

External vs. domestic: the evolution of China's competition regime

*Prepared for the Fifth Meeting of
the Research Partnership Platform on Competition and Consumer Protection of UNCTAD
Geneva, 11th July 2014*

WANG Lei & KRIZIC Ivo
University of Luzern
11 July, 2014

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

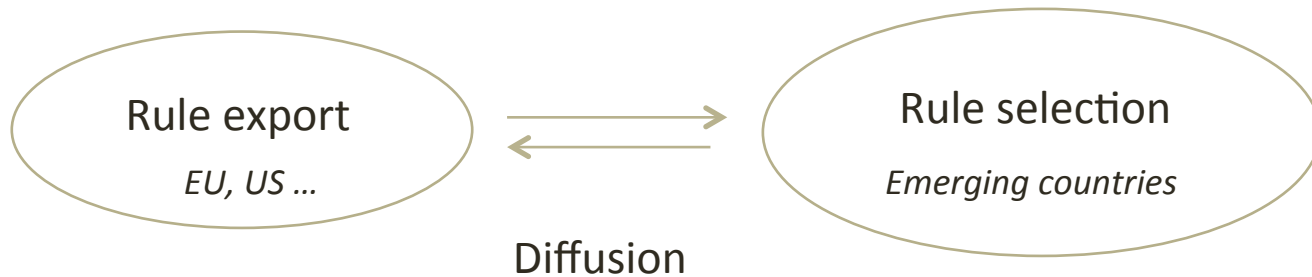


Research context

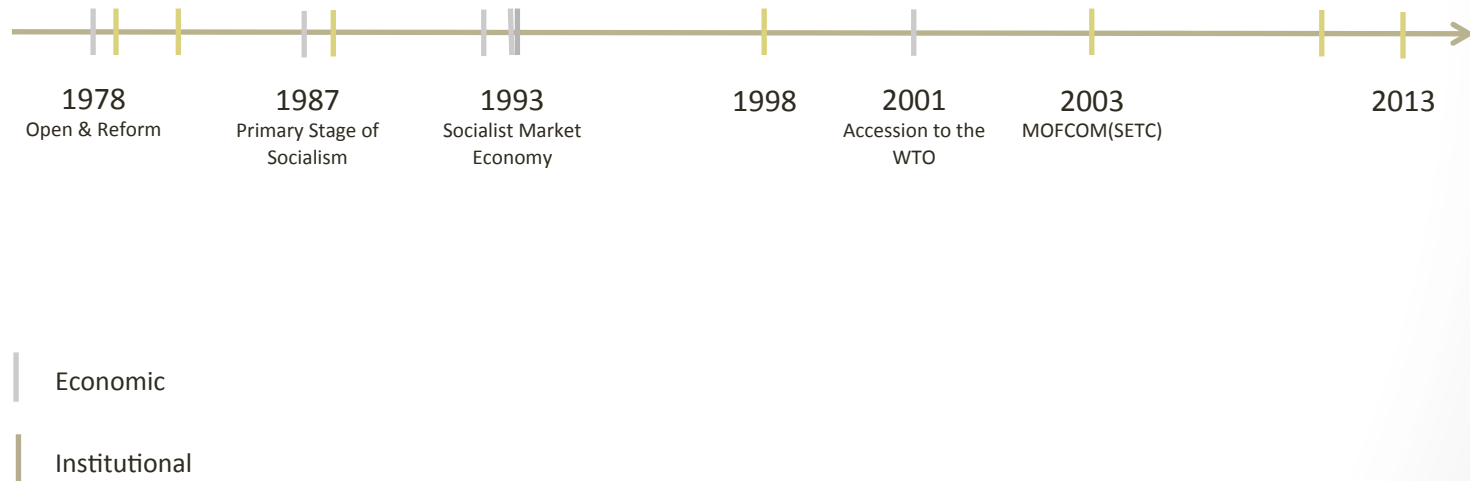
- Project looking at the role of emerging markets in the formation of international economic law
 - Intellectual Property Rights
 - Labor Mobility (GATS 4)
 - Competition Policy
 - Public Procurement
- Competition
 - International cooperation
 - Policy diffusion

Conceptualization

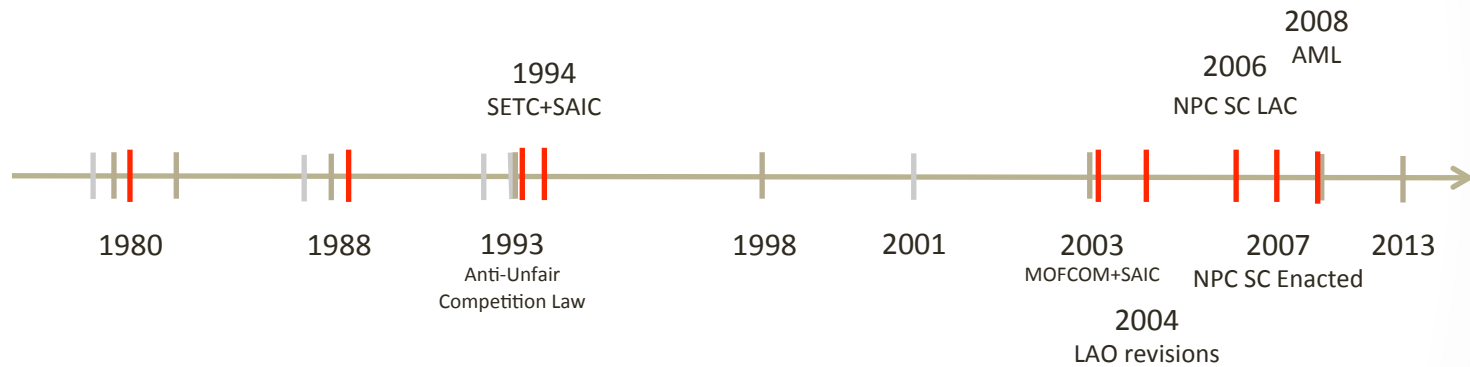
EU External governance → conditionality, socialization ...



Economic and institutional context

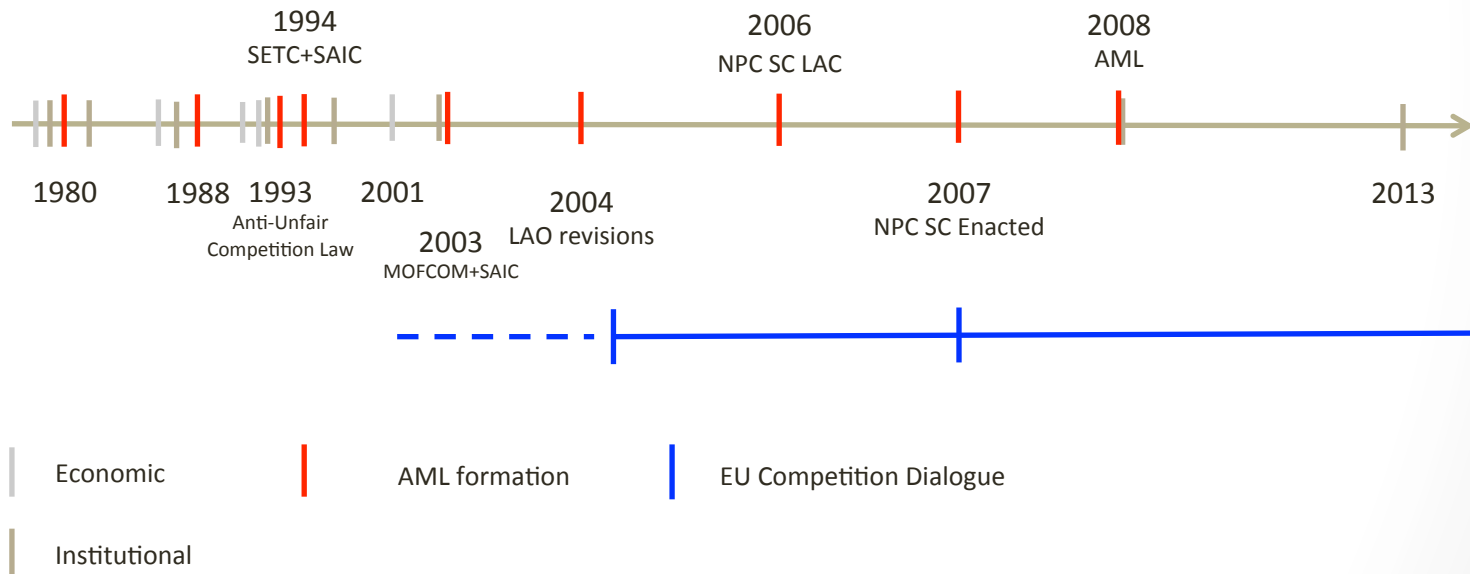


AML legislation



EU – China Competition Dialogue

- Yearly meeting
- EUCTP I (5/2004 - 08/2007)
 - 4 «events»
- (GTZ project 2000-2004)



EU – limited inspiration for China’s AML

- Broad structure of China’s AML resembles EU regime (Art. 101, 102; Merger Regulation), but...
- EU suggestions as of July 2005 draft:

EU demands	EU view considered?
Objectives (≠ «public interests», «socialist market economy»,...)	No
One single competition authority	No
≠ Prohibition of «monopoly agreements» that limit the purchase or development of new technology (→IPR)	No
≠ consider effect of concentration on national economy and public interest	No



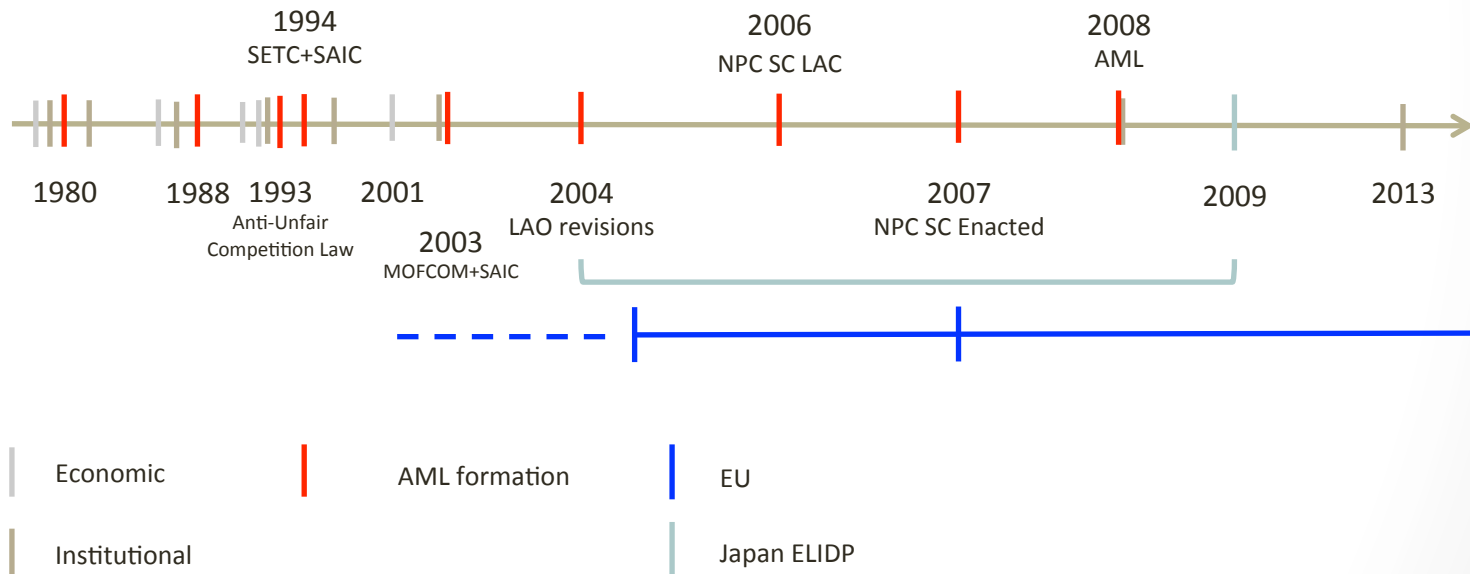
China driven process

Domestic consensus: China should refer to the experiences of Europe and America but establish a competition regime that can meet China's needs and be appropriate to China's economic conditions and market demand.

- Intellectual support
 - Domestic scholars
 - Being drafters
 - Expert advisory group
 - Pool of foreign experts (2005)
 - DE, US, JP, KR, RU
- Seminars
 - With OECD (1998,1998)
 - Invite foreign experts (2003, 2005)
 - EU, US, DE, RU, KR, JP, OECD, UNCTAD, IBA, ABA, ECCC, MNCs
- Research and Study visits
 - US, EU, AU, JP, MX, NO, RU, FI, etc.
- (Comments to drafts)

China-Japan ELIDP

- Sub-project on anti-monopoly law (2004-2007, 2007-2009)
- For AML legislation and enforcement
- 4 seminars in Beijing and 4 study trips to Japan



Laws referred & selected in AML legislation

Issue	AML	Referred laws/practices	Rule selection
Prohibition of monopoly agreements		DE, JP, EU, Chinese Taipei	
Exemptions for certain monopoly agreements	Article 15	EU, Chinese Taipei	Similar to EU categories, also similar to Chinese Taipei's list
Abuse of dominant market position			
Relevant market		EU/US	
Abuse of market dominant position	Article 6	EU and US	EU and US
Legislative modes of addressing abuse	Article 17	US, EU and DE	Listing (EU and DE) plus rule of reason (US)
Presumption on dominant market position	Article 19	DE, KR	International practice plus CN reality
Operator concentration		Various, especially DE and EEC	EU and DE
<i>Ex ante</i> notification	Article 21		International practice
Standards for prohibition	Article 28	US, DE	US
Remedies	Article 29	EU and US	Common practice
Administrative monopoly	Article 6, Chapter 5	Former USSR and Eastern Europe	CN
Abuse of IP rights		JP, US and EU	JP
National security review	Article 31	US CFIUS	US
Extraterritoriality	Article 2	Effects doctrine	Effects doctrine
Enforcement agencies	Article 9, 10	JP, RU, US, etc.	CN
Corrective undertaking	Article 45		JP
Leniency program	Article 46	EU and US	EU and US
Civil liabilities	Article 50	EU and US	EU and US
Essential Facilities Doctrine		US, DE	Deleted: US advice

Conclusion

- Not simply a direct template transplant
- Template diffusion
 - Domestic knowledge and access to template options
 - Epistemic exchanges and institutional policy dialogues
 - Current legal system

On-going research

- More jurisdictions for comparative study
 - Korea
 - Brazil, etc.
- Primary and secondary rules
 - China (finished)
 - More...
- Bilateral and pluri-/multi-lateral mechanism
- Comparison and linkage to other policy fields
 - Public procurement



Thank you!

