The Compromised "Rule of Law by Internationalisation"

LEÏLA CHOUKROUNE*

ABSTRACT: Upon accession to the WTO, China committed to a series of specific obligations often referred to as "WTO+," aimed at the progressive transformation of the Chinese legal landscape. While one cannot ignore a number of very significant achievements as well as a true political responsiveness to other WTO members' concerns, China has not been willing to grasp the WTO opportunity for domestic legal reforms as much as observers, and some Chinese leaders, had hoped for. This incomplete normative revolution now creates tensions between WTO members, as evidenced by an increasing number of disputes shedding a direct light on the lack of transparency in the Chinese legal system. Ten years later, this piece reflects upon predictions about Chinese "rule of law by internationalisation," while putting China's legal reform into a broader political perspective.

KEYWORDS: China, WTO, legal reform, rule of law, internationalisation.

"The participation of China in the WTO would not only have economic and political benefits, but would also serve to bolster those in China who understand that the country must embrace the rule of law."

Martin Lee, leader of the Democratic Party of Hong Kong. (1)

Ten years ago, upon accession to the WTO, China committed to a series of specific obligations often referred to as "WTO+," aimed at the progressive transformation of the Chinese legal landscape towards (2) if not a genuine rule of law in the democratic sense of the concept, at least a *sui generis* model that could result from a greater porosity between the legal order and practices. In the *China Perspectives* special issue published at that time, I questioned what I had identified as a possible "rule of law by internationalisation" – that is, China's greater attention to of international rules and the positive impact this new familiarity might have on internal reform. From legal drafting to legal implementation and the role of the judiciary in adjudicating disputes, Chinese law, while rapidly reforming, was already confronted with a series of essential limitations. The unique and rigorous character of the Chinese Protocol of accession to the WTO as well as the planned far-reaching legal reforms were nevertheless raised hopes for change, as if this receptivity of the national legal order to international law was giving a helping hand to the Chinese transformation into a rule-led and rule-abiding regime. (3) While one cannot ignore a number of very significant achievements as well as a true political responsiveness to other WTO Members' concerns, (4) China has not been willing to grasp the WTO opportunity for domestic legal reforms as much as some observers, and also some Chinese leaders, had hoped for. This incomplete transformation does not only create tensions between WTO Members, as evidenced by an increasing number of disputes shedding a direct light on the lack of transparency in the Chinese legal regime, but could also impede fundamental socio-economic evolutions.

After a decade of China's participation in the WTO, this piece reflects upon my own initial findings and predictions, while putting Chinese legal reform into a broader political perspective.

Incomplete transformation

China's initial commitments

From July 1986 to November 2001, China traversed a 15-year diplomatic marathon that ended, at the WTO Ministerial Conference of Doha, with the

* Leïla Choukroune (Doctorate in International Law from Paris Sorbonne Law School, Lawyer Paris Bar) teaches international economic law at Maastricht University. She is Deputy Director of the Institute for Globalization and Economic Regulation (IGIR). Her research deals with the interactions between trade, investment and human rights with a special interest for the emerging world and Asia, China and India in particular, where she has lived and visits very frequently.

1. Extract from a letter to President Clinton on 14 November 1999, right after the US-China bilateral Agreement on WTO accession was signed. Available on the web site of the US-China Business Council at www.uschina.org/public/wto (consulted on 25 February 2012).
2. See generally *Protocol of Accession of the Republic of China to the WTO* (WT/L/432), 10 November 2001, and the incorporated paragraphs of its *Working Party Report* (WT/ACC/CHN/49).
3. For a more detailed account, see Leïla Choukroune, "China's Accession to the WTO and Legal Reform: Towards the Rule of Law via Internationalization without Democracy," in Pierre-Etienne Will and Mireille Delmas-Marty (eds.), *China, Democracy and Law*, Leiden, Brill, 2012; as well as Leïla Choukroune, "China's accession to the WTO: A Turning Point," and, "A Rule of Law through Internationalization, the Objective of the Reforms," *China Perspectives*, no. 40, March-April 2002.
4. As shown by the bilateral trade dialogues between China and its main trading partners and as reflected in the Transitional Review Mechanism's Reports, as well as in the China Trade Policy Review: USTR, *2011 Report to Congress on China's WTO Compliance*, Trade Policy Review: Report by the Secretariat – China (Revision), WT/TPR/S/230/Rev. 1, 5 July 2010, and China's Transitional Review Mechanism; Communication from the European Communities, G/MA/W/97, 22 September 2009.

signing of a Protocol of Accession more than 900 pages long. The American and European insistence on integrating "rule of law"-related requirements in the Chinese Protocol should be put into a historical perspective. While the first phase of negotiations commenced in early 1987, it was abruptly terminated in the immediate aftermath of "Beijing Spring" and the bloody political repression that followed. Reversing into a protectionist strategy, China restored a series of administrative measures to control its foreign trade. By 1992 and the adoption of the "socialist market economy" doctrine at the 14th Congress of the Chinese Communist Party, Beijing found a way to reconcile political and economic objectives and embrace a new period of powerful growth able to restore its international credibility. Hoping to join the WTO before the Uruguay Round negotiations were brought to a close, China was determined to reform and accept its trading partners' requirements. A draft Protocol of Accession had been prepared and presented by the European Commissioner, Sir Leon Brittan, to Wu Yi, China's then Minister of Foreign Trade, during a visit to Beijing on 28 February 1994. But from May 1994, the negotiations stumbled over the question of intellectual property and the serious doubt raised by the US over China's ability to implement its commitments in the context of what remained an immature legal system. The issue of a state governed by law, not to say the rule of law, was touched upon directly by the ambitious draft Protocol for the "reintegration" of China into the GATT, as it already formulated for a whole series of provisions addressing the questions of transparency and judicial review of administrative acts relating to international trade. China was not ready, and revised its strategy to adopt a gradual approach: from March 1996, when China's Vice-Minister of Foreign Trade and chief negotiator, Long Yongtu, took part in the first session of the Working Party on the Accession of China to the WTO, a diplomatic ballet began between Beijing and Washington, and between Beijing and Brussels. China and the US reached a crucial compromise in November 1999, while China and the EU concluded their negotiations positively a few months later in May 2000. Interestingly, the issue of administration of the trade regime in a uniform and transparent manner, as well as possible judicial review of the related administrative measures – and so a certain rule of law – had always been at the centre of the discussions.

Catch-all and flexible concepts, the principles of uniform application and transparency in international and/or national law build upon the ideas of openness and predictability to generate legal certainty for all, and businesses in particular. In a WTO context, uniform application and transparency are applied to all agreements and cover a large number of trade aspects, from technical barriers to trade to sanitary and phytosanitary measures or subsidies. [5] They guarantee the effectiveness of a reciprocal system relying on the principle of non-discrimination embodied in the concepts of Most Favored Nation (MFN) and National Treatment (NT). Informing other WTO Members of one's legal provisions and practices and having these norms reviewed by an independent judicial system is proof of genuine adherence to the rules and effective participation in the liberalisation of international trade.

In a Chinese context, these apparently inoffensive requirements echo with a rather peculiar sound. Closed to the world for decades, the Chinese political-legal system was generally not keen to embrace the concepts of transparency or independent judicial review of administrative acts, [6] as they were likely to challenge its functioning at the national and local levels. On the other hand, some Chinese reformers, starting with Zhu Rongji, were happy to consider China's increased international assertiveness as a tool to speed up complicated internal reforms. The results of these tensions and negotiations can be found in Part I, Section II, paragraphs A, B, C, and D of the Chinese Protocol of Accession to the WTO that deals with the administration of the trade regime and should to be read in conjunction with Article X (Publication and Administration of trade Regulations) of GATT 1994 (see Document 1).

For China, which had no Official Journal upon accession to the WTO, a fragmented legal regime, and a judicial system that was not exactly known for its impartiality and independence, this particular aspect of the WTO Protocol of Accession soon appeared as a considerable challenge.

Achievements

Ten years after the adoption of these provisions, one cannot ignore the progress made towards the realisation of a more transparent and uniform trade regime.

According to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC – now MOFCOM), more than 2,500 commercial laws and regulations were assessed in May 2002, 830 of which were abrogated and 325 amended, while the National People's Congress undertook to draft 118 new laws and regulations. [8] The reform process continued at the central and local levels. Hundreds of trade-related laws and regulations were modified or abrogated to meet the new WTO commitments. In doing so, the Chinese government also worked on implementation of the "rule of law" requirements encompassed in its Protocol of Accession.

On the transparency front to start with, progress has been slow, but some objectives have been reached. Following its accession to the WTO, China did not establish or designate an Official Journal as required by its Protocol of Accession. It relied on a variety of channels, from websites to journals and news reports, to inform its trading partners of the trade-related measures adopted at the central or local levels. One had to wait until 2006 to see the State Council issue a notice to all government entities and requiring the competent authorities to send a copy of the trade-related measures they adopted to the MOFCOM for publication in the *MOFCOM Gazette*. As one might expect, adherence to this publication rule is far from complete and constitutes one of the main criticisms regularly formulated by foreign businesses operating in China. [9] Another source of frustration relates to the Chinese failure to make available the mandatory translations into one or more of the WTO official languages (English, French, and Spanish) of its trade-related laws and regulations before enforcement of these rules and in any case no later than 90 days afterwards. Ten years after China's accession to the WTO, businesses and trade lawyers continue to produce their

5. See for example GATT 1994 Article X, the Technical Barriers to Trade (TBT) Agreement Articles 2, 3, 5, 7, 8, and 9, Part VII of the Subsidies and Countervailing Measures (SCM) Agreement, GATS Article III, TRIPs Article 63, Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) Agreement Article 7 and Annex B, Agreement on Safeguards, Article 12 and Agreement on Trade-Related Investment Measures (TRIMs) Article 6.
6. Made possible with the adoption of the *Administrative Litigation Law of the People's Republic of China* – also known as the *Administrative Procedure Law* – in 1989. See www.china.org.cn/english/government/207335.htm (consulted on 15 March 2012).
7. Highlighted in bold by the author.
8. See MOFTEC and United States Trade Representative, 2002 Report to Congress on China's WTO Compliance, 11 December 2002.
9. See, for instance, the excellent informative survey by the European Chamber of Commerce in China, Europe Business in China, Business Confidence Survey 2011, available at: www.europeanchamber.com.cn/view/media/publications (consulted on 25 February 2012). This study is based on a panel of EU representative companies surveyed in 2011. See also the USTR report and the WTO reports published for China's trade policy review and transitional review mechanism, supra footnote 4.

Document 1 – China Protocol of Accession to the WTO, Part I, Section 2

Administration of the Trade Regime

(A) Uniform Administration

1. The **provisions of the WTO Agreement and this Protocol shall apply to the entire customs territory of China,**[7] including border trade regions and minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations are established (collectively referred to as "special economic areas").
2. **China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level** (collectively referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange.
3. **China's local regulations, rules and other measures of local governments** at the sub-national level **shall conform to the obligations undertaken in the WTO Agreement and this Protocol.**
4. China **shall establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime**.

(B) Special Economic Areas

1. China shall **notify to the WTO all the relevant laws, regulations and other measures relating to its special economic areas,** listing these areas by name and indicating the geographic boundaries that define them. China shall notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.
2. China shall apply to imported products, including physically incorporated components, introduced into the other parts of China's customs territory from the special economic areas, all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that are normally applied to imports into the other parts of China's customs territory.
3. Except as otherwise provided for in this Protocol, in providing preferential arrangements for enterprises within such special economic areas, WTO provisions on non-discrimination and national treatment shall be fully observed.

(C) Transparency

1. China undertakes that **only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are published and readily available to other WTO Members, individuals and enterprises, shall be enforced**. In addition, China shall make available to WTO Members, upon request, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange before such measures are implemented or enforced. In emergency situations, laws, regulations and other measures shall be made available at the latest when they are implemented or enforced.
2. China **shall establish or designate an official journal** dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange and, after publication of its laws, regulations or other measures in such journal, shall provide a reasonable period for comment to the appropriate authorities before such measures are implemented, except for those laws, regulations and other measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement. China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.
3. China **shall establish or designate an enquiry point** where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published under paragraph 2(C)1 of this Protocol may be obtained. Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request. Notice of the delay and the reasons therefor shall be provided in writing to the interested party. Replies to WTO Members shall be complete and shall represent the authoritative view of the Chinese government. Accurate and reliable information shall be provided to individuals and enterprises.

(D) Judicial Review

1. China **shall establish, or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement.** Such **tribunals shall be impartial and independent** of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Review procedures shall include the **opportunity for appeal**, without penalty, by individuals or enterprises affected by any administrative action subject to review. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any right to further appeal.

Focus: Aid for Trade

According to the Chinese Ministry of Commerce (MOFCOM), China received USD 6.7 billion in bilateral and multilateral development assistance between January 1979 and May 2009. This assistance has clearly been beneficial to Chinese growth. As far as trade is concerned, the OECD estimates that commitments made by developed nations for development assistance to China amounted to USD 1.4 billion in 2007. This included USD 335 million in aid for trade and assisting China in implementing its WTO commitments.*

The EU has committed to very large, long-term programmes of trade assistance for China. The most important was the Euro 20.6 million jointly-funded EU China Trade Project that ended in December 2009 and consisted of more than 300 technical assistance and training activities designed primarily to support China's application of its WTO commitments. This supported regulatory and legislative efforts and specifically targeted: the customs and import/export regulatory system, agriculture and agro-food, technical barriers to trade and sanitary and phytosanitary measures, trade in services, legislative and legal aspects of domestic implementation, and transparency, co-operation, and policy development.

Over the course of the Project, 50 Chinese government officials from both the central and provincial levels attended training courses in European Institutions, and 250 Chinese officials participated in study visits to Europe, while EU counterparts visited China. More than 1,000 officials were trained either in Europe or internationally.** The main achievement of this programme was certainly the adoption of the long-awaited China antimonopoly law, which is largely inspired by European norms and practices. The impact on transparency and rule of law is more doubtful.

In terms of further cooperation, the EU China Country Strategy Paper (2007-2013) sets out three main areas:

1. Bilateral trade, business, socio-economic development, support for the internal reform process;
2. Climate change, the environment and energy;
3. Human resources development.

Euro 128 million have been allocated for the first four years (2007-2010).***
This, of course, is not to mention many other smaller EU projects, as well as specific activities by EU member countries or EU regions. France, for instance, has developed a quite comprehensive programme of legal and judicial training.****

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* These figures are reported in the *China 2010 WTO Trade Policy Review* (WT/TRR/S/230/Rev.1), 5 July 2010, p. 22.
** See http://www.euchinawto.org.
*** See www.eeas.europa.eu/china/csp/07_13_en.pdf.
**** See www.ambafrancecn.org/imprimer.html?id_article=388&lang=fr&cs=print.

own translations of available rules.[10] As we will see below, this is not a trivial detail, as the US recently claimed in the *China — Measures concerning wind power equipment* (DS 419)[11] case that this failure to translate relevant trade measures constituted a clear violation of the Chinese Accession Protocol. However, a more satisfactory evolution has taken place in relation to the ability to publicly comment on trade-related laws and regulations. From late 2003 and the adoption by MOFCOM of its *Provisional Regulations on Administrative Transparency*, the Trade Ministry started to accept more comments and reactions to the rules it was adopting. The application of these Regulations has nevertheless been very uneven, and Chinese trading partners have kept pushing for more transparency in providing, for instance, myriad technical assistance programmes for Chinese officials (see document 2). In 2010, the State Council's Opinions on the *Strengthening of the building of a government ruled by law* aimed at reinforcing the public comment system at all levels of government, but again, implementation of this measure seems rather limited. On a more positive note, China's trading partners generally agree on the progresses made in terms of the professionalism and responsiveness of the Chinese administration.[12] The MOFCOM Enquiry and Notification Centre seems to be functionning well, along with other designated enquiry points. China has also benefited from a wide range of international programmes designed to help it fulfil its commitments under the WTO Agreement (see Focus: Aid for Trade).

A more complicated situation is found when assessing the uniform application of China's trade-related laws and regulations. Despite MOFCOM commitments, many problems persist in the areas of investment, intellectual property, customs, and taxation and constitute *de facto* barriers to trade.[13]

An equally complex and unsatisfactory observation can be made in relation to the absence of a judicial review system of administrative acts related to trade issues. Although some progress has been made in the reform of administrative law, Chinese courts still suffer from a lack of professionalism and independence originating in the historical and recent limitations the Chinese government has put on the legal reform. Introduced into the law school curriculum in 1981 but made mandatory only in 1986, Chinese administrative law is recent and in constant evolution. The principal piece of legislation governing the possible judicial review of administrative acts is the *Administrative Litigation Law of the People's Republic of China* ("ALL"). The ALL stipulates that citizens or other legal persons (in this case, companies) whose rights have been infringed upon by certain types of administrative acts are able to seek remedies in bringing the case to Chinese courts. Citizens' ability to resort to this type of justice should not be exaggerated, as only 2 percent of the six million cases heard by Chinese courts in 2003 concerned a dispute between a citizen and an administration. While the very large majority of Chinese laws could fall under the category of administrative law, this could, at first sight, seem very surprising. A simple explanation can however rapidly be found, that of the quasi-systematic interference of administrative agencies or the Chinese Communist Party it-

10. *Ibid.*
11. See www.wto.org/english/tratop_e/dispu_e/cases_e/ds419_e.htm (consulted on 25 February 2012).
12. See the article of Hubert Bazin in this special issue.
13. For a detailed overview of these trade barriers, see *EU-China Trade Relations*, a study coordinated by Leïla Choukroune and authored by Denise Prevost, Jean-François Huchet, Rogier Creemers, and Leila Choukroune for the European Parliament Directorate General for External Policies, Policy Department, presented at the EU Parliament on 11 October 2011: www.maastrichtuniversity.nl/web/Main/Sitewide/Content/IGIRFellowLeilaChoukrounePresentsStudyOnEUChinaTradeRelationsToEuropeanParliament.htm (consulted on 15 March 2012).

self to discourage Chinese citizens from resorting to the courts, and if they do, to make sure that the judge will not accept the case or will abandon the procedure at a later stage.[14] To encourage a genuine application of the Chinese Protocol of Accession, the Supreme People's Court (SPC) promulgated in August 2002 a judicial interpretation requiring judicial review of WTO-related administrative acts to be based on the ALL and to be adjudicated at least by the administrative division of the intermediate courts if not a higher court. In November of the same year, the SPC promulgated two other judicial interpretations prescribing that antidumping and countervailing related cases should be heard at the (provincial) High People's Court level. Despite these promising first steps, little data seems available from businesses so far regarding the effective functioning of these WTO-related courts, and it remains to be seen whether China is willing to implement this particular aspect of its Protocol of Accession.

From a distance, everything appears *as if* China were abiding by the rules and progressively moving towards a rule-led type of government while benefiting from a greater familiarity with international norms. However, a closer look at the Chinese legal landscape helps us rapidly identify many limitations and their causes.

The compromised "rule of law by internationalisation"

As illustrated by the above discussion, it seems one may have to wait even longer to make the Chinese "administration accountable to the people" (*min gao guan* 民告官).[15] While China's accession to the WTO has gone beyond simple harmonisation and has contributed to a more ambitious legal reform, hence bringing a new legal framework via internationalisation, this porosity of legal orders and the greater reception of rules that followed has not yet brought anything close to the rule of law. The structural and political reasons explaining this unachieved transformation would require a much more detailed explanation than the scope of this piece allows, but we can nevertheless provide a few key elements relating to the legal profession and pointing out the many legal deadlocks in which Chinese legal reform has gotten stuck during the past few years.

Legal impasses

One key element of this inherent limitation and the inability of China to truly adhere to its "rule of law"-related commitments lies in the lack of a professional and independent judiciary. During the first legal reform phase, the courts were reorganised according to a four-tier hierarchy, with the Supreme People's Court (*Zuigao renmin fayuan* 最高人民法院) at the top.[16] There are 3,000 Basic People's Courts with approximately 200,000 judges. Their level of professionalism was enhanced considerably in 2002 with the establishment of the standard national examination, which has a success rate of around 10 percent. The vast majority of practising judges nevertheless had no real legal training. There is obviously a huge difference between a judge in the Supreme People's Court who is well aware of international realities and of belonging to a legal community able to interpret the law, and a judge drawn from the ranks of the army or the police, appointed by a local People's congress, and continually confronting problems of legitimacy *vis-a-vis* Party officials, as well as lacking resources and tempted by corruption.[17]

In 1999, the Supreme People's Court adopted a first five-year reform plan aimed at enhancing the professionalism and independence of judges.[18] On 18 October 2001, the Court published a code of ethics, targeting in particular judicial corruption.[19] Finally, in October 2005, the Court unveiled its second five-year plan (2006-2010), one highlight of which was to implement a process of centralised national review of capital punishment sentences.[20] Despite the commendable efforts of a Supreme Court made more dynamic through the profile of Xiao Yang as its President, the Party's interference remains too strong for the acclaimed modernisation to have real effect.[21] This was cynically confirmed with the election, on 16 March 2008, of Wang Shengjun as the New President of the Supreme Court.[22] Upon this change of leadership, the Supreme Court has modified its discourse to the great confusion and dissatisfaction of the many "modern" judges who were looking forward to the professionalisation of the judiciary and eventual independence from the Party-state.

This return to the past has brought not only disappointment amongst the legal profession, but also real worries as to the future of an already quite uncertain judicial reform. Clearly all this is a question of judicial independence. But how is this independence to be assessed, and what type of progress can be made in terms of fairness while there is no institution equivalent to a "high council for the judiciary," for example, and no guarantee of the independence or impartiality of the judiciary under any statute? More specifically, the Standing Committee of the CCP Politburo seems to be THE body in charge of justice, through the establishment of a leading small group on judicial reform (*sifa tizhi jizhi gaige lingdao xiaozu* 司法體制機 制改革領導小組). Through this group and the Party's Political and Legal Committees and its Central Commission for Discipline Inspection, the entire judicial apparatus (prosecution, judges, ministry, and even the police) is subject to the Party, which of course cannot be legally challenged.

14. See Kevin O'Brien and Lianjiang Li, "Suing the Local State: Administrative Litigation in Rural China," *The China Journal*, no. 51, 2004, pp. 75-96; and for a more detailed account of the administrative reform, Leïla Choukroune, "China's Accession to the WTO and Legal Reform: Towards the Rule of Law via Internationalization without Democracy," *art. cit.*
15. For a fascinating discussion of the administrative reforms taken upon accession to the WTO and that could have led to an effective judicial review of trade-related administrative acts, see Veron Mei-Ying Hung, "China's Commitment on Independent Judicial Review: Impact on Legal and Political Reform," *The American Journal of Comparative Law*, vol. 52, 2004, pp. 77-132.
16. There are three other levels: 30 High People's Courts (*Gaoji renmin fayuan* 高級人民法院), which have authority in provinces, autonomous regions, and municipalities directly under the central government; 389 Intermediate People's Courts (*Zhongji renmin fayuan* 中級人民法院), which function at the prefecture level, with municipalities served by courts at the level of provinces and autonomous regions; and, finally, more than 3,000 Basic People's Courts (*Jiceng renmin fayuan* 基層人民法院), which have authority at the district and county level, and that are sometimes complemented by other People's Tribunals (*Renmin fating* 人民法庭) in the instance of those counties that are geographically dispersed. Furthermore, there are more than 100 specific tribunals with authority in matters of fishing, maritime affairs, forestry, railways, etc.
17. For a precise and rigorous history of the last 30 years of judicial reform, see Stanley Lubman, *Bird in a Cage: Legal Reform in China after Mao*, Stanford, Stanford University Press, 1999. Although more than ten years old now, this book remains a classic, as not much has changed in a positive way as far as the judiciary is concerned.
18. Cf. *Renmin Fayuan wunian gaige gangyao* (Five-Year Program of Reform), www.dffy.com/faguixiazai/xf/200511/20051128111114.htm (consulted on 15 March 2012).
19. See Li Yuwen, "Professional Ethics of Chinese Judges, A Rising Issue in the Landscape of Judicial Practice," *China Perspectives*, no. 47, May-June 2003, http://chinaperspectives.revues.org/document274.html (consulted on 15 March 2012).
20. See *Renmin Fayuan dierge wunian gaige gangyao* (Second Five-Year Program of Reform), www.dffy.com/faguixiazai/xf/200512/20051214221735.htm (consulted on 15 March 2012).
21. See Benjamin Liebman, "China's Courts: Restricted Reform," *Columbia Journal of Asian Law*, Fall 2007, and by the same author, "A Populist Threat to China's Courts," in Mary Gallagher & Margaret Woo (eds.), *Chinese Justice: Civil dispute resolution in post-reform China*, Cambridge, Cambridge University Press, 2009.
22. With no formal legal education, this native of Suzhou joined the Chinese Communist Party in 1972 and occupied various prestigious positions in the local communist apparatus until he became, in 1993, deputy secretary general of the Party Central Politics and Law Committee. Wang Shengjun was also deputy director of the Central Committee for Comprehensive Management of Public Security from 2005 to 2008 and a member of 15th Party Central Commission for Discipline Inspection.

Another severe limitation to WTO-related "rule of law" ambitions lies in the frequent and arbitrary repression of rights defenders and the systematic promotion of mediation as the best alternative to judicial settlement. As too often demonstrated in the recent news, the professional work of lawyers receives insufficient protection. The very recent amendments to the Chinese Criminal Procedure Law will not bring more certainty in this regard, but rather put lawyers at risk if they are too independent and critical of the government.

These developments go against commendable efforts to modernise and promote a Chinese legal system that was opening up increasingly to external influences. The restoration of norms, which is occurring through legislative and procedural make-believe, hides an ambiguous attitude towards the law and only brings about an illusion of justice based on the fiction of harmony and the need to discipline a society to better ensure its stability.

Coming battles

These limitations empasses will not be without effect at the WTO level, as we now see an increasing number of disputes dealing with the issue of transparency, or more precisely the lack of transparency and accountability of the Chinese legal system. Three of the 23 disputes brought against China deserve particular attention: *China — Measures Related to the Exportation of Various Raw Materials* (US, EU, and Mexico as complainants),[23] *China — Measures Concerning Wind Power Equipment* (US as complainant),[24] *China — Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union* (EU as complainant).[25] With very little in common from a substantive point of view, these disputes nevertheless share a common approach in the sense that the opacity of the Chinese regulatory landscape appears as a *de facto* barrier to trade and a clear violation of the Chinese Protocol of Accession. China's reluctance to publish its laws and regulations and notify the WTO of the latest transformation of its trade regime will soon become a major issue, as evidenced by a growing number of cases addressing this problem.

Conclusion

The syncretic nature of China's legal system no longer evokes surprise. Although drawn from foreign rules and practices, China has sinicised these norms to better integrate them. China's accession to and participation in the WTO is a fascinating illustration of this ability to adapt and perpetuate a given system without fundamentally challenging its basis. While Chinese legal reform has clearly benefited from the WTO engine, the changes in leadership witnessed since the mid-2000s have not led to the "rule of law via internationalisation" some Chinese rulers were themselves calling for.

As discussed above, this incomplete transformation originates in the limits of Chinese law itself, from law-making to law implementation, and creates tensions between WTO Members as evidenced by an increasing number of disputes directly pinpointing the lack of transparency of the Chinese legal regime.

A diligent student of international trade law, which plays with international norms and seemingly abides by them, China has not been able to overcome the serious contradictions that have not only hindered a genuine political evolution, but have also taken legal reform backward, by favouring stability over change. It is to be hoped a different political elite may soon be able to approach legal and political reform in a less fragmented and hence more coherent way that could bring about the long-awaited transformations.

23. See www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm?id=G158#selected_subjectDS394 (consulted on 15 March 2012), China — Measures Related to the Exportation of Various Raw Materials (Complainant: United States) 23 June 2009; DS395, China — Measures Related to the Exportation of Various Raw Materials (Complainant: European Communities) 23 June 2009; DS398, China — Measures Related to the Exportation of Various Raw Materials (Complainant: Mexico) 21 August 2009.
24. www.wto.org/english/tratop_e/dispu_e/cases_e/ds419_e.htm (consulted on 15 March 2012).
25. www.wto.org/english/tratop_e/dispu_e/cases_e/ds407_e.htm (consulted on 15 March 2012).