain heavy losses due to removals of product subsides and import quotas on agricultural products. The Development Research Centre of China's State Council (as cited by Kim, 2002, p.451) predicated around 10 million (3.6 per cent) of total agricultural labours would lose jobs within seven years after China's accession to the WTO. Meanwhile, 18 per cent of the agrarian lands would be out of production. Traditional manufacturing industries such as machinery, automobile and petrochemicals were hit especially hard during the process. Due to overlapping investments, widespread

inefficacy and flooding of quality products from abroad, these sectors totally registered a new unemployment population of half a million (Kim, 2002, p. 451). Most conservative estimate of the total bankruptcy ratio of SOEs reached 10 per cent. China's service industry also faced mounting pressure of survival with the elapse of the grace period. China was expected to pay dearly in the financial service sector. The failure of many insolvent banks, securities firms and insurance companies in face of intense international competition were inevitable (Qin, 2007, p.682, Kim, 2002, p. 452). This may lead to lose of market shares and laying off of Chinese personnel. The ceasing of policy support roles of banks to many underperforming SOEs was also a political concern as it may result in social instability. Finally, China's acquisition of the WTO membership also finalizes the full convertibility of ranminbi (RMB, China's legal tender) in capital transaction. This will increase the susceptibility of RMB to market uncertainties such as volatile exchange rates, speculative attacks and future financial crisis (Kim, 2002, 452).

For institutional costs, the Protocol requests China, inter alia, "to administer in a uniform, impartial and reasonable manner of all the laws and regulations and so on governing trade and goods and service, trade-related aspects of intellectual property rights and foreign exchange". It requires china to establish a registration system of possible infringements of WTO regime. It requires China to redouble its efforts to improve transparency in legislations and administration. Finally, the Protocol also implies the necessity for China to establish a judicial review system (Potter, 2001, p.599). To meet these requirements, it is necessary for China not only to amend many rules of regulations, but commit considerable resources to restructure the current institutions and bureaucracy.

Besides these economic and institutional costs, China is obliged to revise some clauses of the constitution to ensure it will not collide with the GATT. In particular, China has to reconsider the Article 12 of the constitution which guarantees the Communist Party of China (CPC)'s leadership in the legal system. This constitutional

change also has spillover effects for many interpretative documents and speeches. It also requires the deletion of “socialism” or “socialist” from the Chinese definition of the rule of law as long as these terms connote an infringement of GATT’s authority. The transparency requirement of GATT disallowed the opaque internal decision making process of the CPC in the regulating trades. Meanwhile, the current superiority status accorded to public property also needs revision according to the national treatment principle (Potter, 2001, p.603).

Analysis

As mentioned above, “China’s accession to the WTO requires fundamental revisions to virtually all aspects of its legal and regulatory systems” (Potter, 2001, p.607). In order to fulfill its commitments to the WTO Agreement and the Accession Protocol, China mobilized a daunting amount of resources to reconstitute its administrative laws and substantive laws. This extensive legal overhaul encompasses customs, foreign exchange, taxation, intellectual property rights, enterprise, bankruptcy, pricing and other areas of international trade (Potter, 2001, p.602). If quantity could be used as an indicator of China’ progress so far, it is apparently laudable as “more than 2,500 commercial laws and regulations were reassessed after May 2002, 830 were abrogated and 335 were amended, while the National People’s Congress undertook to draft 118 new laws” (Choukroune, 2012, p. 10).

Based on China’s progress in this regard and positive feedbacks from many foreign establishments, it seems the high costs of entry do not pose a prohibitive burden on China’s WTO legal reforms (Choukroune, 2012, p.12). The legal reforms were conducted in a stepwise fashion and their implementations generally remain in the right track charted by the government. According to the hypothesis, there is a negative correlation between costs of entry and legal reform. This hypothesis, however, is not particularly applicable in China. To explain the discrepancy between hypothesis and reality, I here give two explanations.

Firstly, china's WTO-induced legal reform did not start from scratch. For over two decades, china has been working unilaterally in building a market-oriented economy (Qin, 2007, p.721). During this period, rudimentary legal foundation was lay down to make international trade better serve the national economy. China Foreign Trade Law, for example, was firstly introduced in 1994 and underwent further amendments in 2004 to reflect the WTO requirements ("China Foreign Trade Law," 2005, "Preamble", para.1). China Enterprise Bankruptcy Law only came into effect in 2006, but its origin dated back in 1986, when China Enterprise Bankruptcy Law (Trial version) was published. Although considerable efforts were put in to forge a market-oriented, rule-based trade legal system in the 1980s and the 1990s, China's legal system is widely flawed for the lack of judicial independence and fragmented structure (Choukroune, 2012, p.10). In this sense, the WTO-induced legal reforms serve as an accelerator to modernize China's legal system.

Secondly, the CPC continuously presides over legislations through its Party Committees. Objectively speaking, there are two sides of the story. On the positive side, the CPC's dominance in the legislatures ensures the legal reforms be carried out in an efficient, coordinated and highly unified way. In China, legal reforms concerning international trade typically necessitate consultations and cooperations of diverse departments. They include: Department of Treaty and Law in the Ministry of Commerce, various ministries of the State Council, Legal Affair Bureau of the State Council and Legal Affair Committee in the National People's Congress. China's status as a party state exempts its legislation from fraction interest prevalent in democracy. Although the Protocol forbids the CPC to impinge on GATT' authority in international trade, it has no competency to require the CPC to retreat from making laws. On the negative side, efficiency often prevails over transparency and China's performance in the latter regard is mediocre at the best. Some authors (Lai, 2010, p. 826-827, Choukroune, 2012, p. 12,) also highlight the failure of the WTO in helping establish the rule of law in China.

Japan

Background brief

In contrast to China's sweeping legal reforms, Japan displayed a markedly less capacity to sustain costs of entry. In this research, I use the abortive trade liberalization of Japan's agriculture as one example.

From the middle of 1960s, Japan began to remove tariffs incrementally. As a result of the Kennedy Round Negotiation (1964-1967), it further reduced the tariff rates in the 1970s. Meanwhile, Japan slashed the number of industries under the protection of import quotas from 122 to 72 (Cortell & Davis, 2005, p.12). As a consequence of these moves, Japan's tariff rates for most industrial products are the lowest in the developed world. However, Japan's sensitivity towards different sectoral interest results in a highly asymmetrical pattern of liberalization. One example concerns the disparity between tariffs for industrial products and agricultural commodities. To cite one example: according to Japan's tariff schedule on April 1, 2012, Japan charged no tariff on imported vehicles and accessories. In comparison, it charged a stunning tariff of 778 percent for imported rice. This means every kilogram of rice is subject to a tariff of 150 Japanese Yen ("Japan's tariff schedule as of January 1, 2013," 2013, Section XVII, "Vehicles, aircrafts, vessels and associated transport equipment"). In fact, Japan managed to preserve an embargo on foreign rice well into the 1990s. Even after the ban was lifted in 1993, Japan still heavily privileges domestic producers by subsidies and quota system. The Rice Farming Income Stabilization Programme, for instance, protects rice farmers by predetermined pricing standard. Should the domestic market price fall behind this standard, it compensate farmers the difference. Besides, quota system is also in effect. Currently, the quota for yearly rice importation is 682,000 tons. In sum, these laws and regulations are efficient to isolate a highly uncompetitive domestic sector from world market. However, they contravene the comparative advantages principle at the heart of trade liberalization. At the GATT level, Japan's refusal to liberalize its agriculture constituted one reason for the collapse of GATT negotiation in 1990. WTO negotiations at Cancun later fell apart

also for this reason (Cortell & Davis, 2005, p.17).

Analysis

According to Davis and Shirato (2007, p. 284), agriculture has long been the bone of contentions in international trade and creates the largest number of disputes. This rule also holds in Japan. Theoretically speaking, liberalization of Japan's agriculture would benefit almost everyone in the international trade arena. On the domestic front, it benefits the Japanese society as a whole as consumers can purchase much cheaper rice from abroad. Japan's government can also be eased of its burden to finance the disadvantaged agriculture. On the international front, it facilitates the shift of production of rice to states with higher yield efficiency. My research indicates the major obstacle to liberalization of Japan's agriculture lies in the unaffordable politic price in face of Japanese government. For a better understanding of the stranded legal reforms of agricultural trade in Japan, I give special attention to powerful faction interest.

Japan's agriculture is a small but influential actor in Japanese politics. The interest of Japan's agriculture is crystallized in Japan's Agricultural Cooperative Organization (JA). Thus far, Japan's legislation on agricultural trade is said to reflect the "collusive relationship" between the government and the lobbying of JA at the expense of Japanese consumers (Mulgan, 2012, p. 16). JA exercises its leverage in Japanese politics mainly by representation in the legislature and participation in administration of agriculture (Mulgan, 2012, p. 15).

In the first place, former cadres and members of JA enter the Diet as policy brokers to uphold JA's interests. By doing so, they ensure JA's opinions and preference being heard and integrated in the legislation process. As a return, JA provides campaign subsidies, financial contributions and voting. In the 2010 Upper House election, for example, JA provided endorsement to 16 JA candidates. It also successfully installed Akira Gunji, a former district secretary-general of JA in the Minister office of the

Agriculture, Forestry and Fisheries (MAFF). Many JA members also function as rank officials in the ruling Liberal Democratic Party of Japan. Besides, virtually all political parties in Japan need the five million votes of JA members to survive (Mulgan, 2012, p.15).

In the second place, JA can function as an adjunct to the bureaucracy and is frequently tasked with administrative functions in agriculture and trade. This differentiates JA from other pure lobbyist groups. In the middle of 2000s, for example, MAFF authorized JA to charge out rice production adjustment programme, including the setting of maximal production volumes. This policy is geared directly to keep market price high by restriction of domestic output. It is also common for MAFF to heed JA's concerns and interests in its formulation of agricultural policies (Mulgan, 2012, p.15)

According to Mulgan, (2012, p.16), JA's interest lies in restricting production outputs and promoting small, inefficient and part-time agricultural farms. By restricting volume of supply, JA aims to keep the price of rice afloat in domestic market and extract more marketing commissions from farmers. By maintaining an inefficient and dispersed production system, JA intends to enlarge membership contributions and the base of support. For Japan, to align its agricultural policy with the demands of the WTO requires legal reforms. However, JA's influence in Japan's legislature and the LDP make any legal reforms to change the status quo extremely costly. Here I highlight one lesson from the 1980s.

From the middle of 1980s, Japanese government under Noboru Takeshita began to face mounting pressure to liberalize agricultural trade. In 1987, US filed several GATT complaints against Japan's quota system and won. This leads to Japan's elimination of quotas on ten out of twelve agricultural products. This moderate concession, however, triggered heated controversies at home and the LDP (Japan) had to pay an extraordinary price for its decision. In the 1989 election, the LDP (Japan) lose its dominance at the Upper House. Since then, Japanese government reverted to

the old hard-line policy and contended basic foodstuffs should be exempt from import liberalization. Countries relying heavily on import of staple foods, it argued, need to maintain self-sufficiency in the interest of national security (Cortell & Davis, 2005, p. 16). Since then, the basic political arrangement between JA and LDP (Japan) remains unchanged. As a result, legal reforms to liberalize agricultural trade are not likely to take off with this old pattern still in place.

6.4 Corporate actors

The last few years witness an expansion in the scope of corporate governance study. Traditional literatures in this field tend to concentrate on how to make agent (manager) accountable to principle (owner). In his essay on this topic, Engwall (2006, p.161) proposes an expanded paradigm. It encompass not only the internal management of business institutions, but the interrelations between businesses and other societal actors like government, NGO, media and local community (Djelic & Sahlin-Andersson, 2006, p. 161). According to him, corporate actors are not merely recipients of instructions from other regulative actors. Corporate actors may also assert their interest in the political process either by presenting favourable images (presentation) or campaigning (lobbying). My research follows this line of reasoning and credits corporate actors as influential contributors to China's post-WTO trade laws reforms.

China

Background brief

With a customer base of 500 million, Europe is a highly lucrative market for home appliances manufactures. Each year, around twenty-five million television sets are sold in Europe, among which ten to fifteen units are imported from non-European states. China's TV producers imported the first batch of TVs to Europe in the middle of 1980s. Thanks to their mature technology and low-cost labour, TVs made in China soon flooded into the European market. This caused alarm in the twelve member

states of the EU and they jointly filed a complaint against the alleged dumping of Chinese TVs. EU began to probe this issue in 1988 and imposed a 15.3 per cent anti-dumping tariff on TVs from China. This rate is later heightened to 25.6 percent in 1995 and 44.6 percent in 1998. The final rise in tariff actually barred all Chinese TV from European market.

China's TV producers then began a long and arduous legal battle to reopen European Market. Among their strategies are lodging appeals at Brussels and designating China Chamber of Commerce of Machinery and Electric Products (CCCMEP) to engage in bilateral negotiations with the EU. In 1999, Xiamen Overseas Chinese Electronics Co. made an unprecedented move when it hired a Belgian law firm, Van Bael & Bellis to battle for its interest. It sued EU for its abuse of China's incomplete market economy status and distorted methods in calculating dumping profit margins. In April 2002 the two parties finally reached a deal: CCCMEP and 7 other Chinese TV manufactures consented to the import quotas and floor prices set by Brussels. The EU allowed China to market a limited number of TVs in Europe in return ("Nine Chinese TV producers face up to anti-dumping complaint," 2000, para.3-10).

Analysis

The final agreement is an incomplete victory for China's TV industry as the quota system and tariff remained in place. This case, however, is unique in that it spanned the time period before and after China's accession to the WTO. During this period, Chinese TV industry quickly learns how to cope with foreign trade barriers within the legal framework of WTO. This case also highlights corporate actors as a vital factor in multilevel governance. Due to the rise of transnational jurisprudence, the interactions between corporate actors and their regulatory counterparts far transcend national boundary. In the case above, Chinese TV industry as a subnational actor deals with CCMEP (bureaucracy at national level), foreign law firm (intermediary at international level) and the EU (authority at supernational level) to reform current legislation.

The TV case, along with numerous other anti-dumping complaints against China, plays a catalytic role in establishing China's own anti-dumping regime. Like European continent laws, China's legal system relies predominately on prescribed legal corpus. Legislature in China traditionally grants little emphasis on case laws. In the last few years before China's access to the WTO, soaring number of transnational trade dispute rendered many of its legislations obsolescent. Meanwhile, the inefficiency of China' old legal system to protect national interest was all the more evident. Because of foreign dumping, China was reported to lose $ 35 million annually in the 1990s (Qin, 2007, p.72). China passed two laws regarding anti-dumping and anti-subsidies in 1997 and further merged them into a unitary law in 2001 (Qin, 2007, p.72). Although it is exaggerating to attribute this legal reform exclusively to Chinese corporate actors, it is right to acknowledge the formative role of corporate actors in the legal reform.

Japan

Background brief

From the mid 1990s, Tokyo took concrete steps to legalize its foreign trade regime in line with WTO principles (Pekkanen, 2004, p.135). During this period, Japan increasingly relies on legalism to constrain its major trade partners and safeguard its interests. In this context, legalism means a state's adherence to the legality of WTO laws and active utilization of WTO arbitration to crack foreign trade protectionism. Compared with bilateralism Japan traditionally used before the WTO, this change constitutes a crucial element of Japan's post-WTO trade laws reforms.

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Before the advent of WTO, Japan seldom resorted to international laws in solving transnational trade disputes. During the entire GATT era 1(1947-1994), Japan in total filed four complains, the majority of which were settled at bilateral stage (Pekkanen, 2004, p.137). Japan's interest in formal trade dispute settlement mechanism firstly appeared at the concluding phase of the Uruguay Round. In 1995, the first year WTO

came into function, Japan filed its first complaint against the USA. From 1995 to 2002, Japan was involved in 11 cases as complaint or third party. For many, Japan's record in this regard spoke volumes of Tokyo's WTO-centered trade strategy. Meanwhile, the evolution of Japan' legalism reveals the logic of its domestic political economy. In Japan, trade laws reforms is an area especially under the sway of powerful corporate actors (Pekkanen, 2004, p. 135).

Analysis

In the hypothesis section, I assume different industrial sector may display different attitude towards WTO-induced legal reform. The export-oriented industries, for example, may press ahead with this process due to their vested interest in trade liberalizations. I further assume an industrial sector's standing in national economy has a direct bearing on government's decision to initiate legal reforms. In other words, an economically dominant and financially privileged industrial sector may commit more resources to promote WTO-induced legal reforms. To substantiate this causal mechanism, I firstly create a set of criteria. The aim of these criteria is twofold: to mirror the relative importance of industrial sectors and their varying influence on government's trade laws reforms.

Here I first turn to study of corporate political action. Empirical studies indicate an industrial sector's willingness to petition for political action hinge on several factors. Among them, industry size, consolidation degree, competitiveness and export-dependence are especially important. Davis & Shirato's research (2007, p.281) shows this rule is also valid for an industrial sector's capacity to demand WTO arbitration.

Then I integrate two additional explanatory variables which are unique in Japanese politics. In Japan, it is normal for industrial sector to win policy priority by cultivating political clientelism. Accordingly, an industrial sector's relation with government and its political donations to the ruling LDP are included as two additional causal

variables.

Then I evaluate the interest and potential of major industrial sectors in Japan to influence government's adoption of legalism. The method is to filter them through the seven criteria listed above. In conclusion, I find three sectors of Japan's manufacturing industry: steel, automobile and electronic have the most potential to petition for WTO adjudication:

Why the steel industry is chosen:

The steel industry of Japan has a moderately diversified structure and a medium level of concentration. As the third biggest steel corporation in the world, Nippon Steel Corporation (NSC) is the principle player in this field. In domestic market, traditional customers of the steel industry include automobile and automotive accessories industries, machinery and shipbuilding. From 1980s onwards, the competition levels of Japan's steel industry slackened due to protracted depression in demand and limited profitability. Globally the steel industry of Japan remains one of the top contenders and Asian market is its primary export destination. China, Taiwan, South Korea and Thailand routinely place large quantity of orders with Japan. In 2001, Japan's steel industry claimed a 10.4 percent share of the world market and 5 percent of the total value of Japan's export (Davis & Shirato, 2007, p.299). Politically speaking, the steel industry is viewed by many as the most privileged sector within the manufacturing industry. It enjoyed Tokyo's support from as early as the Meiji period and maintains a close liaison with the METI (Ministry of Economics, Trade and Industry) in the postwar years. Due to economic security reason, METI historically regards the steel industry as a strategic sector and is all too willing to be at its service. Compared with other industrial sectors, Japan's steel industry is particularly active in championing the use of WTO platform to combat trade barriers (Davis & Shirato, 2007, p.305). Institutionally speaking, the steel industry exerts its influences mainly through the Japan Iron and Steel Federation (JISF). The steel industry also cements its relation with the ruling LDP by regular political donations. In 2002, its political contribution

to the LDP amounted to JPY 142 million (Davis & Shirato, 2007, p. 288).

Why the automobile manufacturing is chosen:

Japan's automobile manufacturing is structured with a medium-high level of concentration. Three big corporations: Toyota, Honda and Nissan partition the majority of domestic market. Toyota, with its market share of 35 percent in comparison with Nissan's 13.7 percent and Honda's 11.8 percent in 2004, is the market leader. From 1990s to early 2000s, the automobile sector is characterized by a medium level of dynamism. This resulted in a moderate level of competition and stable distributions of profits in the domestic market. Thanks to its mature technology and high productivity, Japan's automobile sector traditionally enjoys high profitability. In 2001, Japan won a market share of 15.2 percent globally (Davis & Shirato, 2007, p.299). Politically speaking, the automobile sector and the steel sector constitute the backbone of Japan's postwar catch-up strategy. Japan Automobile Manufactures Association (JAMA) functions as an intermediary between manufactures and government. Meanwhile, the automobile sector gives special attention to fostering favourable relations with leading political parties. In 2004, for example, its political contribution to the LDP was 285 million JPY (Davis & Shirato, 2007, p.288).

Why the electronics manufacturing is chosen

Japan's electronics sector is characterized by a fragmented topography, with no company being the top runner. A host of companies vie for market share over a wide range of product lines. Among them, Fujisu, Hitachi, Masushita, Mitsubishi, NEC (Nippon Electronics Corporation), Sony, Toshiba and Sharp are the most well-known. This sector is noted for a very dynamic environment, fierce competition and short product lifecycle. Compared with the steel and automobile sector, Japan's electronics manufacturers have an even higher level of dependence on export. In 2001, Japan's electronics sector was the nation's top export earner. It contributed to 24 percent of export value and 33 percent of export volume of that year. Meanwhile, it is also the nation's biggest employer. In 2004, 17.6 percent of Japan's labor force worked in the

electronics sector (Davis & Shirato, 2007, p. 288). Besides, it also contributes heftily to the LDP. In 2002, the political donations from the electronics sector amounted to 225 million JPY (Davis & Shirato, 2007, p.288)

Finally, I take a look at Japan's actual performance in WTO-induced trade laws reform. Examination of Japan's complainant activities at the WTO reveals an unusual concentration of case types. From 1995 to 2002, Japan in total filed 11 cases. Among them, 5 (DS162, DS184, DS217, DS244, DS249) were lodged for its steel industry and 6 (DS6, DS51, DS55, DS64, DS139, DS322) for its automobile sector. In comparison, Japan initiates no litigation for its electronics sector. This finding generally supports my hypothesis on the collaborative relation between corporate actors and government. Government, in this context, Japanese Government, tends to adopt WTO legalism on the interest of principle and foreign-oriented industrial sectors. However, it fails to clarify why the same pattern does not exist between the electronics sector and government. This provides the starting point of further research.

6.5 Local norm systems

In their essay discussing the rise of transnational governance, Djelic and Sahlin-Andersson (2006, p.21) underline the facilitating role of normative systems in globalization. According to them, analyses of institutional changes should not only focus on perceptible interactions between organizations, but on nuanced influences from normative and cultural factors. Like many other factors in polycentric governance, almost all international organizations are value-laden. For member states, to gain access to an international organization requires the subscription to its value system. The compliance process, whether it be termed socialization (Djelic & Sahlin-Anderson, 2006, p. 31) or "norm nurturing" (Choukroune, 2012, p. 10), is an appropriation of international norms to domestic settings. During this process, international laws and regulations are "edited" and acquire local meaning. To understand them requires knowledge of local culture, history, economy and laws

(Biukovic, 2008, p. 803). How to explain China' WTO-induced trade laws reforms in light of shifts of norms? What factors contribute to this change? This section aims to provide answers to these two questions. To do this, I employ the selective adaptation paradigm.

The selective adaptation tries to explain a state's compliance behaviour of international law/treaty by reference to domestic factors. It allows users to determine to what extent partial compliance or incompliance could be attributed to local cultural characteristics and legal tradition (Biukovic, 2008, p.803-p.804). It argues a state's compliance with the WTO norms is dependant on several important factors. Among them, complementarity, political will, institutional capacity and legal culture are reckoned as the most important. In this research, complementary is used to denote whether the imported norm and local norm are complementary, viz. could coexist without conflicts. Political will is used to reflect whether political elites have the will to comply with international norms. Institutional capacity is used to reflect the efficiency of domestic political and legal system to implement imported norms. Local culture is used to reflect if local legal culture has the ability to absorb imported norms (Biukovic, 2008, p.805).

In political science, norm is a concept with indefinite definitions. In this research, I adopt Cortell and Davis' version: a norm is a prescription for actions in situations of choice. Norms give rise to a feeling of obligation. When being violated, it engenders regret or a feeling for justification (Cortell & Davis, 2005, p. 8). As an international legal regime for trade liberalization, WTO encompasses principles such as tariff reduction, elimination of non-tariff barriers, non-discrimination, etc. Three norms of liberal origin: transparency, national treatment and the rule of law form the base of WTO system (Potter, 2001, p.599).

Analysis

China

Long before China's accession to the WTO, researchers like Potter, Wolfe and Ostry

(as cited by Biukovic, 2008, p.809) had challenged China's capacity to honour its WTO commitment. According to them, WTO norms like transparency and the rule of laws are grafted from Western liberal democracy and free market economy. These tenets echo very few indigenous practices in China. China is the home country of Confucianism, among whose creeds is harmony. Harmony is a widely upheld belief in China, which aims to achieve general welfare of society by enforcing interpersonal relationship. Legal culture in china traditionally does not encourage formal litigation through court system and shows a strong disdain on pettifoggers. In lieu of laws, it prompts the use of mediation to solve problems. This emphasis on informal, peaceful negotiation has far-reaching influence on the design and evolution of Chinese legal system.

Authors like Fukuhama, Potter, Mayeda and Stein (Fukuhama, 2008, para.13, Biukovic, 2008, p.819) attribute China's inadequacy in implementing the rule of law to historical reasons. According to them, political legacy from China's feudalism past hinders China's legal reforms. Fukuhama, for example, uses "paternalistic sovereignty" to describe China's administration culture. The term is employed to capture a condescending relationship between state and subject. State is a patrimonial sovereign responsible for the welfare (especially material welfare) of society but not necessarily accountable for it. This asymmetrical arrangement of power is at odds with Western democracy and constitutes another obstacle to transparency and the rule of law.

Finally, researchers like Lai (2010, p.827) and Kim (2002, p.441) focus on the distorted "guanxi" culture in China. Guanxi (关系) means building and maintaining favourable relation with powerful institutions (especially bureaucracy) to gain access to valued resources. These resources could be marketing intelligence, exemption from regulation or government procurement contract. As a matter of fact, many guanxi is simply bribery in the guise of PR. This practice highly privileges insiders and posts a

particular threat to new entrants, especially foreigners.

In sum, the norm factors mentioned above could partly explain the lopsided nature of China's post-WTO legal reform. Although China made some progresses in the last few years, China's record in transparency and the rule of law is mediocre at the best. In 2012, China ranks 80 in the 176 countries surveyed by Transparency International's Corruption Perception Index ("Corruption Perception Index", 2012, "China").
China also fares poorly in The World Justice Project's The Rule of Law Index. Out a scale from 0 to 1, China is scored at 0.35 ("Rule of Law Index Map," 2012, "China").

Japan

Analysis

Japan is an Asian country that values solidarity and collaboration. Norms like consensus and harmony are granted high priority in regulating Japanese society. Civil and merchant disputes, for example, used to be solved mainly by informal mechanisms (Biukovic, 2008, p.813).

In terms of administration culture, there is also a far cry between Japanese tradition and the rule of law. Although an Asian pioneer to modernize its national economy, Japan is questioned as a modern state under the genuine rule of law. As the first Asian constitutional monarchy, Japan enacted Meiji Constitution in 1890. Unlike its western counterpart trying to constrain the oligarchy, it institutionalized the unchallengeable authority of Mikado. Although the emperor formally relinquished his divinity in 1945, many practices rooted in Tennoism remained in Japan's administrative culture. One example is the high standing of bureaucracy, which seldom opens its operations and documents to legal scrutiny. As a result, administrate review is very rare (Biukovic, 2008, p.813). Japanese administration also relies heavily on informal guidelines to regulate business and trade. These semiofficial rules are not decree in nature, but potent enough to distort free market economy (Biukovic, 2008, p. 813).

Finally, some traditional beliefs also account for Japan's incomplete observance of GATT/WTO laws and failed legal reform. These presumptive norms anchor in the core of Japan's value system and are very difficult to change. In this respect, one example is mercantilism, which helps explain Japan's protectionist stance on domestic rice production.

When Japan joined the GATT in 1955, it had a reservation about Article X, which mandates the liberalization of agricultural trade. This is an archetypical case of selective adaptation. According to Yoshimura and Anderson (1997, p.207), Japan has a culture deeply affected by traditional behaviour. Japanese feel a pressing obligation to keep things stable and are very resistant to change. From the 19th century onwards, mercantilism began to figure prominently in Japan's foreign trade policies. Japan is an island country deprived of natural resources. Meanwhile, its domestic market is small. Mercantilism argues for government's heavy regulation of economy and strict limitation of import. These ideas particularly appeal to many Japanese with insularity (Biukovic, 2008, p.814). This mercantilist mindset also leads to Japan's position on agriculture by stressing the importance of self-sufficiency.

In sum, the aforementioned local cultural, historical and institutional factors could partly explain Japan's problematic adherence to WTO norms. As a consequence, Japan is frequently faulted by other WTO members for overregulation of trade and lack of transparency in legislations (Biukovic, 2008, p.814).

Conclusion

7.1 Answering the research question

As the research nearing its end, it is time to answer the research question. To what extent does China's accession to the WTO lead to domestic legal reform? My answer is: China's admission into the WTO functions mainly as an exogenous disciplining mechanism for its internal trade regime reform. China attempts to facilitate its

transition to market economy by emerging into world trading system. For Chinese leaders, the WTO also functions as an institutional constraint. It guarantees China's forthcoming reforms stay in an officially approved, internationally endorsed track in the years to come. China's decision to join the WTO is at the initiative of Chinese leaders. In this sense, WTO does not constitute an impingement on traditional state sovereignty. One example concerns the ruling of the Permanent Court of International Court of Justice in the Wimbledon case (as cited by Wang, 2004, p. 477). It reads as follows: " … any conventions creating an obligation of this kind place a restriction upon the exercise of sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagement is an attribute of State sovereignty." In sum, this finding corroborates my central argument, viz., China's accession to the WTO constitutes a necessary, albeit crucial condition for China's trade regime reform.

7.2 Generalization of the research findings

Basing on the multiple causality mechanism, this paper expands the scope of research and probes the influence of national and subnational factors. Four causal variables: state preferences, costs of entry, corporate actors and local norm systems are chosen for their prominence in this legalization process. Below is a generalization of the most important findings from the research.

State preferences

At state level, comparative study on China and Japan's administrative records lends strong support to Jacobson's statement about the duality of modern state. According to him, states increasingly turn to both regulators and being regulated in the transnational governance networks (Djelic & Sahlin- Andersson, 2006, p.246). State is the seat of authority in endorsing and implementing international laws and rules. In China and Japan, state authorities still monopolies the right to change current legal systems through their legislative branch. State preferences is a crucial factor in legal

reform. It could be translated to priority of legal reform, scope of legal reform and efficiency of legal reform. A Comparison of China with Japan's financial service reform demonstrates three is a positive correlation between preexistent political agenda and legal reform. In China, it is Chinese leaders' intention to employ WTO legal reform to galvanize its ailing financial sector. In Japan, the Big Bang carried out to fulfill Japan's GATS obligation also helps alleviate its chronic macroeconomic crisis.

Costs of entry

In this research, I invent a layered model to appraise the impact of adaptation costs on prospective legal reform. Ranged in a descending order from political through institutional to economic level, this stratification design aims to concretize diverse costs. Rational choice theory argues that there is a reverse correlation between adaptation costs and legal reform. In other words, if membership of an international organization overburdens a state, then in all likelihood legal reforms will not take place. This may be due to widespread conflicts of interests. State caught in this situation either does lip service to create a façade of reform or petitions for incomplete reforms. Juxtaposition of adaptation costs in China and Japan reveals significant disparity in terms of scope and magnitude. In the case of China, agriculture, manufacturing and service sector were expected to face a hard time in the initial years after its WTO accession. Meanwhile, China faces the task to revamp its institutional infrastructure and constitutional order. In the case of Japan, costs of entry concerns mainly its fragile agriculture sector, which counts for only a fraction of national economy. Theory suggests Japan should make more progresses in legal reform but reality shows China is relatively more efficient in this regard. For this discrepancy, I focus on China and Japan's sensitivities towards factional interests. China is an authoritarian state where the dominance of CPC on legislature makes trade laws reform immune from conflicting interests. In democracy like Japan where the administration is more answerable to the constituency, political parties need the five million votes of the JA for survival.

Corporate actors

I consider corporate actors the primary factor at subnational level which has a say in WTO-induced trade laws reforms. My research echoes Engawall's assertion (Djelic & Andersson, 2006, p. 161) that corporate actors increasingly use different intermediaries in their interactions with counterparts exercising regulatory authorities. Compared with their predecessors two decades ago, corporate actors in China are endowed more autonomy in management and marketing. In this research, a consortium of corporations in China challenged the validity of EU ruling with the aid of other players. They include: administrative organ at national level and law form at international level. This is an example par excellence of polycentric governance due to the interconnectedness of players in the field. In the case of Japan, export-oriented industries' interest in trade liberalization partly accounts for Japan's alignment with WTO legalism.

Local norm systems

In the study of transnational governance, territories, interactions and relationships are relatively easy to observe and measure. In contrast, cultural frames and patterns of meaning are more complex to capture (Djelic & Andersson, 2006, p.21). As norms travel, local "editing" process and its various relational and structural filters should also be scrutinize (Djelic & Andersson, 2006, p. 69). The final part of this report explains WTO-induced trade laws reforms in light of interplays between imported and local norms. By utilizing the selective adaptation paradigm, this research reveals some striking similarities between China and Japan.

Firstly, the geographic proximity between China and Japan results in a strong presence of Confucianism in these two countries. The "harmony" doctrine speaks volumes about China and Japan's legal cultures and contravenes the rule of law. Secondly, China's feudalism and Japan's Tennoism make an indelible imprint on the two countries' administrative culture and practice. The so-called paternalistic

sovereignty is believed to impair regulatory transparency and accountability. As a result, China and Japan are frequently faulted for lack of administrative transparency and overregulation of economy. Finally, if we view WTO-induced trade laws reforms in terms of norms replacement, then this is usually a lengthy task. Prevalent practice ("Guanxi" in China) or mindset (mercantilism in Japan) is usually ingrained in a society's collective choice and is thus self-reinforcing.

7.3 **Limitation of the research and research potential of this topic in future**

According to Djelic and Sahlin-Andersson (2006, p.18), three are three perspectives collectively forming the transnational research repertoire. They are the actor-centered approach, the process-centered approach and institutionalism. The actor-centered approach focuses on tangible elements of transnational governance such as actors, initiatives and interactions between powers. The process-centered approach tries to dissect the transnational governance by unveiling its internal dynamics. Finally, institutionalism identifies culture and social custom as important formative factors. This research project is mainly conducted in line with the actor-centered approach, although the forth causal variable – the local norm system also addresses partly the concern of institutionalism. The actor-centered "lens" limits the utility of this research because factors are examined in a relatively static and disconnected way. Future study on the same topic could grant more attention to the conditionality of these actors. One example is "Under what condition does variable X maximize the effects of WTO-induced legal reform?" In doing so, causal mechanisms between variables can be mapped in a more precise way.

The major policy implications of this comparative research comprise of two parts. The first one is methodological in nature. This research generally acknowledges the facilitating roles of divergent factors in WTO-induced trade laws reforms. However, there remains the question of how to measure their respective contribution. Perusals

of monographs of multilevel governance reveal a dearth of insight in this regard. How to quantify the significance of different factors and justify the measurement mechanism are two challenging tasks in the years to come.

The second policy implication concerns the role of education in WTO-induced trade laws reforms. As mentioned earlier, WTO-related legal reform could be understood as a substitution of old norms with new ones. Due to the ingrain nature of old norms system, the establishment of new norms cannot be achieved overnight. Policy makers can nevertheless speed up the diffusion of new norms by granting more attention to the inculcating roles of education. The Japanese initiative to overhaul its legal education system in the wake of its WTO accession is one example in point (Biukovic, 2008, p.817).

7.4 Final remark

The World Trade Organization is a creation of globalization and propeller of globalization. It is an ideal subject of research for scholar interested in the rise and evolvement of transnational governance. As an organization embodying liberal principles of trade, the WTO may affect its member states' trade regime in a multitude of ways. This paper aims to explain China's trade legal reforms against the backdrop of its entry into the WTO. Viewed through the lens of multilevel governance theory, China's trade regime reforms exemplify the modern definition of governance. Study on state preferences and costs of entry attribute China's trade legal reforms to the interplay between domestic and foreign policies. Study on corporate actors acknowledges the rising importance of business in national legislation. Finally, study on local norm systems underlines the constraining effects of indigenous value systems in the reforms. Transnational governance, an amorphous process under the sway of multiple factors, finds a good example in China.

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