TRADING WITH FOREIGNERS: AN INTERDISCIPLINARY ANALYSIS OF CHINA'S CORE INTERESTS IN TRADE AND FOREIGN POLICY

Phoenix X. F. Cai∗

∗ Associate Professor of Law and Director, Roche L.L.M. in International Business Transactions, University of Denver Sturm College of Law; University of California, Berkeley Law, J.D., 1999, *Order of the Coif*; Washington University in St. Louis, B.A. 1996. Thanks to Shruti Rani, Miye Goishi, and the participants of the CAPALF 2013 conference at UC Hastings School of Law for their insightful comments. Thanks also to the participants of the 2013 ILA-ASIL Asia-Pacific Research Forum in Taipei, Taiwan, for their helpful comments. Particular thanks go to Michael Cox, who contributed both significant research and writing to Part III.B of this Article. I am also extremely grateful to Caroline Watson for her invaluable research, editing assistance, and writing contribution to Part III (B)(g). Any errors are mine.

I. INTRODUCTION – A SLEEPING GIANT AWAKENS

It is perhaps the dominant truism of the twenty-first century that has awakened China from her slumber to claim the status of a global superpower. In recent years, China has eclipsed Japan as the third largest economy, after the United States and the European Union. China is a giant in global trade, with import and exports of goods equal to U.S. $3.87 trillion in 2012.[1] This means that in 2012, China surpassed the United States (U.S. $3.82 trillion) as the biggest trading nation in the world in terms of trade volume in goods. As of 2011, the number of China's middle class exceeded the entire population of the United States.[2] By 2026, the number of Chinese middle-class citizens will reach an estimated 800 million.[3] Additionally, according to a 2012 report, there are now 1,020,000 millionaires in China, defined as those with total assets equal to at least U.S. $1.6 million, and 63,500 individuals with total assets equal to at least U.S. $16 million.[4] The Hurun Rich List has been tracking China's tycoons since 1999, and reported that the number of U.S. dollar billionaires in China totaled 271 in 2010, an increase from 130 in 2009.[5] The resulting cultural, economic, and political turmoil from these and other rapid changes in China has been the subject of thousands of popular and scholarly articles

1. *China Eclipses U.S. as Biggest Trading Nation,* BLOOMBERG NEWS, Feb. 10, 2013, http://www.bloomberg.com/news/2013-02-09/china-passes-u-s-to-become-the-world-s-biggest-trading-nation.html.

2. Helen H. Wang, *The Biggest Story of Our Time: The Rise of China's Middle Class*, FORBES, Dec. 21, 2011, http://www.forbes.com/sites/helenwang/2011/12/21/the-biggest-story-of-our-time-the-rise-of-chinas-middle-class/.

3. *Id.*

4. GroupM Knowledge, *Hurun Report Together with GroupM Knowledge*, HURUN WEALTH REPORT 2012, July 31, 2012, http://www.hurun.net/usen/NewsShow.aspx?nid=283.

5. Malcolm Moore, *China's Billionaires Double in Number*, THE TELEGRAPH, Sept. 7, 2011, 10:52 AM BST, http://www.telegraph.co.uk/news/worldnews/asia/china/8746445/Chinas-billionaires-double-in-number.html.

and books. Surprisingly, throughout the tumult, the Chinese political system has remained relatively stable, although not without controversy. In the legal academy, one under-studied characteristic of China's stability has been its foreign policy, especially as it plays out in the international economic law arena. This article draws on political science, international relations, and the legal literature on global governance and coalition-building in order to begin to fill the void.

For the past ten years, China's foreign policy has been guided by the zealous and consistent pursuit of three "core interests."[6] These core interests include: (1) ensuring the permanence of China's fundamental system (including the dominance of the Chinese Communist Party) and the maintenance of internal security, (2) protecting state sovereignty and territorial integrity, and (3) the continued economic development and stable social order.[7] This article highlights the major domestic and foreign policy characteristics of each of these three core interests under President Hu Jintao's leadership from 2002 to 2012. Despite China's recent power transition and the ascendancy of Xi Jinping as head of state in 2012 and President in March 2013, no one expects significant changes in the broad contours of China's foreign policy. Because the three core interests will continue to guide Chinese foreign policy in the predictable future, it is important to understand the global governance and trade policy implications of their unabated salience.

This article takes an interdisciplinary approach by drawing on political science, international relations, and legal global governance literatures to explain how China's foreign policy impacts and guides its trade policy, which is manifested in the three core interests. The article makes the case that the core interest analysis holds promising explicative, predictive, persuasive, and coalition-building value in the arenas of global trade policy and dispute settlement.

The insight that China pursues its interests in foreign affairs is, of course, not new. All nations do.[8] However, two factors make the analysis advanced in this article useful and timely. There is a critical

6. *See* Wang Jisi, *China's Search for a Grand Strategy: A Rising Great Power Finds Its Way*, 90 FOREIGN AFF. 68, 71 (2011) (arguing that China's pursues sovereignty, security and development simultaneously).

7. *首轮中美经济对话:除上月球外主要问题均已谈*, 中新社 [Talks Begin at the First China-U.S. Strategic & Economic Dialogue], July 28, 2009, http://www.chinanews.com.cn/gn/news/2009/07-29/1794984.shtml (reporting on comments by State Councilor Dai Bingguo at the first China-U.S. Strategic & Economic Dialogue in Washington, D.C., in July 2009).

8. ROBERT O. KEOHANE, INTERNATIONAL INSTITUTIONS AND STATE POWERS: ESSAYS IN INTERNATIONAL RELATIONS THEORY 7-16 (1989) (coining the term "neoliberal institutionalism" and distinguishing this from other interest-based international relations theories).

difference in the temporal scope of policy changes between China and other countries, especially other superpowers. Take the United States for example. One can point to a distinct foreign policy shift between the administrations of Presidents George W. Bush and Barack Obama. Commentators disagree on the exact degree of the change,[9] but few would allege that there was no policy change.[10] In contrast, China's foreign policy has remained remarkably consistent for ten years – and these were ten years characterized by rapid social change, intense economic change, and seismic cultural shifts in other arenas of Chinese life. Yet China's foreign policy goals remained unchanged. Even more strikingly, it is likely to *remain* fundamentally unchanged for at least another decade. The only foreseeable change is that China will pursue the three core interests even more actively.[11]

While political scientists and international relations scholars are used to interest-based discourse, such discourse is often missing in the legal literature. Moreover, the intersection between the three disciplines (political science, international relations, and law) is under-theorized. Thus, this article makes a much-needed contribution to the interdisciplinary literature on China.

Understanding how China perceives and pursues its core interests is critical and important in four distinct, but related, ways. First, China's past behavior is a predictor of future behavior. This is true both in domestic policy and foreign policy (see Part II). Second, in the World Trade Organization ("WTO") arena, applying the core interest analysis helps us predict what cases China will file or prosecute as well as what cases we can expect China to defend most zealously (see Part III.B's case study). Third, the core interests' analysis yields insight on China's future role in coalition and alliance-building attempts, which are especially important for smaller developing countries. Armed with this information, these countries can better frame their coalition building or negotiations strategies to appeal to China's interests. In other words, understanding the core interests and how they play out in WTO litigation will help countries predict areas in which China will likely be an ally. Where China's core interests are not implicated, China is unlikely to lend a helping hand. Lastly, this *real-politik* understanding exposes one

9. Brett McGurk, *Agreeing on Afghanistan: Why the Obama Administration Chose Consensus This Time*, FOREIGN AFF., June 21, 2011, http://www.foreignaffairs.com/articles/67957/brett-mcgurk/agreeing-on-afghanistan.

10. *See generally* Barack Obama, *Essay: Renewing American Leadership*, FOREIGN AFF. (July/Aug. 2007).

11. *See* Jisi, *supra* note 6, at 71.

of the remaining weaknesses of the WTO system, in which small economies are still held hostage to power politics. This last observation leads to significant implications for international global governance that is elaborated in detail in Part V.

This article proceeds in five main parts. Part II traces the contours of China's three core interests in action, both in the domestic and international spheres. While not purporting to be exhaustive, it takes some of the most significant events in China's recent history and examines them through the core interest lens. This section provides a deeper understanding of China's motives by embedding them in the context of geopolitical goals and policies. Part III focuses the lens more narrowly on the arena of international trade law. It examines the ongoing U.S.-China and E.U.-China trade disputes on solar subsidies in terms of a core interest analysis. This section provides a useful roadmap for understanding future cases. It demonstrates that China engages in a deliberate and intentional weighing of how WTO litigation and other activities advance or impede its strategic interests. Part IV examines the policy and normative implications of these finding with an interdisciplinary analysis drawing on political science, international relations, and legal global governance literatures. Part V lays out the four significant implications to be drawn from this article's arguments, briefly described in the paragraph above. Part VI concludes.

II. PURSUIT OF CORE INTERESTS

For the past ten years, three core interests have been the driving engines of China's foreign policy. These core interests are: (1) ensuring the permanence of China's governing system and the maintenance of internal security, (2) protecting state sovereignty and territorial integrity, and (3) the continued economic development and stable social order. Each of these three core interests present significant global governance implications in the area of both foreign and trade policy. This section traces the origins and contours of each of the three core interests.

A. Overview of China's Foreign Policy and Core Interests

Thanks to China's tight one-party rule, its foreign policy tends to be relatively consistent over time. During the presidency of Deng Xiaoping (1992 to 1997), China was widely perceived as "passive"[12] in the foreign

12. *See* Evan S. Medeiros & M. Taylor Fravel, *China's New Diplomacy*, 82 FOREIGN AFF. 22, 23 (2003) (arguing that China's passivity in foreign diplomacy began to change with Beijing's

policy sphere. The policy has been described as "rhetorically promoting a 'peaceful international environment' in which to grow their economy while free-riding on the tough diplomatic work of others."[13] As a rule, it played a quiet role in international forums such as the United Nations ("UN"), where despite its seat on the Security Council, it rarely claimed the spotlight, preferring to operate in the shadows whenever its interests were implicated.[14] While other nations certainly also operate informally in back rooms (at the UN or elsewhere), China stands out for the rarity with which it has proclaimed any public positions.[15] China has also eschewed important leadership roles in important multinational negotiations, such as the Kyoto Agreement on Climate Change.[16] While China insisted on treatment as a developing nation, it left the advocacy for the implications of such a label to others like India and Brazil.[17] During this time, China was not active at the International Court of Justice – participating for the first time only in 2009 in an advisory hearing on Kosovo.[18] It did actively pursue membership in the WTO[19] as well as negotiate a number of key bilateral trade agreements,[20]

facilitation of three party talks in 2003 over North Korea's nuclear policies).

13. *See* Elizabeth C. Economy, *The Game Changer: Coping with China's Foreign Policy Revolution*, 89 FOREIGN AFF. 142, 142 (2010).

14. Jorge G. Castañeda, *Not Ready for Prime Time: Why Including Emerging Powers at the Helm Would Hurt Global Governance*, 89 FOREIGN AFF. 109, 111 (2010) (arguing that Brazil, China, India, and South Africa are not ready to join the helm. Their shaky commitment to democracy, human rights, nuclear nonproliferation, and environmental protection would only weaken the international system's core values).

15. *China and Qatar Block Security Council Statement on Darfur Crimes,* SUDAN TRIBUNE, Dec. 10, 2007, http://www.sudantribune.com/spip.php?article25104.

16. For example, the United States justified its refusal to ratify the Kyoto Protocol on the ground that the Protocol incorporated the principle of "common but differentiated responsibility," leaving China, India, and other developing countries without any significant responsibility for emissions reductions. *See* Por Thilo Kunzemann, *The Past and Future of the Kyoto Protocol*, ALLIANZ, Nov. 27, 2011, http://sustentabilidade.allianz.com.br/?131 (stating that U.S. politicians were angered by the fact that the Kyoto Protocol gave major economic competitors a "free ride"). Canada echoed these complaints when it withdrew from the Kyoto Protocol at the Durban conference. *See Canada to Withdraw from Kyoto Protocol*, BBC NEWS (Dec. 13, 2011, 7:01 AM), http:// www.bbc.co.uk/news/world-us-canada-16151310. The Chinese delegation at Durban "accused developed countries of hypocrisy." *See, e.g.,* John M. Broder, *Climate Talks in Durban Yield Limited Agreement*, N.Y. TIMES, Dec. 12, 2011, at A9; *see also* Roger Harrabin, *UN Climate Talks Extend Kyoto Protocol, Promise Compensation,* BBC NEWS (Dec. 8, 2012, 2:20 PM), http://www.bbc.co.uk/news/science-environment-20653018.

17. *See* Castañeda, *supra* note 14, at 118.

18. Dapo Akande, *Is China Changing Its View of International Tribunals?* EJIL: TALK! (Oct. 4, 2010), http://www.ejiltalk.org/is-china-changing-its-view-of-international-tribunals/.

19. *See* DEEPAK BHATTASALI ET AL, EDS., CHINA AND THE WTO: ACCESSION, POLICY REFORM, AND POVERTY REDUCTION STRATEGIES 1 (World Bank ed. 2004).

20. MOFCOM, CHINA FTA NETWORK, http://fta.mofcom.gov.cn/english/index.shtml.

although both were seen as critical to China's economic development. Overall, commentators have described China's foreign policy under Deng as maintaining the status quo.[21]

Deng oversaw the beginnings of China's great economic expansion, but it was under Hu Jintao's leadership that China's economy flowered. Hu Jintao presided over China's phenomenal rise as a global economic power in just ten years. China's economy has grown steadily since 2002, dipping only temporarily in the aftermath of the 2008 global financial crisis.[22] This sustained growth ushered in a marked increase in China's willingness to assert its newfound economic clout in foreign affairs. One observes three distinct but related trends under Hu. First, Hu abandoned Deng's low-profile diplomacy in favor of more assertive, even aggressive, stances. Second, Hu sought to elevate China's global leadership and geopolitical position via foreign policy. Third, China showed increased readiness to undertake a stronger role in international governance befitting its new status as a rising power. China's leaders now recognize that fulfilling their domestic needs of economic growth demands a more activist global strategy.[23]

Each of these trends developed *in tandem* with China's pursuit of three core interests. Not only was the Chinese leadership increasingly assertive in defense of the core national interests, but so were the Chinese people. Both reacted, on occasion, quite stridently to perceived slights to its national pride and sovereignty. A nationalist rhetoric emerged, and took strong root. A recent example occurred in 2012 when the Chinese government tacitly sanctioned anti-Japanese populist protests over Japan's alleged purchase and nationalization of the hotly contested Senkaku/Diaoyu islands in the East China Sea.[24] Another increasingly common symptom of the same phenomenon is China's insistence on serving as a counterpoint to American hegemony,[25] not only in Asia, but in other parts of the world as well, especially in Africa.[26] These issues are laden with symbolic value tied to China's

21. *See* Economy, *supra* note 13, at 142.

22. *Rising Power, Anxious State*, THE ECONOMIST, June 23, 2011, http://www.economist.com/node/18829149.

23. *See* Economy, *supra* note 13, at 142.

24. CHIEN-PENG CHUNG, DOMESTIC POLITICS, INTERNATIONAL BARGAINING AND CHINA'S TERRITORIAL DISPUTES 26 (RoutledgeCurzon 2004).

25. Andrew J. Nathan & Andrew Scobell, *How China Sees America: The Sum of Beijing's Fears*, 91 FOREIGN AFF. 42, 44 (2012).

26. Leslie Hook & Katrina Manson, *China Pledges More Investments to Africa*, THE FINANCIAL TIMES (March 25, 2013, 2:02 PM), http://www.ft.com/cms/s/0/a2bc930e-9517-11e2-a4fa-00144feabdc0.html#slide0.

prestige and sense of national pride.

B. Internal State Security and Communist Party Rule

The Chinese Communist Party has ruled China since October 1, 1949 when Mao Zedong formally announced the founding of the People's Republic of China.[27] In no other country has a single "political party" been in power for so long in modern history. Even though China has seen tremendous change and political turmoil since 1949, the Communist Party has been surprisingly resilient through it all. It survived Mao's ill-fated Great Leap Forward and the starvation of millions of Chinese,[28] the Korean and Vietnam Wars, the destructive Cultural Revolution,[29] and the tragedy of Tiananmen Square.[30] More recently, the Communist Party has survived countless internal and external attacks on China's human rights abuses, widespread populist unrest over rural land seizures, the deep social rifts caused by urbanization, and a society increasingly characterized by huge wealth disparity. How has it survived?

The Chinese government spends a staggering amount on internal state security every year. China devoted U.S. $111 billion in 2012,[31] and more in 2013,[32] to internal state security. This amount comprises spending for police, state security, armed militia, courts and jails, and other items it categorizes as "public security."[33] It spends more on its massive internal security apparatus than on its military.[34] Much of this public security spending goes to maintaining the hold of the Communist Party, thus explaining the long-term survival of one-party rule in China

27. JONATHAN D. SPENCE, THE SEARCH FOR MODERN CHINA 512-15 (1990).

28. YANG JISHENG ET AL, TOMBSTONE: THE GREAT CHINESE FAMINE, 1958-1962 XXII, XXIII (Edward Friedman et al. eds., Stacy Mosher & Guo Jian, trans. 2012).

29. JOSEPH ESHERICK ET AL, EDS., THE CHINESE CULTURAL REVOLUTION AS HISTORY 1 (Joseph W. Esherick et al. eds., 2006).

30. DINGXIN ZHAO, THE POWER OF TIANANMEN: STATE-SOCIETY RELATIONS AND THE 1989 BEIJING STUDENT MOVEMENT 1-2 (2004).

31. *China Domestic Security Spending Rises to $111 Billion*, REUTERS (Mar. 5, 2012, 3:06 AM), http://www.reuters.com/article/2012/03/05/us-china-parliament-security-idUSTRE82403J 20120305; *See also generally* Andrew T. Guzman, *Global Governance and the WTO*, 45 HARV. INT'L L. J. 303 (2004).

32. Ben Blanchard & John Ruwitch, *China Hikes Defense Budget, to Spend More on Internal Security*, REUTERS (Mar. 5, 20133:49 AM), http://www.reuters.com/article/2013/03/05/us-china-parliament-defence-idUSBRE92403620130305.

33. *See China Domestic Security*, *supra* note 31.

34. Keith B. Richburg, *China Military Spending to Top $100 Billion in 2012, Alarming Neighbors*, WASH. POST March 4, 2012, http://articles.washingtonpost.com/2012-03-04/world/35448587_1_path-of-peaceful-development-official-military-budget-first-aircraft-carrier.

despite cataclysmic changes.

C. State Sovereignty and Territorial Integrity

China has been increasingly willing to assert its state sovereignty and territorial integrity. China's policies in Tibet and the South China Sea are illustrative of the lengths to which China will go to defend this core interest.[35]

Tibet. In response to President Obama's meeting with the Dalai Lama in early 2010, China reminded the West of the tough statement that Deng once made, "[n]o one should expect China to swallow the bitter [fruit] that [hurts its interest]."[36] This aggressive rhetoric is a departure from China's usual measured tones vis-à-vis Tibet. Moreover, China stepped up an overt and aggressive policy of cultural assimilation, encouraging the migration of thousands of ethnic Han Chinese into Tibet.[37] China has not retreated from its aggressive policies and rhetoric in Tibet.

South China Sea. In its relations with Asian-Pacific neighbors, Beijing has been aggressive in maritime territorial disputes. China has long coveted the resource-rich islands in the South China Sea.[38] For many decades, China pursued a delaying strategy and avoided both shows of force and escalation. During the last three years of the Hu presidency, China began to overtly and aggressively assert sovereignty over the disputed maritime territories.[39] In 2009, it even publically extended its official territorial integrity claims beyond the traditional areas of Taiwan, Tibet, and Xinjiang[40] to include maritime territorial claims over much of the South China Sea.

Three recent events, all occurring between 2009 and 2012, illustrate the trend of China's pro-activity in the South China Sea. Beginning in 2009, China made repeated diplomatic and military attempts to prevent Vietnamese and Philippine vessels from exploring oil and gas in disputed waters of the South China Sea.[41] In 2010, China took punitive

35. Taiwan is discussed *infra* in Part II.A.

36. *Press Conference of the PRC State Council Information Office for Contacts Between Central Government and Dalai Lama*, XINHUA (Feb. 11, 2010, 2:03 PM), http://news.xinhuanet.com/english2010/china/2010-02/11/c_13172224.htm.

37. Edward Wong, *China's Money and Migrants Pour into Tibet*, N.Y. TIMES (July 24, 2010), http://www.nytimes.com/2010/07/25/world/asia/25tibet.html?pagewanted=all&_r=0.

38. *See* CHUNG, *supra* note 24, at 9.

39. *Id.*

40. Wu Xinbo, *Forging Sino-US Partnership in the Twenty-First Century: Opportunities and Challenges*, J. CONTEMP. CHINA 21:75, 391, 393 (2012).

41. Jane Perlez, *Dispute Flares Over Energy in South China Sea*, N.Y. TIMES, (Dec. 4,

action by breaking off diplomatic contacts with Japan over Japan's detention of a Chinese trawler captain who strayed into Japanese territorial waters.[42] Lastly, in 2012, the Japanese government decided to nationalize the disputed Senkaku/Diaoyu islands in the East China Sea by purchasing them from a private seller, which set off a furor.[43] Chinese public outrage against Japan ran high, resulting in widespread protests and looting aimed at Japanese businesses. For example, crowds of angry protesters shut down a factory in China in 2012.[44] In each of these incidents, China brought into play its naval superiority, flexing its muscles in a manner reminiscent of war games in the China/Taiwan Formosa Strait, but rarely seen elsewhere. Each of the three incidents led to diplomatic crises, in addition to nadirs in China's relationship with its neighbors.

D. Economic Development and Social Stability

The story of China's astonishing economic success is inextricably linked to the success of the Chinese Communist Party. Since Deng's economic reforms, the Party has tied its fate to continued economic growth, largely driven by an export-oriented economy. The Communist Party has staked its legitimacy on its ability to sustain economic growth. Some commentators have noted that the Chinese Communist Party pursues economic growth as if its life depended on it, which may well be true.[45]

China's rapid economic expansion has lifted millions out of poverty and created a hitherto unknown middle class. But it has come at a great cost. Just to name a few of the problems that China faces that make the headlines in and out of China regularly: environmental degradation,[46] scarcity in natural resources,[47] corruption,[48] social upheaval,[49] public

2012), http://www.nytimes.com/2012/12/05/world/asia/china-vietnam-and-india-fight-over-energy-exploration-in-south-china-sea.html?_r=0.

42. Yuri Kageyama, *Chinese Boat Skipper Arrested Off Japan's Coast,* ASSOCIATED PRESS (Nov. 7, 2011, 9:41 AM), http://news.yahoo.com/chinese-boat-skipper-arrested-off-japans-coast-010649940.html.

43. *Panasonic, Toyota Report Damages in China as Protests Widen*, BLOOMBERG (Sept. 16, 2012, 5:34 AM) http://www.bloomberg.com/news/2012-09-16/panasonic-plant-in-china-on-fire-as-anti-japan-protests-escalate.html.

44. *Id.*

45. JOHN KNIGHT & SAI DING, CHINA'S REMARKABLE ECONOMIC GROWTH 295 (2012).

46. Damien Ma, *Before and After Hu: Is China Better Off Than It Was Ten Years Ago?*, FOREIGN AFF. 2-3 (2012).

47. *Id.*

48. Eric X. Li, *The Life of the Party: The Post-Democratic Future Begins in China*, 92 FOREIGN AFF. 34, 39 (2013).

health crises,[50] wealth disparity,[51] and erosion of traditional values[52] (such as caring for the elderly, who are now often abandoned in the country by their children who work in cities). These myriad problems explain in part why China spends so much on maintaining internal security. Another key element of the social stability equation is the rise of a large politically savvy and active middle class. Increasingly, this new middle class desires not only the economic privileges of their counterparts in the West, but also their social and political freedoms. Until now, there has been a silent détente, with the middle class staying relatively quiescent in exchange for the direct benefit of continued economic gains. However, how much longer can the détente last?

III. CORE INTERESTS AND INTERNATIONAL ECONOMIC LAW

This section considers how China's three core interests find expression in its trade policies. The section proceeds in two parts. First, it provides illustrations of how China's trade policy links up to the three core interests. Second, it explores how each of the three core interests has found expression in international economic law litigation, seen through the lens of domestic and WTO trade remedies cases. In particular, the ongoing dispute between the United States and China over solar energy subsidies illustrates how deeply the core interests are intermeshed with trade policies. This section also considers China's other major WTO cases, arguing that each of the central cases China has either brought or the strategy chosen to defend a case are driven, in whole or in part, by the furtherance of one of the three core interests.

A. Linkages Between Regional East Asian Trade Policy and Core Interests

All countries align foreign and domestic policies with trade policy, although views on the extent of alignment or even the desirability of alignment may vary.[53] One common integration principle is that foreign

49. John W. Schoen, *China's Wealth Gap Strains Social Fabric*, NBCNEWS.COM (Oct. 20, 2010, 10:36 AM), http://www.nbcnews.com/id/39546204/.

50. Yanzhong Huang, *The Sick Man of Asia: China's Health Crisis*, 10 FOREIGN AFF. 119, 124 (2011).

51. *See* Ma, *supra* note 46, at 2-3.

52. Benjamin Cost, *China's Aging Population Poses Problems for Economy and Tradition,* SHANGHAIIST (Mar. 22, 2012, 3:15 PM), http://shanghaiist.com/2012/03/22/chinas_aging_population.php.

53. *See, e.g.*, Paul Krugman, *Is Free Trade Passé?*, JOURNAL OF ECONOMIC PERSPECTIVES, Fall 1987, at 131-44, cited in JOHN H. JACKSON ET AL, LEGAL PROBLEMS OF INTERNATIONAL

and domestic policy goals must be balanced with the desire to maintain friendly trade relations with existing trading partners or open up trade opportunities with new partners. For example, Country A's decision to host a formal state visit from Country B may be driven, in part, by a desire to trade more with Country B. Similarly, the value of making condemnatory statements on Country C's human rights record may be balanced against the desire to maintain friendly trade relations with Country C. The interlinked nature of decisions makes it difficult to distill a single motive behind each decision. Nonetheless, it is possible to discern trends in the salience of one among many motives in the conduct of foreign affairs. In the past ten years, one can identify a cohesive trend of increased assertion of China's core interests.

Taiwan is a particularly salient example of the close relationship between Chinese foreign policy objectives and trade policy. China's insistence on the One-China policy is a cornerstone of its sovereignty core interest. As a result of the One-China policy, Taiwan's status as a member of the community of nations is fraught with confusion. Taiwan has struggled to carve out a policy space for itself because of its ambiguous status in international law. Due to China's strong-arming, just twenty-five nations have official diplomatic relations with Taiwan.[54] The lack of official diplomatic recognition also hampers Taiwan's trade relations. Taiwan is party to only five free trade agreements: El Salvador, Honduras, Nicaragua, Guatemala, and Panama.[55] In contrast, China has fourteen free trade agreement partners comprised of thirty-one economies[56] and is actively negotiating many more, in addition to investment treaties.[57] Interestingly, Taiwan is a member of the WTO, but only through a protracted negotiated compromise reached during China's accession process where the two nations raced to the finish line for WTO membership, with China joining on December 11, 2001[58] and Taiwan soon thereafter on January 1, 2002.[59] Taiwan feared that if

ECONOMIC RELATIONS, CASES, MATERIALS AND TEXT 24-29 (4th ed. 2003).

54. *Diplomatic Allies*, MINISTRY OF FOREIGN AFFAIRS REPUBLIC OF CHINA (TAIWAN), http://www.mofa.gov.tw/EnOfficial/Regions/AlliesIndex/?opno=f8505044-f8dd-4fc9-b5b5-0da9d549c979.

55. *See FTAs Signed with Trading Partners*, BUREAU OF FOREIGN TRADE, http://www.trade.gov.tw/english/Pages/List.aspx?nodeID=672.

56. MOFCOM, CHINA FTA NETWORK, http://fta.mofcom.gov.cn/english/index.shtml.

57. For an analysis of China's evolving investment treaty program, *see generally* Stephan W. Schill, *Tearing Down the Great Wall: The New Generation Investment Treaties of the People's Republic of China*, 15 CARDOZO J. INT'L & COMP. L. 73 (2007).

58. *See Member Information – China and the WTO*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/countries_e/china_e.htm.

59. *See Member Information – Separate Customs Territory of Taiwan, Penghu, Kinmen and*

China were to become a WTO member first, it would vote to block Taiwan's membership. Thus, Taiwan felt it had no choice but to negotiate quickly to join the WTO at the same time as China. In exchange for a speedy accession process, Taiwan agreed to join as a developed nation and made other costly concessions.[60]

In the South China Sea, China's sovereignty claims come into direct conflict with its trade interests in the area. China's recent relations with the Association of Southeast Asian Nations ("ASEAN") and the East Asia Free Trade Area have deteriorated substantially in recent years due to territorial claims in the South China Sea. The dispute over the Senkaku/Diaoyu islands is just the most recent and highly publicized episode. The South China Sea links the Pacific and Indian Oceans and has some of the world's busiest shipping lanes. Several Asian countries claim sovereignty over the South China Sea, whose waters are believed to be rich in oil and gas. China claims virtually the entire sea, while the Philippines, Taiwan, Vietnam, Brunei, and Malaysia claim various parts.[61] China's aggressive military policing of the South China Sea raised tensions with its neighbors to new peaks throughout 2012. The crisis has not abated. New rules that came into effect on January 1, 2013, allow police in the southern Chinese province of Hainan to board and seize control of foreign ships that "illegally enter" Chinese waters and order them to change course.[62] In November 2013, tensions rose over China's patrolling of a newly declared air zone over the disputed South China Sea Islands.[63]

Meanwhile, China is supposedly working on closer economic integration with the very same countries whose territorial claims it disputes in the South China Sea. In the background are China's ongoing efforts to foster a closer economic partnership with ASEAN, particularly through the ASEAN Plus Three cooperation initiative in which China, Japan, and South Korean pledge to work closely with ASEAN's members on a wide range of trade, development, economic, and social

Matsu (Chinese Taipei) and the WTO, WORLD TRADE ORGANIZATION, http://www.wto.org/english/thewto_e/countries_e/chinese_taipei_e.htm.

60. *See* Lee J. Brenner, *The Effect of China's WTO Accession on Taiwan*, LEEJBRENNER.COM, http://www.leejbrenner.com/The_Effect_of_China%27s_WTO_.html.

61. Matthew Bigg, *ASEAN Chief Says China Plan on Disputed Seas Escalates Tension*, REUTERS (Nov. 30, 2012, 2:57 AM), http://www.reuters.com/article/2012/11/30/us-china-seas-asean-idUSBRE8AT09120121130.

62. *Id.*

63. Jane Perlez & Martin Fackler, *China Patrols Air Zone Over Disputed Islands*, N.Y. TIMES, (Nov. 28, 2013), http://www.nytimes.com/2013/11/29/world/asia/japan-south-korea-fly-military-planes-in-zone-set-by-china.html?_r=0.

issues.[64] Progress on the ASEAN Plus Three cooperation plan has stalled largely due to tensions in the South China Sea. The same is true for the East Asia Free Trade Agreement ("FTA"), encompassing the same ASEAN Plus Three membership. An East Asian FTA would have economic benefits (as well as disadvantages and displacement events), but would also foster closer regional interdependence, leading to possible reductions of social and political tensions.[65] However, there is little forward movement with ASEAN due to China's aggressive policies in the South China Sea, policies that have entrenched the rivalry between China and Japan. Leadership and cooperation between China and Japan would be necessary for the creation of an East Asia FTA, but the two countries have rival and divergent views on regional security. China stands to gain a great deal from an East Asia FTA,[66] particularly in new potential export markets. However, the core interest of continued economic development is pitted against the competing interests of regional hegemony, control over valuable resources (oil and gas reserves in the South China Sea, also essential for economic development), and territorial sovereignty. It is not surprising that cooperation with ASEAN is getting short shrift.

Particularly in regional politics, trade relations are reflective of and even subservient to regional hegemonic and sovereignty concerns. China's policies vis-à-vis Taiwan and its ASEAN neighbors in the South China Sea are explicable only in terms of core interests of sovereignty and regional hegemonic dominance. This can also be understood in terms of China's need to maintain internal stability by aggressively pursuing alternative sources of energy to fuel its economic expansion. The next section explores how core interests play out in trade disputes in light of these core interests.

B. Case Study – Solar Industry Trade Dispute

The solar energy industry presents a timely and salient case study of how China's core interests can place China on a political and economic collision course with its largest trading partners - the United States and the European Union. China has been investing very heavily in the solar industry, both privately and publically, through government

64. *See* Association of Southeast Asian Nations, *ASEAN Plus Three Cooperation*, ASEAN.ORG (OCT. 23, 2012), http://www.asean.org/asean/external-relations/asean-3/item/asean-plus-three-cooperation.

65. Shujiro Urata, *Towards an East Asia Free Trade Area*, OECD DEVELOPMENT CENTRE POLICY INSIGHTS, 4 http://www.oecd.org/dev/31098183.pdf.

66. *Id.* at 4.

subsidies, loans, and other policies. The solar industry is an important cornerstone of China's export-driven economic growth policy, as well as its desire to have sustainable sources to satisfy its ever-increasing domestic energy demand. Increased demand for energy and other resources presents a tinderbox of social stability issues for the Chinese government, pressured to respond to skyrocketing demand for resources. Thus, the solar industry provides a direct lens into two core Chinese interests – economic growth through export expansion and maintaining domestic social stability.

1. Brief Overview of Renewable Energy Investments

Renewable energy now comprises a significant portion of global investment in the energy industry. In 2011, 16.7 percent of all global energy investment went toward renewable energy.[67] The United Nations reported that investment in renewable energy reached a record U.S. $257 billion in 2011, representing a 17 percent increase from 2010.[68] In 2012, China was responsible for one-fifth of all investments in renewable energy, spending U.S. $52 billion, slightly topping the United States' share of U.S. $51 billion.[69] Germany, Italy, and India comprise the next top tier of countries making large renewable energy investments.[70] Solar and wind made up 8.2 percent of global investment in renewables.[71] Renewable energy supplies only 4.7 percent of the world's electricity,[72] so there is great growth potential for industry. The level of investment means the solar energy industry may be poised for extraordinary growth. In 2011, solar led the renewable energy industry with U.S. $147 billion in global investment.[73]

Solar energy's impressive growth is due its increasing viability as an economically efficient energy source. Enough sunlight hits the Earth in one hour to power the world's energy needs for an entire year.[74] A plot of solar panels covering an area of 100 miles by 100 miles would

67. *See* Jack Perkowski, *China Leads the World in Renewable Energy Investment*, FORBES (July 27, 2012, 9:19 AM), http://www.forbes.com/sites/jackperkowski/2012/07/27/china-leads-the-world-in-renewable-energy-investment/.

68. *Id*.

69. *Id*.

70. *Id*.

71. *Id*.

72. *Renewable Power*, BP, http://www.bp.com/en/global/corporate/about-bp/statistical-review-of-world-energy-2013/review-by-energy-type/renewable-energy/renewable-power-.html.

73. Perkowski, *supra* note 67.

74. Jeff Himmelman, *The Secret to Solar Power*, N.Y. TIMES, (Aug. 9, 2012), http://www.nytimes.com/2012/08/12/magazine/the-secret-to-solar-power.html?pagewanted=all.

power the United States for a day.[75] Of course, much of the potential is not practically harvestable, but investors are beginning to appreciate solar energy's potential.[76] Consumers are also embracing solar energy. More consumers are installing solar panels worldwide. In the United States, companies have discovered the best way to market solar energy for commercial and residential use is through leasing solar panels,[77] reaping more profits for the company and savings for the consumer.[78] This new approach coupled with state and local incentives (such as significant rebates) have boosted both consumer demand and investment in solar power.[79]

2. U.S. Solar Industry

In 2010, the United States consumed 8 percent of its energy from renewables. Of the renewable energy, solar energy comprised only 1 percent.[80] Nonetheless, solar power demand has grown quickly as the price of solar panels in the United States decreased from $50 per watt in 1975 to 84 cents per watt in 2012, a 97.2 percent drop.[81] The Wall Street Journal reports, "the U.S. is on pace to install as much solar power this year as it did in this century's entire first decade: at least 2,500 megawatts, the equivalent of more than two nuclear-power plants."[82] Many of these solar panels, however, will come from foreign companies. "[Photovoltaic] imports have been rising for several reasons: (1) increasing crystalline silicon (c-Si) module production in places like China, Malaysia, and the Philippines; (2) an emergent U.S. market, responding to the falling price of solar energy; and (3) favorable state polices in key markets like California."[83] Currently, two-thirds of all

75. *Id*.

76. *Id*.

77. *Id*.

78. *Id*.

79. The State of Colorado, for instance, has programs that offer rebates and payments that cover 20 percent to 30 percent of a given solar system's costs, including installation. Combined with a 30 percent federal tax credit available to all Americans, a consumer could potentially subsidize more than 50 percent of the costs. *Colorado Solar Incentives*, WHOLESALE SOLAR, (Oct. 11, 2011), http://www.wholesalesolar.com/solarincentives/Coloradosolarpanels.html.

80**.** *Renewable & Alternative Fuels: Trends in Renewable Energy Consumption and Electricity*, EIA (Dec. 11, 2012), http://www.eia.gov/renewable/annual/trends/.

81. Ryan Tracy & Cassandra Sweet, *Fueled by Cheap Chinese Panels, U.S. Solar Use Soars*, WALL ST. J. (Sept. 9, 2012, 8:00 PM), http://online.wsj.com/article/SB10000872396390443589304577637333545350176.html.

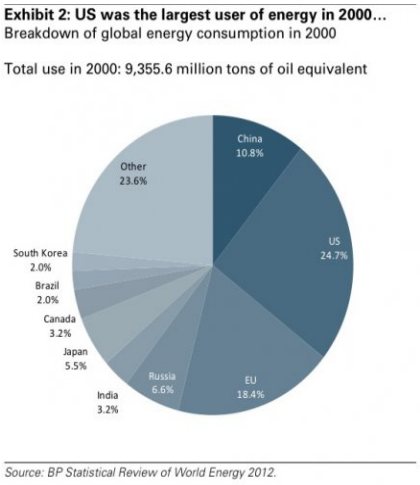
82. *Id*.

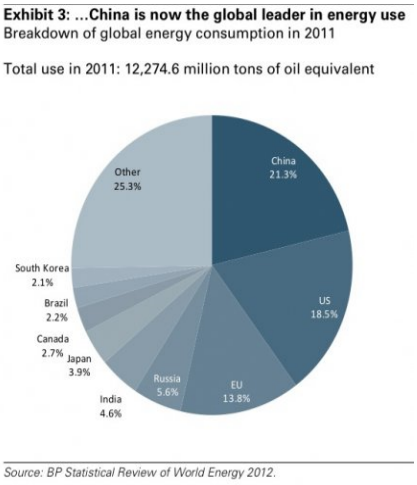
83. MICHAELA D. PLATZER, CONG. RESEARCH SERV., R42509, U.S. SOLAR PHOTOVOLTAIC MANUFACTURING: INDUSTRY TRENDS, GLOBAL COMPETITION, FEDERAL SUPPORT 19 (2012).

solar panels imported in the U.S. come from Asia.[84] China accounts for 56 percent of all imports into the United States.[85]

3. China's Solar Industry

China is the second largest economy in the world, but the biggest consumer of energy. China now accounts for 21 percent of all global energy consumption – greater than even the United States (see Figure 1 below).[86]





Source: Mamta Badkar, *The Ultimate Guide to China's Voracious Energy Use*, BUSINESS INSIDER (Aug. 17, 2012, 10:24 AM), http://www.businessinsider.com/china-energy-use-2012-8?op=1.

China's energy use increased 150 percent in the past decade, and although per capita energy use remains small relative to the United States, its growing middle class and surging economic development means that per capita use will continue to rise.[87] Of all renewable energies, including hydropower, solar energy comprises only 1 percent of renewable energy use in China.[88]

84. *Id*.
85. *Id*.
86. Mamta Badkar, *The Ultimate Guide to China's Voracious Energy Use*, BUSINESS INSIDER (Aug. 17, 2012, 10:24 AM), http://www.businessinsider.com/china-energy-use-2012-8?op=1.
87. *Id*.
88. *Id*.

Renewable energy, especially solar, thus comprises a tiny portion of China's energy portfolio. However, China is investing heavily in renewable energy. In 2012, China was responsible for one-fifth of all investment in renewable energy, spending U.S. $52 billion, compared with the United States at U.S. $51 billion.[89] China intends to spend an additional U.S. $457 billion over the next five years and has set a goal to consume 20 percent of its energy from renewable sources by 2020.[90] U.S. $39.5 billion will be invested in the solar energy industry alone in 2015.[91] Moreover, "China's official goal is to install 10 gigawatts of solar panels a year by 2015, using 20-year contracts to guarantee payment for electricity purchased from them."[92]

China's ability to manufacture solar panels is tremendous. GTM Research, a renewable energy consulting firm in Boston, estimated that in 2012 Chinese companies had the ability to manufacture 50 gigawatts of solar panels per year, while the Chinese domestic market was on track to absorb only four to five gigawatts.[93]

China currently exports 95 percent of all the solar panels it produces.[94] However, the proportion of solar panel exported will likely decline as domestic consumption expands.[95] China supplied half of the world's solar panels in 2012, an increase from one-fifth in 2008, making it the largest producer in the world.[96] By comparison, the United States exported only three percent of the world's solar panels in 2012, down from seven percent in 2008.[97] China's aggressive pursuit of export markets for solar panels has placed it on a collision course with both the United States and the European Union.

89. Perkowski, *supra* note 67.

90. PLATZER, *supra* note 83, at 17.

91. Jamie Yap, *China's Solar Power Investment to Hit $39.5B by 2015*, ZDNET (Sept. 14, 2012, 5:27 AM), http://www.zdnet.com/cn/chinas-solar-power-investment-to-hit-39-5b-by-2015-7000004255/.

92. Keith Bradsher, *Glut of Solar Panels Poses a New Threat to China*, N.Y. TIMES (Oct. 4, 2012), http://www.nytimes.com/2012/10/05/business/global/glut-of-solar-panels-is-a-new-test-for-china.html?_r=1&adxnnl=1&pagewanted=all&adxnnlx=1349732602-Pkl7Q3HlyTDqztjR8bM3WQ.

93. *Id*.

94. John Mathews, *Solar Panels in China: An Emerging U.S.-China Trade Dispute*? THE GLOBALIST (Jan. 19, 2012) http://www.theglobalist.com/solar-panels-in-china-an-emerging-u-s-china-trade-dispute/.

95. *See* PLATZER, *supra* note 83.

96. Tracy & Sweet, *supra* note 81; Leslie Hook, *Cloud Hovers Over China's Solar Industry*, FIN. TIMES (Oct. 22, 2012, 5:33 PM), http://www.ft.com/intl/cms/s/0/bef02db6-1c26-11e2-a63b-00144feabdc0.html#axzz2CVY9wR9l.

97. Tracy & Sweet, *supra* note 81.

4. Financial Hard Times for the Solar Industry

Despite positive growth and massive production capacity, the solar energy industry has fallen on hard times. The influx of Chinese solar panels onto the world market has created an oversupply that vastly outstrips demand by almost twofold.[98] This oversupply has caused a precipitous decline in prices, hurting solar panel companies around the world. When China's solar panel producers are financially troubled, so are, by extension, many state-owned banks that have loaned about U.S. $18 billion to these companies at low interest rates.[99] In 2012, China's largest solar panel producers suffered a loss of approximately U.S. $1.00 for every U.S. $3.00 of sales because prices have fallen by three-fourths since 2008.[100] Wholesale prices for solar panels dropped by 50 percent in 2012.[101] Suntech, one of China's largest solar panel producers, has cut its production by 40 percent, its share price has dropped by 60 percent, and it even received a delisting warning from the New York Stock Exchange in late 2012.[102] Trina Solar Limited, another large Chinese solar panel manufacturer, saw its shares drop by 85 percent over the past three years.[103] Rory MacPherson, a spokesperson for Suntech, admits, "[i]t is not a Chinese industry problem, it is a global solar industry problem . . . It is primarily the result of an imbalance between supply and demand False"[104] Jack Perkowski, a writer for Forbes Magazine, claims, "[t]he economics for the solar industry, both globally and in China, have never been worse, and there are no bright spots on the horizon."[105]

5. Context of Solar Subsidies Disputes

The solar industry is politically important for both China and the United States in a number of ways. The Obama administration has prioritized creating new manufacturing jobs through building the

98. *See* Ucilia Wang, *Report: Solar Panel Supply Will Far Exceed Demand Beyond 2012*, FORBES (June 27, 2012 9:30 AM), http://www.forbes.com/sites/uciliawang/2012/06/27/report-solar-panel-production-will-far-exceed-demand-beyond-2012/.

99. James Kanter & Keith Bradsher, *Europe and China Agree to Settle Solar Panel Fight,* N.Y. TIMES, July 27, 2013, http://www.nytimes.com/2013/07/28/business/global/european-union-and-china-settle-solar-panel-fight.html?_r=0.

100. *Id*.

101. Wang, *supra* note 98.

102. Hook, *supra* note 96.

103. *Id*.

104. *Id.*

105. *See* Perkowski, *supra* note 67.

renewable energy sector, including solar energy. The White House's website highlights "Securing American Energy"[106] by "deploy[ing] American assets, innovation, and technology so that we can safely and responsibly develop more energy here at home and be a leader in the global energy economy."[107] The United States justifies renewable energy subsidies as supporting a potentially strategic infant industry, one that requires help so it can compete both globally and with other conventional energy sources.[108] China subsidizes its own solar energy industry for similar reasons. Solar power is seen as one of the nascent fields in which China can effectively compete on a global scale, securing new export markets while providing a green energy source for its ever-increasing domestic needs. Both China and the United States are investing heavily in renewable energy, and both countries have made it a political and economic priority.

China and the United States are now embroiled in trade disputes over green energy subsidies[109] aimed at photovoltaic ("PV") solar panels.[110] The U.S. Department of Commerce ("DOC") and the U.S. International Trade Commission ("ITC") both approved imposing countervailing duties ("CVD") on heavily subsidized imported PV solar panels from China.[111] China, in response, launched its own investigations, finding that the United States also illegally subsidizes its solar energy industry.[112] According to Scott Lincicome, an international trade attorney with White and Case, LLP, trade between China and the United States in the solar industry is just more than three billion dollars.[113] While this is not a large percentage of overall United States-China trade flow, the world's two strongest economies are nonetheless in stiff competition to establish their own domestic industries in these technologies. The stakes between China and the United States are seen

106. *Develop and Secure America's Energy Resources*, THE WHITE HOUSE (Oct. 13, 2013) http://www.whitehouse.gov/energy/securing-american-energy.

107. *Id*.

108. Mark Muro, *Do We Need Subsidies for Solar and Wind Power*, WALL ST. J. (Oct. 8, 2012), http://professional.wsj.com/article/SB10000872396390444032404578008183300454400.html?mg=reno-wsj.

109. For a succinct and persuasive discussion of the economic and political rationale for regulating subsidies, *see* MICHAEL K. YOUNG, UNITED STATES TRADE LAW AND POLICY 68-70 (2001).

110. Michael Bastasch, *Report: US Green Energy Subsidies Jeopardize American Companies, Global Markets*, DAILY CALLER (Oct. 9, 2012, 10:53 AM), http://dailycaller.com/2012/10/09/report-green-energy-subsidies-jeopardize-us-companies-global-markets/.

111. *Id*.

112. *Id.*

113. *Id*.

as enormous due to the importance of solar as one of the pathways to "energy independence."[114]

6. China's Current Solar Disputes

On October 19, 2011, SolarWorld Industries America, Inc., the largest producer of crystalline silicon PV products in the United States and a member of the Coalition for American Solar Manufacturers ("CASM"), filed a petition for countervailing duties against China at the Department of Commerce ("DOC") and the International Trade Court ("ITC").[115] The investigation covered the time period from January 1, 2010, through December 31, 2010.[116] The petition sought to impose countervailing duties ("CVDs") on imported PV panels from China to counteract government subsidies. SolarWorld asserted in the petition that Chinese solar panel manufacturers receive "a wide range of illegal subsidies from the Chinese government, including massive cash grants, discounted raw material inputs such as polysilicon and aluminum; heavily discounted land; power and water; multibillion-dollar preferential loans and directed credit; tax exemptions, incentives and rebates; export assistance grants; and export insurance at referential rates."[117] Additionally, the petition claimed that the Chinese government granted more than U.S. $30 billion in subsidies to its domestic solar energy industry in 2010, with at least two billion dollars going to Suntech.[118]

On March 20, 2012, in its preliminary findings, the DOC found that "at least 10 categories of Chinese subsidy programs are WTO-illegal and announce[d] its decision to impose a preliminary duty of 4.73 percent on U.S. imports from Trina Solar, 2.9 percent from Suntech, and 3.6 percent from all other remaining Chinese manufacturers."[119] It also made a preliminary finding of "critical circumstances," meaning the CVDs would apply retroactively to December 2011.[120] On October 17, 2012, the DOC confirmed in its final determination that "countervailable subsidies are being provided to producers and exporters of crystalline

114. *Id.*

115. *Crystalline Silicon Photovoltaic Cells and Modules from China*, Inv. Nos. 701-TA-481, 731-TA-1190, USITC Pub. 4295, at 2 (Dec. 2011) (Preliminary).

116. *Crystalline Silicon Photovoltaic Cells, From China: Final Affirmative Countervailing Duty Determination*, 77 FED. REG. 63788 (Oct. 17, 2012).

117. *See Fact Sheet*, COALITION FOR AM. SOLAR MFG., http://www.americansolarmanufacturing.org/fact-sheet/.

118. *Id*.

119. *Id*.

120. *Supra* note 116.

silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the People's Republic of China (PRC)."[121]

The ITC, in its final determination on November 7, 2012, unanimously found "that a U.S. industry is materially injured by reason of imports of crystalline silicon photovoltaic cells and modules from China that the DOC has determined are subsidized and sold in the United States at less than fair value."[122] The only portion the ITC did not uphold was the application of "critical circumstances," meaning the ITC disallowed retroactive duties.[123] Trina Solar and Suntech were the primary targets of these duties as they comprised the "lion's share" of exports to the United States.[124] The final ruling assigned to Suntech a CVD of 14.78 percent and a 15.97 percent CVD to Trina Solar, while all other exporters were assigned a rate of 15.24 percent.[125] The final tariff schedules are depicted in Figure 2 below:

	AD Prelim	CVD Prelim	Total Prelim		AD Final	Less Export Subsidy	AD Final Adjusted	CVD Final	Total Final
Trina	31.14	4.73	35.87		18.32	10.54	7.78	15.97	23.75
Suntech	31.22	2.9	34.12		31.73	10.54	21.19	14.78	35.97
Separate Rate	31.18	3.61	34.79		25.96	10.54	15.42	15.24	30.66
Countrywide Rate	249.96	3.61	253.57		249.96	10.54	239.42	15.24	254.66

Source: Eric Wesoff, *Final ITC Decision on SolarWorld's China-US Solar Trade Complaint*, GREENTECHMEDIA (Nov. 7, 2012), http://www.greentechmedia.com/articles/read/case-casm.

In the wake of these rulings, the Chinese government has already launched its own investigations into subsidies for the U.S.'s domestic solar energy industry. The first two investigations found that the United States is using prohibited subsidies, and China is now considering whether or not to complain to the WTO or to take other remedial

121. *Id*.

122. *Crystalline Silicone Photovoltaic Cells and Modules from China Injure U.S. Industry, Says USITC*, USITC (Nov. 7, 2012), http://www.usitc.gov/press_room/news_release/2012/er1107kk1.htm.

123. Eric Wesoff, *Final ITC Decision on SolarWorld's China-US Solar Trade Complaint*, GREENTECHMEDIA (Nov. 7, 2012), http://www.greentechmedia.com/articles/read/case-casm.

124. Charles W. Thurston, *Breaking: ITC Makes Unanimous Decision on Chinese Cell & Modules*, RENEWABLENERGYWORLD.COM (Nov. 7, 2012), http://www.renewableenergyworld.com/rea/news/article/2012/11/commerce-slams-chinese-cell-modules-with-final-duties.

125. *Id*.

action.[126] The Chinese case is not without merit. The Energy Information Administration, an independent arm of the Department of Energy, found that subsidies for energy markets in the United States rose from $17.9 billion in 2007 to $37.2 billion in 2010.[127] Also in 2010, U.S. subsidies for renewable energy increased 186 percent, from $5.1 billion to $14.7 billion, with solar energy receiving more than $1 billion in 2010.[128] The potential for complaints on both sides notwithstanding, the U.S. is poised to bring its own complaints to the WTO soon.

The United States has the option of filing a complaint against China at the WTO.[129] The countervailing duties are already in place, as recently approved by the ITC, and the legal arguments have been tested and heard by both DOC and ITC. The United States will claim that its domestic industry is materially injured or is threatened with material injury[130] due to China's subsidization of its solar panels.

The United States could present three potential claims, and it could assert all three at once, or a combination of them. First, the United States could allege that China is engaging in red-light, or prohibited export-contingent subsidies, which are automatically illegal under the Agreement on Subsidies and Countervailing Duties[131] (the "SCM

126. *See* Bastasch, *supra* note110.

127. *Direct Federal Financial Interventions and Subsidies in Energy in Fiscal Year 2010*, ENERGY INFO. ADMIN. (July 2011), http://www.eia.gov/analysis/requests/subsidy/pdf/subsidy.pdf.

128. *Id*. at xiii.

129. Under the WTO system, member nations confronted with illegal subsidies may choose between either a multilateral solution or a unilateral one, but not both simultaneously or cumulatively. The aggrieved party can initiate a WTO dispute settlement procedure to seek the removal of the subsidy by another WTO member. In such a dispute, the SCM Agreement governs. In the alternative, it can choose to unilaterally impose a countervailing (or off-setting) duty on the subsidized import. The unilateral approach usually begins when a domestic industry injured by subsidized imports from another country initiates a countervailing duty investigation under its country's domestic laws. If the investigation finds that the subsidy is present and is more than *de minimus* (more than 1 percent of the ad valorum value), then it can impose a duty on the subsidized import that countervails or offsets the financial advantage of the subsidy. The findings of the domestic countervailing duty investigation are also subject to WTO review under the SCM Agreement. The countervailing duty is designed solely to level the playing field by neutralizing the effect of the subsidy. It is not punitive, nor does it require the subsidizing foreign government to remove its subsidy, although it creates pressure to do so by removing the benefit of the subsidy, at least for the one relevant import market. *See Agreement on Subsidies and Countervailing Measures*, (Apr. 15, 1994), http://www.wto.org/english/docs_e/legal_e/24-scm.pdf [hereinafter SCM Agreement]; Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 I.L.M. 1125 (1994).

130. For an excellent exposition of the challenges involved in prosecuting "injury to domestic industry" or "nullification and impairment" claims, *see* Richard H. Steinberg & Timothy E. Josling, *When the Peace Ends: The Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge*, 6 J. INT'L ECON. L. 369, 379-85 (2003).

131. *See* SCM Agreement, *supra* note 129.

Agreement"). Second, the United States may argue that China is engaging in yellow-light, actionable subsidies that have caused serious prejudice to the U.S. domestic industry through price suppression. Third, the United States could claim that China's is engaging in yellow-light subsidies that are causing material injury to the U.S. domestic industry. Subsidies cases are legally and factually complex. Because such WTO cases rely heavily on industry-specific economic data, it is beyond the scope of this article to discuss the technical aspects of potential claims in any detail.[132] However, an overview of the most salient threshold questions is beneficial to the core interest discussion because it highlights the ways in which the core interests are expressed in China's support of the solar industry.

The United States must first establish that specific subsidies exist. As noted above, a subsidy exists when a government or public body has made a financial contribution in the form of direct or indirect transfer of funds, loans, grants, tax credits, and the provision of goods and services.[133] Secondly, it must show that a benefit to China's solar industry has been conferred.[134] Lastly, the subsidy must be specific to China's solar energy industry.[135]

The United States will likely be able to establish that China is subsidizing its solar energy industry. The United States can argue that the Chinese government has made financial contributions in several forms. Reuters reported that on December 12, 2012, the Chinese government allocated seven billion yuan (U.S. $1.1 billion) to its solar industry, taking China's total subsidization this year to 13 billion yuan (U.S. $2 billion).[136] State-run banks, which can, depending on their actions and duties, be considered a "public body,"[137] have given these

132. *See generally* Janie Hauser, *From Sleeping Giant to Friendly Giant: Rethinking the United States Solar Energy Trade War with China*, N.C. J. INT'L L. & COM. REG, 1062, 1063, *available at* http://www.law.unc.edu/journals/ncilj/issues/volume38/issue-4-summer-2013/from-sleeping-giant-to-friendly-giant-rethinking-theunited-states-solar-energy-trade-war-with-china/.

133. *Id.* at art. 1.1(a)(1).

134. *Id*. at art. 1.1(b).

135. *Id*. at art. 2.

136. Swetha Gopinath & Krishna N Das, *China Doubles Solar Subsidies, U.S.-Listed Stocks Jump*, REUTERS (Dec 12, 2012, 1:43 PM), http://www.reuters.com/article/2012/12/12/us-chinesesolarcompanies-shares-idUSBRE8BB16B20121212.

137. "The Appellate Body also found that the USDOC had not acted inconsistently with the same obligations in determining, on the basis of evidence relating inter alia to the Government of China's role in the banking sector, that certain State-owned commercial banks that provided loans to investigated companies constituted 'public bodies.'" *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WTO, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm (last visited Mar. 30, 2013) (the case summary provides a brief explanation of the case's findings).

companies U.S. $18 billion in low-interest loans.[138] Domestic programs, such as China's goal to install ten gigawatts of solar panels per year until 2015, is driven by twenty-year guaranteed government contracts to pay for the electricity produced.[139] Over this timeframe, this would amount to U.S. $50 billion in subsidies, according to Li Junfeng of the National Development and Reform Commission, China's top economic planning agency in the form of guaranteed government contracts.[140] China recently announced it will reinstate its programs known as Building Integrated Photovoltaic ("BIPV") and "Golden Sun."[141] BIPV, in its first rendition, subsidized costs at fifteen yuan per watt for rooftop systems and twenty yuan per watt for BIPV systems.[142] China's media outlets reports this amounted to 1.2 billion yuan in 2009.[143] Golden Sun offered 50 percent of investments for solar projects over 500 MW including the necessary distribution networks within two to three years.[144] For rural projects not connected to the grid, China offered to contribute 70 percent of the investment.[145] The financial contributions are clear: direct transfers of funds, loans, and guaranteed government contracts.

Secondly, considering the raw numbers, it would be difficult to argue these contributions have not conferred a benefit. A benefit means the companies are better off than they otherwise would have been relative to the world marketplace. China's spike in solar panel production, such that it now accounts for 50 percent of all global trade and vastly outperforms all other countries, is a strong indication that these subsidies have benefitted its domestic solar energy industry relative to the global trade market.[146] Finally, these subsidies are specific because they are targeted at and limited to a specific industry,

138. *See* Kanter & Bradsher, *supra* note 99.

139. *Id*.

140. *Id*.

141. *The Golden Sun of China*, PVGROUP, http://www.pvgroup.org/events/ctr_031358; *China: Golden Sun Subsidies Announced – 50% on Large Scale Solar Projects*, CLEANERGY.ORG (Jul. 22, 2009), http://cleanergy.blogspot.com/2009/07/china-golden-sun-subsidies-announced-50.html.

142. *The Golden Sun of China*, *supra* note 141.

143. *China's National Solar Subsidy Programs*, CHINA POLICY IN FOCUS, https://sites.google.com/site/chinapolicyinfocus/china-s-solar-subsidy-programs/china-s-solar-industry/china-s-national-solar-subsidy-programs.

144. Robert D. Kaplan, *The Geography of Chinese Power: How Far Can Beijing Reach on Land and at Sea?*, 89 FOREIGN AFF. 22, 23 (2010).

145. *Id*.

146. *Photovoltaic Power Systems Programme, Annual Report 2011*, INT'L ENERGY AGENCY, 46 (2011), www.iea-pvps.org/index.php?id=6&eID=dam_frontend_push&docID=1129 [hereinafter IEA].

the solar energy industry. These subsides are not available for other enterprises based on fulfilling objective criteria for eligibility. The solar energy industry is the sole recipient of these subsidies, thus they are specific.

Although little public information exists that definitively states China is providing prohibited subsidies, one glaring statistic strongly suggests China may be doing so. In 2011, China exported 95 percent of all PV solar panels, with only five percent absorbed by its domestic market. It is difficult to imagine that China, even with only a fraction of its energy consumption from solar, can absorb only five percent of its production capacity. Such a discrepancy is highly suspicious and suggests that instead of marketing solar panels to the domestic market, companies export them to receive further subsidies. Additionally, China has been the largest PV producer in the world since 2007, achieving a more than 100 percent increase in production capacity each year since 2007.[147] In 2011, China's solar panels accounted for 50 percent of all global trade in solar panels.[148] Such extreme export-orientation is difficult to ignore.

The United States would present a similar argument. As noted above, China has pumped roughly U.S. $2 billion into its solar energy industry this year, U.S. $30 billion in 2010, and forecasts show China will spend another U.S. $50 billion in the next 20 years.[149] China's gross revenue on imports to the United States was more than three billion dollars,[150] thus subsidies were roughly 65 percent of China's revenue on imports to the United States. China also accounted for half of the world's exports in solar panels last year, giving it substantial influence on the world market for prices.[151] Its production capacity alone outweighs the world's demand for solar panels.[152]

The United States would argue that this subsidization program has driven China's tremendous solar panel production expansion. As a result, solar panel prices have fallen by three-fourths since 2008,[153] the same year China began this expansion, and wholesale prices dropped 50 percent within the last year and continue to fall.[154] Between 2008 and

147. *Id.*

148. *Id*.

149. *See* Gopinath & Das, *supra* note 136; *see also* Kanter & Bradsher, *supra* note 99; *Fact Sheet*, *supra* note 117.

150. *See* Bastasch, *supra* note 110.

151. IEA, *supra* note 146.

152. *See* Wang, *supra* note 98; *see also* Kanter & Bradsher, *supra* note 99.

153. *See* Kanter & Bradsher, *supra* note 99.

154. *See* Wang, *supra* note 98.

2010, according to CASM, China's solar exports rose 350 percent, and its production capacity rose by over 100 percent every year for the past five years.[155] The glut of Chinese solar panels on the world market is significant and has a dramatic effect on world prices. The United States is likely to be able to show that China's subsidization program has caused the United States domestic solar energy industry serious prejudice through price suppression and violated the SCM Agreement and its obligations under the WTO. Therefore, unless China and the U.S. can reach a political compromise similar to the resolution reached in the China –European Union dispute (described below), the U.S. has a sound basis for seeking redress before the WTO.

7. China's Solar Disputes with the European Union

China's solar industry subsidies have spilled over to both sides of the Atlantic. "The row over solar technology is one of the most contentious in current world-trade disputes, increasing tensions between Beijing, Washington and Brussels."[156] The European Union ('EU") has also accused China of unfairly subsidizing its solar panel firms,[157] thereby allowing Chinese firms to dump below-cost solar panels into their markets and undercutting rival European producers.[158] In 2012, it is estimated that about twenty one billion euros (U.S. $28 billion) worth of low-cost solar panels were imported from China into European countries, forcing several European solar firms to shut their doors.[159] As tensions continued to escalate, the E.U. Trade Commissioner responded by enacting punitive tariffs on China's manufactured solar panels, a threat opposed by some E.U. national governments.[160] China countered by threatening to impose duties on European imports of polysilicon, a material used in solar panels, and wine.[161] China also filed a WTO

155. *See* IEA, *supra* note 146; *see also Fact Sheet*, *supra* note 117.

156. *Id*.

157. *EU to Investigate Chinese Solar Panel Subsidies*, BBC NEWS (Nov. 8, 2012, 4:15 PM), http://www.bbc.co.uk/news/business-20249003 [hereinafter *EU to Investigate*]; Dinny McMahon & Carlos Tejada, *China Complains to WTO Over EU Solar Subsidies*, WALL ST. J. (November 5, 2012, 10:17 AM), http://professional.wsj.com/article/SB10001424052970204349404578100741581635834.html?mg=reno64-wsj.

158. Robin Emmot & Ben Blanchard, *EU, China Resolve Solar Dispute – Their Biggest Trade Row by Far*, REUTERS (July 27, 2013), http://www.reuters.com/article/2013/07/27/us-eu-china-solar-idUSBRE96Q03Z20130727.

159. *Id.*

160. V.V.V., *Sabres Rattled and Ready*, THE ECONOMIST (July 30, 2013), http://www.economist.com/blogs/analects/2013/07/european-trade.

161. *Id.*

complaint against the European Union for subsidizing its solar components such as poly-silicon.[162]

With the global price of solar panels being driven down by over-production and China's unfair trade practices, and with tariffs levied against China by its largest export market for solar panel products,[163] both China and the European Union were motivated to take a seat at the negotiation table. After six weeks of discussion, the European Union and Chinese solar-panel producers announced an agreement on July 27, 2013, defusing the long-standing trade dispute.[164] In a statement regarding the negotiated resolution, European trade commissioner Karel De Gucht announced, "[w]e have found an amicable solution that will result in a new equilibrium on the European solar panel market at a sustainable price level."[165] China agreed to set a minimum price for its solar panels at 56 euro cents per watt (74 cents), a "near spot market price,"[166] of as much as 7 gigawatts in the European Union market until the end of 2015.[167] If China's producers do not adhere to these conditions, they will find themselves subject to the European Union's antidumping tariffs set to sharply increase from 11.8 percent to an average of nearly 50 percent.[168] Thus, the European Union –China solar dispute may rear its head again.

8. The Solar Energy Dispute from China's Core Interests Perspective

China is unlikely to back down significantly from its multipronged support of the solar energy industry. The core interest analysis helps to lay bare the stakes from China's perspective. Sustainable energy sources development is a keystone in China's stable economic development. China is keen to wean itself of dependence on fossil fuels, especially coal, for a host of environmental[169], public health[170],

162. McMahon & Tejada, *supra* note 157.

163. *EU and China Agree Minimum Import Price Near Spot Price*, CNBC (July 29, 2013, 12:53 AM), http://www.cnbc.com/id/100919695.

164. Jonathan Steams, *European Commission Approves Chinese Solar-Panel Trade Pact*, BLOOMBERG NEWS (Aug. 3, 2013) http://www.businessweek.com/news/2013-08-02/eu-solar-panel-accord-with-china-approved-by-european-commission.

165. Kanter & Bradsher, *supra* note 99.

166. *See* Moore, *supra* note 5.

167. Art Patnaude & Gabriele Steinhauser, *EU, China Reach Agreement on Solar-Panel Dispute,* WALL ST. J. (July 27, 2013, 12:50 PM) http://online.wsj.com/news/articles/SB10001424127887324564704578631323954623876.

168. *Id.*

169. *China Overtakes US in Greenhouse Gas Emissions,* N.Y. TIMES (June 20, 2007),

geopolitical[171], and economic[172] reasons. All these reasons lead logically to China's state-owned banks giving of more than U.S. $18 billion in low-interest loans to Chinese solar companies.[173] It also explains China's policy to guarantee the purchase of any solar-generated electricity for twenty years under the Golden Sun program.[174] Not only is the Golden Sun program politically beneficial by encouraging the consumption of clean energy, it also incentives the growth of a vibrant new industry in solar panel production and installation.

Export-driven trade policies have proven to be a highly successful strategy for China's economic insurgence. The solar panel industry presents a stark example of China's export-focused trade policy. Ninety-five percent of all solar panels produced in China were exported in 2012.[175] The Coalition for American Solar Manufacturing ("CASM"), a union of seven different American solar companies, claims imports of Chinese solar panels rose more than 350 percent between 2008 and 2010.[176] CASM is alarmed by the enormous influx of Chinese imports and the accompanying 20 percent decline in American exports of polysilicon (used in the manufacture of solar panels) and machinery.[177] In the course of two years, the United States trade position with China has done a complete about-face. CASM states that "[i]n 2010, the United States managed to hold on to a small solar trade surplus with China of less than $500 million. However, in 2011, the United States had a $1.6 billion [solar] trade deficit with China."[178] China succeeded in dominating the United States' solar panel market in a matter of two years as a result of an aggressive import-focused trade policy.

Clean and stable sources of energy are critical for China's social stability, especially with the increasing number of protests over environmental contamination and health problems caused by air

http://www.nytimes.com/2007/06/20/business/worldbusiness/20iht-emit.1.6227564.html.

170. *See* Edward Wong, *On Scale of 0 to 500, Beijing's Air Quality Tops 'Crazy Bad' at 755*, N.Y. TIMES (Jan. 12, 2013), http://www.nytimes.com/2013/01/13/science/earth/beijing-air-pollution-off-the-charts.html?_r=0.

171. Kaplan, *supra* note 144.

172. *See* Ma, *supra* note 46, at 2-3.

173. *See Bradsher*, *supra* note 99.

174. *Id.*

175. *See Mathews*, *supra* note 94.

176. *See Fact Sheet*, COALITION FOR AM. SOLAR MFG., http://www.americansolarmanufacturing.org/fact-sheet/.

177. *Id*.

178. *Id*.

pollution.[179] China spent a staggering U.S. $111 billion in 2012[180], and that amount will increase by 8.7 percent in 2013[181] to 769.1 billion yuan[182] (approximately U.S. $126 billion). The increased spending on internal security "underscore the ruling Communist Party's vigilance not only about territorial disputes with Japan and Southeast Asia and the U.S. "pivot" back to the region, but also about popular unrest over corruption, pollution and abuse of power, despite robust economic growth and rising incomes."[183] With the rise of the large and vocal middle class increasingly focused on air pollution and public health problems, the Chinese government sees energy scarcity as a hot-button issue that may de-stabilize domestic security. Promoting renewables, including solar energy, is therefore not only good environmental and energy policy, but also good defense policy.

The solar energy industry implicates critical core interests for China, such as sustainable energy resources, sustained economic growth, and internal security. For these reasons, a sustained trade dispute involving the solar industry is perhaps inevitable. Even though China has recently reached a compromise with the European Union[184] over solar panel subsidies, "[t]he U.S.—China Solar Trade War is far from over."[185]

IV. POLICY AND NORMATIVE LESSONS

Appreciating China's core interests through its trade policies is important in four distinct, but related ways. First, to the extent that past behavior is a predictor of future behavior, the core interest analysis enables us to discern certain patterns in China's domestic policy and foreign policy. Among these, a greater willingness to project its power regionally may irritate its neighbors, but will also provide a platform for the global projection of political power.[186] That has already been happening in Africa, where China as opportunistically filled a

179. *See* Wong, *supra* note 170.

180. *See China Domestic Security Spending Rises to $111 Billion*, supra note 31.

181. Ben Blanchard & John Ruwitch, *China Hikes Defense Budget to Spend More in Internal Security*, REUTERS (Mar. 5, 2013, 3:49AM), http://www.reuters.com/article/2013/03/05/us-china-parliament-defence-idUSBRE92403620130305.

182. *Id.*

183. *Id.*

184. *See* Emmot & Blanchard, *supra* note 158.

185. Thurston, *supra* note 124.

186. KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS (1979) (presenting a "neorealist" formulation which assumes that states are "unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination").

superpower vacuum, but is likely to occur in other areas. As China extends its geopolitical and economic reach, it will inevitably become enmeshed in more policy arenas, drawing it into more active roles in international organizations and global governance structures.[187]

Second, in the trade arena, applying the core interest analysis helps us predict which WTO and other trade dispute cases China will prosecute or defend most zealously (see Part III.B's case studies). Much more is at stake than esoteric questions of legal compliance with the SCM Agreement. While those issues are important, particularly in light of China's desire to be perceived by the international community as a country that follows the rule of law, they are subservient to overriding core interests like sovereignty, economic development, and social order. Even though these interests cannot be explicitly raised in any trade dispute, they are nonetheless highly salient. It is critical for China's trading partners to understand how these core interests influence the Chinese government's framing of legal issues that do not seem to implicate any of these interests. Given that the WTO system maintains the political bargaining vestige of the General Agreement on Tariffs and Trade ("GATT") system through the consultations process,[188] where many disputes are solved through a political compromise process, having an appreciation of the core interests may help other countries better frame possible compromises in WTO disputes. Lawyers do not tend to think in terms of *real-politik* solutions to seemingly pure legal problems. However, such myopia is both misguided and wrong-headed. A rich vein of law and society literature has demonstrated that legal disputes are often guided by non-legal concerns such as reputation,[189]

187. Professor Anne-Marie Slaughter, a central thinker in liberal legal theory, has long asserted that one of the "most important and effective" means of global governance is not top-down international treaty law but "direct regulation of private actors . . . with deliberate transnational or global intent." *See* Anne-Marie Slaughter, *A Liberal Theory of International Law*, 94 AM. SOC'Y INT'L L. PROC. 240, 245 (2000).

188. Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments—Results of the Uruguay Round, 15 April 1994, 1869 U.N.T.S. 401, 33 I.L.M. 1125 [hereinafter DSU], at Arts. XXII and XXIII; *See also* Ernst-Ulrich Petersmann, *The Dispute Settlement System of the World Trade Organization and the Evolution of the GATT Dispute Settlement System since 1948,* 31 COMMON MKT. L. REV. 1157, 1205-24 (1994) (providing a succinct but exhaustive description and analysis of the functioning of the DSU).

189. *See e.g.,* Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823, 1825 (2002) (noting that states comply to preserve reputations and avoid informal and formal sanctions); Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487, 500 (1997) [hereinafter Keohane, *Two Optics*] (reasoning that institutions facilitate compliance with international law by shaping reputations).

reciprocity,[190] and perceptions of social fairness.[191] These concerns are often relevant in the case of public international disputes as well. In a similar vein, in any negotiations it is important to grasp both your counterpart's articulated main concerns (including instrumental gains)[192] as well as underlying interests.[193]

The core interest analysis also yields insights on China's future role in coalition and alliance-building attempts, which are especially important for smaller developing countries. Despite being a trade behemoth, China views itself as aligned with developing economies on a surprising array of economic, development, market access, investment, and other trade-related issues. Much of this is due to China's status as a developing nation, one that China cynically uses on many occasions as a club.[194] However, real synergies do exist between China and a diffuse group of developing nations, whose identities shift depending on the issue at hand. Market access for agricultural food products provides a good example. China has joined with Argentina to attack Chile's price bands for agricultural products,[195] Brazil and Thailand in attacking European customs treatment of chicken,[196] Thailand in protesting European export subsidies for sugar,[197] and Ecuador against U.S. antidumping measures on shrimp.[198] These examples are all related to China's role in the WTO dispute settlement, but many synergies are untapped in the field of bilateral and multilateral trade negotiations as well. Countries that wish to cooperate with China can better frame their coalition building or negotiations strategies to appeal to China's core

190. *See, e.g.*, THOMAS M. FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS 7-9 (1995) (states will comply with regimes they perceive to be legitimate); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2603 (1997) [hereinafter Koh, *Why Do Nations Obey?*] (arguing that compliance arises from internalization of legal norms).

191. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, n.72 (1974).

192. JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005) (analyzing compliance through rational choice theory and proposing that states comply with international law only for instrumental reasons).

193. *See* ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 42-57 (Bruce Patton, ed., revised ed., 2011) (arguing for a principled negotiations strategy that focuses on party's interests rather than positions).

194. *See* Guzman *supra* note 31, at 307.

195. *See* Appellate Body Report, *Chile — Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R (*adopted* Oct. 23, 2002).

196. *See* Appellate Body Report, *European Communities — Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/AB/R (*adopted* Sept. 27, 2005).

197. See Panel Report, *European Communities — Export Subsidies on Sugar*, WT/DS283/R (*adopted* May 19, 2005).

198. *See* Panel Report, *United States — Anti-Dumping Measure on Shrimp from Ecuador*, WT/DS335/R (*adopted* Feb. 20, 2007).

interests. In other words, understanding the core interests and how they play out in WTO litigation and negotiations will help countries predict areas in which China will likely be an ally. These observations lead to significant implications for international global governance that are elaborated in detail in the next subsection.

V. GLOBAL GOVERNANCE IMPLICATIONS OF CORE INTERESTS ANALYSIS

Current theories of effective global governance do not easily accommodate core interests. It is more common to find methodologies derived the political science[199] and international relations literatures,[200] which in turn uneasily grapples with complex legal regimes like the WTO and the ever-increasingly complex web of investment and free trade treaties that make up the global trade regime.[201] Within the legal literature on international economic law, grappling with messy realist[202] or neo-realist[203] interest-based analysis is eschewed in favor of analysis based on liberal theory,[204] institutionalism,[205] or transnational norm theories.[206]

Professor Anne-Marie Slaughter, a central thinker in liberal legal theory, has long asserted that one of the "most important and effective"

199. *See* Ruth W. Grant & Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 41, 41 (2005).

200. *See* ROBERT POWELL, IN THE SHADOW OF POWER, STATES AND STRATEGIES IN INTERNATIONAL POLITICS, (1999) (canvassing the international relations literature and providing a persuasive analysis of how states behave under threat).

201. *See, e.g.*, Sungjoon Cho & Claire R. Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491, 497 & nn.13-14, 498 & nn.15-17 (2012) (collecting literature on multilateral treaty failures and identifying why treaties are ineffective at coordinating global financial regulations).

202. HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE (classic version, 1948).

203. KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS (1979) (presenting a "neorealist" formulation which assumes that states are "unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination").

204. Anne-Marie Slaughter, *Liberal International Relations Theory and International Economic Law*, 10 AM. U. J. INT'L L. & POL'Y 717, 718-19 (1995) [hereinafter Slaughter, *Liberal IR Theory*] (suggesting that productive insights for international lawyers may be gained by exploring the assumptions of international relations theory).

205. *See, e.g.*, KEOHANE, *supra* note 8, at 7-16 (1989) (coining the term "neoliberal institutionalism" and distinguishing this from other interest-based international relations theories); *See also*, Keohane, *Two Optics*, *supra* note 189, at 490 (explaining the institutionalist account as arising from the intuition that states sometimes "forgo the short-term advantages derived from violating [[those] rules" in order to maintain the international system (quoting Phillip R. Trimble, *International Law, World Order and Critical Legal Studies*, 42 STAN. L. REV. 811, 833 (1990)).

206. *See, e.g.*, Koh, *Why Do Nations Obey?*, *supra* note 190; FRANCK, *supra* note 190.

means of global governance is not top-down international treaty law but "direct regulation of private actors . . . with deliberate transnational or global intent."[207] In addition to transnational regulatory networks, Slaughter also lauds the spread of "private regimes" arising from corporate codes of conduct or industry association norms that take on transnational effect.[208] Others also champion voluntary law over traditional, top down and state-centrist law or treaties. In an influential piece, Professors Kenneth Abbott and Duncan Snidal criticize the "persistent regulatory inadequacies" of treaty-based "international 'Old Governance'" and encourage states and intergovernmental organizations to focus attention on promoting voluntary networks, which might fill governance gaps.[209] Abbott and Snidal call this collection of voluntary mechanisms "Transnational New Governance."[210] In this new governance model, private actors such as industry groups, corporations, and investor groups collaborate internationally, sometimes with Non-Governmental Organizations ("NGO"), states, standardization organization, or international institutions, to generate and enforce new norms for transnational conduct.[211]

Much of this scholarship emphasizes private regulation, often voluntary, over state action. However, private regulation takes places in the shadow of traditional laws and treaties.[212] Even within the context of Transnational New Governance, private actors and their NGO collaborators cannot afford to ignore the core interests of their governmental interlocutors if they hope to achieve meaningful change. This article makes a valuable contribution to the legal, political science, and international relations literatures by showing ways in which China's core interests may be easily injected into either a public or private-action

207. See Slaughter, *A Liberal Theory*, *supra* note 187, at 245.

208. *Id*. at 243. In Slaughter's conception, there are two forms of "directly" regulating law, and both are more effective at structuring private behavior and "get[ting] at the root of the problem" than public international law, which affects private conduct only through the intermediation of the state. *Id.* at 245-46. These two forms are voluntary norms with transnational effect created by business and industry groups, and national regulations that reach across national borders to govern extraterritorially. *Id*.

209. *See* Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT'L L. 501, 545 (2009) (describing and advocating a transnationally linked and voluntarily promulgated system of regulatory norms).

210. *Id.* at 509.

211. *Id.* at 505-6.

212. Jose E. Alvarez, *Interliberal Law: Comment*, 94 AM. SOC'Y INT'L L. PROC. 249, 250 (2000) (observing that many of the nontraditional modes of global governance are "nestled within traditional treaty regimes").

analysis. Core interests play a critical role not only in territorial and political disputes (like Taiwan, Tibet and the South China Sea island disputes), but also in the more esoteric realm of WTO dispute settlement, where private actors often play a direct role, albeit behind the scenes.[213] Directly naming the core interests have great value. This section lays out the explicative, predictive, persuasive, and coalition-building values of a core interest analysis.

A. Explicative Value

The core interest analysis explains, to a large extent, China's intractability in many areas that have consistently caused international controversy, such as human rights, democracy, Taiwan, and Tibet. While it is clearly beyond the scope of this article to thoroughly discuss, much less propose solutions, to any of these long-term controversies, it is nonetheless worthwhile to examine briefly how the core interests analysis bears on each of them. China usually defends its human rights record with outright denials, obfuscations, indignation, or by relying on national sovereignty arguments.[214] However, from a core interest perspective, the human rights dilemma (writ large) implicates not only sovereignty, but also social stability or public order, and the dominance of the Communist Party. Because human rights issues are so interwoven with these important core interests, it explains why China is often so recalcitrant over seemingly small human rights concessions, or why policy changes tend to be only temporary, such as during the Beijing Olympics. If human rights activists want meaningful, lasting change, they need to directly tackle the underlying core interests and craft solutions that address them. Tibet provides another example of how the core interest analysis has strong explicative power.

Tibet implicates only sovereignty concerns, but also economic development. Tibet is seen as providing critical *lebensraum* (or living space) for China's growing population. This explains why China refuses to make public statistics on the number of ethnic Han Chinese immigrants to Tibet.[215] It also explains the massive influx of

213. *See generally* Gregory Shaffer et al., *The Trials of Winning at the WTO: What Lies Behind Brazil's Success,* 41 CORNELL INT'L L.J. 383 (2008).

214. Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 626 (2004) (noting that international law affects state behavior through a process of "acculturation" in which various actors feel compelled to assimilate through interaction with other actors).

215. *See* Wong *supra* note 37, ("Chinese officials say Tibetans make up more than 95 percent of the region's 2.9 million people, but refuse to give estimates on Han migrants, who are not

infrastructural investment in Tibet in recent years, like the U.S. $3.83 billion Qinghai-Tibet Railway completed in 2006.[216] The Chinese government invested U.S. $3 billion in the Tibet Autonomous Region in 2009, a 31 percent increase from 2008.[217] Tibet is seen as an economic opportunity for China. Again, these observations are not meant to be justificatory or apologist by any means, but a realistic assessment that any calls for reform must tackle the underlying issues. As much as one might like to think of Tibetan independence as a pure self-determination and human rights issue, one cannot ignore the economic perspective. Indeed, one of the primary benefits of the core interest analysis is that it pinpoints the interrelated and competing interests underlying complex issues like Tibet and human rights concerns more broadly. As such, the core interest analysis is helpful not only for its explicative value, but also for calling for further scholarships that apply the core interest analysis to such issues.

B. Predictive Value

The core interest analysis also holds predictive value, particularly in the area of trade disputes, either at the WTO or domestic level. One would expect China to zealously defend or prosecute cases that implicate the core interest of economic development. While all trade disputes directly or indirectly implicate economic development in one way or another, the prediction is strong for cases that implicate China's policy space to pursue its particular brand of economic development –namely, export driven economic growth coupled with sustainable (and socially stable) growth in domestic consumption by the middle-class.

Thus, the on-going solar dispute directly impinges on both types of issues. As discussed in Part III.B, the solar industry has both real and symbolic values that the core interest analysis highlights. Solar energy is an emerging industry that is important to China's continued economic development. The solar industry, supported through subsidies, tax breaks, and collaboration with state-owned enterprises is typical of the overall structure China has created to encourage exports. Therefore, it has symbolic value not only as a representative of China's economic strategy, but also as proof of China's ability to innovate in cutting-edge technologies.

registered residents").

216. Xinhua News Agency, *New Height of World's Railway Born in Tibet,* CHINA VIEW (Aug. 24, 2005, 4:38 PM), http://news.xinhuanet.com/english/2005-08/24/content_3397297.htm.

217. *Id*.

Lastly, solar is important for China's social stability. China's ever-increasing demand for energy resources has caused social tensions, such as the populist protests against land seizures for a power station in Yunnan Province,[218] as well as a host of health concerns arising from air pollution. While solar energy can ease the demand for heavily polluting fossil fuels, it too has come under scrutiny. In September 2011, hundreds of residents in Zhejiang Province stormed the factory of Zhejiang Jinko Solar Co. Ltd., a solar panel manufacturer, to protest the emission of toxic gases and waste.[219] Nonetheless, China is unlikely to reverse its current policy of supporting the solar energy industry both as a green alternative to fossil fuels and as a symbol of China's model of export-driven economic development.

C. Persuasive Value

Understanding the core interests gives China's interlocutors access to the persuasive power of the core interests. It gives negotiators, activists, academics, policy-makers, and decision-makers of all types a new set of tools to use to strategically frame issues in terms of core interests. Not only is it important to appreciate the effect of the core values (requiring both the explicative and predictive functions), one must understand how to best use the core interests for advocacy or negotiations purposes. This accords with the best practices in effective negotiations in all contexts,[220] and it applies to China across a large range of issues.

Consider the solar energy industry disputes as an example. Assume, as is likely, that the trade dispute results in the filing of a WTO complaint by the United States against China, triggering automatic consultations between the parties. If the United States hopes to achieve a satisfactory negotiated solutions to the dispute, it needs to muster not only all the WTO arguments, but also frame its proposed solutions in reference to China's core interests. One possible compromise might be for China to agree to a voluntary phasing out of certain tax benefits or indirect subsidies to solar panel manufacturers in return for a similar phasing out of the United States Department of Commerce imposed

218. *Major Protests and Riots in China in 2011 and 2012*, FACTS AND DETAILS, http://factsanddetails.com/china/cat8/sub49/item1894.html.

219. Elaine Kurtenbach, *Over 500 Villagers Protest China Factory Pollution,* ASSOCIATED PRESS (Sept. 19, 2011, 12:30 AM), http://cnsnews.com/news/article/over-500-villagers-protest-china-factory-pollution-0.

220. *See* FISHER, *supra* note 193, at 42-57 (arguing for a principled negotiations strategy that focuses on party's interests rather than positions).

countervailing duties on solar panels imported to the United States from China. In addition, both countries could promise not to attack each other's policies for the guaranteed purchase of solar electricity. Such a compromise would satisfy China's interest in having an export market, but also the United States' interest in protecting its own domestic solar panel manufactures. It would recognize that China has an interest in encouraging the development of green energy sources for domestic consumption, an important aspect of China's internal social stability.

D. Coalition-Building Value

Lastly, the core interest analysis can be leveraged to provide strategic coalition building value for developing nations within the international trade regime. I have argued elsewhere for a number of different ways to improve the WTO's responsiveness to the needs of developing nations, both within the dispute settlement context[221] and otherwise.[222] Many other scholars have contributed to this large literature.[223] The lack of meaningful access the smaller developing

221. *See generally* Phoenix X.F. Cai, *Making WTO Remedies Work for Developing Nations: The Need for Class Actions*, 25 EMORY INT'L L. REVIEW 151, 159 (2011) (making the case for limited class action remedy).

222. *See generally* Phoenix X.F. Cai, *Aid for Trade: A Roadmap for Success*, 36 DENV. J. INT'L L. & POL'Y 283 (2008).

223. *See generally* Joel P. Trachtman, *The WTO Cathedral*, 43 STAN. J. INT'L L. 127 (2007); Andrew T. Guzman & Beth A. Simmons, *Power Plays and Capacity Constraints: The Selection of Defendants in World Trade Organization Disputes*, 34 J. LEGAL STUD. 557, 557-58 (2005); Chad P. Bown, *Developing Countries as Plaintiffs and Defendants in GATT/WTO Trade Disputes*, 27 WORLD ECON. 59 (Jan. 2004); Susan Esserman & Robert Howse, *The WTO on Trial*, 82 FOREIGN AFF. 130 (2003); ROBERT Z. LAWRENCE, CRIMES & PUNISHMENTS? RETALIATION UNDER THE WTO (2003); Kym Anderson, *Peculiarities of retaliation in WTO dispute settlement*, 1 WORLD TRADE REV. 123 (2002); Claude Barfield, *WTO Dispute Settlement System in Need of Change*, 37 INTERECONOMICS 131 (2002); Marco Bronckers & Naboth van den Broek, *Financial Compensation in the WTO: Improving the Remedies of WTO Dispute Settlement*, 8 J. INT'L ECON. L. 101 (2005); Chi Charmody, *Remedies and Conformity Under the WTO Agreement*, 5 J. INT'L ECON. L. 307 (2002); Steve Charnovitz, *Rethinking WTO Trade Sanctions*, 95 AM. J. INT'L L. 792 (2001); Patricio Grané, *Remedies Under WTO Law*, 4 J. INT'L ECON. L. 755 (2001); Joost Pauwelyn, *Enforcement and Countermeasures in the WTO: Rules are Rules — Toward a More Collective Approach*, 94 AM. J. INT'L L 335 (2000); Robert Howse & Robert W. Staiger, *United States —Anti-Dumping Act of 1916 (Original Complaint by the European Communities)—Recourse to Arbitration by the United States under Article 22.6 of the DSU, WT/DS136/ARB, 24 February 2004: A Legal and Economic Analysis*, 4 WORLD TRADE REV. 295 (2005); JOHN H. JACKSON, DISPUTE SETTLEMENT AND THE WTO: EMERGING PROBLEMS, IN FROM GATT TO THE WTO: THE MULTILATERAL TRADING SYSTEM IN THE NEW MILLENNIUM 67 (2000); Jason E. Kearns & Steve Charnovitz, *Adjudicating Compliance in the WTO: A Review of DSU Article 21.5*, 5 J. INT'L ECON. L. 331 (2002); Pieter Jan Kuyper, *Remedies and Retaliation in the WTO: Are They Likely to Be Effective? The State Perspective and the Company Perspective*, 91 AM. SOC'Y INT'L L. PROC. 282 (1997); Kofi Oteng Kufuor, *From the GATT to the WTO: The Developing Countries and the Reform of the Procedures*

nations face to the WTO's dispute settlement and negotiations forums remains one of the lingering weaknesses of the WTO system.[224] Even though the Doha round of WTO trade talks finally, after a decade-long deadlock[225] reached agreement on some issues,[226] it is nonetheless critical to find creative ways to move forward on important global trade issues in fora other than cumbersome multilateral negotiations. While some commentators fear the fracturing of the WTO regime due to the rise of bilateral agreements,[227] others see an opportunity to foster strong regional alliances.[228] In a climate of regionalism and bilateralism, effective coalition-building strategies are essential.

In terms of coalition building or strategic alliances, developing

for the Settlement of International Trade Disputes, 31 J. WORLD TRADE 117 (1997); Nikolaos Lavranos, *Some Proposals for a Fundamental DSU Reform*, 29 LEGAL ISSUES EUR. ECON. INTEGRATION 73 (2002); Robert M. MacLean, *The Urgent Need to Reform the WTO's Dispute Settlement Process*, 8 INT'L TRADE L. REG. 137 (2002); Petros C. Mavroidis, *Remedies in the WTO Legal System: Between a Rock and a Hard Place*, 11 EUR. J. INT'L L. 763 (2000); Victor Mosoti, *In Our Own Image, Not Theirs: Damages as an Antidote to the Remedial Deficiencies in the WTO Dispute Settlement Process; A View from Sub-Saharan Africa*, 19 B. U. INT'L L. J. 231 (2001); Joost Pauwelyn, *Enforcement and Countermeasures in the WTO: Rules Are Rules — Toward a More Collective Approach*, 94 AM. J. INT'L L. 335 (2000); Timothy M. Reif & M. Florestal, *Revenge of the Push-Me, Pull-You: The Implementation Process under the WTO Dispute Settlement Understanding*, 32 INT'L LAW. 755 (1998); Arvind Subramanian & Jayashree Watal, *Can TRIPS Serve as an Enforcement Device for Developing Countries in the WTO?*, 3 J. INT'L ECON. L. 403 (2000); ALAN O. SYKES, *The Remedy for Breach of Obligations under the WTO Dispute Settlement Understanding: Damages or Specific Performance?* NEW DIRECTIONS IN INTERNATIONAL ECONOMIC LAW: ESSAYS IN HONOUR OF JOHN H. JACKSON 347 (Marco Bronckers & Reinhard Quick eds., 2000); Henrik Horn, et al., *Is the Use of the WTO Dispute Settlement System Biased?* C.E.P.R. DISCUSSION PAPER 2340, (1999). In addition to the academic literature, there are a number of proposals by states in connection with current WTO negotiations in the Doha Round. These are helpfully listed and summarized at Marylin Johnson Raisch, *Website Survey 2009*, J. INT'L ECON. LAW (Mar. 23, 2010), http://jiel.oxfordjournals.org/content/early/2010/03/23/jiel.jgq010.full. In particular, *see Negotiations on the Dispute Settlement Understanding*, *Proposal by the African Group*, TN/DS/W/15 (Sept. 25, 2002) (proposing "monetary compensation to be continually paid pending and until the withdrawal of the measures in breach of WTO obligations" and including a number of proposals by commentators).

224. Gregory Shaffer, *How to Make the WTO Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies in* TOWARDS A DEVELOPMENT-SUPPORTIVE DISPUTE SETTLEMENT SYSTEM, 1, 26, 51-52 (ICTSD, 2003).

225. *See Doha Round Suspended Indefinitely After G-6 Talks Collapse*, BRIDGES-WEEKLY TRADE NEWS DIGEST (July 26, 2006), http://ictsd.org/i/news/bridgesweekly/6354/ ("The Doha Round of trade negotiations was put into deep freeze on 24 July, after a meeting of ministers from six key trading nations collapsed over divisions on how to cut farm subsidies and tariffs."); *see also, In the Twilight of Doha*, THE ECONOMIST, July 29, 2006, at 63.

226. The Editorial Board, *Trade Talks Produce a Deal*, N.Y. TIMES (Dec. 12, 2013), http://www.nytimes.com/2013/12/13/opinion/trade-talks-produce-a-deal.html.

227. *See* Urata, *supra*, note 65, at 2-3.

228. For a succinct discussion of the trend of new regionalism, *see generally*, *Trade and Development Report*, 2007, UNCTAD, OVERVIEW VIII-X, *available at* http://www.unctad.org/en/docs/tdr2007fas_en.pdf.

nations labor at a disadvantage.[229] They have fewer bargaining chips,[230] wield little economic strength,[231] and are handicapped by collective action difficulties,[232] as well as divergent interests.[233] Despite these difficulties, we are beginning to see encouraging trends in the WTO arena, in the emergence of influential groups like the G20[234] that have been active at the WTO.[235]

However, China has yet to fulfill its promise and take on a decisive leadership role in the international trade arena, both in terms of dispute resolution[236] and trade negotiations.[237] It is difficult not to deplore the wasted potential and lost opportunities.[238] Perhaps the most intriguing aspect of the core interest analysis is its usefulness in future coalition building efforts. The core interest analysis may be leveraged to benefit nations seeking alliances with China on a variety of issues. At the most basic level, understanding the core interests and being able to identify

229. *See generally* Sonia E. Rolland, *Developing Country Coalitions at the WTO: In Search of Legal Support*, 48 HARV. INT'L L. J. 483 (2007).

230. *See generally* Marco Bronckers & Naboth van den Broek, *Financial Compensation in the WTO: Improving the Remedies of WTO Dispute Settlement*, 8 J. INT'L ECON. L. 101 (2005).

231. *See e.g.,* Douglas Ierley, *Defining the Factors that Influence Developing Country Compliance with and Participation in the WTO Dispute Settlement System: Another Look at the Dispute Over Bananas*, 33 LAW & POL'Y INT'L BUS. 615, 616 (2002) (presenting the five principal factors cited by diplomats as influencing developing country participation in and compliance with WTO panel and Appellate Body decisions, including lack of economic power).

232. Jayashree Watal, *Developing Countries' Interests in a "Development Round," in* THE WTO AFTER SEATTLE 71 (Jeffrey J. Schott ed., 2000) (explaining that for many decades, developing nations were not significant players in the rounds of multilateral trade negotiations under GATT); *see generally* Dinah Shelton, *Normative Hierarchy in International Law*, 100 AM. J. INT'L L. 291, 317 (2006) (noting that due to globalization and the increasing interdependence of states, many modern problems cannot be solved in a purely consensual system and require formal international agreement, "rules that require strict compliance," and mechanisms to influence the conduct of outlier states).

233. Victor Mosoti, *In Our Own Image, Not Theirs: Damages as an Antidote to the Remedial Deficiencies in the WTO Dispute Settlement Process; A View from Sub-Saharan Africa*, 19 B.U. INT'L L. J. 231, 232 (2001).

234. *See* Sungjoon Cho, *Doha's Development*, 25 BERKELEY J. INT'L L. 165, 170-72 (2007) (describing the strong role played by the G-20 on agricultural negotiations at the Cancun Ministerial Conference).

235. *See* Pedro da Motta Veiga, *Brazil and the G20 Group of Developing Countries*, MANAGING THE CHALLENGES OF WTO PARTICIPATION: CASE STUDY 7, http://www.wto.org/english/res_e/booksp_e/casestudies_e/case7_e.htm#first.

236. *See* Phoenix X.F. Cai, *Making WTO Remedies Work for Developing Nations: The Need for Class Actions, in* INTERNATIONAL LAW, CONVENTION AND JUSTICE (David A. Frenkel ed., 2011).

237. *See* Guzman, *supra* note 31, at 307.

238. *See generally* Sungjoon Cho, *The WTO Doha Round Negotiation: Suspended Indefinitely*, ASIL INSIGHTS (Sept. 5, 2006), http://www.asil.org/insights/volume/10/issue/22/wto-doha-round-negotiation-suspended-indefinitely.

which ones are implicated in any given issue is in and of itself helpful. The explicative power of the core interests can shed light on China's motivations, especially when they are mixed. Beyond the explicative value, understanding the core interests enables potential partners to frame issues in more attractive ways to appeal to, down-play, or avoid China's interests, as appropriate to the situation. By identifying the core interests, discussing how they are implicated in recent and long-standing controversies, and highlighting the role they play in trade disputes, this article lays the foundations for robust debate and future scholarship on the utility of the core interest analysis.

VI. CONCLUSION

China will continue to be a dominant force in the global economy for the near future. Therefore, it is imperative to understand the interests that drive China's trade and foreign policies. This article articulates three core interests that will dominate China's decision-making for at least the next decade. Appreciating the explicative, predictive, persuasive, and coalition-building values of the core interests will be indispensable in understanding China.