

The Role of China in Enhancing Global Supply Chains: Legal Obstacles and Solutions

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Because of its low-cost, highly educated and abundant labour, improved infrastructure, and foreign direct investment, China, a developing nation, has played a crucial role in enhancing global supply chains (SCs) in recent decades. However, the implementation of domestic and global SCs needs to be improved with new measures in China's legal system. The Chinese government should remove current barriers to improve the trading climate. Even though various analysts have identified the same issue, there needs to be a more focused examination of laws on environmental protection, customs, and tax. As a result, I aim to explain the legal options that may be used to overcome some of the current legal barriers, and the role that the United Nations Commission on International Trade Law (UNCITRAL) plays in creating favourable legal rulings for China's global SCs. Nonetheless, more is needed, and further legislation is needed to address several legal deficiencies. The goal of this article is to support increasing the Chinese government's concern over the issues so that it can improve domestic and global SCs.

Keywords: Global Supply Chains, Green Supply Chain, Sustainability, UNCITRAL, China

I INTRODUCTION

Because international trade often involves suppliers from one country supplying businesses in other nations, firms from one country frequently interact with companies from other countries daily. The majority of production processes include various phases, and the supply chains (SCs) cover several nations, each of which specializes in a different stage of the production process.¹ This is what global SCs are. China regarded as a world factory, plays an essential role in international trade. Growth in the Chinese economy may impact how domestic and foreign businesses engage and, subsequently, how domestic and global SCs interact. That China's participation in global SCs is both a domestic and a global issue is not unexpected. This paper highlights certain Chinese variables that can enhance global SCs, such as low-cost, highly educated and abundant labour, improved infrastructure and foreign direct investment, and assesses whether China's legal system contains any barriers that could harm global SCs. It will also examine the United Nations Commission on International Trade Law (UNCITRAL)'s role and how it relates to China's Global Supply Chains (GSCs).

Discussing the issues mentioned above is vital for at least three reasons. First, emphasizing Chinese factors that can improve global SCs highlights the benefits of China's trading environment and attracts foreign enterprises to invest in the Chinese market. Second, finding Chinese legislative barriers that can impact global SCs enables the Chinese government to express concern about the issue. Third, examining UNCITRAL's role and relevance to China's global SCs illustrates how the organization's regulations benefit China's enterprises.

2 THE ROLE OF CHINA IN GLOBAL (SCs)

Gross Domestic Product (GDP) is an indicator of economic growth and a signal of the well-being of a country. According to the National Bureau of Statistics of China, the GDP of China in the whole year of 2022 represents a year-on-year increase of 3%.² Because China is regarded as a world factory and in virtue of its growing importance, in most cases, Chinese economic growth can influence internal issues and international matters, such as international trade. From the global business perspective, Chinese economic growth can affect the interaction between domestic and foreign enterprises and, consequently, the domestic

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¹ Arnaud Costinot, Jonathan Vogel & Su Wang, *An Elementary Theory of Global Supply Chains*, 80 Rev. Econ. Stud. 109 (Jan. 2013), doi: 10.1093/restud/rds023.

² *Preliminary Accounting Results of GDP for the Fourth Quarter and the Whole Year of 2022*, National Bureau of Statistics of China (18 Jan. 2023), http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892204.html.

and global SCs, even though it should be recognized that the pandemic and current geopolitical context have some impact on global SCs in China. To highlight China's involvement in global SCs, some critical factors that can improve global SCs, such as low-cost, highly educated and abundant labour, improved infrastructure and foreign direct investment, should be thoroughly highlighted.

2.1 Low-Cost, Highly Educated and Abundant Labour

In the twenty-first century, when most companies understand that low-cost labour doesn't mean low-skill labour, they prefer moving their manufacturing and sourcing activities to low-cost countries like China and India. Nowadays, in addition to the low-cost labour, the availability of improved capabilities and highly educated labour in low-cost countries helps companies develop their complex activities, such as engineering, procurement, high-value-added manufacturing and research and development.³

Low-cost productive workers help China emerge as a production hub of the world.⁴ China is one of the leading low-cost countries to which companies want to shift their trade activities. In addition to low-cost and highly educated labour, China's abundant and extensive labour resource is another factor for the move of companies because of its vast population. With the low-cost, highly educated and abundant labour, China is becoming more competitive than other low-cost countries in terms of labour costs.

China's low-cost, highly educated and abundant labour enhances global SCs by significantly reducing unit costs and increasing quality and productivity while moving the product or service from supplier to customer. For instance, China is predominant in the global pharmaceutical SC. Its low-cost base and immense talent pool have made it a preferred sourcing destination for low-cost commodity products for many pharmaceutical companies.⁵ Another example is General Electric, an American multinational corporation incorporated in New York, to which China provides various products, from raw materials to highly technical finished goods.⁶ However, there is evidence that China's labour costs are not as low as they once were. It indicates that China's historically low cost of labour has

been on the rise, and this trend is waning. As a result, China will no longer enjoy the same level of benefit from its cheap workforce as it formerly did.

2.2 Improved Infrastructure

Infrastructure can be divided into physical (that embraces road, air and water transportation), energy (that aims at supplying electricity and fuel) and telecommunication (that develops telephonic and internet activity) infrastructures.⁷ It is a factor that can profoundly influence the management and operation of SCs in a country, so it directly impacts a nation's whole economy and SCs performance.⁸ Hence, the developing logistics capacities support global interconnection into and out of a nation.

On the other hand, the improved physical infrastructure is essential for reducing the transportation cost and time from one city or country to another, apart from the ease of movement of products or materials. Taobao, an online shopping platform similar to Amazon and eBay that Alibaba Group manages, is an example that manifests the successful and efficient logistics in China with e-commerce because its logistics network covers the majority of China's cities. Different to the previous situation, in recent years, Taobao's logistics network has covered Macau and Hong Kong, facilitating the transfer of products from suppliers to these cities' consumers.

Because China is considered a production hub or factory in the world, developing the SCs in China because of its improved infrastructure can be a driver for enhancing domestic and global SCs. According to the National Bureau of Statistics of China, the investment in Fixed Assets from January to December 2022 shows that investment in transport, storage and post increased by 9.1% year-on-year, investment in production and supply of electricity, gas and water increased by 19.3% year-on-year and infrastructure investment in the tertiary industry (excluding power, heat, gas and water production and supply industries) increased by 9.4% year-on-year.⁹ According to the data above, China has been investing in infrastructure. Other than GDP growth, investment in infrastructure is one of the essential factors that facilitates the ease of the trade environment for domestic and international firms. Consequently, it enables and enhances domestic and global SCs.

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³ Till Vestring et al., *Making the Move to Low-Cost Countries*, BAIN & COMPANY 3 (2005), http://www.bain.com/Images/BB_Making_move_low-cost_countries.pdf.

⁴ *The Future of Global Supply Chains*, Council on Foreign Relations (29 Jun. 2016), <https://www.cfr.org/report/future-global-supply-chains>.

⁵ Shannon Bennett, *China's Growing Presence in the Global Supply Chain*, 30 *Chemistry Today* 56 (2012).

⁶ Vestring et al., *supra* n. 3, at 2.

⁷ Ted Stank, Mike Burnette & Paul Dittmann, *Global Supply Chains: A Report by the Supply Chain Management*, Global Supply Chain Institute of the University of Tennessee 17 (Nov. 2014).

⁸ *Ibid.*

⁹ *Investment in Fixed Assets from January to December 2022*, National Bureau of Statistics of China (18 Jan. 2023), http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892297.html.

2.3 Foreign Direct Investment

Since the economic reform in 1978, China has adopted many measures to attract foreign investors, such as investment in improving infrastructure, change of the legal framework in support of investors, the establishment of Special Economic Zones, maintenance of high GDP growth and increasing the liberalization of the market-based system.¹⁰ In addition, after China joined the WTO, many foreign enterprises in other WTO member countries were encouraged to invest in the growing Chinese marketplace because of reforms being undertaken in the Chinese legal framework reform to comply with WTO rules, the stable political and social environment and optimistic outlook on the economic situation.¹¹

Many foreign businesses implement global SCs strategies in and via China based on their extensive experience.¹² According to the Statistical Bulletin of Foreign Direct Investment in China 2022, the amount of foreign direct investment in China from 1983 to 2021 demonstrates an upward trend, from 920 million USD to 180.96 billion USD.¹³ The fundamental reason for this increasing foreign investment is that the Chinese market offers abundant opportunities for global SCs in various dimensions, including raw material suppliers, component manufacturers, logistics networks, and end users.

Given the advantages of the Chinese market (such as low-cost and highly skilled labour and improved infrastructure), a high level of quality services is achieved throughout the SCs, which is sometimes not possible in other developing countries. Even though it has been argued that a country's industrial upgrade is not automatically triggered by foreign direct investment and that foreign direct investment has no significant effect on Chinese company performance,¹⁴ foreign direct investment can still enhance GSCs. High levels of foreign direct investment in China imply that foreign enterprises separate their production process into various stages and outsource these stages to China. This, indeed, enhances the dimension of domestic and global SCs.

According to the Provisions on Guiding the Orientation of Foreign Investment,¹⁵ there are four

categories of foreign-funded projects in China, including encouraged, permitted, restricted and prohibited projects. The encouraged, restricted and prohibited categories are listed in the Catalogue of Industries for Encouraging Foreign Investment.¹⁶ The encouraged projects category provides a good indication of the types of investment that are considered to support China's economy and social development. It involves areas in which China wants to encourage foreign investors to invest. For this purpose, the five-year plans of China, such as the newly issued fourteenth five-year plan (2021 to 2025),¹⁷ have emphasized the importance of encouraging foreign investment and the reinvestment of profits of foreign enterprises in the Chinese market. Therefore, the Chinese government intends to create a sound business environment in favour of foreign investors to attract them to invest in areas favouring Chinese economic and social development.

3 CHINESE LEGAL OBSTACLES AND SOLUTIONS

Knowing some factors that can enrich domestic and global services, it is imperative to determine if the Chinese legal framework incorporates any lawful provisions that could hinder their enhancement. Several legal obstacles exist in the People's Republic of China's laws on environmental protection, customs, and tax. This paper describes these obstacles and the solutions the Chinese government has proposed to overcome those obstacles.

3.1 Environmental Protection Law

Many countries have considered environmental protection a core goal. China is one of those countries considering long-term and sustainable development in conjunction with protection of the ecosystem. The Chinese government, for instance, requires that 'Euro III' vehicle standards be implemented in its many cities, meaning logistics firms must change or upgrade their transportation methods to comply with low-carbon regulations. In

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¹⁰ Behzad Azarhoushang, *The Effect of FDI on China's Position in the Global Value Chain*, The Global Labour University Conference Paper 11 (2015), http://www.global-labour-university.org/fileadmin/GLU_conference_2015/papers/B.Azarhoushang.pdf.

¹¹ Hong Paul, Noh Jungbae & Hwang Woosang, *Global Supply Chain Strategy: A Chinese Market Perspective*, 19 J. Enter. Info. Mgmt. 331 (2006), doi: 10.1108/17410390610658496; Azarhoushang, *supra* n. 10, at 11.

¹² Paul, Jungbae & Woosang, *supra* n. 11, at 325.

¹³ *Statistical Bulletin of Foreign Direct Investment in China 2022*, Ministry of Commerce of the People's Republic of China 25, 26 (2022), <http://images.mofcom.gov.cn/wz/202211/20221102151438905.pdf>.

¹⁴ Azarhoushang, *supra* n. 10, at 24, 25.

¹⁵ Provisions on Guiding the Orientation of Foreign Investment of the Order of the State Council of the People's Republic of China no. 346 (11 Feb. 2002), <http://en.pkulaw.cn/display.aspx?cgid=39354&lib=law>.

¹⁶ Article 4, first and second paragraphs, Catalogue of Industries for Encouraging Foreign Investment of the Order of the National Development and Reform Commission and the Ministry of Commerce of the People's Republic of China no. 52 (26 Oct. 2022), https://www.pkulaw.com/en_law/5137741.html?#0.

¹⁷ *Outline of the 14th Five-Year Plan (2021–2025) for National Economic and Social Development and Vision 2035 of the People's Republic of China*, People's Republic of China (23 Sep. 2021), http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm.

this case, implementing low-carbon rules indirectly means increasing the cost of road transportation.

The Environmental Protection Law of the People's Republic of China (2014 revision),¹⁸ imposes environmental protection obligations on entities and individuals. For instance, enterprises, public institutions, and producers or operators are required to prevent and reduce environmental pollution and ecological destruction; otherwise, they are responsible for the harm they do.¹⁹ These organizations and individuals must adhere to national requirements for the discharge of pollutants set by the appropriate department of environmental protection administration within the State Council.²⁰ In the event of potential pollution, the competent governmental department may seize and detain the facilities and machinery that emit pollutants.²¹

Another legislative provision for environmental protection in China's legal system is the Atmospheric Pollution Prevention and Control Law of the People's Republic of China (2018 Amendment).²² This law requires entities and individuals to prevent atmospheric pollution. For example, enterprises, public institutions, and other business entities must adhere to the Atmospheric Pollution Prevention and Control Standards.²³ The responsible government department may seize, impound, or take other required administrative steps for suitable facilities, equipment, and goods in the event of severe atmospheric pollution or if pertinent evidence is likely to be destroyed or disguised.²⁴ Motor-driven vehicles and vessels shall not discharge atmospheric pollutants that exceed the required standard; enterprises shall not produce, import or sell motor-driven vehicles and vessels that exceed the same standard.²⁵

Following implementation of the two above-mentioned laws, the Ministry of Environmental Protection of the People's Republic of China established the Atmospheric Environment Quality Standards to evaluate and manage ambient air quality.²⁶ These standards set mandatory

emission concentration limits for certain pollutant items, such as sulphur dioxide, nitrogen dioxide, carbon monoxide, ozone and nitrogen oxides. Domestic or international firms in China must comply with the standards for environmental protection and, in case of violation, will face legal liability for damage they cause. In this way, compliance with the standards requires firms to change or update their instruments, equipment or items, consequently increasing the costs associated with domestic and global SCs.

Nonetheless, some obligations in the Chinese legal framework attempt to reduce existing legal obstacles. The Environmental Protection Law of the People's Republic of China rewards outstanding entities and individuals who have protected and improved the environment.²⁷ As part of its responsibilities, the Chinese government must adopt policies and measures related to finance, taxation, price, government procurement, etc., to promote the further reduction of pollutants discharged by enterprises, public institutions and other businesses after meeting the statutory requirements.²⁸ Notably, however, the Atmospheric Pollution Prevention and Control Law of the People's Republic of China does not establish any legal norm that predicts rewards for entities or individuals that reduce pollutant discharges or meet statutory requirements. In our view, this legislation should have included the same concept of rewards provided for by the Environmental Protection Law. Amendment of legislation would therefore be desirable to provide motivation for businesses to protect the atmosphere.

These two laws are intended, among others, to enhance sustainable economic and social development.²⁹ There is a risk that these laws increase the costs associated with domestic and global SCs, thus increase the impact on global SCs in China as companies may move elsewhere where compliance costs are higher.

Despite this potential impact on SCs, the concept of 'sustainability' is a crucial one. Sustainability of SCs (so-called 'green SCs') concerns sustainable development,

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¹⁸ Environmental Protection Law of the People's Republic of China (2014 revision) of the Order of the President of the People's Republic of China no. 9 (24 Apr. 2014), https://www.pkulaw.com/en_law/c24f71752129d23dbdfb.html.

¹⁹ Article 6, third paragraph.

²⁰ Article 16, first paragraph.

²¹ Article 25.

²² Atmospheric Pollution Prevention and Control Law of the People's Republic of China (2018 Amendment) of the 6th Session of the Standing Committee of the 13th National People's Congress (26 Oct. 2018), https://www.pkulaw.com/en_law/56d189e827f94116bdfb.html.

²³ These standards are regulated by Arts 8 to 17 of the law and set forth by the responsible government agency.

²⁴ Article 30.

²⁵ Article 51.

²⁶ Atmospheric Environment Quality Standards of the Order of the Ministry of Ecology and Environment of the People's Republic of China no. 29 (14 Aug. 2018), https://www.mee.gov.cn/gkml/sthjbgw/sthjbgg/201808/t20180815_451398.htm.

²⁷ Article 11.

²⁸ Article 22.

²⁹ Article 1 of both legal documents.

which refers to ‘*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*’.³⁰ Integrating sustainability into the SC process involves bringing environmental considerations into all aspects of SC management, such as product design, material selection and sourcing, manufacturing, delivery of the final product to customers, and end-of-life management once the product has reached its end of life.³¹

The concept of sustainable SCs involves economic and social aspects and environmental features. Domestic and international enterprises with sustainable SCs can have long-term development compared to those without it. In recent years, small and medium-sized enterprises or suppliers have been required by large-sized enterprises to green their SCs or incorporate environmental protection rules into the global SCs. In this context, as China occupies 10% of the world’s total exports, Chinese suppliers must comply with the environmental requirements of green SC buyers to avoid the risk of losing their international customers.³² Accordingly, compliance with those rules lets those enterprises or suppliers increase their competitiveness.

Furthermore, green SC management is an excellent way to improve the performance of products and processes by complying with the government’s environmental protection rules intended to conserve energy. By doing so, companies avoid dispersing harmful materials into the environment during the product’s life cycle, encompassing the design, production, distribution phases and disposal at the end of the life cycle.³³ Even though they are legal obstacles at the beginning of the SC development, environmental protection rules or standards can be a legal solution for enhancing domestic and global SCs for the long term. It means the burdens imposed by environmental laws, especially the ones that result in a change or update in enterprises’ instruments, equipment or items for protecting the environment, are necessary for the sustainability of SCs. The concept of a ‘green SC’ is essential for sustainable domestic and global SCs in China.

3.2 Customs Law

Generally, the Customs Law of a country plays an important role not only in the safety of society through the prohibition of illicit trade but also in promoting exchanges with foreign countries in economic affairs, trade, science, technology and culture. As is common knowledge, the processes involved in SCs may entail the export or import of commodities; thus, a country’s Customs Law will be a legal barrier to trade if it makes it difficult for items to enter or leave a country smoothly.

China is no exception; its Customs Law (2021 Amendment)³⁴ contains legal provisions that can make importing and exporting commodities difficult. By this law, for instance, goods can only be released if specific requirements are met, including submission of accurate declarations, submission of an import or export licence and pertinent paperwork to the Customs office for examination,³⁵ import and export goods are subject to Customs examination,³⁶ payment of duties is required, and provision of guarantees may be required.³⁷ Generally, this law mandates that items be released only after review of the customs declaration. Yet, these rules frustrate import and export businesses, negatively impact the effectiveness of customs clearance, and raise logistical costs for businesses. They are to blame for the extended time that import and export products must be held for. Thus, these rules can significantly impact foreign direct investment in China.

Nonetheless, the Chinese government has noticed the importance of enhancing customs clearance facilitation. It has established various measures for this purpose, even though only for specific goods and cities in China. These measures can be considered remedies for alleviating certain difficulties met in the Custom Laws and do not violate this law. For instance, the People’s Republic of China’s General Administration of Customs published an ‘Announcement on Launching the Pilot Program of Reforming the Administration of Taxation’ (Announcement No. 62[2016])³⁸ on 29 October 2016. Following the principle of ‘*facilitating those acting in good faith and complying with laws and punishing those acting in bad faith and violating laws*’, one of the purposes of the

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³⁰ *Sustainable Development*, EUR-Lex, (24 March 2017) <https://eur-lex.europa.eu/EN/legal-content/glossary/sustainable-development.html#:~:text=Sustainable%20development%20was%20defined%20in,to%20meet%20their%20own%20needs>.

³¹ Samir K. Srivastava, *Green Supply-Chain Management: A State-of-the-Art Literature Review*, 9 Int’l J. Mgmt. Rev. 53 (2007), doi: 10.1111/j.1468-2370.2007.00202.x.

³² Ma Jun et al., *Greening Supply Chains in China: Practical Lessons from China-based Suppliers in Achieving Environmental Performance*, World Resources Institute 1 (Oct. 2010), http://pdf.wri.org/working_papers/greening_supply_chains_in_china_en.pdf.

³³ Kshitij Dashore, *Green Supply Chain Management – Barriers & Drivers: A Review*, 2 Int’l J. Eng’g Res. & Tech. 2021 (2013).

³⁴ Customs Law (2021 Amendment) of the Standing Committee of the National People’s Congress (29 Apr. 2021), https://www.pkulaw.com/en_law/63ba507938b1df81bdfb.html?keyword=%E6%B5%B7%E5%85%B3%E6%B3%95.

³⁵ Article 24.

³⁶ Article 28.

³⁷ Article 29.

³⁸ *Announcement No. 62(2016) of the General Administration of Customs* (29 Oct. 2016), https://www.pkulaw.com/en_law/2637248f335891d1bdfb.html.

pilot program is enhancing the level of customs clearance facilitation. Even though the scope of the pilot program covers only certain cities (such as Beijing, Shanghai and Ningbo) and specific goods, this has been an advanced step for facilitating the import and export of goods in these cities' ports, increasing the effectiveness of customs clearance processes. After implementing this Announcement, independent customs declaration, corporate tax payment, and customs declaration review following the discharge of goods have all been made possible. As a result, it has been made easier for import and export businesses, customs clearance effectiveness has been increased, and logistics costs have been lowered.³⁹

Similar measures can be found in other legal documents, such as the Announcement on Comprehensively Implementing Customs Clearance and Taxation Facilitation Measures for Wines Entering into the Chinese Mainland through Hong Kong,⁴⁰ the Announcement on Optimizing the Consolidated Duty Collection System,⁴¹ the Notice of the General Administration of Customs on Issues concerning the Implementation of the Tax Policies for the Supplies for the Development and Production of Animation Products Imported by Animation Enterprises during the 'Thirteenth Five-Year Plan' Period.⁴²

3.3 Tax Law

China's tax system is currently regarded as the most complicated worldwide. Value-added tax (VAT), consumption tax (CT), and business tax (BT) are the three main indirect tax types in China. Even after the VAT reform implemented in 2016, the VAT system is still recognized as the most complex globally. This is a problem hindering foreign direct investment in China. The complexity of the Chinese tax system may impact foreign firms' willingness to consider Chinese suppliers at different stages of their production processes. Even though they may be able to work with a Chinese company familiar with the Chinese tax system, this doesn't solve the root problem. Foreign companies may seek suppliers in other nations due to the risk of breaking Chinese tax laws and incurring legal penalties. As a result, this is an issue that the Chinese government must address.

In addition, the People's Republic of China's Enterprise Income Tax Law (2018 Amendment) requires that enterprises shall pay 25% income tax.⁴³ Given that income from the sale of goods is one of the items that must be included in an enterprise's income,⁴⁴ a tax rate of 25% may be highly detrimental to businesses that have customers in the Chinese market. This in turn has a significant impact on foreign direct investment and the favourable business climate for foreign investors. Although the law's Chapter IV grants preferential tax treatment, its scope is very constrained because it only governs a small number of situations in which enterprise income tax is exempted or reduced, such as income from projects in agriculture, forestry, husbandry, and fisheries, etc. Nonetheless, we can find another tax benefit in the other corner of the Chinese legal system. According to the aforementioned Customs Law, customs tax can be waived or reduced for a set number of import and export goods.⁴⁵ Although this can mitigate the Enterprise Income Tax Law's shortage of preferential tax treatment to a certain extent, it is unquestionably insufficient.

As we can see from the explanations above, additional and more effective legal solutions are required to address of the tax law's current legal issues and foster an environment that encourages foreign investors to enter the Chinese market. Specific legislative requirements do not solve or eliminate the significant problem that prevents the development of global SCs; instead, they help lower the tax burden imposed by other legal requirements.

4 UNCITRAL ROLE AND ITS RELEVANCE TO CHINA'S GSCs

In the area of international trade law, UNCITRAL, a specialized agency of the United Nations system, has developed current, equitable, and unified rules for business and commercial transactions, including conventions, model laws and regulations, legal and legislative guides and recommendations of great practical value, updated information on case law and enactments of uniform commercial law, technical assistance in law reform initiatives, and regional and national standards.⁴⁶ Therefore, it is essential to evaluate UNCITRAL's role and how it relates to global SCs, particularly China's GSCs, to determine

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³⁹ KPMG, *China Customs Authority Conducts Pilot of Independent Customs Declaration and Tax Payment for Imported Goods*, China Tax Alert, Issue 30 (Nov. 2016), <https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/11/china-tax-alert-30.pdf>.

⁴⁰ *Announcement No. 55 (2017) of the General Administration of Customs* (11 Sep. 2017), https://www.pkulaw.com/en_law/50c6da60461f26aebdfb.html.

⁴¹ *Announcement No. 45 (2017) of the General Administration of Customs* (21 Sep. 2017), https://www.pkulaw.com/en_law/5e9e4be0bfd02d6dbdfb.html.

⁴² *Notice No. 254 (2016) of the General Administration of Customs* (21 Dec. 2016), https://www.pkulaw.com/en_law/9263b0f6e184e575bdfb.html.

⁴³ Article 4, first paragraph, Enterprise Income Tax Law (2018 Amendment) of the Standing Committee of the National People's Congress (29 Dec. 2018), https://www.pkulaw.com/en_law/47bea5f5ea1fa83ebdfb.html.

⁴⁴ Article 6.

⁴⁵ Article 56 of the Customs Law.

⁴⁶ *Texts and Status*, United Nations Commission On International Trade Law, <https://uncitral.un.org/en/texts>.

whether UNCITRAL is creating any current, equitable, or unified rules that favour China's global SCs.

In the ambit of electronic commerce, UNCITRAL adopted, in 1996, the UNCITRAL Model Law on Electronic Commerce⁴⁷ and, in 2001, the UNCITRAL Model Law on Electronic Signatures⁴⁸ to define the conditions under which electronic records can replace paper-based transport documentation. In other words, electronic records can have the same legal effect as paper documents.⁴⁹ Both laws were supplemented in 2007 by the United Nations Convention on the Use of Electronic Communications in International Contracts,⁵⁰ which 'applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States'.⁵¹ In 2008, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules)⁵² was adopted and aimed at, among other things, facilitating electronic commerce by creating a legal framework for the equivalence with legal effects between electronic documents and paper transport documents. In 2011, the Working Group IV of UNCITRAL was essential in establishing harmonized rules for transferable electronic records. To lower transaction costs (for example, greater savings for both shippers and carriers), speed up payment, and make global SCs secure and sustainable, UNCITRAL has been working to develop harmonized standards in favour of electronic records.

Moreover, UNCITRAL instruments can assist in the development of Supply Chain Finance, which refers to 'an arrangement between a buyer, a supplier, and a financial intermediary where the credit standing of the buyer is leveraged to improve the working capital position of a supplier'.⁵³ This is particularly important to help small and medium enterprises.⁵⁴

These instruments show UNCITRAL's relevance in enhancing SC finance and assisting not only small and medium-sized businesses but also big-sized ones. This implies its significance to a country's global SCs. China's global SCs can also benefit from the UNCITRAL instruments because, taking UNCITRAL Arbitration Rules as an example, these rules can improve the effectiveness of the arbitration system for the advantage of business parties, whether Chinese or foreign, and make China an appealing venue for international commercial arbitration.

But how have the different UNCITRAL initiatives or rules been implemented or used in China? The UNCITRAL Model Laws are not directly applicable in the Chinese jurisdiction. They are mainly used for legislative reference purposes. For example, some fundamental aspects of the 1985 UNCITRAL Model Law on International Commercial Arbitration, such as party autonomy and the separability of arbitration agreements, were included in China's Arbitration Law.⁵⁵ However, in our view, as some authors suggest,⁵⁶ the UNCITRAL Model Laws serve as the recognized benchmark for contemporary arbitration law on an international level and, consequently, they should have been incorporated into China's legal system.

The situation is different regarding the applicability of UNCITRAL Arbitration Rules in China. The Chinese legal system allows their direct application in some situations. For instance, the Shenzhen Court of International Arbitration (SCIA) shall administer the case in accordance with the UNCITRAL Arbitration Rules and the 'SCIA Guidelines for the Administration of Arbitration' under the 'UNCITRAL Arbitration Rules' when the parties agree that the UNCITRAL Arbitration Rules shall govern the dispute referred to international or foreign-related disputes or disputes related to the Hong Kong, Macao and Taiwan regions.⁵⁷

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⁴⁷ UNCITRAL Model Law on Electronic Commerce (1996) With Additional Article 5 Bis as Adopted in 1998, United Nations (1999), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf.

⁴⁸ UNCITRAL Model Law on Electronic Signatures With Guide to Enactment 2001, United Nations (2001), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/ml-elecsig-e.pdf>.

⁴⁹ Abhinayan Basu Bal, *The Role of UNCITRAL in Creating Strong and Secure Global Supply Chains: Transport and E-commerce Laws in Perspective*, in *Trade Development Through Harmonization of Commercial Law* 431 (Muruga Perumal Ramaswamy & Joao Ribeiro eds 2015).

⁵⁰ *United Nations Convention on the Use of Electronic Communications in International Contracts*, United Nations (2007), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-57452_ebook.pdf.

⁵¹ Article 1, n. 1.

⁵² *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly*, United Nations (2009), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>.

⁵³ Kristina Dervojeda et al., *Innovative Business Models: Supply Chain Finance*, European Union 2 (Feb. 2014), <https://ec.europa.eu/docsroom/documents/13408/attachments/5/translations/en/renditions/native>.

⁵⁴ Such as industry standards in Art. 12 (a)(vii) of UNCITRAL Model Law on Electronic Transferable Records, Model Law on Secured Transactions, deliberation by UNCITRAL Working Group I on micro, small and medium-sized enterprises, and deliberation by UNCITRAL Working Group IV on cloud computing, identity management and trust services. Abhinayan Basu Bal, *Can UNCITRAL Instruments Advance Supply Chain Finance to Benefit Small and Medium Enterprises*, *Modernizing International Trade Law to Support Innovation and Sustainable Development: Proceedings of the Congress of the United Nations Commission on International Trade Law* 156–165 (Nov. 2017).

⁵⁵ Zhang Shouzhi, *Arbitration Procedures and Practice in China: Overview* (1 Aug. 2022), [https://uk.practicallaw.thomsonreuters.com/3-520-0163?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a998611](https://uk.practicallaw.thomsonreuters.com/3-520-0163?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a998611).

⁵⁶ João Ribeiro & Stephanie Teh, *The Time for a New Arbitration Law in China: Comparing the Arbitration Law in China With the UNCITRAL Model Law*, 34 J. Int'l Arb. 459–487 (Jul. 2017), doi: 10.54648/JOIA2017023.

⁵⁷ Article 3, para. 4, *SCIA Arbitration Rules*, <http://www.scia.com.cn/upload/20221114/6371f20023e32.pdf>.

5 CONCLUSION

China has several factors that can enhance domestic and global SCs. According to our initial analysis, the low-cost, highly educated and abundant labour is one factor that lowers costs throughout the SC process and raises productivity and product quality. Other factors include improved infrastructure, which reduces the cost of logistics for moving goods from raw materials to final consumers, and foreign direct investment in China, which enhances the dimension and quality of global SCs. It is also true that some legislative rules in the Chinese legal system have impacted the variables and impeded the development and improvement of global SCs.

The Chinese government has implemented several strategies to overcome current and potential legal obstacles to foster a facilitative business climate that benefits domestic

and foreign companies. Nevertheless, the remedies only eliminate some of the impediments. China has to strive to improve its domestic economy and global SCs, particularly by enhancing the ease of operating SCs through its legal and legislative framework. The more facilitative that the Chinese government can be of businesses and suppliers will improve the development of domestic and global SCs. It is anticipated that China will be able to accomplish its stated objectives, particularly by enhancing a legalized, internationalized, and facilitated business environment and building an excellent business environment, which aims to create fair competition in the market environment, an effective and clean administrative environment, a fair and transparent legal policy environment, as well as an open and inclusive cultural climate. This is crucial for improving domestic and global SCs. UNCITRAL instruments may help China eliminate current barriers and achieve set objectives.