

China's Legal Cultural Relationship to International Economic Law: Multiple and Conflicting Paradigms

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ABSTRACT

China is a significant participant in the international economic legal order (the “IELO”). It is both a significant “importer” of international economic law (“IEL”) and it is rapidly becoming a major influence on the development of the IELO. As a distinctive participant, it is critical to try to understand the legal forces within China that contribute to how it handles its relationships with the IELO. These forces shape not only the implementation of IEL within China, but also the ways in which it interacts with other participants within the IELO.

Of course, there are many different forces that play a role in shaping China’s interaction with the IELO, including those that are political (both national and local), economic, historical, legal structural, geographic, demographic, sociological, philosophical, and so on. Thus, an understanding of the historic force of the nineteenth century involuntary opening of China to Western powers helps us to understand if there is some innate Chinese suspicion of the West with respect to trade liberalization. Similarly, understanding how the importation of a Soviet socialist approach resulted in the centralization of all economic decisions will provide greater understanding of China’s current situation with respect to State Run Organizations (“SROs”). But one important and often overlooked influence on China’s interaction with the IELO is the role of China’s legal culture, or more accurately its many different and often conflicting legal cultural characteristics. Legal culture, defined in detail below, can be at its most basic level be understood to be the approaches and responses of legal participants to legal activities and scenarios. This chapter considers, through a comparative legal cultural analysis, China’s legal cultural environment and the impact of China’s legal cultures on China’s relationship with the IELO. The chapter uses international trade for most of its examples though the methodology is as applicable to the other fields within the IELO.

The legal cultural analysis in the chapter shows that the specific development, mix and interaction of those legal cultural influences is of significant importance in understanding China’s relationships with the IELO. More specifically, this chapter concludes that because Chinese legal culture has gone through such rapid change in the last 100 years, almost unmatched by another other major economic power in the IELO, the result has been that ancient traditions today sit alongside more modern tradition, but that those modern traditions are less ingrained, resulting in the fact that the ancient traditions may probably be the more reliable guide to China’s legal cultural relationship to the IELO. Furthermore, those ancient traditions may not fit well with the IELO. If those conclusions were to be taken into account by policy members, it is likely that some of the legal cultural disconnects that exist between the IELO and China could be moderated, mitigated or eliminated – to the benefit of both the IELO and China.