

Innovation and Improvement of International Economic and Trade Rules for the Belt and Road Initiative

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In September and October 2013, Chinese President Xi Jinping successively proposed building the Silk Road Economic Belt and the 21st Century Maritime Silk Road, which were jointly referred to as the Belt and Road Initiative (BRI). In November 2013, the BRI was written into the Decision on Some Major Issues Concerning Comprehensively Deepening the Reform adopted at the 3rd plenary session of the 18th Central Committee of the Communist Party of China (CPC), thus becoming the centerpiece of China's foreign economic and diplomatic policy. In March 2015, the Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, which set a comprehensive overview of the BRI, was issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce under the authorization of the State Council. In the past ten years, the BRI has achieved remarkable results, benefiting the people of partner countries. However, it is also imperative to continue innovating and improving relevant international economic and trade rules to serve the BRI projects better.

Belt and Road Development Calls for High-Standard International Economic and Trade Rules

The BRI is designed to facilitate development and is not intended for cross-

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regional economic integration. However, it is embedded in an international network of intertwined relations in political, economic, cultural and many other dimensions that make it vulnerable to diverse, uncertain, unpredictable, and interconnected risks. Better international economic and trade rules are necessary to reduce the risks facing the BRI and protect the initiative. It is not an exaggeration to say that the BRI's progress and sustained success depends, to a considerable extent, on the effectiveness of institutional setup for formulating and perfecting the system of high-standard international economic and trade rules.

From the BRI participants' perspective, explicit and predictable international economic and trade rules are necessary for mitigating and avoiding the risks inherent in the BRI.¹ Against the backdrop of great-power rivalry and under the impact of the COVID-19 pandemic, geopolitical factors continue to exacerbate tensions in geoeconomic relations. The legal risks facing the BRI have become more complex and highly specific. They must be handled with reasonable programs based on targeted and careful research. This effort rests on a suite of appropriate international economic and trade rules.

From the perspective of Belt and Road countries, the acceptance of relevant international economic and trade rules signifies their inclination to participate in the BRI and manifests their consensus.

Internationally, the BRI is sometimes viewed as a large regional economic integration arrangement² and sometimes interpreted as a Chinese global governance model. While the observations of most Western academics are ideologically based and biased, it is not wrong to say that the BRI is an innovative attempt of China to build a community with a shared future in cooperation with partner countries.³ From China's perspective,

1 Li Yubi and Wang Lan, "Legal Risks of the Belt and Road Initiative: Identification and Response Strategies," *Journal of Chinese Academy of Governance*, No.2, 2017, pp.77-80.

2 Giuseppe Martinico and Xueyan Wu, "The Belt and Road Initiative: A Legal Analysis—An Introduction," in Giuseppe Martinico and Xueyan Wu, eds., *A Legal Analysis of the Belt and Road Initiative—Towards a New Silk Road?* Palgrave MacMillan, 2020, pp.1-4.

3 Kong Qingjiang, "China's B&R Initiative and the Free Trade Agreement Attempts in the Asia-Pacific," *Areas Studies and Global Development*, No.1, 2017, p.8.

this exploratory program for participating in global governance requires a binding legal mechanism to consolidate the relevant interests, and political policies must be translated into international economic and trade rules to gain stability and legitimacy. With an asymmetric advantage over other participating countries, China can steer the development of relevant international economic and trade rules.

In his report to the 20th CPC National Congress, General Secretary Xi Jinping stated that “we will promote the high-quality development of the Belt and Road Initiative.” Earlier, when addressing the third symposium on BRI development in November 2021, he had mentioned high-quality Belt and Road cooperation with the vision of high-standard, sustainable and people-centered cooperation. These three pillars of cooperation are all related to applicable international economic and trade rules. One of the hallmarks of high-quality BRI development is the formation and improvement of high-standard international economic and trade rules to serve and safeguard the BRI’s sustainable development and continuously bring benefits to the people of China and partner countries. As such, the BRI will be built into a popular international public good and an international cooperation platform.

It has been ten years since the BRI was launched. Given the growing consensus on the importance of building the BRI rules system, developing and perfecting a system of economic and trade rules for the BRI in an innovative way will be an important task for promoting high-quality BRI development in the next phase.

Current Status of BRI Economic and Trade Rules

Generally speaking, the international economic and trade rules applicable to the BRI include multilateral rules and regional and bilateral ones. The former is largely encapsulated in the multilateral trade agreements (MTAs) administered by the World Trade Organization (WTO), the intellectual property conventions administered by the World Intellectual Property

Organization (WIPO), and a few multilateral investment treaties and tax cooperation agreements. The regional and bilateral rules are embodied in a host of bilateral investment treaties (BITs), bilateral tax agreements (BTAs) and free trade agreements (FTAs) on a regional or bilateral basis. An increasing number of FTAs have incorporated rules on trade in goods and services, investment, intellectual property, dispute settlement, environmental and labor standards, state-owned enterprises (SOEs), and government procurement. The BRI economic and trade rules discussed in this article cover the areas of trade, investment, intellectual property, and dispute settlement.

The existing BRI economic and trade rules are a hybrid rules system. They encompass applicable but non-legally binding documents such as memorandums or similar instruments, as well as legally binding international agreements in the form of treaties. As of June 2023, China had signed more than 200 Belt and Road cooperation documents with 152 countries and 32 international organizations.⁴ Most of these documents are bilateral memorandums of understanding (MOUs) between subjects of international law, including cooperation agreements, cooperation documents, and cooperation memorandums.

Trade

There are both MTAs into which the BRI countries have entered and FTAs among the BRI countries. The WTO-administered MTAs include the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), the General Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), etc. They are currently binding on all WTO members (including 161 countries, of which 123 are BRI members, and three separate customs territories, namely Hong Kong, Macao and Taiwan).

4 “List of Countries that Have Signed Belt and Road Cooperation Documents with China,” June 26, 2023, <https://www.yidaiyilu.gov.cn/xwzx/roll/77298.htm>.

Regional and bilateral FTAs among the BRI countries include the Regional Comprehensive Economic Partnership (RCEP), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and some FTAs between the countries concerned. Among the 15 countries that signed the RCEP—China, Japan, South Korea, Australia, New Zealand and the 10 member states of ASEAN, 12 are participants of the BRI. Among the 11 countries that have ratified the CPTPP—Japan, Canada, Mexico, Peru, Chile, Singapore, Malaysia, Brunei, Vietnam, Australia and New Zealand, seven have also joined the BRI. Regarding FTAs among the countries concerned, China has signed FTAs with 21 countries or associations of countries involving 18 BRI countries. Other BRI countries have also signed FTAs with each other or with non-BRI countries. A representative of the former is the Eurasian economic integration agreements concluded by Russia, Belarus and Kazakhstan. Examples of the latter include the US-Singapore FTA, the EU-Singapore FTA, the US-South Korea (KORUS) FTA, and the EU-Vietnam FTA.

Finance and investment

The BRI financial cooperation rules are embodied in the Guiding Principles on Financing the Development of the Belt and Road and the Belt and Road Inter-Bank Regular Cooperation (BRBR) mechanism. The Guiding Principles on Financing the Development of the Belt and Road were endorsed by China and 26 other countries at the First Belt and Road Forum for International Cooperation in May 2017.⁵ During the meeting, chairpersons and presidents of more than 30 commercial banks from the BRI countries and international financial organizations signed the Joint Statement of the Belt and Road Bankers Roundtable to establish the BRBR mechanism.⁶ Strictly speaking, the Guiding Principles

5 “Guiding Principles on Financing the Development of the Belt and Road,” May 16, 2017, <https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydylgw/201705/201705161021052.pdf>.

6 “ICBC Promotes Belt and Road Inter-Bank Regular Cooperation Mechanism,” February 9, 2018, <http://ydy.people.com.cn/n1/2018/0209/c411837-29816169.html>.

is not a formal international agreement, nor is the Joint Statement a legally binding document. Nevertheless, they have provided the direction of financing institutionalization under the BRI framework, i.e., promoting the construction of a long-term, stable, sustainable and risk-controllable financing system. Two years later, China's Finance Minister announced at the second Belt and Road Forum for International Cooperation that a diversified, inclusive, and sustainable BRI financing system had been initially established.⁷

The BRI investment rules are contained in the Convention Establishing the Multilateral Investment Agency (MIGA Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) administered by the International Center for the Settlement of Investment Disputes (ICSID), and investment treaties signed among the BRI countries or between BRI and non-BRI countries. They are also reflected in the Policy Framework for Investment (PFI) of the Organization for Economic Cooperation and Development (OECD), the Investment Policy Framework for Sustainable Development (IPFSD) developed by the United Nations Conference on Trade and Development (UNCTAD), and the G20 Guiding Principles for Global Investment Policymaking proposed by China. The MIGA Convention aims to encourage the flow of investments for productive purposes among member countries, particularly developing member countries. It is committed to enhancing understanding and trust between host countries and foreign investors and promoting investment in developing countries from developed countries by providing guarantees to overseas private investors.⁸ The MIGA Convention currently has a membership of 182 countries, including 143 BRI countries. The ICSID Convention provides facilities for resolving investment disputes between host countries and foreign investors. Among the 165 signatories are 121

7 "MOF: BRI Financing System Initially Established," April 26, 2019, http://finance.ce.cn/bank12/scroll/201904/26/t20190426_31946067.shtml.

8 MIGA's official website, www.miga.org/about-us.

BRI countries.⁹ Investment treaties above cover investment promotion, protection, and management. As far as China is concerned, China has entered into more than 130 Bilateral Investment Treaties (BITs) since the reform and opening-up, with 104 in force now, of which more than half were concluded with BRI countries.¹⁰

The PFI, developed by a task force of OECD and non-OECD members in 2006, provides a checklist of important policy issues for any government interested in creating an environment attractive to all investors and enhancing the development of investment benefits to society. The IPFSD, formulated by UNCTAD in 2012, takes sustainable development as its mission and objective while paying attention to harmonizing the interests of developing and developed countries and of investors and the public. It offers a detailed set of investment policy options, consisting of the Core Principles for Investment Policymaking for Sustainable Development, the National Investment Policy Guidelines, and policy options for international investment agreements design and implementation, for adoption by different countries according to their respective national circumstances. The G20 Guiding Principles for Global Investment Policymaking,¹¹ adopted at the 2016 G20 summit in Hangzhou, is the world's first multilateral framework of investment rules, which fills the gap in this respect. It covers all the core elements of an international investment regime and places an important cornerstone for building a future-oriented global investment framework. It should be noted that the G20 Guiding Principles bear the consensus of G20 members, but they do not yet constitute binding global investment rules. Against this backdrop, introducing these agreed

9 ICSID's official website, <https://icsid.org>, <https://wwid.worldbank.org/about>.

10 "List of Bilateral Investment Treaties Signed by China with Foreign Countries," <http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml>.

11 The G20 Guiding Principles for Global Investment Policymaking identifies nine principles, i.e. anti-protectionism and openness; non-discrimination; investment protection; transparency; sustainable development; the right to regulate; investment promotion and facilitation; responsible business conduct and corporate governance; and international cooperation. See "G20 Guiding Principles for Global Investment Policymaking," *People's Daily*, September 7, 2016, p.21.

principles into the BRI to foster regional investment rules will be a viable option.

Taxation

The BRI tax rules are contained in a few multilateral agreements on tax cooperation and many bilateral agreements on the prevention of double taxation and tax evasion. They are also embodied in the BRI Tax Administration Cooperation Mechanism (BRITACOM). China is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, among other multilateral tax cooperation agreements. By the end of June 2021, China had ratified about 107 bilateral agreements on preventing double taxation and tax evasion, of which 101 have come into force, involving 87 BRI countries.¹² To establish a long-term mechanism for BRI tax cooperation, China signed the Astana Proposal on the Belt and Road Initiative Tax Cooperation with more than 50 BRI countries, regions and international organizations in May 2018. This proposal called for cooperation among tax administrations of the BRI countries in the areas of rule of law in tax matters, enhancing the efficiency of tax dispute resolution and raising the level of tax services.¹³ One year later, China signed the BRITACOM Memorandum of Understanding with the tax administrations of 33 countries and regions at the first BRI Tax Administration Cooperation Forum in April 2019, marking the formal establishment of BRITACOM.¹⁴

12 “Multilateral Tax Treaties Signed by China,” <http://www.chinatax.gov.cn/n810341/n810770/index.html>.

13 “Promoting Stable and Sustained BRI Development with Tax Cooperation,” January 11, 2019, <http://www.chinatax.gov.cn/n810219/n810724/c4039208/content.html>.

14 “Jointly Building the Belt and Road Initiative Tax Administration Cooperation Mechanism,” April 18, 2019, <http://www.chinatax.gov.cn/chinatax/n810219/n810729/c4268169/content.html>.

Intellectual property

The BRI intellectual property rules are scattered in the WIPO-administered treaties with varying degrees of participation by the BRI countries, TRIPS, FTAs, and cooperation documents among several countries. The WIPO administers 26 treaties, including the WIPO Convention. The BRI countries are mostly signatories to the WIPO Convention and some intellectual property treaties. Most FTAs between China and other BRI countries contain provisions for protecting intellectual property rights. In addition, the China National Intellectual Property Administration has established a regular mechanism for intellectual property cooperation with more than 40 BRI countries. Concrete and tangible cooperation projects have been launched in eight areas, covering macro-level policy dialogue, intellectual property examination, basic capacity building and information and data exchange.¹⁵ China has also forged formal partnerships with regional organizations such as the Gulf Cooperation Council Patent Office, ASEAN, and the Eurasian Patent Office, and signed, with the WIPO, the Intergovernmental Agreement on Strengthening Belt and Road Intellectual Property Cooperation as a guiding document.¹⁶ The Joint Initiative on Strengthening Intellectual Property Cooperation among Countries along the Belt and Road was adopted at the 2016 High-Level Conference on Intellectual Property for Countries along the Belt and Road. In 2018, the Joint Statement on Pragmatic Cooperation in Intellectual Property among Countries along the Belt and Road was released by heads and representatives of intellectual property authorities of BRI countries.¹⁷

15 “China’s Achievements in Protecting Intellectual Property Rights Win International Recognition,” May 1, 2021, <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/39595/40331/xgbd40338/Document/1653072/1653072.htm>; “SCIO Press Conference on Development of China’s Intellectual Property Rights in 2018,” April 28, 2019, http://www.gov.cn/xinwen/2019-04/28/content_5387125.htm#1.

16 “China’s Achievements in Protecting Intellectual Property Rights Win International Recognition,” May 1, 2021.

17 “Joint Initiative on Strengthening Intellectual Property Cooperation among Countries along the Belt and Road Launched,” July 27, 2016, http://www.gov.cn/xinwen/2016-07/27/content_5095220.htm; “Intellectual Property Rights Protection Bolsters Continuous Optimization of Business Environment,” May 16, 2019, http://www.gov.cn/xinwen/2019-05/16/content_5392004.htm.

Dispute settlement

The dispute settlement mechanism is essential to a well-functioning global or regional governance system. The WTO dispute settlement mechanism is the world's most important mechanism for dispute settlement. It is mandated to deal with disputes among members arising from the implementation of WTO-administered MTAs, so it does not apply to those BRI countries that have not yet acceded to the WTO. The WTO dispute settlement mechanism is at a standstill currently following the paralysis of the WTO Appellate Body. Several WTO members, including China, have created a Multi-Party Interim Appeal Arbitration Arrangement (MPIA) to deal with disputes among the participants.

Concerning investment dispute settlement, the ICSID Convention aims to resolve investment disputes between host countries and foreign investors, involving 125 BRI countries among the 165 signatories. As for international commercial dispute settlement, rules applicable to the BRI countries include the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), the 2005 Hague Convention on Choice of Court Agreements (Hague Convention), and the 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation), as well as agreements on mutual legal assistance signed among the BRI countries and between BRI and non-BRI countries. The New York Convention aims to facilitate recognizing and enforcing commercial arbitral awards in foreign countries. It bears the signatures of 172 countries, including 125 BRI countries. The Hague Convention provided that, for international civil or commercial disputes, the court or courts of a contracting state designated in a choice of court agreement shall have exclusive jurisdiction to hear the case and make the judgment. Other contracting states shall be obliged to recognize and enforce the judgment under prescribed provisions. Among the 31 contracting states, there are 20 BRI countries. The Singapore

Convention on Mediation offers a harmonized legal framework for cost-effective and expeditious enforcement of agreements resulting from international commercial mediation. It promotes mediation as an effective alternative to international arbitration and litigation. Currently, nine out of the ten signatories to this convention are BRI countries.¹⁸ China has entered into 39 treaties on mutual legal assistance in civil and commercial matters with foreign countries, involving 33 countries along the Belt and Road.¹⁹

Problems and Obstacles in the Operation of BRI Economic and Trade Rules

The BRI economic and trade rules serve the Belt and Road projects. They ensure the BRI's orderly implementation by balancing the rights and obligations of its participants and stakeholders. After carefully examining the BRI economic and trade rules mentioned above, it is not difficult to find problems in either their overall design or their implementation on the ground. A few of them are not yet compatible with BRI objectives and, worse, set up obstacles to BRI development.

Fragmentation of existing rules

The existing BRI economic and trade rules are fragmented. The BRI countries follow international economic and trade rules in different forms (treaties or non-treaty instruments) and at different levels (multilateral, regional or bilateral). These economic and trade rules, even within the same category, are different in terms of areas covered, degree of trade and investment liberalization and facilitation agreed upon, level of investment protection, scope and level of intellectual property rights protection, and

18 “United Nations Convention on International Settlement Agreements Resulting from Mediation,” https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf.

19 “The People’s Republic of China—Treaty Database,” <http://treaty.mfa.gov.cn/web/index.jsp>.

rigidity of rules.

Besides, BRI countries have participated very differently in specific international economic and trade rules. For instance, MTAs administered by the WTO have binding force on all its 164 members. However, 28 BRI countries have not yet acceded to the universal international organization, so these WTO agreements do not apply to their trade relations with each other and with other members. The New York Convention facilitates the mutual recognition and enforcement of arbitral awards in 172 countries around the world. Yet, 26 BRI countries have not joined this convention. In international arbitration dealing with investment disputes involving these countries, there are still major uncertainties in the recognition and enforcement of international arbitral awards by the courts of these countries, making it difficult to implement the decisions of arbitration. Likewise, the ICSID Convention provides an important means for the 165 contracting states to settle disputes between host countries and foreign investors. However, investors from and to 30 BRI countries, which are not signatories of the convention, are restricted from using the ICSID Convention and the ICSID.

In addition, unilateralism and protectionism practised by the US in recent years have intensified the fragmentation of global trade and investment rules, prompting BRI countries to focus more on economic and trade rules-making at the regional level.

Failure to keep pace with BRI development

The BRI economic and trade rules have failed to keep pace with the times in certain areas, such as tax. Many of the concluded tax agreements did not mention or made little mention of mutual assistance on tax matters and tax incentives. This shortcoming undermines the appeal of host countries to investors and the overseas competitiveness of Chinese investors in BRI countries. To lure foreign investment, the tax agreements China signed in the early days granted tax credit and sparing to developed countries unilaterally and to developing countries mutually. Such issues

were even absent in some negotiations.²⁰ Due to a lack of enforceable tax incentive provisions, some Chinese enterprises “going out” cannot enjoy the preferential tax treatment that host countries provide. Some are even embroiled in international tax disputes and suffer huge losses. China’s tax authorities are forced to negotiate in an emergency and sign supplementary provisions to avoid greater losses. In addition, the automatic application of enterprise tax items after joining the Multilateral Convention on Mutual Administrative Assistance in Tax Matters has yet to be clarified. The tax laws on foreign-related collection trusts are absent, inadvertently increasing tax-related risks of enterprises’ cross-border operations. Also, railroad transport between Asia and Europe is subject to two sets of railroad transport rules, namely, the Agreement on International Goods Transport by Rail signed by China, Russia and other Eastern European countries, and the Convention concerning International Carriage by Rail (COTIF), which mainly applies to the Western European countries. The railway bill of lading system to show the right of ownership has not been established, which is not conducive to the operation of China-Europe Railway Express and the trade between the two sides.²¹

In areas other than those mentioned above, China has signed high-standard FTAs with “hub countries” such as South Korea, Singapore and New Zealand. Nevertheless, it is important to note that the prevailing rules between China and most BRI countries are generally antiquated and fall short of what BRI needs.

Difficulties in advancing WTO multilateral rules reform

The WTO is in crisis and urgently needs reform, but major members are widely divided. Overall, the US global trade strategy is the key variable

20 Tang Fenglin and Chen Han, “China’s Bilateral Tax Agreements in the Context of the Belt and Road Initiative: Status Quo, Problems and Suggestions for Improvement,” *International Taxation in China*, No.5, 2020, p.56.

21 *International Economic Law*, 2nd edition, Beijing: Higher Education Press, 2019, pp.102-103; Chen Jing and Pan Qingquan, “Railway Bill of Lading System: Theoretical Controversy and Practical Difficulty,” The Paper, https://m.thepaper.cn/baijiahao_14315651.

affecting the WTO's future.²² Judging from what the Biden administration has done on trade, it does not substantially change Trump's "America First" policy and merely puts more emphasis on the role of US allies and partners. On the one hand, the US tries to foster new international economic and trade rules by creating new regional FTAs. On the other hand, the US attempts to change and reconfigure WTO rules, hoping that the WTO will provide a new legal weapon for its strategic competition with China in trade and commerce rather than serve as an effective tool to constrain its own trade agenda. The US takes the WTO as an important instrument in its trade policy toolbox to serve its narrow interests. Noting the aspiration of the majority of members to advance WTO reform and safeguard the multilateral trading system, the US has blackmailed other WTO members into accepting its offer to reshape international trade and economic rules in its favor.

Pressure from US-style international economic and trade rules

The landscape of global economic and trade governance has been changing, adjusting, and reconfiguring in recent years. The US, Japan and the EU, as the representatives of incumbent great powers, spare no effort to secure their position, while China and India, as leading emerging economies, want to enhance their voice in international economic and trade rules. By its own strength or in unison with its allies, the US has been promoting its preferred international economic and trade rules while setting up regulatory barriers to contain its rivals. The new US-style discriminatory economic and trade rules are taking shape as part of the evolving landscape of international economic and trade governance.

National security is thrust into mainstream foreign investment screening standards in many countries. Some countries have gradually employed it as a policy tool to protect specific domestic industries and industrial chain ecosystems. For example, the US has kept updating its legislation since

22 Kong Qingjiang, "Reform of the World Trade Organization: US and EU Plan and Comparison with China's Proposal," *Chinese Journal of European Studies*, No.3, 2019, pp.39-47.

2018 to gradually increase the competence of the Committee on Foreign Investment in the United States (CFIUS) to more intensely scrutinize foreign investment, and has made every effort to restrict foreign capital from entering areas considered significant to US national security and block investment of special concern to the CFIUS. The US government can apply the national security standard to a wider range as the Foreign Investment Risk Review Modernization Act expanded the scope of “covered transactions” and even stipulated mandatory reporting requirements for investments involving critical technologies. In September 2022, US President Joe Biden signed an executive order requiring the CFIUS to tighten the review of transactions involving foreign companies in key supply chains, artificial intelligence, quantum computing and biotechnology.²³ This executive order is the first of its kind since the establishment of CFIUS to specify that particular national security risks are to be considered when reviewing “covered transactions.” It linked the agency’s objectives and functions to defending national security. With the US leading the way, the EU and Japan have introduced stricter national security review requirements into domestic law.

In the meantime, the Biden administration signed the Executive Order on America’s Supply Chains in February 2021, initiating a comprehensive review of American supply chains in a move towards “de-Sinification” on the grounds of supply chain security, regardless of the laws of the market. The EU followed suit, with Germany passing the Act on Corporate Due Diligence in Supply Chains in June 2021. Besides, after Biden signed into law the CHIPS and Science Act in August 2022, which prohibits transactions that may materially expand the semiconductor manufacturing capabilities of China or any other “foreign country of concern” (including Russia, Iran, North Korea, and other countries alleged to pose “national security threats” to the US), the EU is also about to finalize its own Chips Act to protect the so-called supply chain security of its critical products, including chips.

23 Yang Fan et al., “CFIUS: Concept, Change and Impact,” September 18, 2022, <http://finance.sina.com.cn/stock/stockzmt/2022-09-18/doc-imqsmm9562401.shtml>.

Since 2017, the US has repeatedly expressed dissatisfaction with the outdated international economic and trade order it set up after World War II. In a joint effort to reshape international economic and trade rules, the US launched the trilateral meeting of trade ministers with Japan and the EU to foster consensus on the design of new trade rules. According to the eight joint statements published, the three parties have agreed on a basic framework for advancing the reform of international economic and trade rules.

First, discriminatory rules against specific countries are emerging. The “ABC rule” (Anyone but China) has become a common feature of some mega-regional FTAs, such as the Transatlantic Trade and Investment Partnership (TTIP, to be concluded), the CPTPP (derived from the Trans-Pacific Partnership Agreement), the KORUS FTA, the US-Mexico-Canada Agreement (USMCA), and the EU-Japan Economic Partnership Agreement (EPA). This rule is evidence of their efforts to exclude China from their trading network and foster international economic and trade rules targeting the alleged “China issues.”

The first issue is non-market-oriented policies and practices. Non-market economy (NME) status is one of the focal points in China’s rivalry with developed countries.²⁴ NME is a temporary assumption in China’s WTO accession protocol,²⁵ which allows other WTO members to use third-country prices in determining the dumping of products from China within 15 years of China’s accession. The NME provisions put Chinese exporters in an extremely unfavorable position in foreign anti-dumping cases. However, after this transitional period expired, the US, the EU, and Japan took this conditional assumption as a permanent designation, disregarding the remarkable achievements of China’s market-oriented reforms. They refuse to recognize China’s market economy status because market economy

24 Zhang Monan, “Reconstruction of International Economic and Trade Rules Underway,” *China Comment*, May 7, 2020.

25 According to Article 15 of the Protocol on the Accession of the People’s Republic of China to the World Trade Organization, in determining dumping, the importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry.

conditions as prescribed by their respective domestic laws do not prevail in China, which they allege has put them in a disadvantageous position in competing with China. They have also attempted to perpetuate China's NME status by creating the concept of "non-market-oriented policies and practices." Through eight trilateral meetings of trade ministers, the US, the EU and Japan have reached a consensus on rules-making to address this issue of concern. The US will likely insert restrictive provisions on "non-market-oriented policies and practices" into negotiations on US-EU and US-Japan trade agreements and other regional FTAs.²⁶

The second issue is industrial subsidies. In the 7th Joint Statement of January 14, 2020, the US, the EU and Japan considered it necessary to strengthen existing WTO rules on industrial subsidies, arguing that the Agreement on Subsidies and Countervailing Measures (SCM Agreement) is insufficient to tackle market- and trade-distorting subsidies existing in certain jurisdictions.²⁷ They explicitly proposed expanding the scope of prohibited subsidies, reversing the burden of proof on certain more harmful subsidies, adding overcapacity caused by subsidizing members to serious prejudiced situations, providing an incentive mechanism that encourages members to properly notify their subsidies and increasing the punishment for subsidies counter-notified, allowing investigative authorities to use external benchmarks for subsidies, and including state enterprises into the scope of "public bodies." This program for reforming the WTO subsidy system was understood to be directed against China, though not explicitly named. Given this, subsidies are deemed one of the most severe challenges to China's multilateral trade relations and have implications no less significant than the IPR issue, which is of long-standing concern to developed countries.²⁸

Second, there are attempts to "tailor-make" rules for SOEs. From 2017 to 2021, the US, the EU and Japan announced eight joint statements

26 Zhang Monan, "Reconstruction of International Economic and Trade Rules Underway."

27 Zhang Monan, "China Needs to Quickly Adapt to New Round of Evolution of International Economic and Trade Rules," *China Economic Times*, July 27, 2020, p.4.

28 Zhang Junqi, "The Adjustment of Industrial Subsidy Policies in Pilot Free Trade Zones of China," *Journal of Shanghai University of Finance and Economics*, No.1, 2019, p.126.

through the trilateral meeting of trade ministers to abandon existing WTO rules and introduce new regulations to further constrain SOEs by viewing them as public bodies and their lending and alike as financing support. The new rules will allow for the implementation of unilateral countervailing measures against SOEs. At the regional level, SOE rules represent an important part of the CPTPP, the USMCA, and the EU-Japan EPA. Also, the SOE rules are emphasized or embedded in the chapters or provisions of bilateral FTAs between the US and 18 countries, including Australia, South Korea, Israel, and Chile. Some of these rules directly view SOEs as quasi-government entities (with a status similar to “public bodies” in the SCM Agreement within the WTO framework) and deem their normal business practices as financial subsidies. The new rules challenge SOEs from selected countries active in international trade, particularly Chinese SOEs active in the BRI countries.²⁹

Third, the supply chain reset and value chain competition are distorting economic and trade rules. The US problem of manufacturing decline and trade imbalance has become prominent again in the context of globalization. For industrial security reasons, the US is trying to reduce its dependence on China and working with its allies to reorganize supply and value chains.

The industrial, supply and value chain changes have been intensified by the COVID-19 pandemic, the Ukraine crisis, and other “black swan” and “grey rhino” events. The shortage of supplies of many goods in the US and the EU amidst the global quarantine against the pandemic that broke out at the end of 2019 sounded the alarm of supply chain security for all countries. A complete and robust supply chain has received unprecedented attention, especially against the backdrop of energy and food shortages escalating after the outbreak of the Ukraine crisis in February 2022. As inflation surges under the combined effect of multiple factors, the US and EU deficiencies in domestic infrastructure and primary energy supply

29 Zhang Monan, “China Needs to Quickly Adapt to New Round of Evolution of International Economic and Trade Rules.”

systems become increasingly conspicuous. The malaise of inflation and supply shortage has greatly boosted the call for reshaping their own supply chains.

The stability of supply and value chains has become a core concern of all countries. Some countries, with the US taking the lead, actively seek to reduce their dependence on China and even isolate China from supply chains. On the one hand, the US endeavors to restructure the regional industrial, supply and value chains, intending to divorce China from these chains and re-establish its centrality and dominance. To this end, the US launched the Indo-Pacific Economic Framework for Prosperity (IPEF) in May 2022 with a dozen partners, including Japan, India and Thailand. One of the four key pillars of the framework is “supply chain resilience.” If substantive new rules come out of IPEF, there will certainly be an adverse impact on China by somewhat impairing China’s regional economic and trade integration and neighborhood economic security. So is the Chip 4 alliance formed by the US, Japan, South Korea, and China’s Taiwan. On the other hand, the US continues to “label” China in unison with its allies, accusing China of alleged human rights violations in Xinjiang and forced technology transfer. The accusations are an intentional move to “break the chains” and “decouple” from China. The US, among other countries, is working on various trade restrictions and plans to further tighten the regulation of foreign investment.

The flourishing digital economy has brought about profound changes in global value chains. Digital trade reduces the cost of communications, logistics and matching in global value chains, leading to a more specialized international division of labor and the continuous extension of value chains. As the digital share rises in inputs and outputs, digital services become an important influencing factor of value chains. Digital infrastructure connectivity, unimpeded and orderly cross-border data flow, and integrated development and utilization are expected to accelerate industrial revolution and create significant added value. To seize the new opportunities, major economies, including China, have emphasized digital trade in their

recent work, ranging from national development planning, policies and regulations, foreign trade and economic cooperation to international rules-making to create a favorable institutional environment. It is of great significance to promote openness, development and cooperation in digital trade, especially in anticipation of more intense international competition in the future.

Fourth, behind-the-border trade barriers are becoming a trend. As tariffs are drastically cut, trade barriers have increasingly been reflected in behind-the-border (BTB) non-tariff measures. The focus of trade negotiations has also increasingly shifted to BTB regulations, as shown in the case of TTIP, TPP (which morphed into CPTPP among the remaining 11 countries after the US withdrawal in 2017), KORUS FTA, USMCA, and the EU-Japan EPA.³⁰ Typical BTB measures include differentiated product standards, separate licensing requirements for service providers, and duplicative certification and conformity assessment procedures for goods, services and production processes. BTB barriers are now the most prominent issue plaguing international trade, referred to as “the real 21st-century trade issue” by former WTO Director-General Pascal Lamy.³¹ This issue seriously challenges China’s trade, investment, industry, and economic growth approach. If not actively taking part in setting new rules, China, as well as the BRI countries, will likely be ostracized from the next round of globalization by the US, the EU, and Japan and be subject to substantially higher regulatory barriers.

Fifth, national security exceptions have increasingly overridden international economic and trade rules. National security has been frequently cited in international trade and investment. It has also been taken into special consideration in the strategic planning and rules-setting of various countries and regions on more and more occasions. National security

30 Zhang Monan, “The International Economic and Trade Rules System Is Speeding to 2.0 Era,” *Macroeconomic Management*, No.4, 2020, p.12.

31 Shawn Donnan, “EU and ASEAN to Pave Way for Trade Pact Talks,” *Financial Times*, September 6, 2004.

exceptions (NSE) have existed in international trade and investment and are often considered anomalies in trade and investment liberalization. Special provisions under the WTO, bilateral and multilateral trade agreements, and investment treaties underline the importance of national security. However, such provisions were not considered enforceable, with a low frequency of application in practice. In international trade, it was not until 2019 that the WTO saw the first case based on NSE under GATT Article XXI, i.e., the dispute brought by Ukraine against Russia related to multiple restrictions on traffic in transit from Ukraine through Russia to third countries.³² NSE is now a new focus in the evolving international trade and economic rules. The US even denies the authority of the WTO Dispute Settlement Body to review domestic trade measures taken on the grounds of national security. NSE has, in effect, become an “imperial clause” that overrides international economic and trade rules. With such a generalization of the national security concept, China will be susceptible to trade and investment restrictions imposed by other countries in the name of national security. The development is not conducive to China’s foreign trade and investment and the BRI development.

Academics believe there are four notable trends in current international economic and trade rules, including the full coverage of the “zero tariffs, zero subsidies and zero non-tariff barriers” program, the wide range of BTB measures, the development of high-standard economic and trade rules, and the broad regionalization of mega free trade areas.³³ On the one hand, international economic and trade rules are evolving towards high standards. The aforementioned mega-regional FTAs, including TTIP, CPTPP, KORUS FTA, USMCA, and the EU-Japan EPA, are generally based on the principle of free trade. The so-called “three zeros” offer made during the Trump presidency represents the ultimate solution in trade

32 Russia—Measures Concerning Traffic in Transit, WT/DS512/R.

33 Shen Wei and Zhang Guoqi, “Reconstruction of International Economic and Trade Rules under Changing Circumstances: A Study Based on China-US Trade Frictions,” *Business Economic Review*, No.6, 2022, pp.44-62.

liberalization.³⁴ On the other, the value-based trade system advocated by the US in the recent two years has abandoned the WTO principle of non-discrimination. It prioritizes geopolitical considerations, overstretches the national security concept, and adopts an ideologically-biased position that promotes specific models of democracy and human rights. Practically, it pushes businesses to restructure supply chains, shifting production to politically friendly countries and promoting so-called “friend-shoring” and socialized trade barriers.³⁵ In addition, the US and the West have shifted from multilateral to regional arena in setting international economic and trade rules, and preempted rules-making in accordance with high standards and common values. This move will not only affect the future trajectory of global economic and trade rules, but also give rise to alternative non-tariff barriers against China, which may be used to confine China and squeeze the interests of BRI countries.

Insufficient guarantee mechanisms for debt sustainability

Debt sustainability is closely related to the investment and financing mechanism. It involves both the guarantee of claims and the guarantee of debts. It is the focus of the so-called Belt and Road “debt trap” issue raised by Western countries.³⁶ At present, the BRI debt sustainability guarantee mechanism is deficient, which is mainly reflected in the following aspects.

First, the ex-ante due diligence on the investee is inadequate. In some loan or investment projects, there is neither complete due diligence on the investee nor reasonable assessment of the investee’s debt capacity and repayment ability. As a result, some loans are granted to unqualified borrowers. Given this, the Ministry of Finance of China published the Debt Sustainability Framework for Participating Countries of the Belt and Road

34 Wang Xiaohong et al., “The Rule of ‘Three Zeros’ in International Economy and Trade,” *Intertrade*, No.6, 2019, pp.33-34.

35 Zheng Tao, “Hegemony in the Disguise of Supply Chain Reset: An End Shall Be Put to US Friend-Shoring,” August 10, 2022, <http://world.people.com.cn/n1/2022/0810/c1002-32499680.html>.

36 Yu Miaojie and Chen Zhuoyu, “Advancing the Belt and Road Initiative amidst Achievements and Challenges: Analysis Based on the Blue Dot Network and the Debt Trap Claim,” *Journal of Liaoning University (Philosophy and Social Sciences)*, No.6, 2022, pp.3-4.

Initiative as a guide in 2019.³⁷

Second, there remains a lack of remedies for debt problems that may arise. For instance, the cooperation agreements signed by China with other countries do not provide mechanisms for dealing with debt crises that may arise, making it unlikely to bail out troubled borrowers. Debt relief, which China usually adopts, treats the symptoms rather than the root causes. This approach does not solve the borrowing countries' structural problems nor boost economic development. At the international level, there are already relatively mature ways of debt restructuring, including litigation for suspending contract performance and other litigation and non-litigation procedures, creditors' meetings and resolutions under majority rule, and mandatory constraints on non-consenting creditors. The Debt Sustainability Framework (DSF), jointly developed by the International Monetary Fund (IMF) and the World Bank, serves as important criteria for their decisions on providing financing to low-income countries. It also provides, in practice, guidance for the lending decisions of all creditors, including multilateral financing institutions.³⁸ Concerning the introduction of such systems and the specifics of implementation, a more comprehensive assessment is needed for appropriate choice.

Lack of digital trade rules

The rapidly developing digital trade has gradually become the main mode of modern trade. With the rise of cross-border e-commerce platforms and the growth of cross-border electronic transmission, many new problems have arisen.

First, cross-border data transfer. Internationally, there are several approaches to regulating cross-border data transfer. The first is in favor of cross-border data transfer. This approach considers cross-border data transfer good for cross-border digital trade and economic growth, so it is inappropriate for

37 "MOF Unveils the BRI Debt Sustainability Framework," April 25, 2019, http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201904/t20190425_3234663.htm.

38 Gu Bin, "The Soft Law Path to the BRI Debt Sustainability," *Journal of Shanghai University of International Business and Economics*, No.1, 2022, p.24.

countries to restrict data transfer. The second takes individual privacy and data protection as a fundamental target, allowing data transfer outside the country under the premise of protecting privacy following the domestic law. A typical example is the EU General Data Protection Regulation. The third insists that data protection should consider national security interests, and data can be transferred outside the country only if national security has been guaranteed. Countries are widely divided on the issue of data transfer due to the uneven development of their digital economy and their different motivations behind national interests. In the absence of international conventions on cross-border data transfer, the unilateral provisions of domestic laws prevail, adding great uncertainty to cross-border data transfer.

Second, electronic transmission tariffs. Under the WTO framework, electronic transmission is exempted from tariffs to encourage the development of digital trade. Such exemption has also been confirmed in the RCEP. Nonetheless, there is still international controversy over this issue. In particular, noting the surging revenues generated by fast-growing internet companies worldwide, many countries have suggested that tariffs be levied on electronic transmissions because of their high value, arguing that national revenues should not be reduced just because of the mode of transmission. This unsettled issue needs follow-up consultations among countries.

Third, cross-border e-commerce. Specifically, cross-border e-commerce involves issues in the following areas. One is the access to cross-border e-commerce. The provisions are mainly derived from the accession commitments of WTO members and the commitments of countries entering into bilateral and/or multilateral agreements. It is generally considered necessary to clarify the extent of applicability of such commitments, particularly those relating to trade in services and commercial activities conducted by electronic means. The second issue is related to data localization. To protect national interests, including personal data and national security, the countries concerned require foreign subjects engaging in data-related commercial activities within their territories to set up a data processing hub and store the data locally. Since such requirements will increase the costs

of e-commerce companies, the data localization requirements need to be clarified. The third issue is about open source code. To protect the IPR and trade secrets of source code holders and their legitimate rights and interests, the FTAs among some countries stipulate that the host country shall not compel investors to make source code open. Nevertheless, out of the need to access information related to national security, some other countries impose an obligation of open source code on foreign investors. Such divergence of stance among countries is detrimental to the development of digital trade.

Principles for Innovation and Improvement of BRI Economic and Trade Rules

Given the problems existing in BRI economic and trade rules, it is necessary to strengthen innovation and gradually perfect the BRI economic and trade rules to meet the needs of high-quality BRI development. Innovating and improving BRI economic and trade rules to build an inclusive and comprehensive system of international economic and trade rules should follow certain principles.

Building on existing mechanisms and rules

From a pragmatic angle of necessity and effectiveness, the existing economic and trade rules should and can be taken as the starting point of the endeavor to innovate and improve BRI economic and trade rules. According to some scholars, with regard to the BRI regulatory framework, China prefers a mode of international economic legislation that is more inclined to serve as rules on the whole.³⁹ At this stage, however, it may be difficult for China and other BRI countries to establish a complete set of international economic and trade rules. Therefore, it is important to build on existing initiatives and the national practices of formulating and promoting BRI soft-law documents

³⁹ Prof. Xu Chongli's speech at the Forum on Innovation of International Economic and Trade Rules for the Belt and Road Initiative held by Shanghai University of International Business and Economics in 2018, cited in Wu Lan, "Overview of the Forum on Innovation of International Economic and Trade Rules for the Belt and Road Initiative," *International Business Research*, No.5, 2018, p.97.

to demonstrate China's concepts and institutions of law-based governance to its BRI partners. This move will spur the development of rule of law within relevant countries and raise the BRI's overall level of law-based governance. There is also a possibility that such national practices will be integrated into customary international laws and later codified into international treaties.

While the existing rules are often designed to address trade and investment issues separately, it is advisable to integrate trade and investment rules. One of the priorities of the BRI cooperation is to “integrate investment and trade and promote trade through investment.”⁴⁰ Based on the connection between international investment and trade, a close nexus that links trade, investment, services and technology has arisen from global value chains, with the four elements interact and influence each other.⁴¹ In this process, trade-related investment measures such as market access restrictions and local content requirements have a distorting effect on trade and weaken the export competitiveness of specific countries, while trade protection policies such as non-tariff barriers discourage international investment. Global value chains require consistency in market rules and compatibility of standards across countries. Because of this, more integrated regulation concerning cross-border flows of goods and factors is needed to ensure the harmony and consistency of trade, investment and technology policies.

Promoting international cooperation at multilateral level

Many BRI countries are now cooperating bilaterally. In the next step, China may explore and promote multilateral mechanisms for cooperation in formulating rules on trade and investment facilitation, digital economy and/or dispute resolution.

Unlike traditional bilateral and multilateral agreements with binding

40 *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, Beijing: People's Publishing House, 2015.

41 Liang Shuxia, “The Correlation between International Direct Investment and International Trade—An Empirical Analysis with China as an Example,” *Forum of World Economics & Politics*, No.6, 2003, pp.47-49; Zhao Jin, “Focal Points of Policy Adjustments to Adapt to Global Value Chains,” *Economic Daily*, March 11, 2017.

legal force, many BRI economic and trade rules are embodied in loose and informal multilateral documents. As a product of coordination and compromise among sovereign states, traditional multilateral economic and trade rules have limitations in providing international public goods and are often caught in a dilemma of collective action.⁴² Therefore, when making rules that serve the actual needs of BRI development, the codified “hard law” of multilateral economic and trade treaties should be combined with a flexible “soft law” approach.

Expanding institutional opening-up

Opening-up is the greatest reform launched by China. The report to the 20th CPC National Congress identified “steadily expand institutional opening-up with regard to rules, regulations, management and standards” and “promote the high-quality development of the Belt and Road Initiative” as important parts of high-standard opening-up.⁴³ To expand its institutional opening-up, China can consider gradually incorporating certain alleged “China issues” that are in line with its reform agenda, for example competitive neutrality and SOE transparency, into the discussion on innovation and improvement of BRI economic and trade rules. The move will facilitate a new round of reform in international economic and trade rules and contribute to shaping a new open economic system in China.

Pathways of Innovating and Perfecting BRI Economic and Trade Rules

Following the right path leads to the goal. Focusing on serving high-quality BRI development, we should explore feasible pathways of innovating and perfecting BRI economic and trade rules.

42 Shi Jingxia, “The Belt and Road Initiative and International Law—An Analysis From the Perspective of International Public Goods Provision,” *Social Sciences in China*, No.1, 2021, p.168.

43 Xi Jinping, “Hold High the Great Banner of Socialism with Chinese Characteristics and Strive in Unity to Build a Modern Socialist Country in All Respects—Report to the 20th National Congress of the Communist Party of China,” *People’s Daily*, October 26, 2022, p.3.

Embracing innovation based on WTO rules while upgrading or re-negotiating BITs, FTAs and tax treaties

The WTO is currently still irreplaceable in the multilateral trading system. To restrain certain countries from undermining negotiations on specific rules by taking advantage of the consensus decision-making mechanism, rules should be set down through flexible approaches such as Joint Statement Initiatives⁴⁴ and plurilateral agreements, which are effective only among the participating countries, to advance WTO reform.

Most of China's existing BITs were signed in the 1980s and 1990s when it was a capital-importing country. At that time, China demonstrated its commitment to foreign investment through international treaties to attract foreign investment. These BITs were relatively conservative with a low degree of investment liberalization. Limited by the conditions for opening-up at that time, they generally did not contain rules on market access and likewise. However, such treaties are incompatible with China's current status as a major player in two-way investment and its role as a capital-exporting country in the BRI. Given this, the BITs must be upgraded or re-negotiated in due course, with new investment rules introduced possibly through FTA talks, to strengthen the protection of foreign investors' rights and interests in the BRI development.⁴⁵

Besides, as the existing bilateral tax treaties are not helpful for fully mobilizing foreign investment in the BRI, it is advisable to upgrade or re-negotiate tax treaties to improve the provisions on tax credit, tax sparing, thin capitalization and transfer pricing.⁴⁶

44 The Joint Statement Initiative is a negotiating instrument launched by a group of WTO members who seek to advance negotiations on certain issues without adhering to the rule of consensus decision-making involving all WTO members.

45 Kong Qingjiang and Wang Ronghua, "A Study of the Investment Security Guarantee Mechanism for the Belt and Road Initiative," *Journal of Shanghai University of Political Science and Law (The Rule of Law Forum)*, No.5, 2022, pp.89-90.

46 Tang Fenglin and Chen Han, "China's Bilateral Tax Agreements in the Context of the Belt and Road Initiative: Status Quo, Problems and Suggestions for Improvement," *International Taxation in China*, No.5, 2020, pp.57-58.

Promoting trade facilitation while pushing forward BRI-centered free trade area strategy

Taking the WTO Agreement on Trade Facilitation as a model, more efforts should be made to increase trade facilitation in BRI countries. With special regard to the China-Europe Railway Express, work should speed up to establish a cross-country bill of lading system and uniform international rules for railroad transport.

FTAs contribute to fostering an innovative system of BRI economic and trade rules. The Asia-Pacific Economic Cooperation (APEC) Connectivity Blueprint should be fully implemented to promote regional economic integration as well as trade and investment liberalization and facilitation. China can consider promoting the RCEP as the economic and trade arrangements for the 21st Century Maritime Silk Road, while advancing the negotiations on its accession to the CPTPP, thus facilitating the early completion of a high-standard free trade area for the Asia-Pacific while starting the construction of free trade areas among BRI countries.

The BRI financing mechanism should also be improved with an effective debt sustainability mechanism in line with the Guiding Principles on Financing the Development of the Belt and Road. It is equally important to build a multi-level, diversified financial service system among BRI countries.

We should stay committed to inclusive and sustainable development in the process of BRI regulatory innovation and improvement. In terms of energy, it is important that we push for an efficient, clean and diversified energy system, promote inclusive trade and investment, and implement the 2030 Agenda for Sustainable Development. Besides, the BRI economic and trade rules need to integrate public health security issues, and in particular, promote joint research and development and technology exchanges on vaccines; support the transfer of relevant technologies to developing countries, and encourage regional and multilateral development banks to provide more preferential financing to developing countries for vaccine

procurement and production. Regarding digital trade, China should take full advantage of its leading position in cross-border e-commerce to formulate digital trade rules acceptable to the international community and consistent with its own national conditions and interests. Moreover, soft environmental standards, sustainability provisions, and labor standards based on relevant conventions of the International Labor Organization can be introduced into the BRI regulatory architecture. We should reject the idea that only SOEs must be restrained from accepting anti-competitive subsidies while the private sector is naturally unfettered. In determining relevant matters, other countries' judgments should not be allowed to unconditionally prevail.

Well-proven legal practices in the international arena suggest that the development of domestic legal systems determines to a great extent the level of international law-based governance. The domestic rule of law is very important, especially for a country leading the construction of international norms. China, as the BRI initiator, should build a good legal base on the application of business and trade law, particularly in the Pilot Free Trade Zones and the Hainan Free Trade Port, and drive forward the building of BRI legal framework in economic and trade matters through institutional opening-up.

Improving the international dispute settlement mechanism

Resolving international civil and commercial disputes is the top priority of the BRI dispute settlement mechanism. Using the mechanisms available to serve the BRI dispute settlement needs is advisable. At the same time, the BRI commercial dispute settlement mechanism should be further improved through active exploration, bold innovation as well as expanded international and regional cooperation. This will contribute to the building of a diversified international mechanism for commercial dispute settlement that ensures orderly BRI implementation.

The BRI commercial dispute settlement mechanism covers litigation, arbitration and mediation. Regarding litigation, China should give

more play to its international commercial courts in safeguarding the BRI development. Establishing a specialized court to resolve international commercial disputes helps ensure the prompt settlement of foreign-related disputes. Such a court will continuously improve China's foreign-related civil litigation system, and the Suzhou International Commercial Court can serve as a reference. Meanwhile, the approach of presumptive reciprocity should be applied to reinforce the mechanism of judicial assistance in civil and commercial matters among BRI partners. The Multilateral Memorandum on Enforcement of Commercial Judgments for Money, signed by China and published by the Standing International Forum of Commercial Courts, is expected to play an innovative role in facilitating the effective enforcement of relevant judgments. In addition, BRI countries are advised to follow China in acceding to the Hague Convention and the Singapore Convention on Mediation and rectifying the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.⁴⁷

On arbitration, China must speed up the revision of its arbitration law and modernize its arbitration system with an international perspective. It may draw on best practices of international commercial arbitration and consider introducing advanced systems such as ad hoc arbitration and amiable composition. With the relaxation of access of foreign arbitration institutions to the Beijing Free Trade Zone and the Shanghai Lin-gang Special Area, it is worth considering strengthening cooperation between domestic arbitration institutions and renowned international arbitration institutions so that advanced experience of international commercial arbitration, as well as outstanding arbitrators, can be leveraged to develop innovative arbitration rules and foster an internationalized professional arbitration team for China. The one-stop platform for resolving international commercial disputes should be fully harnessed to improve arbitration efficiency and enhance the voice and

47 Kong Qingjiang and Wang Chucheng, "China's Judicial Cooperation System for Cross-Border Enforcement of Judgments in Commercial Matters," *Jiangxi Social Sciences*, No.2, 2023, pp.31-33.

competitiveness of Chinese arbitration institutions in the international arena. Besides, the New York Convention will be instrumental in ensuring the global enforcement of commercial arbitration awards involving the BRI.

As for mediation, China should accelerate the formulation of its commercial mediation law. Building an international commercial mediation mechanism is important to implement the mediation process efficiently. To this end, more efforts are needed for China to make its commercial mediation mechanism more standardized and systematic. The Singapore Convention on Mediation can play a role in enhancing the enforceability of mediation agreements and thus strengthening the significance of international commercial mediation.⁴⁸

Conclusion

Guided by the vision of building a community with a shared future for mankind, the fostering of the BRI economic and trade rules system should adopt a practice-oriented approach that steers cooperation, facilitates exchanges, regulates actions and resolves differences, with the goal to shape an inclusive and comprehensive international economic and trade rules system. To this end, it is necessary to harmonize established rules and avoid conflicts between different rules, in particular by creating platforms for communication and convergence. In a gradual manner, old and new rules should be made mutually compatible. A network of FTAs on this basis will create conditions for promoting high-quality BRI development, and in this way, the BRI will be built into an international cooperation platform and serve as a well-received international public good. 

48 Qi Zhuang, “International Commercial Mediation Development: New Trends and China’s Response,” *Jiangxi Social Sciences*, No.2, 2023, pp.78-79.