A New Multilateralism? A Case Study of the Belt and Road Initiative

Keywords: Belt and Road Initiative, Case Study, Governance, International Trade, Multilateralism, World Trade Organization

Abstract: The first five years (the first stage) of Belt and Road Initiative (BRI) have drawn international attention and provoked skepticism and debate. This article explores questions about the nature of BRI and its impact on multilateralism, which is increasingly fragile and under attack. After summarizing past practices employed in BRI investments, it analyzes the characteristics of BRI and assesses the results and implications. This article studies in depth one of the two primary BRI economic activities—special economic zones. The paper introduces and compares the Asian Infrastructure Investment Bank and Chinese domestic banks in their respective financing practices, and compares state-owned enterprises and privately-owned enterprises in BRI practices. The article observes three characteristics from past BRI practices and analyzes their respective implications on the transformation of international trade governance. The first characteristic is the unconventional "infrastructure development first, institution next" approach. The second is the plurilateral- and multilateral-focused method in international rules-setting processes. The third characteristics is the innovation in the dispute settlement mechanism. Through a cautious examination, the article argues that experiences gained from BRI inform China's international rulemaking efforts and further its domestic trade liberalization reform agenda, which will likely contribute to the convergence of rules-making in international trade.

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I. Introduction

The World Trade Organization (WTO), the multilateral trade forum, is experiencing an existential threat coming from within.[1] Perhaps the only consensus among WTO members is that consensus is extremely difficult to obtain. Unable to reach common grounds on reforms regarding the Appellate Body,[2] regulations on state-owned-enterprises, e-commerce, and data (etc.) in the WTO forum, Members of WTO turned to regional cooperation. The consensus-

[1] *See* Anthea Roberts et al., 'The Geoeconomic World Order' (2018) LAWFARE <https://www.lawfareblog.com/geoeconomic-world-order> accessed 25 February 2020, and Sergio Puig, 'Can International Trade Law Recover? The United States-Mexico-Canada Agreement: A Glimpse into the Geoeconomic World Order?', AJIL UNBOUND, 113, 56-60

[2] The WTO Appellate Body became defunct on December 11, 2019 after the retirement of two appellate body judges, due to the inability to form a three-judge panel, the minimum legal requirement to adjudicate appeals, by consensus among all WTO Members. But the interim measure has not been universally adopted yet. *See* Philip Blenkinsop & Luke Baker, 'EU, China and 15 others agree temporary fix to WTO crisis', *Reuters* (24 Jan. 2020)

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based multilateralism is giving way to a new form of multilateralism, under which the consent of "smaller groups of like-minded countries" is gradually taking control.[3]

Worse still, the world seems to be locked in the great power rivalry between the United States (U.S.) and the People's Republic of China (China). The 18-month trade war finally came to a fragile détente in mid-December, 2019 with the newly effective U.S.-China Phase One Trade Agreement.[4] But regulations and measures restricting technology export from the U.S. to China are yet to be loosened.[5] Investment scrutiny under national security considerations is increasing,[6] as are proposals to remove Chinese capitals from U.S. capital markets[7] and bar companies from enforcing patent rights in the U.S.[8] These are just a few examples of the so-called "de-coupling."[9] A new Geo-economic World Order, in which the use of economic tools to achieve strategic goals, has gained prominence and popularity.[10] World trade and the rules of law are seeing increased fragmentation.

Meanwhile, emerging markets (EMs) and developing and least developed countries (LDCs) are struggling to meet their desire for growth and development—their demands are

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[3] Alex Lawson, 'Lighthizer: WTO's All-Or-Nothing Model Presents 'Dilemma'', *LAW360* (12 March 2019),
[4] David Gantz, Sergio Puic, and Jingyuan Zhou, *The Scorecard of the Phase One Trade Agreement*, (*EJIL:Talk*!, 14 February 2020) <https://www.ejiltalk.org/the-scorecard-of-the-phase-one-trade-agreement/> accessed 25 February 2020
[5] White House, *Executive Order on Securing the Information and Communications Technology and Services Supply Chain* (15 May 2019). The White House further tightened the technology export restriction by extending the 15 May 2019 order for another year on 13 May 2020, *see* White House, *Text of a Notice on the Continuation of the National Emergency on Securing the Information and Communications Technology and Services Supply Chain* (13 May 2020).
[6] The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)
[7] Jenny Leonard, 'White House Focuses on China Stock Limits in Retirement Fund', *Bloomberg* (8 October 2019)
[8] SA 551, Congressional Record—Senate, S3573 (13 June 2019)
[9] 'Year in a word: Decoupling' *Financial Times* (20 December 2019)
[10] *Supra* note 1 Anthea Roberts et al., *The Geoeconomic World Order*

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largely left unsatisfied and under-addressed.[11] Global investments plummet while measures restricting trade and investments are on the rise.[12] If multilateralism indeed has its own life cycle,[13] this stage is hopelessly witnessing the growing tension and rivalry on all fronts between China and the U.S. for rulemaking, with the brunt born by other countries.[14]

Against this backdrop, the gigantic Belt and Road Initiative (BRI)[15], promoted by China since 2013, has entered the limelight. First brought up in 2013 by Chinese President Xi Jinping in his speeches in Kazakhstan and Indonesia,[16] BRI is said to "consist[] of a land path called the Silk Road Economic Belt, connecting the continental Asia with the continental Europe, and a maritime path called the 21st Century Maritime Silk Road, connecting African continent with Southeast Asia and Pacific Islanders."[17]

Proponents of BRI praise the investment it brings to regions in dire need of basic infrastructure, whose needs are largely unsatisfied due to either the inability or unwillingness of

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[11] For a more detailed discussion on the inadequate addressing of the rights and interests of indigenous peoples under international law, please *see* Sergio Puig, 'International Indigenous Economic Law', (2019) 53 U.C. DAVIS L. REV. 1243
[12] United Nations Conference on Trade and Development, *World Investment Report 2019 Special Economic Zones*
[13] Multilateralism refers to "a problem-solving strategy or organizing principle," thus "describes the choice to include, involve, and gain the agreement of as many states as possible to solve global problems or produce global benefits." Harlan Grant Cohen, 'Multilateralism's Life Cycle', (2018) 112 AJIL 47, at 51
[14] WTO estimates that the growth rate of 2.3% for both 2019 and 2020, downgraded from the 2.6% estimates made previously. The WTO Director-General Roberto Azevêdo faulted the "heightened uncertainly" as a result of "trade disagreements" for the "darkening outlook." 'WTO lowers trade forecast as tensions unsettle global economy', (*World Trade Organization*, 1 October 2019) , <https://www.wto.org/english/news_e/pres19_e/pr840_e.htm> accessed 25 February 2020
[15] There are many abbreviations for the Belt and Road Initiative, like BRI, which is mostly used by news media such as the official Belt and Road Portal and Economists, and BRI, which is used in the official publication 'The Belt and Road Initiative Progress, Contributions and Prospects 2019' by Foreign Languages Press Co. Ltd. The author exercises her discretion to use BRI throughout this paper.
[16] Office of the Leading Group for Promoting the Belt and Road Initiative, *The Belt and Road Initiative Progress, Contributions and Prospects 2019* (Foreign Languages Press Co. Ltd. (1st ed.)), at 1
[17] *Id.*

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investors.[18] BRI advocates depict it as the bedrock of building "a global community of shared future for mankind," serving as a platform for global development.[19]

In contrast, others question not only China's practices in BRI but also its true intent.[20] They view BRI as another tactic deployed by China to disrupt the current international trade order and to "displace the United States as the final arbiter of the rules of international trade and finance in the twenty-first century."[21] They criticize the financing model as "debt-trap,"[22] the hiring practice as "exporting Chinese employees at the expense of local workforce,"[23] construction as "threats to local communities and environment,"[24] and BRI as a whole as "neo-colonialism."[25] According to the critics, instead of upholding multilateralism, BRI's practices rather distort market economy.

The division between narratives is so wide that the author believes it appropriate and necessary to address it. I attempt to provide an in-depth case-study of BRI by advancing two related claims: one descriptive and one normative.

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[18] One example is Vietnam, a member of Association of Southeast Asian Nations and Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Despite the influx of investments as a result of companies avoiding heightened tariffs and other trade regulatory barriers of the U.S.-China trade dispute, Vietnam lacks adequate domestic infrastructure to absorb all incoming investments and manufacturing. Michelle Jamrisko & Xuan Quynh Nguyen, 'Vietnam Becomes A Victim of Its Own Success in Trade War', *Bloomberg* (7 September 2019)
[19] Proponents refer to international, especially multilateral organizations and fora that have adopted this oft-quoted phrase in their respective charters, resolutions, communique, or guidelines.
[20] Bruce Jones, 'China's Belt and Road: The New Geopolitics of Global Infrastructure Development, A Brookings Interview' (Ryan Hass, Bruce Jones, and Jennifer Mason ed., *Brookings*, April 2019.) (summarizes current critics of BRI).
[21] Daniel C.K. Chow, 'Why China Established the Asia Infrastructure Investment Bank', 49 VANDJTRANSNATLL 1255 (2016), 1255. James Andrew Lewis, 'Emerging Technologies and Managing the Risk of Tech Transfer to China', (*Center for Strategic and International Studies* September 2019) vi
[22] *Supra* note 20.
[23] *Id.*
[24] *Id.*
[25] *Id.*

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Part II—the descriptive part—describes practices employed in BRI in three aspects, based on publicly available information.[26] Part II first describes primary forms of economic activities, then introduces the financing structure, and finally provides a summary of the primary players of BRI—Chinese state-owned entities and privately-owned entities. I attempt to answer the fundamental questions: What is BRI? How does BRI operate? Is BRI an outlier to existing practices?

Part III—the normative part—argues that while BRI brings new dynamics to the existing system, it is not necessarily an existential threat to the current international trade and investment system. The new dynamics are rather the fruit of the past success of the post-World War II multilateralism.[27] However, BRI does present (great) challenges through its unconventional "infrastructure development first, institution next" approach, as noted in the first section of Part III. The second section notes that while China can, in theory, leverage experiences gained and capacity built from BRI at various levels of the trade negotiations, the effectiveness of such leverage is difficult to estimate, especially when such trade negotiations are at plurilateral and multilateral fora. Section two argues that instead of diverging from existing practices, the convergence of Chinese practices and those commonly adopted in developed economies will more likely be seen. Lastly, Part III analyzes innovations in the dispute settlement mechanism and argues that these innovations are primarily procedural and based upon existing models. The

[26] I am aware of the limitation of my ability to independently verify the accuracy of data and information due to the limited availability of relevant data, which in part owes to the transactional nature of BRI, the first characteristic this paper will discuss in *infra* Part III. Therefore, the data and information used in this paper is subject to change when circumstances so require.

[27] Cohen, *supra* note 13, at 48.

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last section notes that on the substantive side of dispute settlement mechanisms, China seem to be more willing to let the WTO adjudicate politically sensitive matters, instead of inclined to subject them to investor-state dispute settlements. Part IV concludes with a summary of key features of BRI and an overview of its impacts on the global trading system.

II. What Exactly Is BRI?

What exactly is BRI? Does the proliferation of infrastructure projects like railways and roads and energy plants alongside the dubbed "six major corridors for international economic cooperation"[28] (Six Corridors) mean that BRI is an instrument through which China overwhelms other regions and countries with large sum of investments, as argued by some?[29] Probably not. According to a World Bank Group analysis, China did not outspend traditional foreign direct investments (FDI) exporters like the U.S., EU, and Japan, just to name a few, in countries along BRI routes.[30]

Is BRI confined to the aforementioned Six Corridors? Probably not, either. Thanks to the "openness and inclusiveness" principle,[31] a total of 138 countries and 30 international organizations—regardless of their geographical locations and/or proximity to BRI routes—have

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[28] The "six major corridors for international economic cooperation" consists of (1) New Eurasian Land Bridge connecting China and Central and Eastern European Countries, (2) China-Mongolia-Russia Economic Corridor, (3) China-Central Asia-West Asia Economic Corridor, (4) China-Indochina Peninsula Economic Corridor connecting China and some Southeast Asian countries, (5) China-Pakistan Economic Corridor, and (6) Bangladesh-China-India-Myanmar Economic Corridor.

[29] *See generally supra* note 12.

[30] *Id.*

[31] Office of the Leading Group for the Belt and Road Initiative, *The Belt and Road Initiative Progress, Contributions and Prospects* (1st edn, Foreign Language Press 2019) 2

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signed 200 cooperation documents under the umbrella of BRI as of the end of January 2020.[32] Thus, it appears that the broad government participation, coupled with the broad geographical coverage, further exacerbates the confusion.

Moreover, as will be discussed in depth in Part III, the opaque institutional architecture and the seemingly lack of organizational design further mystify BRI.[33]

If the concept of BRI cannot be clearly delineated from its geographical coverage, cooperation documents, or even some visible projects, what is it exactly, then? The remainder of this Part II attempts to clear the myths by analyzing signature economic activities in BRI, the arrangements in financing, and the employment practices with information from published reports and sources.

a) Special Economic Zones and Corridors

In summary, special economic zones[34] (SEZs, or interchangeably, free trade zones (FTZs)) and infrastructure projects—including energy projects and transportation projects—are

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[32] 已同中国签订共建“一带一路”合作文件的国家一览 [Overview of Countries Signed Cooperation Agreement on the Belt and Road Initiative Collaboration], (*BeltandRoadPortal*, 12 April 2019) <https://www.yidaiyilu.gov.cn/xwzx/roll/77298.htm> accessed 25 February 2020 (hereinafter BRI Cooperation Agreement Overview). The United Nations has engaged with China in BRI through its 25 Agencies via various ways, *see* 'UN Agencies BRI Involvement 02' (01 Oct 2018) <http://wedocs.unep.org/bitstream/handle/20.500.11822/26318/UN%20Agencies%20BRI%20Involvement%2002%20%2801%20Oct%202018%29.pdf?sequence=17&isAllowed=y> accessed 25 February 2020

[33] The myths about BRI also occur within China, so much so that the Chinese governmental agencies have to issue statements warning about fraudulent misrepresentations or mis-association with BRI-related or –approved projects. 坚决防止滥用“一带一路”概念聚财敛财 [Resolutely Preventing the Abuse of Belt and Road Concept as Means of Illicit Financing), (*Belt and Road Portal*, 30 June 2017) <https://www.yidaiyilu.gov.cn/xwzx/gnxw/17599.htm> accessed 25 February 2020

[34] The United Nations Conference on Trade and Development (UNCTAD) defines special economic zones (SEZs) as geographically delimited areas within which governments facilitate industrial activity through fiscal and regulatory incentives and infrastructure support. *Supra* note 12. Specifically relating to BRI, the Ministry of Commerce of China (MOFCOM) defines it as an extra-territorial economic and trade cooperation zone that is invested by an independent legal entity registered in a sovereign state other than China and is controlled by an

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the primary forms of BRI economic activities. The development and performance of SEZs tend to suggest the development of performance of the corridor SEZs sit. Financing of BRI economic activities has been primarily provided by Chinese policy banks[35] and the big four state-owned commercial banks.[36] While privately-owned Chinese enterprises actively partake in the construction of SEZs and infrastructure projects, state-owned enterprises ("SOEs") have invested more and assumed a leading role.[37] Reportedly, local workforce constitutes a large percentage, and in certain countries, a supermajority of the total workforce.[38] According to two research findings, local employees working in BRI projects are paid no less than local employees employed by non-Chinese investors in non-BRI projects, when taking benefits like paid leave, food, and housing into account.[39] Given that a lot has been written on the infrastructure projects elsewhere, this paper primarily focuses on the less-explored SEZs.

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independent legal entity registered in the territory of China. UNDP & Chinese Academy of International Trade and Economic Cooperation, 中国"一带一路"境外经贸合作区助力可持续发展报告 [Chinese Belt and Road Overseas Economic and Trade Cooperation Zones Sustainable Development Report) (4 July 2019) (hereinafter UNDP & CAITEC Paper)

[35] China Development Bank (CDB) and the Export-Import Bank of China (Ch-ExIm) are the two Chinese policy banks active in BRI.

[36] The big four state-owned banks are the Bank of China, the China Construction Bank, the Industrial and Commercial Bank of China, and the Agricultural Bank of China.

[37] According to one recent official statistic, as of January 15, 2020, 81 centrally-owned SOEs have undertaken over 3,400 projects along BRI routes, accounting for over 60% of total infrastructure projects under construction and planned. 中国 81 家央企在"一带一路"沿线承担超 3400 个项目 [81 Centrally-owned SOEs undertake over 3,400 projects along Belt and Road routes] (*BeltandRoadPortal*, 16 January 2020) <http://ydyl.china.com.cn/2020-01/16/content_75618327.htm> accessed 25 February 2020

[38] *Id.*

[39] Florian Schaefer & Carlos Oya, 'Employment patterns and conditions in construction and manufacturing. A comparative analysis of the road building and light manufacturing sectors in Ethiopia' <https://www.soas.ac.uk/idcea/publications/reports/file141205.pdf> accessed 25 February 2020, and Carlos Oya & Fernandes Wanda, 'Angola Research Brief—Working conditions in Angola. Infrastructure construction and building material factories' <https://www.soas.ac.uk/idcea/publications/reports/file141347.pdf> accessed 25 February 2020. According to both reports, local employment rate in Chinese companies reached at least 75% and in certain instances, even 90%.

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SEZs/FTZs and infrastructure projects are the two primary forms of economic activities in BRI economic cooperation.[40] Relevant Chinese law defines a SEZ as an extra-territorial economic and trade cooperation zone that is invested by an independent legal entity registered in a sovereign state other than China and is controlled by an independent legal entity registered in the territory of China.[41] SEZs may take the form of free zones, export processing zones, and/or industrial parks, or a combination thereof, depending on the functions the particular SEZ purports to serve.[42] SEZs may focus on specific industries the lead investor-entity is in or be of general-purpose aiming at attracting investments and trade at large.[43] Regardless of which industry or general purpose a SEZ is purported to serve, it will provide complete basic infrastructure and public goods, possess the capability of serving industrial agglomerates, and have radiation effects.[44] Specifically relating to BRI, SEZs are said to be tapped with the task of "exploring investment new model" along BRI routes (discussed later).[45]

According to one joint research effort of the United Nation Development Programme (UNDP) and the Chinese Academy of International Trade and Economic Cooperation, in the first

[40] "一带一路"核心区和自贸试验区建设智库论坛在西安举办 [Xi'an hosted Think-tank Symposium on the Belt and Road's Core Zones and Free trade Zones] (*Xinhua Silk Road*, 7 May 2018) <https://www.imsilkroad.com/news/p/94973.html > accessed 25 February 2020
[41] *See supra* note 34, UNDP & CAITEC Paper.
[42] *Supra* note 12, p133
[43] *Supra* note 34, UNDP & CAITEC Paper, p2, and *supra* note 12, 136-37
[44] *Id.* at fn 1.
[45] *Id.* at 4.

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five years of BRI, 82 SEZs have been formed along BRI routes,[46] growing from 56 in 2016,[47] with approximately $30 billion in investments.[48] Beyond the context of BRI, as of 2018, reportedly there are 99 SEZs that either are under construction or have started operations in 44 countries.[49] The fast growth of Chinese-led SEZs is in line with global trend: According to the UNCTAD World Investment Report 2019 on SEZs, more than 1,000 of SEZs were established in the same time frame (over the last five years) globally.[50]

SEZs established under BRI tend to be either multi-activity zones—serving general purposes of SEZ including trade facilitation and investments attraction—or industry-specialized zones. One example of the multi-activity zone is the Horgos/Khorgos Cross-Border Economic Zone (China-Kazakhstan) (Horgos/Khorgos SEZ). The Horgos/Khorgos SEZ is allegedly designed to be a hub for trade, entertainment and intercultural exchange, where merchants and travelers from China, Central Asia, Europe, the Russian Federation and Turkey can meet and stay for 30 days visa-free to communicate and trade. Since its opening in 2012, the Horgos/Khorgos SEZ has reportedly served mainly as a duty-free commercial center, hosting

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[46] *Supra* note 34, UNDP & CAITEC Paper, p8. *See also*【2018年商务工作年终综述之三】“一带一路”经贸合作成效显著 [2018 Year-end Summary for Commerce Works, No. 3: Significant Achievements in Belt Road Initiative Economic and Trade Cooperation] (Ministry of Commerce, 27 December 2018) <http://www.mofcom.gov.cn/article/ae/ai/201812/20181202820669.shtml> accessed 25 February 2020.

[47] 中国对外投资合作发展报告 2017 [Report on Development of China's Outward Investment and Economic Cooperation 2017] (Ministry of Commerce), p124 <http://fec.mofcom.gov.cn/article/tzhzcj/tzhz/upload/zgdwtzhzfzbg2017.pdf> accessed 25 February 2020

[48] 中外资银行助力“一带一路”走深走实 [Chinese and Foreign Banks Help Support Belt and Road Go Deeper and Stronger] (*BeltandRoadPortal*, 7 June 2019) <https://www.yidaiyilu.gov.cn/xwzx/roll/93090.htm> accessed 25 February 2020

[49] 中国对外投资合作发展报告 2018 [Report on Development of China's Outward Investment and Economic Cooperation 2018] (Ministry of Commerce), p14 <http://images.mofcom.gov.cn/fec/201901/20190128155348158.pdf> accessed 23 February 2020

[50] *Supra* note 12, p128

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shopping center and convention facilities.[51] Innovation-focused zones like research and development SEZs are rare, though not unseen.[52] One example is China Belgium Technology Center (CBTC), reportedly the largest Chinese investment in Belgium and the first Chinese-built technology park in Europe.[53] Although CBTC is not labeled as a BRI project, because it was built within the same timeframe of the first stage of BRI, I count it as a BRI SEZ. This differentiation in the purpose of SEZs largely aligns with reported global trend in SEZs location, where science and technology parks and customs zones are most likely located in developed economies while industry-specific and multi-activity zones are mostly located in developing and least developing countries.[54]

In general, most SEZs are developed, managed, and run by business entities established specifically for the purpose of managing SEZs (SEZ Managing Entities).[55] Despite the statutory definition, in practice, not all SEZ Managing Entities are controlled by Chinese entities. For example, the Malaysia-China Kuantan Industrial Park is reportedly operated by Kuantan Port

[51] 中哈霍尔果斯国际边境合作中心简介 [Brief Introduction of the Horgos/Khorgos Cross-Border Economic Zone (China-Kazakhstan)], (23 September 2019) <http://www.xjhegs.gov.cn/info/1166/17377.htm> accessed 25 February 2020. The success of the Horgos/Khorgos Cross-Border Economic Zone (China-Kazakhstan) has been called into doubt, however, as shoppers and vendors reported dissatisfaction over the economic development reality. *See* Sue-Lin Wong & Mariya Gordeyeva, 'Silk Road hub or tax haven? China's new border trade zone may be less than it seems' *Reuters* (4 June 2017)

[52] *See also* China-Belarus Great Stone Industrial Park, which focuses on "high-tech and competitive innovation productions." 'About General Information' (Great Stone Industrial Park) <https://industrialpark.by/en/about/general-information.html> accessed 25 February 2020

[53] 'China Overseas Economic and Trade Cooperation Zone', (COCZ, 27 December 2019) <http://www.cocz.org/news/content-286475.aspx> accessed 25 February 2020. CBTC is invested, developed, and managed by United Investment Europe (UIE), which is co-owned by two Chinese investment companies, Hubei United Investment Co., Ltd. and Juxing International Technology Investment Co., Ltd. 'CBTC Brochure Corporate UK (CBTC) < http://www.cbtc.eu/wp-content/uploads/2019/07/CBTC_Brochure_Corporate_UK_Mail.pdf.> accessed 25 February 2020, p32

[54] *Supra* note 12, pp 31 and 134

[55] *Id.*, 131. *See also supra* note 34, UNDP & CAITEC Paper.

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Consortium Sdn. Bhd. (KPC). According to its corporate profile, KPC is jointly owned by IJM Corporation Berhad, a company publicly listed on Bursa Malaysia and Beibu Gulf Holding (Hong Kong) Co. Ltd. on a 60:40 equity holdings, with the Government of Malaysia having a special rights share.[56] Another such example is the China-Belarus Great Stone Industrial Park, whose three-level management structure comprises of Intergovernmental Council, the Park Administration, and the Industrial Park Development Company, according to its official website.[57]

Once SEZs are established and operations begin, researches show that industry specific SEZs tend to purchase raw materials and other production-related materials from local sources, while SEZs also purchase from other diversified sources.[58] According to published statistics, some 300,000 local employees are hired in these overseas SEZs.[59]

Corridors at large seem to develop at various stages.[60] According to one World Bank Group research, the Six Corridors—through infrastructure projects and coordinated efforts in transport infrastructure construction—can reduce travel times by 12% along economic corridors

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[56] Corporate Profile' (*Kuantan Port*) <http://www.kuantanport.com.my/en_GB/about-us/corporate-profile/> accessed 25 February 2020

[57] 'Management Model', (*Great Stone Industrial Park*) <https://industrialpark.by/en/about/managment-structure.html> accessed 25 February 2020

[58] *Supra* note 34 UNDP & CAITEC Paper p12.

[59] *Supra* note 48. The China-Belarus Great Stone Industrial Park provided over 5,000 jobs for local workforce. 中白工业园累计为当地提供超过 5000 个就业岗位 [China-Belarus Industrial Park Has Provided Over 5,000 Jobs to Local Workforce Overtime] (*cet.com.cn*, 30 April 2019) <https://www.yidaiyilu.gov.cn/xwzx/hwxw/88729.htm> accessed 25 February 2020

[60] For a brief summary of the development status of the six corridors, *see* 六大经济走廊建设面面观，一次获取超全资料！[Full Examination of Six Economic Corridors, Obtain Full and In Depth Information!] (*Belt and Road Portal*, 26 April 2019) <https://www.yidaiyilu.gov.cn/sy/zlbw/87693.htm> accessed 25 February 2020 (hereinafter Six Corridors Information)

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on average, and by three percent with the rest of the world on average.[61] When completed and connected, according to the World Bank Group research, more reduction in travel time (as much as 30% in certain corridors) could occur.[62] The China-Pakistan Economic Corridor (CPEC) is generally considered to be one of the better-developed corridors, partly due to its early start and the joint management of the two governments.[63] CPEC hosts 22 energy projects, seven infrastructure projects, eight Gwadar projects, two digital/cable projects, four rail based mass transit projects, four provincial projects, nine SEZs, four social sector development projects, and six western routes projects, according to its official website.[64] Those listed projects are at various stages of development, with some have been completed and uprunning, and others are still in the initial planning stage. But a recent research finds that the progress of CPEC has been slowed, casting doubt over its economic performance.[65] In contrast, the Bangladesh-China-India-Myanmar Corridor that connects the most populous states in South Asia is seen to be developing at a much slower pace.[66]

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[61] Caroline Freund, Conference on Belt and Road Economics, Potential Effects, Complementary Reforms, Risk Mitigation, Washington D.C., 23 January 2019. *See also* 'World Bank Belt and Road Initiative, What potential opportunities does the BRI present' (World Bank Group) <https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative> accessed 25 February 2020 ("If completed, BRI transport projects could reduce travel times along economic corridors by 12%, increase trade between 2.7% and 9.7%, increase income by up to 3.4% and lift 7.6 million people from extreme poverty.")
[62] *Supra* note 61, Freund.
[63] 'Institutional Framework of CPEC', (*China Pakistan Economic Corridor*) <http://cpec.gov.pk/institutional-framework/5> accessed 25 February 2020. CPEC is supervised by the Joint Cooperation Committee comprising of the Minister of Planning, Development & Reform of Pakistan and the Vice Chairman of National Development Reform Commission of China. *See also supra* note 60 Six Corridors Information.
[64] 'CPEC Projects Progress Update', (*China Pakistan Economic Corridor*) <http://cpec.gov.pk/progress-update> accessed 23 June 2020
[65] Jonathan E. Hillman et al., 'The China-Pakistan Economic Corridor at Five', (*Center for Strategic and International Studies*, April 2020)
[66] *Supra* note 60 Six Corridors Information. The Muse-Mandalay Railway project, which is part of the Kunming-Muse-Mandalay-Kyaukphyu high-speed railroad project, is still awaiting its final approval, pending the

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There appear to be correlation between SEZs' development and performance and the development status of economic corridors. In a published Chinese official summary of each corridor's development status, the success of SEZs are highlighted as major achievements in all corridors but the Bangladesh-China-India-Myanmar Corridor, which was acknowledged to have failed expectations.[67] This correlation in turn suggests the important role SEZs play in the development of BRI.

b) Financing Structure[68]

Chinese financiers, including domestic investment funds and policy and commercial banks, by far are the largest financiers of BRI, reportedly have provided more than US$440 billion in funding BRI projects (as of April 2019).[69] Silk Road Fund Co., Ltd. (SRF), a domestic (Chinese) investment fund established in December 2014 with a total capital of US$40 billion and RMB 100 billion, provides investment and financial support to BRI projects.[70] From January 2015 to April 2019, SRF signed 30 project agreements and committed $11 billion in

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environmental assessment. Kyaw Ko Ko, 'Route of new Muse-Mandalay express railroad selected', (MyanmarTimes, 21 August 2019) <https://www.mmtimes.com/news/route-new-muse-mandalay-express-railroad-selected.html> accessed 25 February 2020

[67] *Supra* note 60 Six Corridors Information.

[68] A more detailed discussion of BRI's financial structure and practices up to July 2019 can be found in Jingyuan Zhou, 'A Glimpse into Asian Infrastructure Investment Bank's Financing Practices', (*Oxford China, Law and Development*, 7 October 2019) <https://cld.web.ox.ac.uk/files/finalzhouaiibfinancingpdf-0> accessed 25 February 2020. This section updates the July 2019 paper as relevant information has been updated by AIIB.

[69] 'China seeks to prevent Belt and Road debt risks' (*CGTN*, 25 April 2019) <https://news.cgtn.com/news/3d3d414f32516a4d34457a6333566d54/index.html> accessed 25 February 2020

[70] 'About Us' (*Silk Road Fund*) <http://www.silkroadfund.com.cn/enweb/23775/23767/index.html> accessed 25 February 2020. SRF is jointly owned by the State Administration of Foreign Exchange (through Buttonwood Investment Holding Company Ltd.), China Investment Corporation (through Seres Investment Co., Ltd.), CDB (through China Development Bank Capital Co., Ltd.), and Ch-ExIm.

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investments, including RMB-denominated investments worth of RMB 18 billion,[71] among which over $6.8 billion worth of investments were made by the end of August 2018.[72]

On the domestic front, besides SRF, three state-owned commercial banks—the Bank of China, Industrial and Commercial Bank of China, and China Construction Bank—accounted for approximately 51.4% of the $292 billion-dollar total outstanding loans and equity investments (from 2013-2016).[73] Two domestic policy banks—China Development Bank (CDB)[74] and the Import and Export Bank of China (Ch-ExIm)[75]—allegedly contributed approximately 45.9% of the US$292 billion investments.[76]

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[71] 丝路基金谢多：为一带一路发展提供有力金融支持 [Providing Strong Financial Support to the Development of the Belt and Road Initiative] (*Sina*, 17 April 2019) <https://finance.sina.com.cn/money/bank/yhpl/2019-04-22/doc-ihvhiewr6530522.shtml> accessed 25 February 2020

[72] 金琦：金融开放新格局下丝路基金的机遇与使命[Opportunities and Mission for Silk Road Fund in the New Era of Financing Open-up] (*BeltandRoadPortal*, 2 January 2019) <https://www.yidaiyilu.gov.cn/ghsl/gnzjgd/76287.htm> accessed 25 February 2020

[73] Zhang Kangle, 'A Tale of Ending Poverty: The New Financial Institutions and China's Global Strategy' in Shan W., Nuotio K., Zhang K. (eds), *Normative Readings of the Belt and Road Initiative* (Springer, Cham, 2018) 116.

[74] In 2018 alone, CDB has made $18.5 billion loans to BRI projects, China Development Bank, '2018 Annual Report' (2019) 52. As of March 2019, CDB has provided more than $190 billion financing to over 600 BRI projects in total, 'Updated – Boao Forum: AIIB President Jin Liqun Seeks to Calm Down Worries Over China's Belt and Road' (*Reuters*, 26 March 2019)

[75] Between May 2017 and December 2018, Ch-ExIm has reportedly "signed all the loan agreements on the RMB 130 billion equivalent special lending scheme announced at the first Belt and Road Forum for International Cooperation." The Export and Import Bank of China, *2018 Annual Report* (2019) 13 (RMB 130 billion is equivalent to $18.2 billion). Furthermore, between 2014 and September 2017, Ch-ExIm has reportedly signed agreements covering over 1,200 projects with a total amount of RMB800 billion (equivalent to $112 billion). 金融时报：发挥金融服务优势 助推"一带一路"建设 [Financial Times: Utilize Financial Service Advantages, Facilitate the Belt and Road Initiative] (*The Export-Import Bank of China*, 7 September 2017) <http://www.eximbank.gov.cn/info/circus/201810/t20181022_7092.html> accessed 25 February 2020 (hereinafter Ch-ExIm News)

[76] *Supra* note 73 Zhang, at 117. *See also* Organization of Economic Cooperation and Development, 'China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape' (2018) 18-20 <https://www.oecd.org/finance/Chinas-Belt-and-Road-Initiative-in-the-global-trade-investment-and-finance-landscape.pdf> accessed 25 February 2020 (hereinafter OECD BRI Report)

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It is worth noting that China's domestic banks have been considered to be "leaders in the world of sovereign finance" long before the operations of BRI, according to one researcher.[77] According to Gallagher, since the 2008 financial crisis, Chinese policy banks have constantly outspent the WB in providing finance to developing countries.[78]

At the multilateral level, efforts to attract investments in BRI from multilateral financing institutions in infrastructure projects can be seen from the establishment of the Asian Infrastructure Investment Bank (AIIB).[79] AIIB, with $100 billion authorized capital stock[80] and headquartered in Beijing, China, began its operation in January 2016 and now has over 100 approved members worldwide.[81] According to its Articles of Agreement, AIIB is committed to "provid[ing] or facilitat[ing] financing to … any entity or enterprise operating in the territory of a member, … or entities concerned with economic development of the Asia region."[82] Because of this commitment, this paper includes AIIB in the analysis of financing impacts of BRI, though so far AIIB has yet to become a major funding source for BRI projects.[83] As of February 2020,

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[77] Keven P. Gallagher, 'Profiting from Precaution: How China's Policy Banks can Enhance Social and Environmental Standards' (July 2013) 1
[78] *Id.*
[79] One of the stated purposes of AIIB is to "promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions." Asian Infrastructure Investment Bank, Articles of Agreement, Art.1, <https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf> accessed 25 February 2020. Contrast with Chow, *supra* note 14, that AIIB is to displace the U.S. in international finance.
[80] Articles of Agreement, Art. 4, (*Asian Infrastructure Investment Bank*) <https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf> accessed 25 February 2020
[81] 'Members and Prospective Members of the Bank', (*Asian Infrastructure Investment Bank*) <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html> accessed 25 February 2020. Noticeably missing from the list of members is United States and Japan (as of the end of February 2020).
[82] Articles of Agreement, Art. 11, (*Asian Infrastructure Investment Bank*) <https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf> accessed 25 February 2020
[83] *Supra* note 73 Zhang, at p116.

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AIIB approved 64 projects,[84] primarily through one of the four types: Sovereign-backed financing, nonsovereign-backed financing, equity investment, and preparation advances for sovereign-backed financing.[85] As of February 2020, AIIB's approved investments totaled to $12.24 billion,[86] an approximate 43.5% increase from the reported $8.5 billion investments as of July 2019,[87] but are still dwarfed by that of Asian Development Bank (ADB)[88] and Chinese domestic policy banks like the CDB[89] and the Ch-ExIm.[90] Although AIIB is catching up, the

[84] 'Approved Projects', (*Asian Infrastructure Investment Bank*) <https://www.aiib.org/en/projects/approved/index.html> accessed 25 February 2020. The energy sector has received the most approved projects by number (21 out of 64), accounting for approximately 32.8% of the total approved projects. The transport sector remotely follows as the second largest recipient by receiving 12 approved projects and is trailed by the finance sector (11 out of 64). As of February 2020, the number of approved projects in the ICT sector, the telecoms sector, and the digital infrastructure sector are surprisingly small (1 in the telecom and 1 in digital infrastructure) compared to other sectors, despite the AIIB's pledge to bridge the gap in its investments to ICT sector in 2020, 'AIIB Investing to Address the Digital Divide in Asia', (*Asian Infrastructure Investment Bank*, 17 January 2020) <https://www.aiib.org/en/news-events/news/2020/20200117_001.html> accessed 25 February 2020

[85] 'Financing Operations', (*Asian Infrastructure Investment Bank*) <https://www.aiib.org/en/about-aiib/who-we-are/financing-operations/index.html> accessed 25 February 2020. India (14), Bangladesh (6), Indonesia (5), and Turkey (5) have won most approved projects (as of February 2020).

[86] (Asian Infrastructure Investment Bank) < https://www.aiib.org/en/index.html> accessed 25 February 2020

[87] 'AIIB reaches 100-member milestone', (*Asian Infrastructure Investment Bank*, 13 July 2019) <https://www.aiib.org/en/news-events/news/2019/20190713_001.html> accessed 25 February 2020

[88] In 2018 alone, the ADB made commitments of new loans and grants amounting to $21.6 billion. 'ADB and AIIB Presidents Discuss Strategic and Operational Issues', (*Asian Development Bank*, 21 March 2019) <https://www.adb.org/news/adb-and-aiib-presidents-discuss-strategic-and-operational-issues> accessed 25 February 2020

[89] In 2018 alone, CDB has made $18.5 billion loans to BRI projects, China Development Bank, '2018 Annual Report' (2019) 52. As of March 2019, CDB has provided more than $190 billion financing to over 600 BRI projects in total, 'Updated – Boao Forum: AIIB President Jin Liqun Seeks to Calm Down Worries Over China's Belt and Road' (*Reuters*, 26 March 2019)

[90] Between May 2017 and December 2018, Ch-ExIm has reportedly "signed all the loan agreements on the RMB 130 billion equivalent special lending scheme announced at the first Belt and Road Forum for International Cooperation." The Export and Import Bank of China, *2018 Annual Report* (2019) 13 (RMB 130 billion is equivalent to $18.2 billion). Furthermore, between 2014 and September 2017, Ch-ExIm has reportedly signed agreements covering over 1,200 projects with a total amount of RMB800 billion (equivalent to $112 billion). *Supra* note 84 Ch-ExIm News.

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pace is not fast enough to meet the huge demand gap in investment needs in Asia,[91] let alone the globe.[92]

A close analysis of the approved projects shows that the financing arrangements of nearly half of AIIB's approved projects were made through co-financing with other multilateral development banks (MDBs) like the ADB, African Development Bank (AfDB), European Investment Bank (EIB), European Bank of Reconstruction and Development (EBRD) , Islamic Development Bank (IDB), and the World Bank Group (WB).[93]

The WB[94] began its engagement in BRI in May 2017 when it signed a Memorandum of Understanding with the Ministry of Finance of China with the ADB, the AIIB, the EBRD, the EIB, and the New Development Bank (NDB).[95] The WB's participation in BRI is self-confined to the provision of technical advice and assistance rather than directly providing BRI labeled loans.[96] Its financing constituents have been providing loans, investments, and insurance and

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[91] According to the ADB, $26-trillion worth investments are in need to develop Asia from 2016 to 2030, taking sustainable development into account. 'Meeting Asia's Infrastructure Need', (*Asian Development* Bank, February 2017) <https://www.adb.org/publications/asia-infrastructure-needs> accessed 25 February 2020

[92] According to one OECD report, global annual investment needs range between $2.9 trillion and $6.3 trillion. *Supra* note 76, OECD BRI Report, at 5

[93] *Supra* note 84 Approved Projects

[94] The World Bank Group consists of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID), 'Who We Are', (World Bank Group) <https://www.worldbank.org/en/who-we-are> accessed 25 February 2020. However, with respect to the World Bank Group BRI MOU (*infra* footnote 98), ICSID was not represented due to its dispute settlement mechanism function.

[95] 'Memorandum of Understanding on Collaboration on Matters of Common Interest Under the Belt and Road Initiative Between Ministry of Finance of the People's Republic of China and the Asian Development Bank, Asian Infrastructure Investment Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the New Development Bank, the World Bank Group (hereinafter "World Bank Group BRI MoU")', (14 May 2017) <https://www.ndb.int/wp-content/uploads/2018/09/MOU-on-BRI-signed.pdf> accessed 25 February 2020

[96] 'Frequently Asked Questions: Belt and Road Initiative' (*World Bank Group*) <http://pubdocs.worldbank.org/en/664251560539547566/BRI-FAQ.pdf> accessed 25 February 2020

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guarantees to countries along BRI routes and projects within those countries,[97] albeit not in the name of BRI. By February 2020, the WB—including the IFC, its private-sector investment arm—has 21 projects co-financed with AIIB, covering over half of AIIB's 11 sectoral coverage.[98] This is a significant increase from that of April 2019, when the WB had reported "fifteen projects that are co-financed with [AIIB]",[99] released $80 billion in infrastructure projects, and was expecting another $10 billion worth of financing.[100]

The Japan-led ADB has co-financed nine projects with AIIB as of February 2020. Three co-financed projects are in the transport sector, five in the energy sector, and another one in the rural sector.

EBRD and AIIB co-financed projects appear to focus on the energy and transport sectors in Tajikistan and Turkey. EIB and the SRF jointly established the China-EU Co-Investment

[97] Jim Yong Kim, "Remarks of World Bank Group President Jim Yong Kim at the Belt and Road Forum for International Cooperation – Opening Plenary Session" (*World Bank* Group, 14 May 2017) <https://www.worldbank.org/en/news/speech/2017/05/14/remarks-of-world-bank-group-president-jim-yong-kim> accessed 25 February 2020

[98] WB has yet to co-finance the digital infrastructure sector, the ICT sector, the rural sector, the telecoms sector, and the other infrastructure sector.

[99] World Insight with Tian Wei, 'What does the World Bank CEO think about BRI as a "debt trap"?' (*CGTN*, 26 April 2019) <https://news.cgtn.com/news/3d3d514f33596a4d34457a6333566d54/index.html> accessed 25 February 2020

[100] 'Belt & Road to Help Close Infra Investment Gaps: World Bank' (*beltandroad.news,* 26 April 2019) <https://www.beltandroad.news/2019/04/26/belt-road-to-help-close-infra-investment-gaps-world-bank/> accessed 25 February 2020

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Fund with an estimated capital of 500 million euros to support equity investment in Europe,[101] in addition to its co-financing with the AIIB in the transport sector in Bangalore.[102]

Overall, MDBs' participation in BRI only constitutes a fraction of all investments made and an even smaller portion of investments needed. However, together with private investments, MDBs would contribute to bridging the investment needs of countries along BRI routes.[103]

Concerns over the health and balance of national debt-ratio have arisen in the course of BRI financing. The so-called "debt-trap," which, on some occasions, have led to Chinese companies/lenders seizing assets when the local government/debtor fails to make payments on the loan principal,[104] or, the cancelation of the planned project.[105] The occurrence has been rare, according to one study by the Rhodium Group.[106] The research finds that China renegotiates

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[101] 'EIB Group cooperation with China to be strengthened with new EUR 500 million Silk Road Fund equity investment Initiative' (*European Investment Bank*, 01 June 2017) <https://www.eib.org/en/press/all/2017-138-eib-group-cooperation-with-china-to-be-strengthened-with-new-eur-500-million-silk-road-fund-equity-investment-initiative.htm> accessed 25 February 2020

[102] 'Bangalore Metro Rail Project – Line R6 Project Summary Information' (*Asian Infrastructure Investment Bank*) < https://www.aiib.org/en/projects/approved/2017/_download/india/summary/Bangalore-Metro-Project.pdf > accessed 25 February 2020

[103] Yi Gang, the former governor of the People's Bank of China, reportedly emphasized the importance of market-oriented commercial funds and private sector investments in the next stage of BRI during the Second Belt and Road Forum for International Cooperation, 'China seeks to prevent Belt and Road debt risks' (*CGTN*, 25 April 2019) <https://news.cgtn.com/news/3d3d414f32516a4d34457a6333566d54/index.html> accessed 25 February 2020

[104] The most oft-reported case is the 2017 takeover of, or more precisely, the grant of a 99-year lease of the Sri Lanka Hambantota Port to China and the 70% control over the port's managing company to China Merchant Port Holdings.

[105] For example, the Malaysian government canceled the train project—East Coast Rail Link—on the ground that it was unfair and too costly, 'Malaysia to cancel $20 billion China-backed rail project: minister' (*Reuters*, 25 January 2019) <https://www.reuters.com/article/us-china-malaysia/malaysia-to-cancel-20-billion-china-backed-rail-project-minister-idUSKCN1PK03P> accessed 25 February 2020. But it renegotiated the financial arrangement with the Chinese counterpart and the project was resumed in April 2019, Joseph Sipalan, 'China, Malaysia restart massive 'Belt and Road' project after hiccups' (*Reuters*, 24 July 2019) <https://www.reuters.com/article/us-china-silkroad-malaysia/china-malaysia-restart-massive-belt-and-road-project-after-hiccups-idUSKCN1UK0DG> accessed 25 February 2020

[106] Agatha Kratz, Allen Feng, and Logan Wright, 'New Data on the "Debt Trap" Question' (*Rhodium Group*, 29 April 2019) <https://rhg.com/research/new-data-on-the-debt-trap-question/> accessed 25 February 2020

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loan terms more often than it seizes assets, with write-offs and deferral being the most common outcomes.[107] That research also notes that once the rarely occurred asset-seizure happens, it does grab attention and raise serious doubts about the legitimacy of BRI on the whole.[108]

c) Privately-Owned and State-Owned/Controlled Entities' Participation in BRI

Chinese business entities, including state-owned/controlled entities (SOEs) and privately-owned entities (POEs)[109], appear to be the primary participants in BRI. In the first 11 months of 2019, Chinese entities (presumably including both SOEs and POEs), reportedly invested US$12.8 billion in non-financial sectors in BRI, and collectively, Chinese business entities reportedly invested over US$100 billion in BRI.[110] POEs reportedly account for almost 90% of the amount of business entities operating in China, but outwardly, they only account for 25.7% of total foreign direct investments[111] and 38.5% of total foreign trade[112] in 2017. SOEs have

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[107] *Id.*

[108] Some cautioned against about the fear of the "new form of colorism" resulting from the handover of the Sri Lanka Hambantota Port. Jonathan E. Hillman, 'The Hazards of China's Global Ambitious' (*New Perspectives Quarterly*, Spring 2018) <https://onlinelibrary.wiley.com/doi/epdf/10.1111/npqu.12134> Summaries of similar concerns can be found at Jones, *supra* note 20.

[109] *Supra* note 43 UNDP & CAITEC Paper, p2, fn1. The 2019 Privately-Owned Entities BRI Report defines "privately owned entities" as any business entities—other than state-owned entities, state-asset-controlled entities, and foreign investment entities—registered in the territory of China; and can in the form of single-owner entity, partnership entity, limited liability company, and joint stock limited company. With respect to limited liability company and joint stock limited company, if such company holds only a small amount of state assets and/or foreign investment assets and neither the state nor the foreign investor has operation right or the right to control the company, then the company falls within the definition of "privately-owned entity." This paper adopts this definition.

[110] 【2019 年商务工作年终综述之十四】对外投资合作和对外援助执行高质量发展，推动共建"一带一路"走深走实 [The Fourteenth End-of-Year Review of the Department of Commerce Work] (Ministry of Commerce, 3 January 2020) <http://www.mofcom.gov.cn/article/ae/ai/202001/20200102927745.shtml> accessed 25 February 2020 (hereinafter "MOFCOM 2019 14th End-of-Year Review")

[111] *Supra* note 43 UNDP & CAITEC Paper, at p iii

[112] *Id.* at p13.

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been seen to play a significant role and continue to actively engage in BRI investment,[113] and, in general, POEs' participation is not as high as those of SOEs', as exemplified by the MOFCOM 2019 14th End-of-Year Review. Nevertheless, POEs' participation appears to be on the rise,[114] especially large POEs: In 2017 alone, it is reported that more than half of top-500 Chinese POEs participated in BRI related projects.[115]

The forms of foreign investment and trade that POEs engage seem to be similar to those of SOEs. The three main forms of economic activities are establishing SEZs; making greenfield and brownfield investments like mergers and acquisitions at varies levels of supply chains, in mining and energy sector, and in agricultural sectors; and providing construction and labor service.[116]

Due to the nature of specific projects in general and the specialization of Chinese POEs in particular, POEs are reportedly more active in agricultural, machinery, appliance, and textile industries, and have led or built more overseas SEZs than their state-owned counterparts.[117] SOEs, on the other hand, appear to largely take on infrastructure construction projects.[118] This separation of business, however, does not guarantee less competition facing SOEs in obtaining

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113 Xiaojun Li & Ke Zeng, 'Beijing is counting on its massive Belt and Road Initiative. But are Chinese firms on board?', *Washington Post*, 14 May 2019) <https://www.washingtonpost.com/politics/2019/05/14/beijing-is-counting-its-massive-bridge-road-initiative-are-chinese-firms-board/> accessed 25 February 2020
114 *Supra* note 43 UNDP & CAITEC Paper, pp 15-16.
115 央企和民企在“一带一路”建设中力量有多大？数据告诉你 [How Much Contribution Do State-owned Entities and Privately-Owned Entities Make Respectively In Belt and Road? Statistics Tell] (*cet.com.cn*, 25 April 25 2019) <http://finance.ifeng.com/c/7m9avBessQi> accessed 25 February 2020
116 For example, the Cambodia Sihanoukville Special Economic Zone (SSEZ) is led by a privately-owned Chinese entity, Hongdou Group, Inc.
117 *Supra* note 43 UNDP & CAITEC Paper.
118 Niu Huizhe, 'Chinese SOEs accelerate participation in BRI construction' (*BeltandRoadPortal*, 03 August 2018) <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/61806.htm> accessed 25 February 2020

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projects in countries along BRI routes. For example, competition exist between Chinese business entities and Japanese investors, who have long invested in developing Southeast Asian countries. Competition also exist with South Korean investors, who over the past few years increased investments in Vietnam and other countries in this region.[119]

III. The Normative Aspect of BRI and Its Impacts on International Trade Governance

The first stage of BRI—from its inception in 2013 to the Second Belt and Road Forum for International Cooperation in April 2019—possesses three distinct characteristics under the WTO framework. The three inter-related and yet distinct characteristics are: (1) an unconventional, transaction-centered approach in expanding economic ties that allows flexibility to both China and BRI countries; (2) a bilateral-based rulemaking approach with an eye towards multilateralism and plurilateralism; and (3) the innovation to transnational dispute settlement mechanisms based on experiences gained in BRI. As will be further elaborated below, China's international rulemaking starts from incremental processes focusing on bilateral relationships and then expands to regional, cross-regional, and multilateral fora by applying rules formulated and tested domestically and at a smaller scale, e.g., the bilateral level. When multilateralism is transitioning into plurilateralism,[120] some argue that China's more vocal and assertive approach

[119] Michael Blomenhofer, *The rise of Korean investment in Vietnam: How Korean companies can continue to thrive in an exciting but challenging jurisdiction*, KROLL, https://www.kroll.com/-/media/kroll/pdfs/publications/the-rise-of-korean-investment-in-vietnam.ashx. As of September 2019, "South Korea continues to be the largest foreign investor in Vietnam." Nhan Dan, 'Korean investment continues its uptrend in Vietnam' (*Vietnamnet*, 3 September 2019) <https://english.vietnamnet.vn/fms/business/219441/korean-investment-continues-its-uptrend-in-vietnam.html> accessed 25 February 2020

[120] *See* Cohen, *supra* note 13, at 51.

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reflects what they call “responsible leadership” of a rising China.[121] Moreover, according to some Chinese scholars, one oft-neglected but important aspect underlying China’s increased assertiveness in international rulemaking processes is the need to use these processes as catalysts to further its domestic economic reform agenda.[122]

a) Unconventional Transaction-Centered Approach Affords China and Partners More Flexibility with Caveats

The first characteristic of BRI is its transactional nature. Unlike the orthodox way of setting institutions/rules first and starting infrastructure second,[123] BRI reversed the order by starting with and developing around transactions, a “bottom-up”/inductive approach. This practice is seen to conform to the “Five Principles of Peaceful Co-Existence” (Five Principles), a foreign policy the Chinese government has long adhered to.[124] The Five Principles prevent China from imposing foreign policies that would interfere with foreign sovereign states’ domestic matters like institutional structure and governance. BRI’s focus on the transactional

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[121] 韩立余[Han Liyu]: “构建国际经贸新规则的总思路” [‘General Approach to Making New Trade Rules’], *经贸法律评论* (2019) 5 BUSINESS AND ECONOMIC LAW REVIEW 1, 7. 刘敬东[Liu Jingdong]: “全面开放新格局的国际法治内涵与路径” [‘The Substance and Roadmap to China’s Comprehensive Opening-up under International Rule of Law’], *经贸法律评论* (2019) 2 BUSINESS AND ECONOMIC LAW REVIEW 69 [hereinafter as “The Substance and Roadmap”]. Both Han and Liu argued that as a rising power, China should be more active in international rulemaking.
[122] *Supra* note 121 Han, at p10.
[123] The orthodox way believes that institutions, broadly defined as the rules governing and shaping human interaction, are the fundamental cause of economic growth and development. Daron Acemoglu & James Robinson, ‘The Role of Institutions in Growth and Development’ (Commission on Growth and Development, GC-WP-010) 1-2 <https://siteresources.worldbank.org/EXTPREMNET/Resources/489960-1338997241035/Growth_Commission_Working_Paper_10_Role_Institutions_Growth_Development.pdf> accessed 25 February 2020
[124] Wen Jiabao, ‘Carrying Forward the Five Principles of Peaceful Coexistence in the Promotion of Peace and Development’ (2004) 3 CHINESE JIL 363, 363-64. The Five Principles are mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence.

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aspect through infrastructure projects and SEZs is viewed by some as operating as a "value-free" platform that brings economic benefits and puts less strains on local governments,[125] although this same principle is also criticized as "[d]ucking responsibility" for deferring to local laws and standards by others.[126] Under no immediate obligation to liberalize domestic markets or initiate governance reforms,[127] BRI countries appear to face less domestic pressure and fewer challenges, and thus are able to come aboard more quickly, compared to the drawn-out process of formal FTA negotiations. The broad participation of BRI may thus be explained under this transaction-centered approach. As listed in the official document, 40 African nations, all of which are also signatories to the African Continental Free Trade Agreement; all members of the Association of Southeast Asian Nations (ASEAN); nine out of the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and all 16 members of Central and Eastern European Countries have signed BRI cooperation agreements.[128] It may also explain the absence of economic heavyweights like the U.S., Japan, United Kingdom, France, Germany, Canada, and Australia, which prefer to adhere to the traditional institution-first model.[129]

Consequently, in the first stage of BRI, this "bottom-up"/inductive approach provides flexibility to both host countries and China in project designation, financing, implementation,

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[125] Organization of Economic Cooperation and Development, 'China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape' (2018) 33.
[126] Asia Society Policy Institute, 'Navigating the Belt and Road Initiative' (2019) 11.
[127] Han noted that both CPTPP and USMCA require some signatories to revise their domestic policies to implement and that BRI should be conducted in a mutually respected way between participating states. *Supra* note 121 Han, at 8-9.
[128] *Supra* note 32 BRI Cooperation Agreement Overview.
[129] *Supra note* 32 BRI Cooperation Agreement Overview.

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and supervision. Flexibility under this transaction-centered approach also allows governments to benefit from trial-and-error, an important factor that enabled China's economy to thrive in the past and is expected to make miracle happen again in BRI countries.[130]

One aspect of flexibility is reflected on the domestic front in treating BRI as catalysts for domestic trade and investment reforms through China's domestic SEZs/FTZs, which are strategically located along BRI routes.[131] Between 2013 and February 2020, 18 domestic BRI-related SEZs/FTZs have been established in five successive rounds, starting with Shanghai FTZ.[132] All 18 domestic BRI-related SEZs/FTZs are tasked to experiment with various levels of domestic trade and investment liberalization and systemic innovation measures, and to further integrate into regional and global economy.[133] Successful experiences in one SEZ/FTZ are expected to be rolled out to the broader economy, including the municipality and province where that particular SEZ/FTZ is located, to other SEZs/FTZs, and eventually to nationwide adoption.[134]

Some SEZs/FTZs are designated because of their significance to Chinese and global economy. For example, as China's financial center, Shanghai Free Trade Zone (Shanghai FTZ) was designated as the first BRI related SEZ/FTZ and was tasked to experiment with trade and

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130 Premier Deng Xiaoping has famously referred to it as "crossing the river by touching the stones." Wayne M. Morrison, 'China's Economic Rise: History, Trends, Challenges, and Implications for the United States' (*Congressional Research Service*, 25 June 2019) 4-5

131 One important distinction between the domestic SEZs and overseas SEZs discussed in Part II is that domestic SEZs are given special authority to experiment policy and system reforms within China.

132 中国 18 个自贸试验区建设进展一览 [A Glimpse on the 18 Chinese Free Trade Economic Zones Development Status] (BELTANDROADPORTAL, 20 August 2019) <https://www.yidaiyilu.gov.cn/sy/zlbw/100997.htm> accessed 25 February 2020

133 *Id.*

134 202 项！自贸试验区形成大批制度创新成果复制推广 [202! Numerous Innovations of FTZs Are Rolled Out] (*Xinhuanet*, 23 July 2019) <http://www.xinhuanet.com/2019-07/23/c_1124789317.htm> accessed 25 February 2020

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investment liberalization measures. Shanghai FTZ aims at exploring the shift government's role from micro-managing to regulating market failures. Some successful trade and investment liberalization reforms include the application of the "negative list" to foreign investment that leads to opening up markets for foreign investments, the prohibition of forced technology transfer, and the facilitation of research, although some had expected more can be done.[135] Shanghai FTZ is now experimenting with further investment and trade liberalization measures, and is opening up service markets, easing visas for foreign workers, and establishing the investor-state dispute settlement mechanism.[136]

On the other hand, some domestic BRI-related SEZs/FTZs are designated on strategic considerations vis-à-vis BRI as they tend to accommodate the development of overseas SEZs and economic corridors while also experimenting domestic economic reform. One such example is Liaoning SEZ, housed within Liaoning Province—which and located along the New Eurasian Land Bridge (the China & Central and Eastern European Countries Corridor).[137] Established in March 2017, Liaoning SEZ attempts to revitalize the economy of Liaoning Province, which reportedly struggled to upgrade its economic structure away from its past reliance over steel and

[135] Neil Thomas, 'Shanghai Free Trade Zone: Putting Reform Over Opening' (*MacroPolo*, 25 September 2019) <https://macropolo.org/shanghai-free-trade-zone-reform-opening/> accessed 23 June 2020

[136] For more discussions on the first two Shanghai experimentations, *see* Gregory C. Shaffer and Henry Gao, 'A New Chinese Economic Law Order?' (2019) (UC Irvine School of Law Research Paper Series) 7. For the last two experimentations, *see* 国务院关于印发中国（上海）自由贸易试验区临港新片区总体方案的通知 [Notice by the State Council of Issuing the Framework Plan for the New Lingang Area of China (Shanghai) Pilot Free Trade Zone] [(State Council) Guofa [2019] 15 Hao, 27 July 2019] <http://www.gov.cn/zhengce/content/2019-08/06/content_5419154.htm> accessed 25 February 2020

[137] 关于中国（辽宁）自由贸易试验区挂牌两周年的有关情况新闻发布会 [Press Briefing on the Second Anniversary of China (Liaoning) Free Trade Zone and on the Status of Development] (Liaoning Government 28 March 2019) <http://liaoning.nen.com.cn/system/2019/04/10/020827340.shtml> accessed 25 February 2020

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coal industries and on SOEs.[138] According to official accounts, Liaoning SEZ adopted measures tested by Shanghai and other domestic BRI-related SEZs such as applying "negative list" to foreign investments, streamlining administrative procedures, and cutting regulatory red-tapes to facilitate and contribute to the development of New Eurasian Land Bridge (the China & Central and Eastern European Countries Corridor).[139] It also experimented with SOEs reforms to enhance their productivity and encourage industrial upgrade.[140] According to official account, by tapping into the New Eurasian Land Bridge and implementing trade and investment liberalization measures, Liaoning SEZ contributed to the economy of Liaoning Province, helping turn its growth rate from negative into positive within two years of its establishment.[141]

One other advantage of such flexibility is the ability to swiftly respond to issues arising out of BRI projects that fall within domestic governance domain. For example, to address concerns over Environmental, Social, and Safety assessment policies and standards (ESSPs) in project financing in the early stage, domestically, the Chinese government issued green-finance guidance documents such as the 2016 *Guidelines for Establishing the Green Financial System (Yinfa [2016] 228 hao)*, reportedly aimed at encouraging domestic financial institutions to take sustainability into their financing considerations.[142] Subsequently in 2017, the Chinese

[138] 辽宁自贸区助力东北振兴 [Liaoning Free Trade Zone Facilitates Dongbei Revitalization] (*Xinhuanet*, 26 June 2017) <http://www.xinhuanet.com//fortune/2017-06/26/c_1121212948.htm>

[139] *Supra* note 218.

[140] *Id.*

[141] 三个"着力"：国务院对转型关键期的东北经济开新药方 [Three Focal Points: The State Council Issues New Diagnose to Economy of the North in Transitin] (Central Government, 7 June 2019) <http://www.gov.cn/zhengce/2019-06/07/content_5398215.htm> accessed 25 February 2020

[142] 'The People's Bank of China and six other agencies jointly issue "Guidelines for Establishing the Green Financial System"' (*PBOC*, 1 September 2016) <http://www.pbc.gov.cn/english/130721/3131759/index.html.> accessed 25 February 2020

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government issued *the Belt and Road Ecological and Environmental Cooperation Plan*[143] and the *Guidance on Promoting Green Belt and Road*,[144] and articulated the Belt and Road Green Investment Principles in 2018[145] to address and promote sustainable financing and development.

This transactional approach and the resulting flexibility are not immune from shortcomings, however. One disadvantage/problem is selective inclusion. Although BRI is promoted as an open and all-inclusive platform, analysts have noted that barriers to local participation, especially in Chinese-funded transportation projects, are still high compared to similar projects funded by non-Chinese financiers.[146] Many factors may contribute to and exacerbate the problem of selective inclusion. Such factors may include the lack of skilled local workforce; the low mobility of local workforce and difficulties adjusting to new tasks or environments;[147] the obscure and non-transparent bidding processes;[148] or the lack of private entities' participation due to BRI countries' bleak economic prospects.[149]

[143] 'The Belt and Road Ecological and Environmental Cooperation Plan' (*BeltandRoadPortal*, 15 May 2017) <https://eng.yidaiyilu.gov.cn/zchj/qwfb/13392.htm> accessed 25 February 2020

[144] 'Guidance on Promoting Green Belt and Road' <https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydylgw/201705/201705161104041.pdf> accessed 25 February 2020

[145] 'Green Investment Principles for the Belt and Road' <http://www.gflp.org.cn/public/ueditor/php/upload/file/20181201/1543598660333978.pdf> accessed 25 February 2020

[146] Jonathan E. Hillman, 'The Belt and Road's Barriers to Participation' (*Reconnecting Asia*, 7 February 2018) <https://reconnectingasia.csis.org/analysis/entries/belt-and-road-barriers-participation/> accessed 25 February 2020. In his article, Hillman pointed out that 89% of Chinese-funded transportation projects are awarded to Chinese contractors, whereas "out of the contractors participating in projects funded by the World Bank and Asian Development Bank, 29 percent are Chinese, 40.8 percent are local, and 30.2 percent are foreign."

[147] 'Belt and Road Economics: Opportunities and Risks of Transport Corridors' (2019) (World Bank Group) 87.

[148] Daniel R. Russel & Blake Berger, 'Navigating the Belt and Road Initiative' (*Asian Society* June 2019) 16.

[149] *See* Ben Heubl, 'The diverging figures behind Belt and Road: Data shows Beijing's focus is more on construction than investment' (*NIKKEI Asian Review*, 17 December 2018)

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To effectively address the issue of selective inclusion and to deliver an open and inclusive BRI, in the second stage, a layered mechanism starting from the top-level of governments, involving both the Chinese government and the governments of BRI states is recommended. On the top is enhanced cooperation between the Chinese government and governments of BRI states in education, worker training, encouraging participation of third-party countries that are currently less engaged[150], and enhancing transparency over the procurement and bidding process.[151] These are not short-term solutions and cannot be done solely by governments, however. Workers training can take form of vocational education, may precede given projects, and will require private entities' cooperation. Establishing platforms for third-party participation requires strong political will from governments and economic will from private businesses. Technical difficulties need to be addressed and good practices need to be established to ensure transparency over procurement and bidding processes. This leads to the second layer—the collaboration and participation of the private sector and multilateral organizations like MDBs. Therefore, it is likely issues like applying the appropriate sectorial good practice and/or standards will be addressed gradually through co-operation and collaboration between private entities and even international organizations. Such public-private collaboration further reinforces the trait of flexibility.[152]

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[150] The Chinese government has taken steps implementing the third strategy—encouraging third party participation—through the publication of 'Third-Party Market Cooperation Guidelines and Cases'. '14 countries, China in third-party market cooperation' (*Xinhuanet*, 4 September 2019)

[151] *Supra* note 76, OECD BRI Report, pp18-20

[152] *See also* 刘敬东[Liu Jingdong]: "“一带一路”法制化体系构建研究" ['Research on Construction of the Rule of Law System of "One Belt One Road"'] (2017) 35 政法论坛[Tribune of Political Science and Law] 125 (Liu argued in his paper that with respect to issues relating to labor rights protection, China should respect the

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b) Bilateral-Based and Yet With an Eye towards Multilateralism and Plurilateralism

The second characteristic arising out of this transaction-centered, bottom-up approach is China's ability to leverage experiences gained in the course of BRI in international rule-making processes.[153] Comments from official channels and scholars reaffirm the need to utilize BRI as a platform and test-laboratory to try out international governance rules.[154] Chinese scholars argue that China should take advantage of BRI in forming new international trade rules at the bilateral and regional level when treaty-making at the multilateral level comes to a halt.[155] Ultimately, with experiences amassed, China looks to form a web of preferential trade areas[156] and "integrate international rules and standards with Chinese rules and standards and Chinese practice."[157] Chinese scholars thus see China's ability to join and negotiate multilateral agreements as both a means to protect its core interests and an opportunity to learn from developed economies.[158] On the other hand, there are concerns on China's increasing assertiveness in international treaty-

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development and economy reality of BRI states, refrain from setting overly high standards, and be flexible when dealing with such issue.)

153 "WTO 改革的中国学者方案笔谈" ['Chinese Scholars' Thoughts on WTO Reform: Interview'] (2019) 1 南海法学[Southsea Law] 12, 13

154 国务院关于加快实施自由贸易区战略的若干意见 [Several Opinions of the State Council on Accelerating the Implementation of the Strategies for Free Trade Areas] [State Council, Guofa〔2015〕69 Hao, 06 December 2015] <http://www.gov.cn/zhengce/content/2015-12/17/content_10424.htm> accessed 25 February

155 *See supra* note 121 Liu, *The Substance and Roadmap*.

156 *China to fast-track FTA strategy*, THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, http://english.gov.cn/policies/latest_releases/2015/12/17/content_281475255618346.htm, ("the long-term goal is to forge a global FTA network that further covers countries along the route of the Belt and Road Initiative and other important countries") *See also* 张建平：辐射"一带一路" 中国自贸区网络开始成型 [Zhang Jianping: the "Belt and Road" China Free Trade Zone radiation network began to take shape] (*BeltandRoad*, 17 September 2019) <https://www.yidaiyilu.gov.cn/ghsl/gnzjgd/103566.htm> accessed 25 February 2020

157 Xiao Gang, Conference on Belt and Road Initiative, Washington D.C., 23 January 2019. Xiao is the former Chairman of China Securities Regulatory Commission and a current Member of Chinese People's Political Consultative Conferences.

158 *See supra* note 121.

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making processes, and some worry that such increased participation may lead to practices that may be inconsistent with international norms or standards.[159] It is worth bearing in mind, however, that China's ability to leverage on its experience based on BRI should neither be underestimated nor overestimated as influences can go both ways, as discussed below.

The most readily observable example of the "web of preferential trade agreements" is the negotiation, updating, and conclusion of free trade agreements (FTAs) between China and countries partaking in BRI.[160] Since 2013, China has renegotiated and updated China-New Zealand Free Trade Agreement and China-Singapore Free Trade Agreement, and is updating both the China-Korea Bilateral Free Trade Agreement and the China-Peru Free Trade Agreement.[161] It is negotiating the Japan-China-Korea Trilateral Free Trade Agreement[162] and the European Union-China Bilateral Investment Agreement.[163] China also has concluded a free trade agreement with Mauritius.[164]

Besides bilateral FTAs with neighboring nations and BRI states, China has also increased its participation and voice in mega-regional FTAs negotiations. One example is the ASEAN-led Regional Comprehensive Economic Partnership (RCEP).[165] The RCEP has 15 negotiating

[159] *Supra* note 1, Anthea Roberts et al.
[160] Chinese scholars have advocated for a new wave of FTAs starting from neighboring states and BRI states, to a broader coverage. *See supra* note 121 Liu, *The Substance and Roadmap*.
[161] 'China FTA Network' <http://fta.mofcom.gov.cn/english/fta_tanpan.shtml> accessed 25 February 2020
[162] Ministry of Commerce of the People's Republic of China, 'Di Ershisan Lun Zhongou Touzi Xieding Tanpan Zai Beijing Juxing (The 23rd Round of China-European Union Investment Agreement Negotiation Held in Beijing)' <http://www.mofcom.gov.cn/article/ae/ai/201909/20190902901081.shtml> accessed 25 February 2020
[163] 'Countries and Regions: China' (European Commission)' <https://ec.europa.eu/trade/policy/countries-and-regions/countries/china/> accessed 25 February 2020
[164] Kamlesh Bhuckory, 'Mauritius Agrees to Sign Free Trade Agreement With China' *Bloomberg* (7 September 2019)
[165] 'China: Neither CEPT Nor FTAAP Is Led by China' (*Xinhuanet*, 18 November 2016) <http://www.xinhuanet.com/politics/2016-11/18/c_129369778.htm> accessed 25 February

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countries;[166] seven (almost half) of which are also contracting parties to CPTPP;[167] all but three (Australia, India, and Japan) have signed BRI cooperation documents with China. The negotiation process of RCEP shows the complexity of intra-regional plurilateral rules-making and the restraints of China's influence.

The negotiation of RECP started in November 2012 and has undergone 30 rounds of negotiation (as of May 2020). Until October 2019—less than one month before the scheduled full conclusion following India's withdrawal—only 65% of the RECP texts have been agreed upon.[168] The fact that China has bilateral FTAs with all but two members negotiating RECP[169] and the economic might China is thought to possess do not appear to have turned RCEP negotiations into an easy process. China's power to exert leverage over other RCEP negotiating countries has yet to be realized partly due to the increased multipolarity[170] and the overlap of countries' membership to other FTAs. On the one hand, the more negotiating parties involved, the larger platform China has to integrate international rules and standards with Chinese rules and standards and Chinese practice. On the other hand, more negotiating parties necessitate the complexity of reconciling diversified interests; thus, making it more difficult for China to

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[166] RCEP negotiating countries originally include the 10 ASEAN states, China, Japan, South Korea, India, New Zealand, and Australia, *see* https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership, however, on Nov. 4, 2019, India announced its withdrawal from the negotiation of RCEP due to concerns over Chinese imports, *see* Suttinee Yuvejwattana, Bibhudatta Pradhan, and Santosh Kumar, 'India Exits China-Backed Trade Deal 15 Nations Plan to Sign' *Bloomberg* (4 November 2019)

[167] Effective Dec. 30, 2018. These seven countries are New Zealand, Australia, Japan, Vietnam, Malaysia, Singapore, and Brunei.

[168] 'Thailand to host RCEP ministerial meeting' (*Xinhuanet*, 9 October 2019) <http://www.xinhuanet.com/english/2019-10/09/c_138456682.htm> accessed 25 February 2020

[169] The two members are Japan and India.

[170] Cohen, *supra* note 13, at 54-55 (especially, Cohen points out that "[a]s power is more widely dispersed, negotiating leverage becomes more widely dispersed, increasing the leverage of less powerful states and decreasing that of the more powerful ones").

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enforce its own agenda irrespective of other parties' concerns and interests, as exemplified by the negotiation process of RCEP. The obstacles facing RECP also seem to stem partly from the lack of urgency amongst negotiating parties as almost half of them already enjoy preferential treatment under the CPTPP,[171] and partly from the fear of the potential influx of Chinese imports into negotiating parties' domestic markets.[172] Thus, the prolonged negotiation process appears to counter the concern over China's ability to impose its own interests over others in trade negotiations.

On the multilateral forum, China has been seen as active in joining other Members of the WTO in offering WTO reform proposals[173] and also proposing suggestions of its own[174] on new issues that are yet to be regulated and existing issues that are considered to be inadequately governed by the current WTO framework. Such issues include the regulation on e-commerce, where the current WOT framework is silent, and regulations on SOEs, trade remedies, and national securities, though existing, appear to be unable to accommodate the changing reality.

Take e-commerce as an example of China's approach to addressing new issues at the WTO forum. Negotiations on e-commerce at the WTO forum seemed to come to an impasse largely due to disagreements on the treatment of data—its access, transferability, and location—and its national security implications.[175] Consequently, regional- and mega-FTAs like USMCA

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[171] 'China-led RCEP Negotiation Postpones Conclusion' (*NIKKEI*, 18 November 2015) <https://cn.nikkei.com/politicsaeconomy/economic-policy/17008-20151118.html> accessed 25 February 2020
[172] Kirtika Suneja, 'PM takes stock of RCEP trade pact amid concerns' (*The Economic Times*, 8 October 2019) <https://economictimes.indiatimes.com/news/economy/policy/pm-takes-stock-of-rcep-trade-pact-amid-concerns/articleshow/71485755.cms> accessed 25 February 2020
[173] WT/GC/W/752/Rev.2, WT/GC/W/753/Rev.1.
[174] MOFCOM, 'China's Position Paper on WTO Reform' (20 December 2018) and WT/GC/W/773, 'China's Proposal on WTO Reform' (13 May 2019) (Hereinafter WTO Reform Proposal).
[175] *Id*.

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and CPTPP have become the main fora in promulgating comprehensive e-commerce rules.[176] Both CPTPP and USMCA generally prohibit data localization and ensure data transferability. And USMCA represents even stronger protection for the free flow of data by eliminating the financial sector caveat and public policy objectives exceptions accorded to certain members under CPTPP.[177]

Meanwhile on the WTO forum, China joined Members in issuing a joint-statement on e-commerce[178] and later proposed its own recommendations on e-commerce.[179] In its WTO Reform Proposal, China proposes to "focus on cross-border trade in goods and relevant payment and logistic services,"[180] while leaving digital services and thorny topics like data flow and storage for future discussions.[181] This approach seems to seek to "balance among technological advances, business development and such legitimate public policy objectives as [i]nternet sovereignty, data security and privacy protection."[182]

China's submissions to the WTO on e-commerce follow its practice in FTA and multilateral treaty negotiations by starting with agreements on trade in goods and then gradually expanding to services[183] and is further informed by the experiences it gained through BRI. As of February 2020, China has established e-commerce collaboration framework arrangements with

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[176] *See generally* Chapter 14, CPTPP and Chapter 17, USMCA.
[177] USMCA Article 17.18.
[178] *WTO Joint Statement on Electronic Commerce*, WT/L/1056, Jan. 25, 2019, https://trade.ec.europa.eu/doclib/docs/2019/january/tradoc_157643.pdf.
[179] WTO Communication from China, *Joint Statement on Electronic Commerce*, INF/ECOM/19, Apr. 24, 2019 (E-Commerce Proposal).
[180] *Supra* note 174, WTO Reform Proposal, Art. 2.22; *see also id.* at 2.
[181] *Supra* note 179, E-Commerce Proposal, at 4.
[182] *Supra* note 174, WTO Reform Proposal, Art. 2.22.
[183] *Supra* note 136, Shaffer & Gao, at 12.

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22 countries across five continents.[184] While these bilateral collaborations are in the form of memoranda of understanding between governments and are general in nature, it provides another channel for China and collaborating countries to share their respective experiences on e-commerce governance. In addition to the top-level regulatory framework, China also builds digital trade centers,[185] platforms, and cross-border e-commerce comprehensive pilot areas[186] to facilitate digital trade in BRI. Almost all of those facilitation forms focus on trade in goods and relevant payment and logistic services, again reflecting and reinforcing China's approach in the WTO Reform Proposal. China's practice in multilateral negotiation also seem to reflect the core principles that Chinese scholars articulated: Focusing on development, learning from developed economies, heeding the needs of developing economies, and safeguarding its core interests.[187]

With respect to updating existing rules, proposal on SOEs will likely see stark contrast between the U.S.-led approach (USMCA), the CPTPP approach, and the China approach. USMCA and CPTPP, while sharing a high degree of similarity in aspects like the emphasis on commercial consideration, differ in the applicability and qualification of SOEs. The applicability

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[184] The 22 countries are Columbia, Italy, Panama, Argentina, Iceland, Rwanda, UAE, Kuwait, Russia, Kazakhstan, Argentina, Austria, Hungary, Estonia, Cambodia, Australia, Brazil, Vietnam, Vanuatu, New Zealand, Iceland, and Chile. 'Silk-Road E-commerce — E-commerce international cooperation' (*MOFCOM*) <http://www.mofcom.gov.cn/article/zt_dsgjhz/index.shtml> accessed 25 February 2020. Noticeably missing from the list are countries from the North America Continent, i.e., Canada, the U.S., and Mexico.

[185] As of October 2019, there are four digital trade centers built in Istanbul, Turkey (2017), Madrid, Spain (2017), California, United States (2017), Melbourne, Australia (2017), and Chongqing, China (2016).

[186] Cross-border e-commerce comprehensive pilot areas are similar to special economic zones but with special focus on facilitating digital trade in goods and relevant payments and customs aspects, *see* 'Q&A' (*China (Hangzhou) Cross-Border E-Commerce Comprehensive Pilot Area*) <http://www.china-hzgec.gov.cn//detail/interactive/2019_2/5_29/1559097042892_1.shtml> accessed 25 February 2020. As of May 2019, there are 35 cross-border e-commerce comprehensive pilot areas across China, *see* 'Q&A' (*China (Hangzhou) Cross-Border E-Commerce Comprehensive Pilot Area*) <http://www.china-hzgec.gov.cn//detail/interactive/2019_2/5_29/1559097042812_1.shtml> accessed 25 February 2020

[187] *See supra* note 149.

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of relevant CPTPP provisions depends on the size of SOEs[188] whereas relevant USMCA provisions apply to all SOEs regardless of their size.[189] Chinese SOEs are seen as the bellwether of China's FDI in BRI projects, accounting for approximately 60% of overall foreign investments in countries along BRI routes, and are thought to expand more.[190] Given the continued significance of SOEs to China's economic model and to BRI, it is unlikely for China to cede on SOEs regulations and will instead demand equal treatment for SOEs in countervailing duties and investment review processes.[191]

In addition to the WTO forum, China has also actively sought multilateral approaches to respond to issues it encountered at the bilateral level. For example, in project financing, in response to concerns on the ESSPs, the Chinese government has led the establishment of the International Coalition for Green Development on the Belt and Road to facilitate sustainable development to guide.[192]

c) Dispute Settlement Mechanism Innovation

BRI's emphasis on private law and the transactional approach catalyzes the formation of new legal institutional hubs like the China International Commercial Court (CICC) within the

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[188] Art. 17.1, CPTPP.
[189] Art. 22.1, USMCA.
[190] Deloitte, 'Belt And Road White Paper Issue 1" (28 March 2018) 7 <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/ser-soe-br/deloitte-cn-belt-and-road-white-paper-issue1-zh-180328.pdf> accessed 25 February 2020. As discussed earlier, investments from privately-owned enterprises are on the rise but primarily are made in developed economies, *id.*, at 8.
[191] *supra* note 174, WTO Reform Proposal, Art. 2.37.
[192] 'The Belt and Road Initiative International Green Development Coalition (BRIGC)', (*UN Environment Programme*) <https://www.unenvironment.org/regions/asia-and-pacific/regional-initiatives/belt-and-road-initiative-international-green> accessed 25 February 2020

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People's Supreme Court of China.[193] It also contributes to the opening of China's domestic market for investor-state dispute settlement (ISDS) in adjudicating investor-state disputes.[194] It further shapes China's WTO Reform Proposal on issues relating to the Dispute Settlement Body.

The establishment of CICC is yet another example of China's efforts to adopt the western legal model and to improve upon it through innovative ideas.[195] Before the establishment of CICC, tribunals with similar functions, i.e., legal hubs serving as "one-stop" legal shops for cross-border commercial dispute resolution, already provide legal adjudicatory services in places like Singapore, Dubai, Hong Kong, etc.[196] CICC, with one branch office in Shenzhen and the other in Xi'an, distinguishes itself from other legal hubs by innovatively bringing mediation as an alternative to court-adjudication to its orbit.[197] To establish its legitimacy, in addition to heightening the qualifications of justices serving on the bench,[198] CICC also assembled a list of world renowned experts to serve on its Expert Committee.[199]

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[193] 'Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, Fa Shi [2018] 11' and 'About China International Commercial Court' (*CICC*) <http://cicc.court.gov.cn/html/1/219/193/195/index.html> accessed 25 February 2020

[194] 'Notice by the State Council on the Issuance of the Framework Plan for the New Lingang Area of China (Shanghai) Pilot Free Trade Zone, Guo Fa [2019] 15'

[195] Matthew S. Erie, *The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution*, VIRGINIA JOURNAL OF INTERNATIONAL LAW. 59(3) (Forthcoming). *See also Supra* note 136 Shaffer & Gao, at 8.

[196] Supra note 195, Erie.

[197] *Supra* note 193, Fa Shi [2018] 11, Art. 11

[198] Among the 14 justices sitting at the CICC, 11 have doctorate degrees, and eight have studied abroad in relevant areas. 'Justices Directory' (*CICC*) <http://cicc.court.gov.cn/html/1//218/19/151/index.html> accessed 25 February 2020

[199] 'Expert Directory' (*CICC*) <http://cicc.court.gov.cn/html/1/219/235/237/index.html> accessed 25 February 2020. Experts include Albert Jan van den Berg, former President of International Council for Commercial Arbitration; Gabrielle Kaufmann- Kohler, current President of the International Council of Commercial Arbitration; and Yuejiao Zhang, former Appellate Body judge. *See also supra* note 213 Erie.

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However, due to the jurisdictional limit, CICC can only adjudicate commercial disputes arising out of private transactions that satisfy specific jurisdictional requirements like the amount of compensations sought.[200] Thus, CICC has no jurisdiction over disputes between investor(s) and state(s) (ISDS).[201] The first set of six BRI Guiding Cases published by the People's Supreme Court of China[202] (not adjudicated by CICC) all involve private disputes arising out of or relating to BRI transactions, ranging from sale of goods contract disputes to admiralty law issues to letters of credits.[203] As of 30 December 2019, both branches have heard cases.[204] Specifically, the Shenzhen Branch has rendered judgments on five cases,[205] among which three involved the validity of arbitration agreements, one involved product liability between a Chinese entity and an Italian entity,[206] and the other concerned a contract dispute. Moreover, because CICC is part of the People's Supreme Court of China, its decisions and judgments are "final and binding."[207]

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[200] *Supra* note 193, Fa Shi [2018] 11, Arts. 2 and 3
[201] *Id.*
[202] While China is not a common law country, the guiding cases published by the SPC are regarded as highly persuasive.
[203] 'The 21th Supreme People's Court Guiding Cases, Fa [2019] 3' (*CICC*) <http://cicc.court.gov.cn/html/1/218/62/163/1192.html> accessed 25 February 2020
[204] As of 27 December 2019, 13 cases have been registered with CICC, involving parties from Japan, Italy, Thailand, and BVI, etc., according to one Supreme People's Court justice. <http://www.court.gov.cn/zixun-zhuanti-aHR0cHM6Ly93d3cuY2hpbmFjb3VydC5vcmcvYXJ0aWNsZS9zdWJqZWN0ZGV0YWlsL2lkL016QXdOTWl4TklBQkFBPT0uc2h0bWw.html> accessed 25 February 2020
[205] 'The First International Commercial Court of the Supreme People's Court effectively concluded the first five cases' (*China International Commercial Court*, 30 December 2019) <http://cicc.court.gov.cn/html/1/219/208/209/1547.html> accessed 25 February 2020
[206] 'The First International Commercial Court of the Supreme People's Court Holds its First Public Hearing' (*CICC*, 31 May 2019) <http://cicc.court.gov.cn/html/1/219/208/210/1251.html> accessed 25 February 2020
[207] 'About China International Commercial Court' (*CICC*) <http://cicc.court.gov.cn/html/1/219/193/195/index.html> accessed 25 February 2020. ("The CICC practices the 'First Instance being Final'."). This is different from the European proposed multilateral investment court system, which allows appellate proceedings. *See* Sergio Puig & Gregory C. Shaffer, *Imperfect Alternatives: Institutional Choice and the Reform of Investment Law*, 112 AM. J. INT'L L. 361, 367 (2018).

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With respect to ISDS, China recently opened its domestic market to international ISDS tribunals and allowed them to establish branch offices in Shanghai to adjudicate investor-state disputes.[208] While the provision of market access is laudable, the coverage of disputes may nevertheless be limited if the subject matter adjudicability provided in China's exiting bilateral investment treaties (BITs) is not broadened. In most existing BITs or FTAs with investment chapter signed by China, China only allows ISDS related to the amount of compensation for expropriation and nationalization to be submitted to the jurisdiction under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).[209] Therefore, existing BITs and FTAs with investment chapter seem to be insufficient to address potential disputes arising out of or relating to BRI transactions, and therefore an overhaul to broaden the scope is needed. Some scholars advocate for an expansion of adjudicability or broadening the definition of investment in future BITs and investment chapters of FTAs.[210] But the danger of incorporating domestic private law into international rules should not be neglected,[211] as the first stage of BRI is transaction-centered. On the other hand, some Chinese scholars have advocated for a restricted jurisdiction over investor-state disputes, excluding issues that are politically sensitive, such as disputes "involving essential security and national emergency rules" or "involving individual taxation measures or prudential

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[208] 'Notice by the State Council on the Issuance of the Framework Plan for the New Lingang Area of China (Shanghai) Pilot Free Trade Zone Guo Fa [2019] 15'

[209] Contracting States and Measures Taken by Them for the Purpose of the Convention, ICSID/8-d (2008).

[210] Jie (Jeanne) Huang, 'Silk Road Economic Belt: Can Old BITs Fulfil China's New Initiative?' (2016) (JOURNAL OF WORLD TRADE 50 no. 4) 733–754.

[211] Julian Arato, 'The Private Law Critique of International Investment Law' (2019) 113 AMERICAN JOURNAL OF INTERNATIONAL LAW 1

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measures of financial regulation."[212] Notwithstanding the limited jurisdiction granted to ISDS, on the multilateral forum, China calls for multilateral review over the invocation of the national security exception under GATT Art. XXI in the WTO Reform Proposal.[213]

Besides the traditional dispute settlement mechanisms like the judicial system and arbitration, China also actively promotes mediation as an alternative, reflecting its long history of using mediation in dispute settlements. The efforts can be seen from the multilateral platform: In its official submission to United Nations Commission on International Trade Law dated on July 19, 2019, China advocated for the official adoption of mediation as alternative to ISDS.[214] Shortly after, China signed the United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention on Mediation")[215] in 2019. Domestically, as discussed earlier, the CICC's "one-stop" shop platform offers institutional support to parties willing to mediate even when the case is pending before a panel of justices in the Supreme Court. As of the end of February 2020, there appears to be no publicly reported mediation cases conducted under the "one-stop" shop mechanism, however. Surprisingly, despite advocating for the adoption of mediation in international dispute settlements, China has yet to promulgate specific domestic laws governing domestic commercial mediation.[216] China is, therefore, likely to rely on experiences it will gain from CICC and learn from other

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[212] Shan Wenhua & Feng Yunya, 'A Trinity Analytical Framework for ISDS Reform' (2018) 112 AJIL UNBOUND 244, 246

[213] *Supra* note 174, WTO Reform Proposal, Art. 2.7.

[214] A/CN.9/WG.III/WP.177, at 4 (original in Chinese), https://uncitral.un.org/sites/uncitral.un.org/files/wp117c.pdf.

[215] United Nations Commission on International Trade Law, 'United Nations Convention on International Settlement Agreements Resulting from Mediation'

[216] The People's Mediation Law of the People's Republic of China (2010) ("2010 Mediation Law") was signed into law in 2010 and became effective on 1 January 2011. However, the 2010 Mediation Law appears to gear toward resolving civil disputes (not commercial in nature) between private parties.

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international dispute settlement bodies to fill the legislative gap. Thus, innovation will facilitate the reform of the domestic system.

IV. Conclusion

BRI, from Chinese scholars' view, is a public good that serves as an open and value-free platform for infrastructure construction and rule-building.[217] The past six years have seen the springing of SEZs and infrastructure project. They also saw the relatively high volume of investments from Chinese domestic banks to LDCs, transition economies, and EMs, which dwarfed that of MDBs. The past six years further witnessed the gradual development and adoption of green and sustainable principles after severe pushbacks and concerns.

Though very few of those practices are new, the magnitude is. So are the challenges in formulating new international rules when the rapid advancement of technology exacerbates the complexities. It is worth noting that to those issues may not particularly belong to China alone, but also may be shared by other economies.

The emphasis on projects-led developments have brought flexibility to both China and hosting countries. This transaction-centered practice will likely be succeeded by the integration of practices and standards into bilateral, plurilateral, and multilateral rules in the second stage of BRI. China's ability to impose its practices and rules on other countries on a large scale should not be overestimated, especially in light of the complex web of FTAs.

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[217] Chi He, 'The Belt and Road Initiative as Global Public Good: Implications for International Law' in Wenhua Shan et al. (eds), *Normative Readings of the Belt and Road Initiative – Road to New Paradigms*

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But BRI is more than just a one-way road. China will also be exposed to best practices, international standards, and governance rules when cooperating with other countries and will learn from them (ideally). China has been seen as adaptive when responding to pushback by adjusting its rules and practices to internationally accepted rules and practices. Furthermore, as noted earlier, BRI brings exogenous impetus necessary for domestic reform when the current reform is slower than expected.

BRI reflects the "China Dream" of rejuvenation. This Chinese trade law practice adds new dynamics to the current fragile legal order and international governance. Even small changes and challenges to the current trade and investment system will be significantly magnified given the sheer size of BRI, thus deserve a cautious approach and examination. But more imminently needed is the restoration of mutual understanding between great powers. Without such mutual understanding, the world risks of slipping into "spheres of influences"[218] and competing trade blocs.[219] And the ultimate loser will be the international rule of law.[220] This paper thus purports to provide a description of BRI and a normative analysis of areas where China has and will use BRI to promote its trade law model, thus to bridge academic discourse on both sides.

[218] *Supra* note 1, Anthea Roberts et al.
[219] *Supra* note 136, Shaffer & Gao, at 35.
[220] *Supra* note 1, Sergio Puig.

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