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**Ideas in International Trade: The role of programmatic beliefs in the EU and China's approaches in the WTO DSM**

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## Abstract

This research project investigates the role of domestic normative ideas in the approaches of the European Union (EU) and China in the World Trade Organisation (WTO) dispute settlement mechanism (DSM). Scholars have differentiated between normative beliefs as those ideas that help actors to distinguish just from unjust, and causal beliefs as those ideas that provide a framework on how to act. I categorise worldviews and programmatic beliefs as normative ideas, and policy actions as closer to causal ideas. This thesis answers the question: *how and why do normative ideas affect the different approaches of the EU and China in the WTO DSM?* The study examines the legalistic belief of the rule of law, and the economic belief of free trade of the Directorate-General (DG) for Trade of the European Commission; and the legalistic belief of peaceful coexistence and the economic belief of State-led economic growth of the Ministry of Commerce (MOFCOM) of China.

I argue that programmatic beliefs guide actors' policy action in the WTO DSM, and that different sets of programmatic beliefs lead to different approaches to international trade dispute settlement. Normative ideas that are aligned with international institutions make states more eager to address concerns in international trade dispute settlement. At the same time, states whose programmatic beliefs are not aligned with international institutions are more reluctant to use international dispute settlement mechanisms.

Through document analysis and process tracing, the study maps the worldview and the main programmatic beliefs from the establishment of the EU to the Uruguay Round, and from the open-door policy of China to its accession to the WTO, analysing three different timeframes over twenty years (2001-2008, 2009-2017, 2018-2021). The study finds that change in actors' approaches is due to their programmatic beliefs. The EU and China have changed their approaches in the WTO DSM either to align it to their pre-existing programmatic beliefs, or to internalise new external information. The study shows how the EU relied on its liberal worldview and programmatic beliefs to navigate the different crises encountered during the three timeframes analysed. The EU changed its approach to the WTO DSM to follow its domestic programmatic beliefs. European programmatic beliefs were reinforced by the EU's activity in the WTO DSM, as they were in line with the normative framework on which the WTO was built. The study finds that change in the Chinese approach to the WTO DSM was connected to

the internalisation of new information on the Western concept of the rule of law in the Chinese normative belief of the rule by law. Internalisation has been understood as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions. Ultimately, the study shows how new information is internalised through pre-existing sets of beliefs, demonstrating how and why programmatic beliefs matter in international trade dispute settlement.

## Lay Summary

This research project investigates the role of domestic normative ideas in the approaches of the European Union (EU) and China in the World Trade Organisation (WTO) dispute settlement mechanism (DSM). Scholars have differentiated between normative beliefs as those ideas that help actors to distinguish just from unjust, and causal beliefs as those ideas that provide a framework on how to act. This study will focus on normative ideas on the functioning of the economy and legal systems, assessing how and why they are responsible for change in international trade dispute settlement. The thesis answers the following question: *how and why do normative ideas affect the different approaches of the EU and China in the WTO DSM?*

I argue that ideas are responsible for trade officials' actions in the WTO DSM. Furthermore, I argue that different ideas lead to different approaches in international trade dispute settlement. Actors whose ideas align with the WTO DSM are more incentivised to use the dispute settlement mechanism. At the same time, actors that carry different ideas from the WTO DSM are less likely to use the dispute settlement mechanism.

The thesis will look at the liberal tradition of the EU, analysing the ideas at the core of its establishment and those that circulated during the creation of the WTO in the Uruguay Round. For China, it will examine how ideas connected to Confucianism circulated between its opening to international markets in the 1970s and its accession to the WTO. Having mapped the ideas of China and the EU, the study will analyse three different timeframes over twenty years (2001-2008, 2009-2017, 2018-2021). One of the main findings of the study is that ideas are linked to change in states' approaches in international trade dispute settlement. The EU and China have changed their approaches in the WTO DSM either to align it to their pre-existing ideas, or to internalise new external information. The EU changed its approach to the WTO DSM to align it with its ideas on the rule of law and free trade. The study finds that change in the Chinese approach to the WTO DSM was connected to the internalisation of new information on the Western concept of the rule of law in the Chinese normative belief of the rule by law. The thesis defined internalisation as the process of acquiring new concepts, adapting them to pre-existing ideas. The Western concept of the rule of law

has been internalised according to Chinese Confucianist ideas on peaceful coexistence and State-led economic growth. The study shows how new information is internalised through pre-existing sets of beliefs, demonstrating how and why programmatic beliefs matter in international trade dispute settlement.

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# 1 Introduction

The World Trade Organisation (WTO) has been at the core of academic and policy makers' debate. The WTO has provided a unique opportunity for countries to advance economic development and free trade. For scholars in international relations and international political economy, the rise of Eastern economies like China and their evolving relationship with established powers like the European Union (EU) has tested traditional explanations of global economic governance. Are new economic powers a threat to the status quo? Or do they comply with the existing international order?

Policy makers and academics have relied on economic theories to answer questions on social phenomena. Less attention has been paid to the role of ideas as objects of studies and drivers of change in international trade. How do different sets of domestic ideas impact state action in global economy?

## 1.1 Why the WTO DSM?

Since its establishment in 1994 the WTO has received significant attention from scholars in international relations. Created in the Uruguay Round after decades of the General Agreement on Tariffs and Trade (GATT) (World Trade Organization, 1994b), the WTO has represented the pinnacle of years of liberal trade in the international community. Legal and international relations scholarship has flourished for the past thirty years, investigating the role of the WTO, its functions, and how it sits with domestic and international politics. Nonetheless, in its almost three decades of existence, the WTO faced multiple crises. Designed as a venue in which members can negotiate the liberalisation of international trade rules, the failure of the Doha Round marked a *de facto* stall of parts of the main functions of the multilateral trade negotiation. Yet, its dispute settlement mechanism (DSM) continued to function, growing in popularity among states, policy makers, and scholars.

Defined as the 'jewel in the crown' of the trade organisation, the WTO DSM was created to provide a *quasi-judicial* system for the international organisation (World Trade Organization, 2009d). The mechanism that was in place at the time of the GATT was profoundly different and needed changes. At the time of the GATT, decisions could

be blocked very easily as unanimity was needed. After the reform, the rule of 'reverse consensus' was adopted, according to which a decision passes unless there is a unanimous vote against its adoption. From a 'power-based' GATT there has been a shift towards a 'rules-based' WTO (Goldstein and Martin, 2000; Rosendorff, 2005; Sacerdoti, 2010). Indeed, the new DSM consists of four steps. After the filing of the formal complaint by a member, a first consultation attempt is sought. If parties do not find any agreement, ad hoc panels are constituted. The panellists are proposed by the WTO Secretariat in accordance with the disputing parties, who can request an appointment by the Director-General. Appeals can be lodged whereby a party can submit a request to the Appellate Body. According to Article 17 Dispute Settlement Understanding, the Appellate Body is composed of seven persons with a four-year mandate, appointed by the Dispute Settlement Body (which is the General Council of the WTO that serves as Dispute Settlement Body when disputes rise). According to Article 3 of the Dispute Settlement Understanding, the 'aim of the dispute settlement mechanism is to secure a positive solution to the dispute' (Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994). Recognising the judicial and political nature of the DSM is helpful to better understand which actors are involved in the domestic decision-making processes of members that ultimately lead to the request of the establishment of a panel. The dual nature of the DSM, judicial and political, can suggest different drivers that prompt members to approach the institution.

## *1.2 Research puzzle*

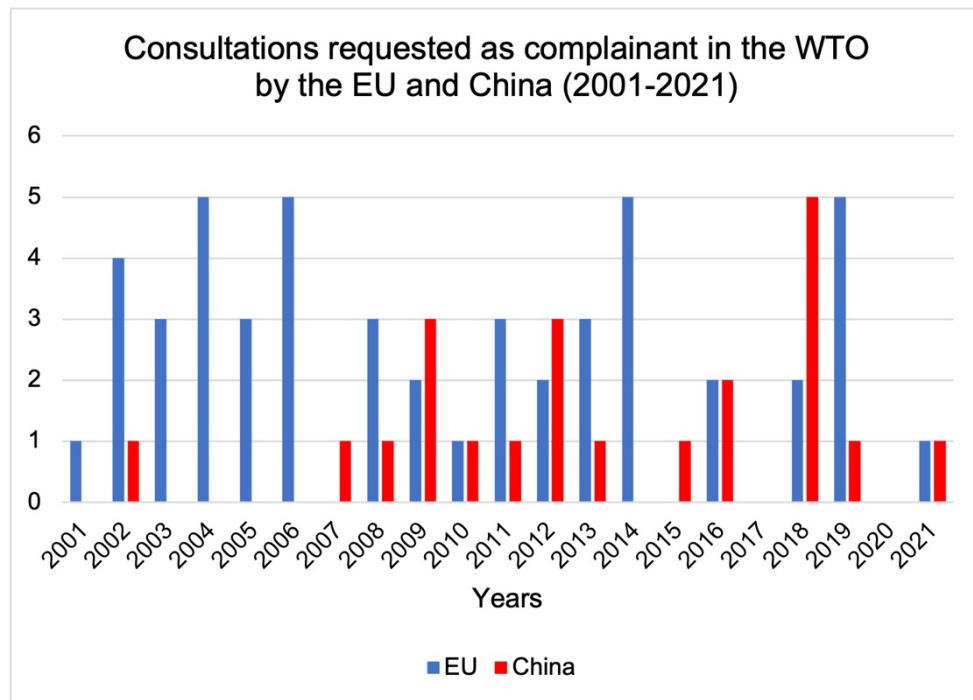
Between 1995 and 2022, 615 requests for consultations have been initiated in the WTO DSM. Studies on the WTO DSM have explained the participation of states in disputes through economic size, market power, or legal capacity (Milner and Yoffie, 1989; Noland, 1997; Horn, Mavroidis and Nordström, 1999; Keohane, Moravcsik and Slaughter, 2000; Busch and Reinhardt, 2002; Hocking and McGuire, 2002; Bown, 2005, 2010; Young, 2005; Allee, 2008; Francois, Horn and Kaunitz, 2008; Davis and Bermeo, 2009; Sattler and Bernauer, 2011).

When considering two of the largest market economies, the EU and China, the expectation is that they both should have initiated a high number of cases in the WTO

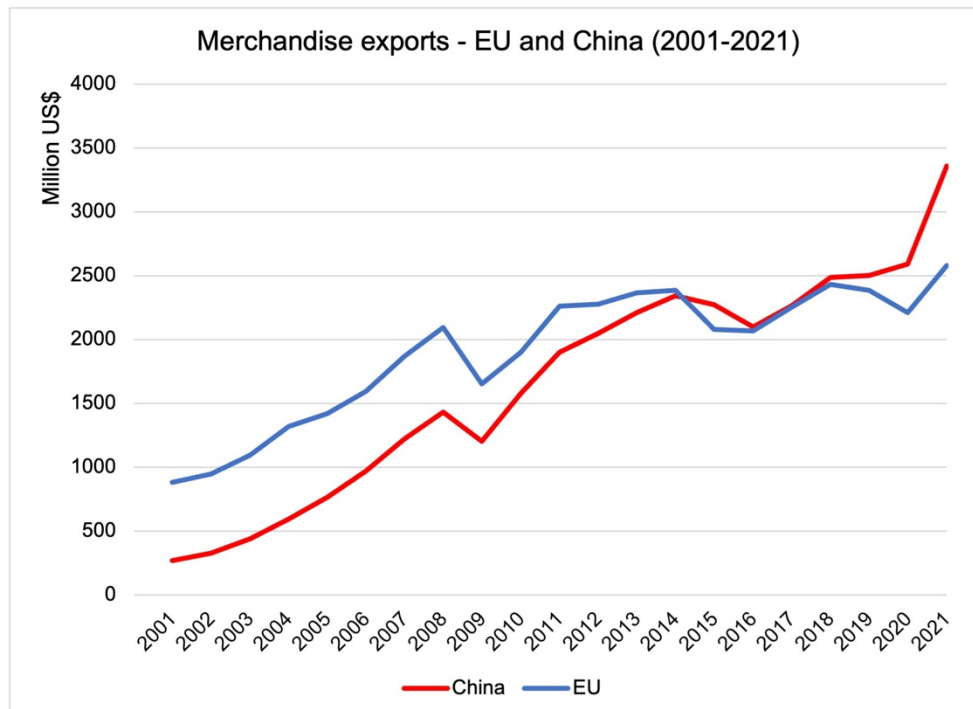
DSM. According to rational choice theories (see Francois et al., 2008; Sattler & Bernauer, 2011), larger economies and bigger traders should become more involved in trade disputes. Nonetheless, when looking at the complaints initiated by the two actors, this is not the case. The EU is the second largest user of the DSM with 110 complaints initiated since 1995, while China has only made 23 complaints since its accession to the WTO. Rational choice theories have used structural and interest-based explanations to understand why and how states engage in trade disputes in the WTO. According to these theories, then, similar material factors should lead to similar approaches to the multilateral trade organisation. Considering the rapid economic growth of China and its increased engagement in global trade, China should have initiated more disputes, especially compared to the EU. These theories, while providing informative explanations for the advancement of the literature on international trade, do not seem to fully explain this picture. Indeed, according to these theories, China would have initiated a similar number of disputes as the EU. Even when looking at the numbers of disputes initiated by the EU and China during the same years of membership in the WTO (see Figure 1.1), the number is different. Even if compared with data on the export of goods and services of both countries, theories that look solely at economic levels do not seem to stand. A higher level of trade does not always correspond to a higher number of complaints in the WTO DSM (see Figure 1.2 and Figure 1.3).

China is one of the largest global economies, like the EU. Furthermore, the Chinese government has been assisted by foreign firms when dealing with international trade disputes (Hsieh, 2010; Guohua, 2016; Shaffer and Gao, 2021b), levelling Chinese technical capacity with that of more experienced users of the DSM. Therefore, China has had the legal capacity to engage in disputes, just like the EU. What, then, accounts for this discrepancy in the data available, if materialistic factors do not fully explain the picture?

**Figure 1.1** Requests for consultations by the EU and China in the WTO between 2001 and 2021<sup>1</sup>



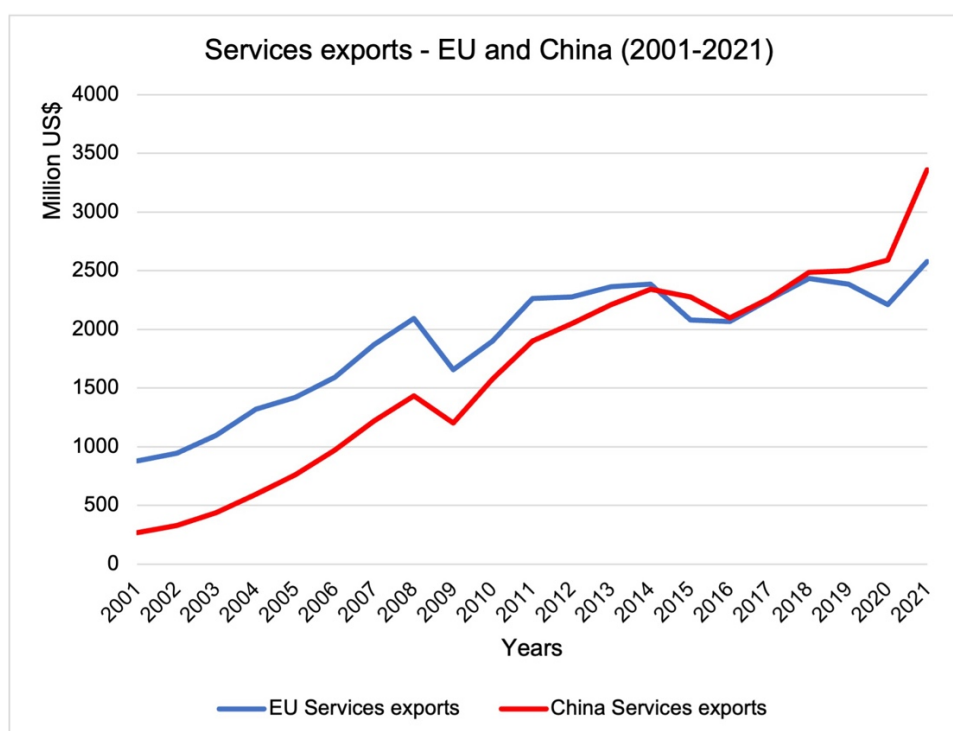
**Figure 1.2** Exports of goods of the EU and China between 2001 and 2021<sup>2</sup>



<sup>1</sup> WTO (2023b).

<sup>2</sup> WTO (no date b).

**Figure 1.3** Exports of services of the EU and China between 2001 and 2021<sup>3</sup>



There might be something different at play that pure economic and tangible statistics are not able to explain fully. If countries are similar in characteristics, facing similar problems, they would be expected to arrive at similar solutions. If countries are similar in characteristics, facing similar problems, and they do not arrive at similar solutions, then normative ideas come into play.

What is the main driver behind this difference in approaches to international dispute settlement and what can explain this discrepancy?

The thesis aims to clarify this evident empirical puzzle by looking at the variance in the EU and China's approaches to the WTO DSM. Through the comparison of the two actors, the thesis will analyse the driving factors of the two different approaches. Building on this empirical puzzle, this study will look at the EU and China's approaches in the WTO DSM. It will analyse how the EU and China interacted in the WTO DSM, looking at their evolution during their twenty years of coexistence in the trade organisation. The analysis of the interaction of these two actors will be fundamental to

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<sup>3</sup> WTO (no date b).

understand the differences and similarities of approaches in international trade dispute settlement, allowing for a clear investigation of the causal mechanisms behind trade officials' policy action in the WTO DSM.

By looking at the discourse in the WTO and its DSM in trade officials' speeches, official policy documents, and trade disputes between the EU and China, the thesis will look at the causal factors behind the different approaches of the EU and China in the WTO DSM. While the study looks at the WTO DSM as an institution in which the EU and China interact, the focus of the thesis is on the domestic sphere of the two actors. As an institution, the WTO DSM will be considered as an enabling structure of the EU and China's approaches in international trade dispute settlement. In other words, the thesis will demonstrate how domestic factors (other than materialistic explanations) can be considered as driving forces in international trade dispute settlement.

### *1.3 Main argument*

The main argument of the thesis is that programmatic beliefs guide officials' actions in the WTO DSM. I argue that programmatic beliefs guide actors' policy action in the WTO DSM. Programmatic beliefs are those ideational frameworks that lead actors to behave in a certain manner, developing specific policies or deciding to act in a specific way. I define programmatic beliefs as 'guiding' ideas, providing guidance for actors when reaching policy actions in an institution. Programmatic beliefs are defined as those normative ideas that actors use to filter external information when acting in international dispute settlement. The thesis looks at the role of programmatic beliefs in trade officials' policy action in the WTO DSM. Given the quasi-judicial nature of the WTO DSM, I identify two different types of programmatic beliefs that are particularly relevant in this institutional setting: economic and legalistic. I argue, then, that actors are guided by ideas on economy and legal systems in their policy action within the WTO DSM. Actors' approach towards the WTO DSM is based on their own beliefs about how the economy operates and how legal systems should function. I argue that different sets of programmatic beliefs lead to different approaches to international trade dispute settlement. More specifically, I argue that normative ideas that are aligned with international institutions make states more eager to address concerns in

international institutions that are based on the same normative beliefs. At the same time, states whose programmatic beliefs are not aligned with international institutions will be more reluctant to use international dispute settlement mechanisms that would challenge their normative domestic belief systems.

Furthermore, when mapping which beliefs matter in the WTO DSM, the thesis will additionally argue that ideas exist and interact at multiple levels. Scholars on ideas have differentiated between normative beliefs as those ideas that help actors to distinguish just from unjust, and causal beliefs as those ideas that provide a framework on how to act. Building on this distinction, I offer a more nuanced categorisation of ideas, looking at worldviews and programmatic beliefs as normative ideas, and policy actions as closer to causal ideas. Policy actions can refer to more actionable policy principles that constitute the practical plan for policy makers to achieve policy goals, while worldviews are generally associated with those general principles that represent actors' ideologies. The thesis will trace the EU's worldview to liberal ideas and traditions on the role of the state, the economy, and law. At the same time, the Chinese worldview will be identified as Confucianist in the same areas.

The main scope of the thesis is to understand how ideas matter in international trade dispute settlement. By looking at actors' policy actions, the thesis will analyse whether ideas change or stay the same over time. In this sense, the thesis will look at how ideas effect (and are affected by) change in actors' approaches to international trade dispute settlement. Change in ideas will be understood as the mechanism through which new information becomes internalised in actors' sets of beliefs. This thesis will explain how ideas change. When exposed to institutions with a different normative framework, actors process new information through their pre-existing programmatic beliefs, internalising new ideas. Internalisation is understood as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions. In this sense, the concept of the rule of law in China appeared when finalising the accession to the WTO and its DSM. This new concept has received a specific interpretation, quite separate from the Western legal tradition, according to the existing sets of beliefs that China already possessed. For new information to become internalised in actors' sets of beliefs, existing programmatic beliefs are necessary. Implications, then, are twofold. First, external information is acquired through a process of internalisation according to

existing normative beliefs. Second, the process of internalisation adapts external information to make it consistent with pre-existing sets of normative beliefs.

Building on the literature on norm diffusion and change (P. A. Hall, 1993; Blyth, 2002; Acharya, 2004; Schmidt, 2008b; Shaffer, 2021), I conceptualise internalisation to understand change in policy behaviour. Contributing to the constructivist literature on ideas and norm diffusion, I seek to understand how external information is treated and processed through normative domestic beliefs in international settings, leading to a change in decision-making. This is fundamental in two ways. Firstly, by conceptualising internalisation as a domestic process, it allows me to focus on the role of domestic normative beliefs as drivers of change in international institutions. Secondly, empirically, it will help explain how new information available through states' participation in international economic organisations like the WTO and its DSM are processed through domestic normative beliefs. Ultimately, this framework will show how international norms are received and internalised by developing countries. This framework, then, will add to the discussion on developing countries and/or newcomers in international institutions like China scrutinising whether they are disruptive to the global economic order, or compliant with it. In this sense, the study will demonstrate the role of the *rise of China* in international institutions, and, more specifically, in global economic governance.

According to discursive institutionalism, it takes time for ideas to change (Berman *et al.*, 2001; Schmidt, 2008b). Institutions like the WTO DSM provide the necessary continuous exposure for new information to settle and become internalised in actors' sets of beliefs. According to bounded rationality theorists (see Skovgaard Poulsen, 2014), actors with similar characteristics should make the same choices under similar circumstances. Building on this, the thesis will start from the proposition that when similar actors make different choices under similar circumstances, normative ideas matter. This thesis, then, explores the role of programmatic beliefs in international trade. Programmatic beliefs will be identified as drivers of policy action. In particular, the thesis will argue that actors will be more likely to be guided by their programmatic beliefs if the institution is based on similar beliefs. If actors' programmatic beliefs are not aligned with the institution's normative framework, actors are more likely to internalise ideas that circulate in the institution. Building on discursive institutionalist scholarship, the WTO DSM will be understood as the venue in which ideas circulate.

Normative ideas, then, belong to institutions, and are shaped (and reshaped) through discourse. While discursive institutionalism is an umbrella concept for different studies of ideas, I use discursive institutionalism as a framework to conceptualise normative ideas as belonging to institutions and bureaucratic apparatuses of states, focusing on the domestic normative beliefs of the EU and China, as well as international organisations like the WTO DSM.

The implications of this argument, then, are multiple. First, by asserting that programmatic beliefs matter, the WTO DSM will be associated with liberal ideas that initially circulated during the negotiations of the Uruguay Round, looking at the primary role of the EU as an architect of the institution. Second, as an architect of the WTO DSM, the EU is more likely to use the WTO DSM, as its economic and legalistic beliefs have shaped the institution. Third, China was led by its own normative ideas on State-led economy and growth to join the WTO and its DSM. Due to the difference between its domestic normative framework and the Western ideas that were circulating in the WTO DSM, China has internalised the Western concept of the rule of law through its own existing beliefs.

The EU, as one of the main architects of the Uruguay Round, had the chance to significantly shape the multilateral trade organisation. The origins of the WTO and its DSM in the EU ideational framework will be a necessary starting point of the research: they will help identify which normative ideas will be part of the analysis. Building on this literature on norm diffusion, then, the expectation of the project will be that the EU will be in line with WTO norms, promoting the status quo. At the same time, the expectation will be that Chinese normative beliefs do not resonate with the WTO and its DSM, exposing China to new information on the functioning of legal systems, leading to the internalisation of the Western concept of the rule of law. One of the main findings of the research will be the change in the Chinese approach over time.

#### *1.4 Relevance of the project*

This study will provide an alternative and complementary theoretical and empirical tool in the study of international trade dispute settlement. While the aim of the thesis is not to refute and discard previous studies on materialistic explanations of countries' participation in the WTO DSM, it will demonstrate how ideas can represent

the subject and the explanatory frameworks for states' approaches in international political economy and international relations. This thesis will contribute to the advancement of the study of ideas as drivers of change in policy action, demonstrating how normative ideas can offer a more nuanced and in-depth explanation of social phenomena. By integrating the conceptualisation of ideas as explanations of behaviour in international political economy, researchers in international trade can address the implication of the economic and political divide between the East and the West, as well as the Global North and the Global South.

The relevance of this study lies not only on its theoretical and empirical aim to address the study of ideas, but also on its focus on the EU and China as main actors. Literature on international trade and the WTO has been mainly focused on the US as a major actor (e.g. Chad P. Bown, 2010; Elsig & Stucki, 2012; Horn et al., 1999). While these studies have been fundamental to explain major issues at the core of the foundation of the GATT and the WTO, this thesis will look at the EU and China and the variance in their approaches to the WTO DSM. Indeed, since the birth of the WTO DSM scholars have been interested in examining the dynamics of the most intensive users of the WTO, looking at the US, or at the relations between the US and the EU, or, more recently, at the trade frictions between the US and China (e.g. Bhagwati, 1995; Chen, 2014). These studies are important to understand how the GATT and the WTO system was born, as well as the challenges that the multilateral trading system is facing today. However, fewer scholars have been solely dedicated to the study of the EU and China. In this sense, the thesis will contribute to the advancement of EU-China studies. As the main aim of the study is to understand the variance in the EU and China's approaches to the WTO DSM, the thesis will not analyse the US as one of the actors. One of the contributions of this study, then, will be the focus on the EU as a representative of the West, and a founding member of the WTO, comparing it with a rising power like China.

Ultimately, this thesis will contribute to the literature on ideas by conceptualising and empirically analysing different categories of ideas. Scholars on ideas have differentiated between normative beliefs as those ideas that help actors to distinguish just from unjust, and causal beliefs as those ideas that provide a framework on how to act. Building on this distinction, I will propose a more nuanced categorisation of ideas, looking at worldviews and programmatic beliefs as normative ideas, and policy actions

as closer to causal ideas. In addition, the study will demonstrate that normative ideas like programmatic beliefs can be explanatory frameworks for social phenomena in international political economy. By mapping the origin of the EU and China's domestic worldview, I will highlight the thread between different levels of normative ideas, connecting worldviews to programmatic beliefs.

The thesis will also contribute to the literature on norm diffusion and ideational change, conceptualising and testing the process of internalisation. Internalisation will be understood as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions. One of the main contributions of this thesis, then, will be the focus on domestic normative beliefs as drivers of change, as opposed to exogenous ideas. Contributing to the constructivist literature on ideas and norm diffusion, the study will demonstrate how external information is processed through normative domestic beliefs in international settings, leading to a change in decision-making. Ultimately, this study will help explain how international norms are received and internalised by developing countries. In this sense, this theoretical framework can shed a light on the role of the rise of China in international institutions, and, more specifically, in global economic governance.

### 1.5 *Structure of the thesis*

This chapter served as an introduction to the thesis, presenting the puzzle of the research, as well as a summary of the argument and the main contribution.

The second chapter will provide the theoretical framework of the research, as well as an overview of the research design. Looking at the literature on rational choice theories and ideas, the chapter will assess why ideational theories are more suitable to explain the approaches of the EU and China in the WTO DSM. The chapter will conceptualise ideas, distinguishing between worldviews, programmatic beliefs, and policy actions. In addition, the chapter will specify the research question, providing a careful consideration of the methodology of the research, and the methods used to analyse primary and secondary data. The chapter will demonstrate *why* ideas matter in the study of international trade and international dispute settlement, addressing *which* ideas will be studied, namely economic and legalistic programmatic beliefs, *who* the actors are, and *how* these ideas will be studied, identifying the main methodology

of the study. Through process tracing, the thesis will highlight the causal mechanism between trade officials' policy action in the WTO DSM and their institutions' programmatic beliefs. Through comparative analysis, the thesis will highlight the differences between Western and Eastern ideas, showing how different sets of beliefs are responsible for different approaches to the WTO DSM.

The third chapter will provide the necessary starting point of the research, looking at which ideas are at the core of the EU and China during the Uruguay Round and the negotiations of the accession to the WTO respectively. The chapter will trace the worldview of the two actors, connecting the EU and China to their programmatic beliefs. More specifically, the chapter will identify their worldview, and how their economic and legalistic programmatic beliefs are connected to it, starting from the creation of European institutions, tracing EU's worldview back to the European tradition of liberal thinkers, until the Uruguay Round. For China, the chapter will focus on the ideas that were circulating during the open door policy, until the accession of China to the WTO, tracing the Chinese worldview to its Confucianist tradition. Ultimately, the chapter will highlight the differences in the EU and China's worldviews and programmatic beliefs, which led to different policy actions in the Uruguay Round and the point of accession to the WTO. The chapter will underline if and how domestic normative beliefs were reinforced and developed through the process of accession to (in the case of China), or negotiation of (for the EU) the WTO.

Chapters four, five, and six will apply the theoretical framework developed in the previous chapters. Chapter four will examine the policy actions of the EU and China between 2001 and 2008. This chapter will trace the ideas behind the more silent approach of China to the WTO DSM and the evidently more active approach of the EU in the same institution, connecting the ideas analysed in the previous chapter to the action performed between 2001 and 2008. The fifth chapter will focus on the timeframe between 2009 and 2017. The approach of the two actors in this timeframe seems different. China is more active in the WTO DSM, quadrupling its complaints from the previous timeframe. The EU is still an active user of the DSM, using the institution as a platform to export its own domestic ideas on economy and law. The chapter will assess whether the shift in approach is related to a shift in programmatic beliefs, highlighting the causal mechanism between ideas and policy actions. The chapter will examine the process of internalisation of the Western concept of the rule

of law. Chapter six will look at the timeframe between 2018 and 2021. In this timeframe both actors seem to have a more reformist approach to the WTO and its DSM, advocating for a reform of the multilateral organisation. While involved in the creation of the multi-party interim appeal arbitration arrangement (MPIA) as a temporary replacement of the Appellate Body, both the EU and China continue to use the DSM. The chapter will explain this approach by tracing the ideas behind it, assessing that, despite the change in approach, programmatic beliefs were consistent with the previous timeframe.

Ultimately, chapter seven will provide a comparison of the findings of the previous chapters. Furthermore, it will summarise the main contribution of the thesis, reflecting on the EU and China's experience in the WTO DSM. The chapter will provide the conclusion of the thesis, identifying the main findings of the research, the limitations of the study, and the opportunities for further research.

## 2 Researching ideas in International Political Economy

### 2.1 Introduction

Interactions between states in trade and dispute settlement matters have been perceived as dominated by 'rational' actors that act upon material interests, choosing a specific policy because it maximises their profits. Rational choice theorists, more specifically, have argued that the international arena abides by economic-oriented rules with rational actors treating interests as exogenous factors that influence decision-making.

In the context of trade policy, economic capacity and market size are often considered as central analytical factors. Numerous studies have been produced to explain how these tools have to be analysed, making them the central body of work for economics and trade researchers (Milner and Yoffie, 1989; Noland, 1997; Horn, Mavroidis and Nordström, 1999; Keohane, Moravcsik and Slaughter, 2000; Busch and Reinhardt, 2002; Hocking and McGuire, 2002; Bown, 2005, 2010; Young, 2005; Allee, 2008; Francois, Horn and Kaunitz, 2008; Davis and Bermeo, 2009; Sattler and Bernauer, 2011; Garcia, 2013). It has been assumed that the larger the market size of a state, the more likely it will engage in a dispute in the World Trade Organisation (WTO) (among others, Francois et al., 2008; Sattler & Bernauer, 2011).

Building on this assumption, several studies have been conducted to explain the behaviour of states in the WTO Dispute Settlement Body, which have tried to understand why they enter in a dispute (Keohane, Moravcsik and Slaughter, 2000; Young, 2005; Allee, 2008; Davis and Bermeo, 2009). They have asserted that materialistic factors like market size or economic capacity can be used as explanations for the decision of states to enter into a dispute in the WTO DSM, especially for those disputes between global powers and developing countries (Allee, 2008; Elsig and Stucki, 2012).

However, as I will discuss further in this chapter, rationalist theories may fail to fully answer why states act in different ways with similar structural and material factors. Can ideas matter in such a rational system? How can we recognise them and trace these ideas if states are intangible institutions? Though abstract and fictional

constructs, states are made of and by people who operate in a specific cultural environment. States, then, embed not only material interests, but ideational factors.

International political economy has been interested in the relationship between economic ideas and policy outcomes. Fewer studies, though, have operationalised ideas as both the object of the research and the main drivers of behaviour in policy settings.

The previous chapter introduced the research, showing the puzzle and giving a brief overview of the main argument of the thesis. This chapter will identify the main research question that will guide this study. This chapter will go through the theories that have been used to explain why states engage in international dispute settlement. In particular, the chapter will review the literature on mainstream and rational choice theories, showing how interest-based theories cannot fully explain the picture. Then, the chapter will identify constructivist and discursive institutionalist theories as more appropriate theoretical frameworks that can explain why and how ideas matter in the WTO DSM. Identifying the 'blind spots' in international political economy (Best *et al.*, 2021; LeBaron *et al.*, 2021), the chapter will specify which ideas will be part of this study, how they change, the actors that carry these ideas, and the methodology used to study them.

## 2.2 *Theories on international trade and dispute settlement*

This section will examine how different theories have analysed phenomena in international trade, and, more specifically, in the WTO DSM. Firstly, rationalist theories will be reviewed to understand how the WTO DSM has been conceptualised, identifying gaps in the literature on international trade dispute settlement. Then, the section will look at constructivist and discursive institutionalist literature as those theories that can contribute to the explanation of ideational factors in international political economy and international relations.

### 2.2.1 *Rationalist theories*

The main international relations theoretical academic debate around an international trade dispute settlement started in the early 1980s. Rationalist neorealists

and neoliberal institutionalists have explained the role of power and structural factors in the WTO. Realist theories are based on the assumption that the international arena is often dominated by a hegemonic power (Waltz, 1979). According to neorealists, an institutional dispute settlement mechanism such as the WTO DSM holds little to no value for the international community, as power belongs to the state and cannot be delegated to a different institution (Downs, Rocke and Barsoom, 1996). They believe that compliance with international obligations exists when enforced by hegemonic powers that act as enforcer (Downs, Rocke and Barsoom, 1996). Other scholars focused on power differentials factors. They investigated the possibility of escalation of the disputes. It has been argued that countries that have different levels of power are less likely to start a dispute in the WTO DSM (Sattler and Bernauer, 2011). The main argument is that smaller states are less likely to enter in a dispute because of fear of retaliation (Francois, Horn and Kaunitz, 2008).

Rationalist neoliberal institutionalists have focused on the issue of transparency in international organisations. Building on the prisoner's dilemma, lack of transparency and asymmetry of information can be overcome by international institutions (Keohane and Nye, 1973; Keohane, 2005). They argue that decentralising the sanctions to solve the prisoner's dilemma is the main task of the WTO DSM (Keck and Schropp, 2007). The WTO DSM aims to create a system of reciprocity and normative reference restraining the unilateral exercise of power (Elsig, Pauwelyn and Bernauer, 2012). According to neoliberal institutional literature, then, the trade organisation is an enforcer of legal norms and obligations in the international arena, acting as a deterrent for non-compliant actors (Keck and Schropp, 2007). In this sense, the WTO DSM represents a forum that lowers the risks of asymmetry of information, promoting compliance with the rule of law and legal certainty. Bringing claims to the WTO DSM is a way to reduce uncertainty, promoting multilateralism, removing barriers, and, ultimately, enhancing free trade. Other works focused on the role of governments as 'gatekeepers' that balance the tension between domestic interest and international pressure (Young, 2005).

Another stream of literature analysed the role of network governance. Scholars in this field have highlighted the impossibility for governments to govern without interaction with other actors (Rhodes, 1996; Shaffer, 2007). Resources are allocated among various actors and public-private networks are necessary for enhancing

governance. Shaffer (2007) applied the concept of network governance and public-private networks to the WTO DSM experience. In particular, he focused on the US and EU networks, looking at the role of private firms in the initiation of disputes in the WTO. Other recent studies have looked at the power shift in the WTO to Global South and developing countries (Hopewell, 2016). Hopewell argues that the rise of new powers like Brazil and China has threatened the liberal economic order, suggesting a revisionist agenda for the developing countries. Hopewell's study shows the recent interest of international political economy in the participation of new global powers like China in the WTO. The work is based on the WTO as a wider institution, without a specific focus on the different approaches to its dispute settlement mechanism. While looking at rising powers like China, Brazil, and India, Hopewell's work is focused on power relations, looking at the power shift from a US-centric WTO to a focus on the Global South. According to Hopewell, this new (im)balance in power relations has caused the stall of negotiations during the Doha Round. This work has been fundamental to shed a light on the recent rise of global economic actors like China. However, the work is based on a neoliberal understanding of international relations, looking at economic and market power as drivers of behaviour in the multilateral trade organisation.

What happens, though, when materialistic and structural factors cannot fully explain the picture? What is the role of normative ideas in this shift? Building on this debate on emerging power, my thesis will propose an alternative and complementary explanation of the rise of global powers in the WTO. Firstly, it will not focus on the US-centric vision of the WTO (see discussion in Chapter 1); instead, it will focus on the EU as the main 'protector' of the status quo. This will help bring to light additional nuances in the explanation of 'traditional' powers' behaviour in the multilateral trade organisation. Secondly, it will propose a different understanding of the rise of emerging powers. By focusing on the role of ideas, the rise of China in the WTO will be seen not as disruptive of the status quo, but as a consequence of the adoption of international norms. Ultimately, the study will focus on the WTO DSM more specifically. By looking at the main institution that kept working even after the stall of the negotiation rounds of the WTO, the study will ultimately contribute to the debate on rising powers in international institutions.

Other scholars focused on the difference between the WTO and the EU legal system, studying the participation of states in the WTO DSM. A difference between the WTO and the EU is that in the WTO DSB ‘preliminary ruling’<sup>4</sup> procedures do not exist (Hoogmartens, 2004). This means that only states have the legal personality to act upon the DSB (Sacerdoti, 2010). In this sense, individuals and private companies can enforce the WTO trade liberalisation commitments through their national legal and political systems (Hoogmartens, 2004; Bown and Pauwelyn, 2010). Following this reasoning, it would not be difficult to assume that national legal and political systems play a major role in the way WTO rules and commitments are translated, transposed, and enacted in the countries. At the same time, this means that national systems are the filters through which international trade commitments are assimilated in the national apparatus. If it is clear, then, that international trade rules are filtered through national legal and political systems, it would also be reasonable to argue that the way actors play in the international trade arena is impacted by their domestic legal systems.

Rationalist neorealist and neoliberal institutionalist theories focused on the role of the WTO and its DSM, explaining, and sometimes describing the functions of the multilateral institution. These studies have been fundamental to understand the work of the WTO and its DSM, but they do not fully engage with the role of states in the DSM.

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<sup>4</sup> According to Article 267 TFEU,

‘The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.’

Preliminary ruling procedures are usually activated by national courts for matters that regard the interpretation of EU law. Important rulings by the Court have been issued through this procedure, contributing to the harmonisation and the improvement of EU law. This is a major difference between the two organisations, as preliminary ruling judgements have been considered as fundamental milestones for the EU integration process (see Donnelly, 2021).

Studies on the WTO have shifted their focus from explaining the role of the DSM *per se*, to investigate states' participation to the disputes. Several scholars have investigated the issue of compliance to the reports of the WTO DSM. They have looked at why states comply with WTO DSM reports (Bello, 1996; Jackson, 1997; Schwartz and Sykes, 2002). Others have focused on the implication of compliance from an international law perspective, expanding scholarship on the judicialisation of international trade (Jackson, 1997, 2004; Mavroidis, 2000; McRae, 2008). Another important contribution sees compliance with the mechanism's decisions as a way to pursue public goods (Pauwelyn, 2000). Other studies focused on the compliance of single members of the WTO (Princen, 2004; Brewster and Chilton, 2014; Zhang and Li, 2014; Yildirim and De Bièvre, 2015; Yildirim, 2018; Yildirim *et al.*, 2018; Zhou, 2019). It has been argued that if the main goal is to induce compliance, influential sectors need to be targeted (Bown and Pauwelyn, 2010). The implication of these studies is twofold. First of all, most of these studies are focused on the causal mechanism between domestic factors and the WTO DSM (Zhou, 2019; Young, 2021). Secondly, they are interested in the *final* stage of the dispute, paying less attention to what is behind the initial stages and overall approaches to the DSM. While these studies have been fundamental in casting a light on the issues of states' participation to the WTO dispute settlement, they leave some questions unresolved. What is the role of non-structural and non-material factors in international trade dispute settlement? What role do normative ideas play in the judicialisation of international trade? How is it possible to explain states' behaviour not when complying to the final reports of the Dispute Settlement Body or the Appellate Body of the WTO, but when deciding to approach the DSM in the first place? What role do ideas play in this scenario? Building on this debate, the research will contribute to the scholarship on judicialisation of international institutions and international trade, looking at the role of normative ideas on domestic legal systems in the WTO DSM. Furthermore, the project will focus on the way states approach the WTO DSM, shifting the attention from the very end phases of the dispute settlement procedure to the starting point, looking at how domestic ideas impact states' use of international trade dispute settlement.

While most of the studies on the DSM have focused on compliance, less attention has been paid to the reasons why states use the WTO DSM, and, more specifically, how they use it, or to the role of domestic ideas in international trade dispute

settlement. Nonetheless, there has been a growing body of literature on these topics in the past decades (Milner and Yoffie, 1989; Noland, 1997; Busch and Reinhardt, 2002; Hocking and McGuire, 2002; Bown, 2005; Bown and Pauwelyn, 2010), which coincides with the reinvigorated interest in international trade triggered by the success of the Uruguay Round (Horn, Mavroidis and Nordström, 1999; Reinhardt, 1999; Horn, Maggi and Staiger, 2006; Allee, 2008). Scholars have investigated the role of economic size in the DSM, arguing that larger economies and bigger traders are more likely to enter into a dispute (Sattler and Bernauer, 2011). Other studies focused on developing countries, arguing that factors like past experience in the DSM (Davis and Bermeo, 2009), or the likelihood of winning (Allee, 2008) increases the chances for states to initiate a dispute. Combining these arguments, scholars looked at how more experienced countries have a comparative legal advantage in using the WTO DSM, as they would be more capable of recognising when a claim can be ruled in favour or against them, conditioning their willingness to escalate the dispute in the dispute settlement (Mitchell, 2013). Furthermore, scholars have investigated the differences between advanced economies and developing countries, looking at economic size and legal capacity as variables to understand why countries initiate a dispute in the WTO DSM (Bown, 2005; Francois, Horn and Kaunitz, 2008; Mitchell, 2013; Zeng, 2013).

These studies clearly show the interest of academia in investigating the causal mechanisms that explain why states use the WTO DSM. Nevertheless, it is evident that further research needs to be conducted. The majority of the studies have been focused on the economic and legal capacity of states to enter into disputes, considering a large amount of cases, mostly focusing on stressing the differences between advanced economies and developing countries (Bown, 2005; Francois, Horn and Kaunitz, 2008; Mitchell, 2013; Zeng, 2013).

Furthermore, the rational choice argument on economic and legal capacity is not fully equipped to explain the whole scope of this study. As anticipated in Chapter 1, this thesis aims to explain the variance in the EU and China's approaches to the WTO DSM. Rational choice arguments would look at the economic and legal capacity of the two actors. They would argue that the EU is one of the biggest traders in global economy, resulting in a more litigious approach to the WTO DSM. Furthermore, they would argue that the EU has institutional, bureaucratic, and legal capacity built on years of experience in the WTO and its DSM as one of the main architects of the WTO

(see Chapter 3). While these arguments are certainly illuminating, they do not capture the breadth of EU-China relations in the WTO DSM. As it will be demonstrated in the empirical chapters of the thesis (see Chapter 5 and Chapter 6), China has used European law firms with previous experience in the WTO to assist it with the DSM procedures. As it will be further explained, this shows that China's reluctance to use the WTO DSM is not (solely) due to different materialistic factors. At the same time, if China has always had the legal and technical capacity to initiate and pursue trade dispute in the WTO DSM, why does it change its approach? Rational choice arguments are not fully equipped to explain the different nuances of EU-China approaches in the WTO DSM between 2001 and 2021. Indeed, the thesis aims to clarify this evident empirical puzzle by looking at the variance in the EU and China's approaches to the WTO DSM. The analysis of the interaction of these two actors will be fundamental to understand the differences and similarities of approaches in international trade dispute settlement, allowing for a clear investigation of the causal mechanisms behind trade officials' policy action in the WTO DSM.

From the review of the literature on rational choice theories in international trade, two main gaps become evident. Firstly, literature on international trade and WTO DSM has mostly focused on the last phases of the disputes (i.e. compliance). Fewer studies have focused on the drivers that bring countries to the initial phases of the dispute settlement, or, more generally, on their overall approach to the WTO DSM. By focusing on the last stages of the dispute settlement procedures there is still a lot left unexplained. By shifting the focus onto the very initial stages of the dispute settlement procedures, the research can contribute to the understanding of states' behaviour in international organisations and international dispute settlement, examining the wider approach that states adopt when using the WTO DSM. Furthermore, by focusing on actors like the EU and China, the project can shed a light on the differences in approaches between established global powers and new, emerging economies in international organisations. Examining the role that domestic ideas play in international trade dispute settlement can advance the understanding of the use of international institutions by emerging powers, examining their wider approach in global economic governance, and, more specifically, in their use of the WTO DSM. Secondly, when focusing on the drivers on the use of the DSM, previous studies have mostly looked

at interests-based and materialistic explanations, whether structural or causal ones, neglecting the role of ideas and normative beliefs in the WTO DSM.

While these studies demonstrated the academic interest in the study of the WTO DSM and major actors like the EU and China, unanswered questions remain. What happens when structural and material factors are similar? Would it be possible that actors with similar structural and material conditions when facing similar scenarios take into account non-material drivers in their decision-making? What is the process that causes domestic normative ideas to guide actors' decisions in international trade dispute settlement? What kind of understanding can the study of ideas bring to the literature on global economic governance? Can ideas be considered drivers of states' action in the WTO DSM?

### *2.2.2 Constructivism*

When discussing ideas in international relations, constructivist scholarship is certainly one of the most prolific. While there is still disagreement on its ontological and epistemological assumptions (Guzzini, 2000; Abdelal, 2009), constructivism can be defined as 'an attempt [...] to build a bridge between the wildly separated positivist/materialist and idealist/interpretive philosophies of social science' (Adler, 1997, p. 323). Adler (1997) argues that there is a middle ground between the 'over' interpretative constructivism and rational scholarship. By adopting this 'middle ground' approach, norms give meaning to the physical world, helping constitute reality (Adler, 1997). Ideas, then, allow for a mediation between agents and physical objects, assigning them meaning or purpose, ultimately constituting reality (Geertz, 1973; Adler, 1997; Bell, 2012a). It can be both 'critical' and 'problem-solving', as it investigates in an alternative way the 'prevailing order of the world', and, at the same time, it 'takes the world as it finds it' (Cox, 1986). Ideas have been analysed as possible variables for governments' behaviour in policy spaces (Hall, 1992; Goldstein, Keohane and Social Science Research Council (U.S.), 1993; J. A. Hall, 1993; P. A. Hall, 1993; Goldstein, 2019).

In this sense, constructivist lenses allow for a comprehensive explanation of reality, examining the role of ideational factors as causal mechanisms of social phenomena in international political economy and international relations (Finnemore

and Sikkink, 1998; Hay and Rosamond, 2002; Abdelal, 2009; Cho, 2010; Baccini and Dür, 2012; Alons, 2013; Siles-Brügge, 2013; Wang and Blyth, 2013; Ho, Neng and Yifei, 2019; Nelson, 2020).

Another relevant study on ideas is the work of Béland (2009). He highlights the unanswered questions that historical institutionalism was not able to fulfil, focusing on policy change. It is important to underline his understanding of sociological literature on assumptions and political behaviour (Béland, 2009, 2017). Building on Pfau-Effinger's (2005) argument, he claims that differences in cultural assumptions about the 'economic, political and social world can explain major social policy variations from one country to another' (Béland, 2009, p. 705). Transposing this argument from social policy to international political economy, it provides evidence that a different set of ideas between two countries can explain a different political behaviour in international organisations. Actors that carry different ideas on the functioning of the economy or legal systems might behave differently in international trade dispute settlement. In this sense, the dichotomy between the Western and Eastern sets of ideas might be an explanation for the different approaches of the EU and China in the WTO DSM.

Constructivists believe that ideas do not operate in a 'vacuum' (Guzzini, 2000; Bell, 2012a, 2012b). This means that ideas are connected to the context and need 'institutional support to be effective' (Guzzini, 2000). Ideas are 'road maps and focal points for coordination' (Blyth, 2002; Ho et al., 2019). Ideas, then, need to be analysed in relation to the context in which they operate. They should be investigated as embedded and connected to the institutional structure. Domestic ideas become necessary in the explanation of international phenomena (Slaughter, 1995). In this sense, norms are not global (Legro, 1997; Finnemore and Sikkink, 1998). Studies on the impact of Confucianism in Chinese political and social structure (Cho, 2010; Karton, 2016; Li and Lin, 2016; Ho, Neng and Yifei, 2019; Jany, 2020), and on European norms (Scott, 1994; Hirsch, 2017; Soave, 2020), are fundamental to address the impact of domestic ideas in international political economy.

This observation is in line with legal constructivist literature on the role of norms in international trade. New ideas and practices become added layers to the original sets of actors' beliefs, meaning that the most recent layer should be interpreted through the previous ones (Shaffer, 2021). Adding new layers through practice and socialisation leads to a different interpretation of the original (first) belief. This leads to

two consequences. The first is that new policy actions (the most recent layers), even if similar in practice, are different in substance, as they are always added to different sets of ideas, that bring actors to interpret them through their original sets of beliefs. The second one is that policy learning and material factors can bring to a different interpretation of existing ideas.

Influenced by Western academia, Chinese international political economy and international relations scholars have investigated concepts as norms, beliefs, and identity, in order to analyse China's behaviour in the international community. Chinese constructivists have investigated the role of China's rise in international relations (Wang and Blyth, 2013). In this sense, Chinese constructivists focused on the role of international norms in shaping China's foreign policy, and how they have been internalised by the bureaucratic apparatus. They problematised the process of internalisation of international norms, theorising the way in which economic development and the desire for international recognition and respect in the international community might have contributed to this change (Kang, 2010). Chinese constructivists also investigated the notion of worldviews and 'worldview gaps' (gap between actual world order and the state's worldview) (Pang, 2007). If the state's worldview is different from the actual world order, then the state has an incentive to change. This worldview and worldview gap concern the idea that states have of the international order. If their worldview adheres to the reality of the world order, then the state is a supporter. According to this argument, Western countries are supporters of the international order, as their worldviews adheres or complies with the wider international community. On the contrary, countries like China have a deeper worldview gap, as their worldview is not in line with the wider international community. Part of the scholarship has been focused on Confucianism and its influence on Chinese foreign policy, looking at the application of principles like moral conduct, aversion to the use of force, and defence over offence in China's understanding of international relations (Yan and Xu, 2008; Wang and Blyth, 2013). These studies highlight the importance of understanding the different worldviews that actors might carry, in order to analyse their behaviour in international relations. Studying how worldviews and ideas differ among actors might shed light on different behaviours in international trade dispute settlement.

The ontological and epistemological assumptions of constructivism will allow the research to investigate how the different sets of ideas between Europe and China lead the two actors to different approaches in the WTO DSM. This literature review showed how ideas have been studied in international relations and international political economy as drivers of states' policy action.

### *2.2.3 Discursive institutionalism*

Discursive institutionalism is an important theoretical approach that is based on the study of ideas, focusing on ideas and the process of discourse in institutional contexts (Schmidt, 2008b, 2011; Carstensen and Schmidt, 2016). Discursive institutionalism provides theoretical and methodological toolkits to answer questions about the role of ideas, interests, and values that are essential for this research.

Discursive institutionalism is intended as an 'umbrella concept' for the diverse approaches that take into account ideas and discourse in institutional frameworks (Schmidt, 2008b, 2011, 2012). According to discursive institutionalism, ideas need to be investigated in their institutional environment (Terlizzi, 2019). Discursive institutionalism treats institutions as 'constraining structures' and 'enabling constructs' (Schmidt, 2008b). They are internal to the actors. They serve as 'constructive opportunities' for action as well as 'obstructive constraints' on it (Schmidt, 2008a). Discursive institutionalism takes a similar yet different approach from the other three (sociological, historical, and rational choice) institutionalisms. Firstly, discursive institutionalism and sociological institutionalism share an interest in the study of ideas (Schmidt, 2008b, 2011). They both refer to the same use of terms like ideas, norms, and discourse. In addition, their constructivist ontology on the nature of interests and institutions is almost the same, together with their conception of actors' ideas and norms in the material reality (Schmidt, 2008b, 2011). Nonetheless, their difference resides mostly in their view on institutions. If social institutionalists treat institutions as static, stressing the constraint role of cultural frames, discursive institutionalists focus more on the 'institutional dynamics that come from the reframing of action through ideas and discourse' (Schmidt, 2011, p. 4). Therefore, discursive institutionalists and historical institutionalist scholars share similar concerns about approaches that explain change as the result of unexplained exogenous factors (see P. A. Hall, 1993). Their

main difference resides in their understanding of change. While historical institutionalism treats change as an exogenous factor, discursive institutionalism focuses on its endogenous nature (Schmidt, 2008b, 2011). Understanding change as an endogenous factor is helpful in addressing the role of ideas and normative beliefs as drivers of behaviour in international institutions. By shifting the understanding of the drivers of change from external factors to endogenous ones, it is possible to explain the causal mechanisms that prompt normative beliefs to change. This conceptualisation of change can help explain the role of normative beliefs in decision making processes, analysing why institutional actors approach international trade dispute settlement in a specific way. Finally, discursive institutionalism and rational choice institutionalism can share the same use of language of interest maximisation and incentive structures. They differ, though, in their evaluation of interests. Rational choice institutionalists put interests at the core of their investigations, relegating ideas as tools that allow choice between interests; discursive institutionalists, instead, put ideas at the core of their theoretical structure (Schmidt, 2008b, 2011). On the institutional side, rational choice institutionalists tend to consider institutions as 'neutral incentive structures', while discursive institutionalism sees them as built on values and ideas, and subjected to change as actors' ideas change over time. Even if they both deal with interests, they look at these interests with a different perspective. If rational choice institutionalists attribute interests to rational actors, discursive institutionalists examine ideas about interests of actors (Schmidt, 2008b, 2008a, 2011).

Discursive institutionalism, then, will be used as the main theoretical framework of this study, informing my understanding of ideas in international institutions. By looking at domestic ideas, discursive institutionalism will allow me to analyse normative ideas as fundamental elements of institutions like the WTO and its DSM. Normative ideas, then, belong to institutions, being shaped (and reshaped) through the discourse of their main actors. While discursive institutionalism is an umbrella concept for different studies of ideas, I take discursive institutionalism as a framework to conceptualise normative ideas as belonging to institutions and the bureaucratic apparatus of states, focusing on the domestic normative beliefs of the EU and China, as well as international organisations like the WTO DSM. In this sense, the conceptual framework of discursive institutionalism will allow the study to focus on an institutional analysis of ideas and, more specifically, normative beliefs, examining the role of these

normative beliefs in policy change. Actors, then, will be analysed as carriers of specific normative beliefs that are embedded in institutions and their practice, looking specifically at the role that ideas have in shaping actors' approaches to international trade dispute settlement. Discourse will be identified as the main vehicle for ideas to drive change in institutional settings. In this sense, the study will use discursive institutionalism to operationalise discourse and thereby trace normative beliefs of the EU and China in their approach to international trade dispute settlement.

### 2.3 *Theorising ideas in international trade*

One of the major challenges when studying ideas is their identification. Before exploring in more detail *how* ideas are explanatory factors in international trade dispute settlement, it is necessary to understand *which* ideas will be studied (Béland, 2009, 2019). To explain how ideas can be studied and in social sciences, Geertz states that:

[...] to analyze symbol use as social action and write thereby an outdoor psychology is [...] to attempt to navigate the plural/unific, product/process paradox by regarding the community as the shop in which thoughts are constructed and deconstructed, history the terrain they seize and surrender' (Geertz, 1982, p. 21).

Analysing ideas as causal factors in international relations and international political economy requires consideration of how ideas interact at different levels. According to Geertz ideas do construct and deconstruct themselves within institutions, and they should be studied as the product of institutions, as well as the enabling factors that construct the same institutions. Rephrasing this argument under a more discursive institutionalist lens, institutions are the constraining structures and enabling constructs in which domestic ideas are created and changed (see Schmidt, 2008). In this sense, ideas can be investigated as causal mechanisms that can explain the shift or variation of those same ideas, which are at the core of causal understanding of specific social mechanisms.

If ideas do not operate in a 'vacuum' (see Guzzini, 2000; Bell, 2012b, 2012a), then it is necessary to understand where these ideas have been operating. More specifically, it is essential to look at the institutional and political background in which these ideas have been developed, characterising and shaping states' behaviour. In

this sense, this section will identify different levels of ideas, that will be part of the analysis of the study. This will allow for the institutional analysis of the ideas that prompted the EU to become a major player in the WTO DSM, and China to become a member of the multilateral trade institution, studying the two actors through their own domestic ideas and normative beliefs. The ultimate aim of the project, more broadly, is to show why and how ideas guide states' behaviour in international institutions, connecting domestic ideas to the approach of the EU and China to the WTO DSM.

Having identified the interest of the literature in the study of ideas in international relations and international political economy, it is necessary, at this stage, to give a more specific definition of ideas in international trade dispute settlement. Scholars have referred to ideas using different terminology and concepts (see Terlizzi, 2019; Swinkels, 2020). Indeed,

'In the literature, specific types of ideas are often studied independently from one another, which can create empirical blind spots and, more importantly, a lack of systematic discussion about the ideational explanatory logic. The advantage of discussing different types of ideas together is that it helps us to understand what ideational processes are at the most general explanatory level, while also revealing their sheer empirical diversity and the different ways in which they can be studied' (Béland, 2019, p. 17).

To understand *how* and *why* ideas matter, then, it is necessary to clarify *what* ideas are and how they can be recognised and classified in international relations and international political economy. This section will propose a classification of different levels of ideas (see summary in Table 2.1). Building on ideational scholars (Goldstein, Keohane and Social Science Research Council (U.S.), 1993; P. A. Hall, 1993; Sabatier, 1998; Blyth, 2002; Hay and Rosamond, 2002; Mehta, 2010), ideas do not operate at the same level. Indeed, some ideas are more general, and relate to the core identity of an actor. I refer to these ideas as *worldviews*. Other ideas are more concrete, and they are not part of the core normative sets of beliefs, being closer to policy solutions, policy goals, or *policy actions*. Between the general worldviews and the more concrete policy actions lie *programmatic beliefs*. I define these as normative ideas that guide actors' decisions in international institutions.

### 2.3.1 Worldviews

Worldviews are usually associated with those general principles that represent actors' ideologies (Freeden, 1998; Berman, 2006; Martill, 2017; Béland, 2019). They are embedded in the institution, also referred to as 'deep core' (Sabatier, 1998; Surel, 2000; Swinkels, 2020). They are ideas that are at the core of the political system and are deeply rooted in society. Other scholars investigated ideas as 'societal paradigm' (Jenson, 1989). This is intended as both a 'set of practices' and a 'meaning system'. They contain 'a view of human nature, a definition of basic and proper forms of social relations among equals and among those in relationships of hierarchy, and a specification of relations among institutions as well as a stipulation of the role of such institutions' (Jenson, 1989, p. 239). In this sense, societal paradigms are still too broad, focusing on the ontological view of the world, making them closer to worldviews. Worldviews, then, can be associated with actors' identities (Finnemore, 1996; Katzenstein and Social Science Research Council (U.S.), 1996; Finnemore and Sikkink, 1998; Banchoff, 1999; Ruggie, 2002; Abdelal, 2009; Alons, 2013). Building on Abdelal (2009), I argue that worldviews have been shaped by centuries of bureaucratic differences. Worldviews, as the deep core identity of an actor (Finnemore and Sikkink, 1998), are 'central to the state and shape the beliefs of the state's decision-making elite' (Alons, 2013, p. 506). In this sense, worldviews are the sum of shared norms and narratives, that help shape policy actions that are specific to a particular actor (Banchoff, 1999; Alons, 2013). They are 'a system of symbolic meaning with features distinctive to a society or a social group, that forms the basic, common model for the beliefs, values and opinions held by its members' (Mousourakis, 2019, p. 139). While worldviews can be associated with identity, they are not interchangeable. Identity is intended as a wider concept that includes the ideational category of worldviews.<sup>5</sup>

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<sup>5</sup> For the sake of this study, the concept of identity is intended as '(a) a social category, defined by membership rules and (alleged) characteristic attributes or expected behaviors, or (b) socially distinguishing features that a person takes a special pride in or views as unchangeable but socially consequential (or (a) and (b) at once)' (Fearon, 1999, p. ii). Therefore, identities are associated with a wider category that includes people's belonging to a specific group. Numerous scholars in political science have discussed this issue (see Abdelal, 2009; Alons, 2013, 2013; Banchoff, 1999; M. Finnemore, 1996; Martha Finnemore & Sikkink, 1998; Katzenstein & Social Science Research Council (U.S.), 1996). Nonetheless, this research does not aim to assess the roots of identity. Building on Abdelal's (2009) work, I will consider the institutional aspect of state identities to identify the ideational

In other words, worldviews can be understood as the cardinal points that guide governments' action. From an empirical perspective, though, these ideas can be difficult to study, because they require a higher level of abstraction, risking relegating the research to a thought experiment, rather than an empirical enquiry. Nonetheless, worldviews provide the necessary starting point to identify actors' normative beliefs. Worldviews, then, will be identified as actors' core normative sets of ideas. More specifically, the study will trace the worldviews of the EU and China, identifying the main sets of ideas that are at the core of each actor's ideology. The research will identify ideas that come from the liberal tradition as fundamental elements of the European worldview. In this sense, the EU will be considered part of centuries of a Western liberal tradition that is at the core of ideas on modern democracy, and global governance (see discussion in Chapter 3). At the same time, the study will identify Confucianist traditions and values as core elements of the Chinese worldview. These ideas will be traced back to the teachings of Confucius and their embeddedness within Chinese bureaucracy and ideas of state relations. These ideas were still circulating during the years of the Opium war and the century of humiliation (see discussion in Chapter 3). This broad interpretation of the European liberal worldview and the Chinese Confucianist worldview will allow for a more comprehensive identification and analysis of the different normative beliefs that derive from them, providing a better understanding of the contemporary ideas behind the EU and China's behaviour in external relations, and, more specifically, in international trade dispute settlement.

### *2.3.2 Policy actions*

At the other side of the spectrum, policy ideas, or 'policy core', are those revealing ideas at a more practical and accessible level, that convert ideas into concrete policy actions. In other words, policy ideas and policy actions are far too intertwined to distinguish one from the other. In this sense, causal beliefs are usually associated with policy actions. They provide 'guides for individuals on how to achieve their objectives' (Goldstein, Keohane and Social Science Research Council (U.S.),

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components that form actors' worldviews. In this sense, I am interested at the identities that have been shaped by years of bureaucratic practice of the EU and China. Ultimately, the research will be focused on the specific worldviews of the EU and China, which can be considered as part of the wider category of institutional identity.

1993, p. 10). They are considered as a means to achieve specific policy objectives, and they are mostly referred to as causal beliefs. Rational choice institutionalists have linked causal beliefs with interests. In this sense, policy actions can refer to more actionable policy principles that constitute the practical plan for policy makers to achieve policy goals. This level of ideas is more accessible, as actors are generally more aware of their policy actions in policy documents, or speeches (Schmidt, 2008a; Béland, 2009; Calvert, 2022). They deal with cause-effect relations acknowledged by recognised elites, like scientists in institutions, providing 'guides for individuals on how to achieve their objectives' (Goldstein, Keohane and Social Science Research Council (U.S.), 1993, p. 10). Policy ideas are more evident, and they can easily change because they do not constitute the core sets of beliefs of institutions. Policy action is more affected by the variation of political conditions and material preferences. Nonetheless, actors tend to connect their policy action to more normative beliefs. If policy action provides the tools to make a decision possible, normative beliefs guide actors in deciding whether a specific decision should be made or not. In this sense, they are close to what has been defined as 'policy solutions' (Mehta, 2010). They are 'both the narrowest conceptualization of the role that ideas play in politics and the most theoretically developed' (Mehta, 2010, p. 29). Policy actions are more closely associated with what policy makers and actors define as objectives or policy goals.

Policy ideas can be understood as a map that can be used to arrive from A to B. Even though they are far more accessible than worldviews in terms of empirical analysis and availability of evidence, policy actions are far too distant from the normative core of actors' ideational framework, being more subjected to changing circumstances and policy goals. When analysing them as the main explanatory factors of social phenomena, the main risk would be to miss the actual normative underpinnings of actors' sets of ideas. In this sense, the analysis that researchers would undertake would not be too distant from rational choice scholars that examine the role of ideas or interests as exogenous factors in their explanatory models of international relations.

As it will be evidenced later in the study, examples of policy actions include the EU's creation of a multilateral organisation for free trade; the reform of the GATT DSM to a new 'quasi' judicial rules-based system during the Uruguay Round (see discussion in Chapter 3); the promotion of multilateralism through the use of WTO instruments

like Trade Policy Reviews; and the maintenance and promotion of a rules-based system through the intensive use of the WTO DSM (see discussion in Chapter 4). Other examples of policy actions include the intensive path of trade liberalisation and institutional reforms as part of the accession process to the WTO membership (see discussion in Chapter 3), and the preference for consultations and mediation in the use of the WTO DSM, as well as the will to learn from more experienced members of the multilateral trade organisation (see discussion in Chapter 4).

### 2.3.3 *Programmatic beliefs*

Lying in the middle of the spectrum are programmatic beliefs. These are ideas that 'interlock' with worldviews and policy actions 'to form a coherent whole' (Calvert, 2022, p. 40). Building on cognitive psychology, 'actors perceive the world through a lens consisting of their preexisting beliefs' (Sabatier, 1998, p. 109). Programmatic beliefs have been conceptualised as an 'ideational framework within which programs of action are formulated' (Berman, 1998, p. 21). In this sense, ideas are close to bounded rationality approaches that see beliefs as 'cognitive biases' that actors have in international politics when processing external information (Skovgaard Poulsen, 2014). While bounded rationality scholars have looked at ideas as causal beliefs that help actors achieve specific policy actions, programmatic beliefs are, rather, normative ideas that guide policy makers distinguishing 'right from wrong'. In this sense, rather than cognitive biases, programmatic beliefs act as filters that actors use when navigating policy decisions, processing external information according to their normative sets of ideas. Considering programmatic beliefs as normative ideas, then, would align them to what scholars define as 'principled beliefs' (Goldstein, Keohane and Social Science Research Council (U.S.), 1993). Programmatic beliefs, then, are associated with those 'normative ideas that specify criteria for distinguishing right from wrong and just from unjust' (Goldstein, Keohane and Social Science Research Council (U.S.), 1993, p. 9). Therefore, programmatic beliefs are conceptualised as normative ideas, like worldviews. However, they are more specific than worldviews, providing a programmatic structure for policy makers. At the same time, they are more abstract than policy ideas, as they lie in the background of the political debate (Calvert, 2022, p. 40). Programmatic beliefs, then, are not as general and embedded as worldviews, or as concrete as policy actions. Programmatic beliefs are those ideational frameworks

that lead actors to behave in a certain manner, developing specific policies or deciding to act in a specific way. According to constructivist literature (Ruggie, 1998), normative ideas like programmatic beliefs can be considered in the explanation of world phenomena. In this sense, programmatic beliefs as normative ideas can guide, inspire, or justify states' behaviour in a particular way (Kratochwil and Ruggie, 1986; Cho, 2010). Programmatic beliefs, then, will be considered as 'central to the state and shape the beliefs of the state's decision-making elite' (Alons, 2013, p. 506). These normative ideas can shape actors' preferences or policy action, guiding them in their decision making process (Finnemore and Sikkink, 1998; Alons, 2013). The study, then, will analyse normative ideas on the functioning of the economy and legal systems. The study will focus on programmatic beliefs like ideas on the rule of law, or free trade, that are embedded in the EU's sets of normative beliefs (see discussion in Chapter 3 and other empirical chapters); or ideas on peaceful coexistence and State-led growth that are at the core of Chinese sets of beliefs (see discussion in Chapter 3 and other empirical chapters).

If worldviews are intended as cardinal points, the stable and reliable normative sets of ideas at the core of institutional actors, and policy ideas as a map that provides the necessary information to translate ideas into policy action, then programmatic beliefs can be understood as a compass, guiding policy makers from point A to point B. A compass is necessary as it can direct to the cardinal points and is necessary to correctly read a map. This is what beliefs are. For this reason, I conceptualise these ideas as 'guiding' beliefs, as they provide guidance for policy makers when navigating decision making processes. Rather than providing a programmatic structure, beliefs are those ideas that guide policy action according to the worldview of policy makers. I argue that programmatic beliefs are the middle ground between the far too abstract worldviews, and the too practical policy actions. Programmatic beliefs are those kinds of ideas that are necessary for connecting policy action to the worldviews of a specific actor. The study will connect the European liberal worldview with more specific ideas on the functioning of the economy and legal systems, like programmatic beliefs on free trade and the rule of law. These programmatic beliefs, then, will be traced as drivers of policy action in international trade dispute settlement, connecting policy actions like the intensive use of the WTO DSM, or the promotion of multilateralism (see discussion in Chapter 4 and 5), or the leadership role in the reform of the multilateral trade dispute

settlement (see discussion in Chapter 6). The Chinese Confucianist worldview will be connected with programmatic beliefs on peaceful coexistence as ideas on the functioning of the legal system, and State-led growth as a normative idea on the functioning of the economy. These programmatic beliefs will help explain why Chinese officials approached the WTO DSM with a preference for mediation and consultation or for domestic structural market reforms (see discussion in Chapter 4). Programmatic beliefs, then, act as linking points between the more general worldview and the concrete policy action, providing an explanatory framework for normative ideas in international trade dispute settlement.

**Table 2.1** *Worldviews, policy actions, and programmatic beliefs in the literature*

|                                    |  |
|------------------------------------|--|
| <p><b>Worldviews</b></p>           | <p>They contain ‘a view of human nature, a definition of basic and proper forms of social relations among equals and among those in relationships of hierarchy, and a specification of relations among institutions as well as a stipulation of the role of such institutions’ (Jenson, 1989, p. 239);</p> <p>They are ‘a system of symbolic meaning with features distinctive to a society or a social group, that forms the basic, common model for the beliefs, values and opinions held by its members’ (Mousourakis, 2019, p. 139).</p> |
| <p><b>Programmatic beliefs</b></p> | <p>They are ‘ideational framework within which programs of action are formulated’ (Berman, 1998, p. 21);</p> <p>They ‘interlock’ with worldviews and policy ideas ‘to form a coherent whole’ (Calvert, 2022, p. 40);</p>   |
| <p><b>Policy actions</b></p>       | <p>They are referred as causal beliefs that ‘guides for individuals on how to achieve their objectives’ (Goldstein, Keohane and Social Science Research Council (U.S.), 1993, p. 10);</p> <p>They are policy solution that ‘are both the narrowest conceptualization of the role that ideas play in politics and the most theoretically developed’ (Mehta, 2010, p. 29).</p>   |

#### 2.3.4 *Conceptualising change in ideas: the process of internalisation*

After having identified *which* ideas will be part of the analysis of the research, and having clarified *why* they should be considered explanatory factors of social phenomena in international trade dispute settlement, it is necessary to see *how* they matter.

According to bounded rationality theories, actors interpret external information through their own already available experience (Poulsen and Aisbett, 2013). When learning something new, actors process new information with the experiences that they already have. Bounded rationality is focused on the role cognitive biases play in international practice (Poulsen and Aisbett, 2013; Skovgaard Poulsen, 2014). When talking about the role of ideas in international relations and global economic governance, bounded rationality scholars pay attention to causal beliefs. As previously stated, causal beliefs inform actors of what reality is, and how to achieve specific policy goals. According to bounded rationality and rational choice scholars, learning happens because of causal beliefs that act as biases and filters to interpret new and external information. What if past experience and cognitive biases are not the only filters? What is the role of normative beliefs in this process of norm diffusing and change? Building on this argument in ideational scholarship, actors might interpret external information through their own already available sets of beliefs. When exposed to new information, actors tend to rely on their domestic set of programmatic beliefs to interpret them (Calvert, 2022). Programmatic beliefs act as normative filters that actors use when navigating policy decisions, processing external information according to their sets of ideas. This argument fits well with the conceptualisation of ideational change in discursive institutionalism and constructivist scholarship (Blyth, 2002; Schmidt, 2008a; Bell, 2012a). Discursive institutionalists theorise change as an endogenous process based on background ideational and foreground discursive abilities (Schmidt, 2008b, 2008a). Change happens because of the interaction of discourse with pre-existing ideas. Building both on the discursive institutionalist argument and Poulsen's view of learning and change ideational change happens because of actors' pre-existing sets of ideas. More specifically, when exposed to new information in international institutions (e.g., WTO DSM), actors process and internalise new ideas through their own pre-existing beliefs, making it consistent with their worldview.

Institutions are viewed as the venues where ideas circulate and can be absorbed by actors through a process of policy learning. At the same time, ideas take time to change (Berman *et al.*, 2001; Schmidt, 2008b). Ideas can change, but actors need time to adjust to them and to act accordingly. New ideas, then, need time to settle before they can become drivers of change in actors' policy action. In other words, programmatic beliefs are at the core of actors' policy action as they are needed to interpret reality. At the same time, institutions (like the WTO DSM) can lead actors to new ideas, which will be interpreted and internalised through their pre-existing sets of programmatic beliefs (see table 2.1).

While learning has received a lot of attention in the literature of ideas and its diffusion, this theory starts from the assumption that new ideas that can be internalised and adopted are global and universal. According to the literature on policy learning (P. A. Hall, 1993; Béland, 2019), ideas should be the same and adopted by actors in the same way. This approach to learning raises concerns in two main ways. Firstly, the attention of this process is focused on the role of the *teacher* or the norm diffuser (or norm-entrepreneur). Secondly, norms have been treated as universal. The focus is on the actor (state or institution) that contributes to the diffusion of global norms, implying that the norm will receive the same interpretation by every actor. What is missing, then, is the role of domestic normative beliefs, as opposed to global norms, in this process.

A better explanation on the role of domestic normative beliefs in ideational change and norm diffusion is represented by the concept of localisation (Acharya, 2004). Localisation is understood as the process of 'active construction [...] of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices' (Acharya, 2004, p. 245). Paying attention to the role of local actors, then, means that localisation is interested in explaining how local (and domestic) normative beliefs interact with new and external information. Localisation, then, shifts the attention to domestic actors, rather than global players. In this understanding of norm diffusion, localisation looks at how external ideas that can fit local norms are better received than ideas that are too distant from the pre-existing sets of normative beliefs. This proposition fits well with the experience of China when opening up to the world in the 1980s. Ideas on economic growth during the open door policy were better received than others, because they 'fitted' with Chinese pre-existing domestic norms (see discussion in Chapter 3). The idea that China, as a Middle

Kingdom (中国), is at the heart of the world has shaped the same idea that China should thrive through economic growth. Nonetheless, it was mediated through already existing normative beliefs, putting the state at the core of economic reforms. Localisation draws on the scholarship on norm diffusion that sees the 'congruence' of domestic beliefs with the norms and values of the international community (Checkel, 1999; Acharya, 2004). In other words, ideas are received more positively if they are in accordance with pre-existing sets of beliefs. This argument on norms' congruence is similar to the one made by Chinese constructivists on 'worldview gaps' (Pang, 2007; Yan and Xu, 2008; Wang and Blyth, 2013). Actors that are aligned with international norms are more incentivised to be part of the international community as their normative beliefs are similar. The EU, then, seems to fit this proposition. European normative beliefs resonate with those of the WTO, as they are in accordance with the international trade system (see discussion in Chapter 3). However, this is only part of the picture, as the situation is more nuanced than that. Not only do WTO norms and values resonate with the EU worldviews and programmatic beliefs, but they have been built upon them. As it will be shown in the following chapter (see Chapter 3), the WTO and its DSM were built on the normative beliefs of Western countries. The EU, as one of the main architects of the Uruguay Round, had the chance to significantly shape the multilateral trade organisation. Building on this literature on norm diffusion, the expectation of the project is that the EU will resonate with WTO norms, promoting the status quo. At the same time, Chinese normative beliefs do not resonate with the WTO and its DSM, highlighting the worldview gap between the international organisation and domestic beliefs.

For ideas to change, specific conditions need to apply. According to Acharya (2004), actors need to feel the need for change because of a major event. This is more likely to happen in times of systemic change, crisis, or domestic political change. These conditions are not essential, but they are complementary to ideational change. When looking at the economic and political situation of China between 2001 and 2021 and its activity in the WTO DSM, most of these conditions have been fulfilled. The negotiation of the accession to the WTO and the subsequent membership of China to the multilateral organisation was a major opportunity for systemic change (see discussion in Chapter 3 and Chapter 4). Chinese membership to the WTO not only prompted the demand for China to align with international norms, but also prompted

an enthusiastic reaction beyond central government. Local governments established different think tanks, known as WTO centres, to create a bridge between government, experts, and academia. These think tanks are not necessarily independent non-governmental organisations (NGOs), but rather they are governmental entities (Hsieh, 2010, p. 1013). These centres act as trade organisations, holding conferences, assisting private companies to identify trade barriers. They submit information to MOFCOM, which might include it in the annual Foreign Market Access Report. The main centres are in Beijing, Shanghai, and Shenzhen (Shaffer and Gao, 2021b, p. 184). WTO centres, think tanks, and academia have raised awareness on WTO laws and practices, training generations of students and officials for defending China in international disputes (Hsieh, 2010; Guohua, 2016; Shaffer and Gao, 2021b). Secondly, in 2008, both the EU and China experienced the global financial crisis. Crisis can be understood as a 'favourable' moment to identify actors' beliefs (see discussion in Chapter 5). Indeed, scholars on ideas seem to agree that crisis, however interpreted, forces actors to reflect on their beliefs, evaluating whether they are suitable to overcome uncertain times (P. A. Hall, 1993; Acharya, 2004). Ultimately, a political change occurred in 2014 when Xi Jinping (习近平) became President of China, succeeding Hu Jintao. According to scholars in Chinese studies, President Xi Jinping is considered as the 'ultimate decision maker on foreign policy issues' (Jakobson and Manuel, 2016, p. 108), concentrating most of the state powers in his person. Another condition for ideational change is the strength of domestic pre-existing beliefs. Programmatic beliefs that stem directly from the worldview of actors are often intertwined with bureaucratic practice and states' identities. The programmatic belief on the functioning of judicial systems that comes directly from the Confucianist worldview has been at the core of legal practice and understanding of administrative and legal relations for centuries. Ultimately, to favour the process of localisation, ideational change should be prompted by 'credible' actors, and the norm-taker should have a 'well-developed sense of being unique in terms of their values and interactions' (Acharya, 2004, p. 249). Due to the specific role and power of the central government in China, and the strong sense of tradition and identity of its Confucianist worldview (see discussion in Chapter 3), these conditions also seem to be fulfilled.

The theory of localisation, though, can only explain actors' behaviour up to a certain point. Localisation, indeed, is focused on the way actors take international

norms and apply them to domestic policy, according to their pre-existing sets of normative beliefs. What happens to actors in international institutions? What is the role of normative beliefs when guiding actors' policy action in international settings? Building on the concept of localisation, the project will look at the process of internalisation as ideational change. Internalisation will be looked at as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions.

The key element of localisation is the focus on the domestic level of ideas. International norms are 'localised' by domestic actors, shaping new information, and adapting new norms to existing normative frameworks. Chinese reforms of the judicial system to comply with international standards and requirements set out by the WTO and its DSM are in line with this argument (see Chapter 4 and Chapter 5). Chinese reforms, then, are evidence of domestic change that have been undertaken because of the impact of external information. Internalisation takes a step forward. Internalisation is interested in the way external information is intensively processed by and within the pre-existing normative sets of beliefs, leading to change in policy action in international institution. While localisation has been fundamental to advance the debate on norm diffusion and the role of normative beliefs in international relations, it focuses on the way normative ideas interact at the domestic level and inform actors in their decision making process at the local (or regional) level. What happens after ideas have been localised? What roles do programmatic beliefs play when guiding actors in their policy action in international institutions?

Internalisation, then, will be understood as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions. Localisation 'describes a process in which external ideas are simultaneously adapted to meet local practices' (Acharya, 2004, p. 251). Local practices are made consistent with an external idea. Building on localisation, internalisation looks at how external information is mediated and incorporated into pre-existing sets of normative beliefs, leading to a change in policy action in international institutions (see Figure 2.1). Internalisation looks at how external ideas become part of normative beliefs, through practice and discourse.

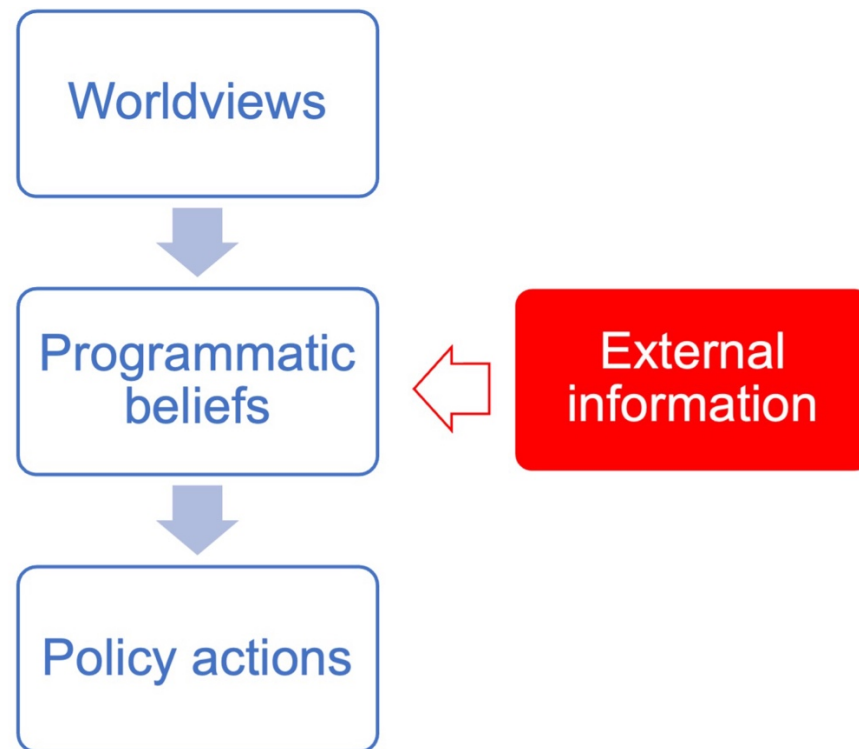
**Table 2.2** *The process of internalisation and types of change in normative ideas*

| <b>Scenario/Condition</b>  | <b>Change in normative ideas</b> |
|--|----------------------------------|
| Actors' policy actions are aligned with programmatic beliefs and worldviews.   | <i>No change</i>                 |
| Actors' policy actions are not aligned with pre-existing programmatic beliefs. External information is processed, adapted, and applied domestically through programmatic beliefs to fit with pre-existing normative sets of ideas.     | <i>Localisation</i>              |
| Actors' policy actions are not aligned with pre-existing programmatic beliefs, but with new localised ideas. Localised ideas guide actors' policy actions in international institutions, fitting pre-existing normative sets of ideas. | <i>Internalisation</i>           |

Building on the literature on norm diffusion and change (P. A. Hall, 1993; Blyth, 2002; Acharya, 2004; Schmidt, 2008b; Shaffer, 2021), I conceptualise internalisation to understand change in policy behaviour (see Table 2.2). Contributing to the constructivist literature on ideas and norm diffusion, I seek to understand how external information is treated and processed through normative domestic beliefs in international settings, leading to a change in decision-making. This is fundamental in two ways. Firstly, by conceptualising internalisation as a domestic process, it allows me to focus on the role of domestic normative beliefs as drivers of change in international institutions. Secondly, empirically, it will help shed light on how new information available through states' participation in international economic organisation like the WTO and its DSM is processed through domestic normative beliefs. Ultimately, this framework will contribute to the understanding of how international norms are received and internalised by developing countries. This framework, then, will assess whether developing countries and/or newcomers in international institutions like China are disruptive to the global economic order, or are compliant with it. The study, then, will contribute to the literature on the role of the *rise*

of *China* in international institutions, and, more specifically, in global economic governance.

**Figure 2.1** *Worldviews, Programmatic beliefs, policy actions, and external information*



#### 2.4 *Research question*

Having identified the main gaps in the literature on the WTO DSM, the research will answer the following question:

*How and why do normative ideas (programmatic beliefs) affect the EU and China's approach to the WTO DSM?*

The object of the study is to understand the causal mechanism behind ideas and actors' approaches to the WTO DSM. The research will consider causal mechanisms as transformative processes that connect inputs and outcomes (George and Bennett, 2005; Gerring, 2008, 2012; Falleti and Lynch, 2009; Falleti, 2016; Terlizzi, 2019). As defined by Falleti and Lynch (2009, p. 1147), 'mechanisms describe the relationships

or the actions among the units of analysis or in the cases of study. Mechanisms tell us how things happen'. In this sense, the research will look at how programmatic beliefs guide actors' actions in the WTO DSM. According to George and Bennet, causal mechanisms are

'ultimately unobservable physical, social, or psychological processes through which agents with causal capacities operate, but only in specific contexts or conditions, to transfer energy, information, or matter to other entities. In doing so, the causal agent changes the affected entities' characteristics, capacities, or propensities in ways that persist until subsequent causal mechanisms act upon them. If we are able to measure changes in the entity being acted upon after the intervention of the causal mechanism and in temporal or spatial isolation from other mechanisms, then the causal mechanism may be said to have generated the observed change in the entity.'

Building on these definitions of causal mechanism, the thesis will observe the role of programmatic beliefs as drivers of change in a space (the WTO DSM) and time (2001-2008; 2009-2017; 2018-2021).

## *2.5 Research design*

The study will examine normative ideas like worldviews and programmatic beliefs as those ideational factors that help actors to distinguish right from wrong. Programmatic beliefs on the functioning of the economy and legal systems help trade officials process external information in international trade, orienting their behaviour in their decision-making. In the WTO DSM, ideas on the rule of law, for instance, guide European officials in their policy actions, ultimately guiding their approach in the DSM in accordance with their wider normative framework (worldview) (see discussion in Chapter 4 and Chapter 5). Distinguishing right from wrong helps when processing new external information. Normative ideas like programmatic beliefs are essential in order to internalise external ideas, fitting new information to the pre-existing sets of normative ideas, ultimately driving change in actors' behaviour in international trade dispute settlement.

Having given an overview of the main literature on international trade dispute settlement, and an outline of the theoretical framework of this study, this section will express *how* the research will be conducted, going through the research question it wants to answer, the actors involved, the object of the study, and the main methodology.

### 2.5.1 *The EU and China*

If ideas can ‘come from anywhere’ and ‘a plethora of sources’ (Kingdon and Stano, 1984, p. 72), the important question to answer is the ‘who’ (Swinkels, 2020). Who carries ideas? Who is the main actor? In this research, the main actors that are intended as the carriers of these ideas are the European Commission’s Directorate General for Trade (DG Trade) and the Chinese Ministry of Commerce (MOFCOM). As the research is focused on the WTO DSM, it is reasonable both theoretically and empirically to focus on the main institutions that act in the WTO DSM. Indeed, both the DG Trade and MOFCOM represent the EU and China in the WTO DSM, preparing documents and standing on behalf of the state(s) in legal proceedings.

The DG Trade is the main Directorate General of the European Commission that deals with the relationship of the EU with the WTO. Formally, it is the Commission that files the complaint towards the WTO DSM. DG Trade deals with trade policy and trade relations with third countries. Within the DG Trade there are multiple offices that are responsible for taking complaints from businesses, trade organisations, and civil society in general on trade policy issues. Through the DG Trade the EU acts as a ‘distinctive international actor’, *de facto* acting as other states in the WTO and its DSM (Young, 2021). In this sense, the EU will be referred to as a unitary actor. Scholars have questioned whether there is a ‘European’ worldview, or it is the sum, or the reflection, of member states’ domestic worldviews (see discussion in Chapter 3) (see Vennesson, 2007).

The DG Trade, on behalf of the Commission, represents the EU in the General Council of the WTO. The General Council of the WTO is the highest body of the trade institution. The General Council acts as the Dispute Settlement Body, and the Trade Policy Review Mechanism. The Commission also represents the Union in the other subsidiary committees of the WTO, like the Council for Trade in Goods or the

Committee for Trade and the Environment. DG Trade also reports to the European Parliament<sup>6</sup> on key issues of the WTO, specifically to the International Trade Committee.<sup>7</sup> The Committee is divided into working groups that deal with specific

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<sup>6</sup> Another forum in which the European Parliament is involved in matters concerning the WTO is the Parliamentary Conference on the World Trade Organisation. The Parliamentary Conference on the World Trade Organisation is an initiative of the European Parliament and the Inter-Parliamentary Union. The Inter-Parliamentary Union is an organisation of national parliaments. It has a wide membership of 179 Parliaments and 13 Associate members. Their mission is to promote '[...] democratic governance, institutions and values, working with parliaments and parliamentarians to articulate and respond to the needs and aspirations of the people' (See Inter-Parliamentary Union, no date). Sessions of the Parliamentary Conference on the WTO are annual. When the WTO holds Ministerial Conferences (every two years) the Parliamentary Conference on the World Trade Organisation meetings are held in shortly before the Ministerial Conferences, in the same location. The most recent meeting of the Parliamentary Conference on the WTO was held in Geneva on 6 and 7 December 2018. The main aim of the Conference is 'to enhance the transparency of the WTO and to make the WTO, an inter-governmental organisation, accountable to elected representatives of the people' (see <https://www.europarl.europa.eu/pcwto/en/home>). The Conference, then, serves as a forum of discussions for parliamentarians who work on international trade issues and relations with the WTO. It is presided by the President of the European Parliament and the President of the Inter-Parliamentary Union. Even though the Parliamentary Conference on the World Trade Organisation is not directly involved in the process that brings the EU towards the decision to request the establishment of a panel in the DSM, it can provide useful insights on the views of both the Union and China on trade issues. Indeed, both the European Parliament and China seat as members of the PCWTO Steering Committee (see <https://www.europarl.europa.eu/pcwto/en/about/organisation>). Furthermore, this Conference provides an access point for 'persons with a specific interest in international trade questions' (see Article 2.3 of Rules of Procedure, Parliamentary Conference on the WTO). Even though 'these persons may follow the work of the Conference without intervening in its proceedings and will have no speaking rights' (see Article 2.3 of Rules of Procedure, Parliamentary Conference on the WTO), the possibility to participate to the working procedures of the Conference can represent a unique opportunity for businesses, and, more widely, the public, to be present in the international trade policy debate. Looking at the results of the discussion within the Parliamentary Conference on the World Trade Organisation can provide a useful insight for the interpretation of governments' conduct with specific issues in the WTO. While this conference constitutes an important venue for dialogue in international trade policy, it is not the main actor involved in the dispute settlement proceedings. For these reasons, then, the project will focus on the role of the DG Trade in the WTO DSM.

<sup>7</sup> According to Article III of Annex VI, POWERS AND RESPONSIBILITIES OF STANDING COMMITTEES, Rules of Procedure of the European Parliament:

'Committee responsible for matters relating to the establishment, implementation and monitoring of the Union's common commercial policy and its external economic relations, in particular:

1. financial, economic and trade relations with third countries and regional organisations;
2. the common external tariff and trade facilitation as well as the external aspects of customs provisions and management;
3. the opening, monitoring, conclusion and follow-up of bilateral, multilateral and plurilateral trade agreements governing economic, trade and investment relations with third countries and regional organisations;
4. measures of technical harmonisation or standardisation in fields covered by instruments of international law;
5. relations with the relevant international organisations and international fora on trade-related matters, and with organisations promoting regional economic and commercial integration outside the Union;

treaties under negotiation, or with targeted countries. The Committee is responsible for the evaluation of the Union's trade and investment agreements.

Through the DG Trade, it is the Commission that legally represents the Union in dispute settlement procedures according to Article 335 TFEU (European Union, 2012b).<sup>8</sup> The Commission initiates and handles the complaints to the WTO, together with the support of the Council. The amendment of the Enforcement Regulation marks an important step for the EU's external trade relations (European Parliament and Council of the European Union, 2014). The previous text of the Enforcement Regulation prevented the EU from acting before a final binding ruling was issued by the Appellate Body of the WTO. The new text of the regulation allows the EU to enforce an action in the WTO dispute under three conditions: a panel report that confirms the EU's right to action, the impossibility of carrying out an appeal under Article 17 DSU, and the absence of agreement from the parties on a different appeal arbitration under Article 25 DSU (Grieger, 2021). In other words, the EU is entitled to act if the WTO panel report allows it, and there are no other possible ways of appeal, making that report *de facto res judicata*.

The amended regulation also establishes the Chief Trade Enforcement Office, as well as the Access2Markets portal, which succeeds and expands the scope of action of the previous Market Access Database (see Shaffer, 2007). In particular, the Chief Trade Enforcement Office deals with the implementation of multilateral, regional and bilateral trade agreements, and external trade policy.<sup>9</sup> One of the main services that it provides is an access point for the wider audience, a 'single entry point where EU companies, trade organisations or non-governmental organisations can submit

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6. relations with the WTO, including its parliamentary dimension.

The committee liaises with the relevant interparliamentary and ad hoc delegations for the economic and trade aspects of relations with third countries' (European Parliament, 2021).

<sup>8</sup> Article 335 TFEU states that: 'In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.'

<sup>9</sup> The Chief Trade Enforcement Office ensures the commitments of third countries on: 'opening their markets to EU exports and investments; respecting other trade commitments that benefit EU operators; workers' rights; tackling climate change, and; the environment' (European Commission, no date).

complaints' on barriers to trade with third countries (European Commission, no date). The Chief Trade Enforcement Office can take complaints about the failure of complying with the commitments of non-EU countries in trade agreements on workers' rights, climate change, and the environment. This office is also in charge of managing and initiating investigations on trade barriers, as well as supervising the Union's trade defence.<sup>10</sup> The Chief Trade Enforcement Office coordinates proceedings of the WTO DSM and other dispute settlement mechanisms under EU trade agreements with third countries. The office also deals with the reform of the WTO DSU, as well as other bilateral dispute settlement mechanisms and investor state dispute settlement. The Access2Markets portal provides an important access point for small and medium-sized enterprises to signal barriers to trade and market access. The Chief Trade Enforcement Office supervises the portal and can decide to escalate businesses' complaints to investigations, that can lead to a formal complaint in the WTO DSM. Within the DG Trade the EU provides a Single Entry Point, which is the main contact point for all European stakeholders to file a complaint on market access issues or non-compliance with Trade and Sustainable Development and Generalised System of Preferences commitments (European Commission Directorate-General for Trade, 2021). The Single Entry Point provides another important access point for complaints for EU Member States, industry associations of EU companies, associations of EU employers, and trade unions, citizens, and NGOs of EU Member States. A direct concern needs to be demonstrated by the complainant in order to submit the form to the Single Entry Point (European Commission Directorate-General for Trade, 2021, p. 6).

Another of the EU's instruments to initiate an investigation is provided by the 'Trade Barrier Regulation' (European Parliament and Council of the European Union, 2015). The Commission can decide to start an investigation procedure after the complaint of an EU company, industry, or Member State over the existence of a trade barrier. The Commission is also entitled to initiate an investigation on its own, without any external complaint. Nonetheless, this prerogative has never been activated

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<sup>10</sup> 'This includes supervising the implementation of all stages of trade defence investigations from assessing complaints to imposing measures or terminating investigations. Complaints against allegedly unfair trade imports into the EU are lodged directly with the Complaints Office (which is dedicated to TDI complaints and as such distinct from the Single Entry Point)' (European Commission, no date).

(European Commission Directorate-General for Trade, 2020). The Trade Barrier Regulation and Single Entry Point systems are designed to collect information that will help the Commission decide on enforcement plans or dispute settlement procedures (European Commission Directorate-General for Trade, 2020). The main tools at the disposal of the Commission are a call for submission of information issued on the Official Journal of the European Union or the DG Trade website, collecting '[...] exchanges with Member States, consultations with stakeholders, hearings, fact-finding missions, etc. and tailored to the circumstances of each situation' (European Commission Directorate-General for Trade, 2020, p. 2). According to the DG Trade, these instruments are useful to prevent businesses and, more widely, individual stakeholders, refraining from initiating a complaint for fear of retaliation by the third country involved. Furthermore, these procedures should help in those situations in which a lack of transparency makes it hard to identify widespread practices (European Commission Directorate-General for Trade, 2020, p. 2).

All these instruments that have been created and improved in the last few years are part of the President von der Leyen's plan to provide more effective implementation of EU law. According to the President of the European Commission,

'[...] the existing Enforcement Regulation comes as a direct reaction to the blockage yesterday of the operations of the WTO Appellate Body. The current regulation – a basis under EU law for adopting trade countermeasures – requires that a dispute go all the way through the WTO procedures, including the appeal stage, before the Union can react. The lack of a functioning WTO Appellate Body allows WTO Members to avoid their obligations and escape a binding ruling by simply appealing a panel report. The Commission's proposal will enable the EU to react even if the WTO is not delivering a final ruling at the appellate level because the other WTO member blocks the dispute procedure by appealing into the void' (European Commission, 2019a).

The Enforcement Regulation, then, is the legal evidence of the Union's attitude to prefer the jurisdictional route. Without a *res judicata* the Union cannot formally undertake defence measures. This passage, then, is further evidence that demonstrates the role of the Commission, and, more specifically, the DG Trade, in the WTO DSM.

The research will treat the worldview of the EU as belonging to the Union as an international actor in the WTO DSM. Due to its own specific nature, its institutional structure, and integration process, the worldview of the EU is independent and specific to its own identity (see discussion in Chapter 3). Treating the EU as a unitary actor will allow me to analyse the data in a more coherent way, addressing the behaviour of the Union as a distinctive international actor in the WTO DSM. This is correct both theoretically and empirically. If ideas are generated through the constant interactions of different actors (see discursive institutionalism), the integration process of the EU, and the progressive independence of European institutions from member states created a distinct ideational structure and belief mechanism that is particular and specific to the Union as a whole. As it will be demonstrated in Chapter 3, the EU has a unique liberal worldview, which is specific to the Union and tied to its creation since the Treaty of Rome. Secondly, it makes sense empirically. The EU acts as a state in international trade. It represents its member states in the WTO and in the WTO DSM. In this sense, there is a true European bureaucracy that is distinct from the member states' administrative structures, and this bureaucracy is the one in charge of representing the EU in the WTO DSM (Young, 2021). Ultimately, looking at the EU as a distinctive international actor makes sense from a methodological perspective. Treating the EU as a unitary actor in the WTO DSM allows for a comparison of its behaviour with China, that, as a state, is a unitary actor in international trade.

The other actor that this thesis will analyse is China, and, more specifically, the Chinese Ministry of Commerce (MOFCOM). Scholars have found that foreign policymaking in China takes place at both party and state levels (Jakobson and Manuel, 2016; Ghislain and Ponjaert, 2018). Specifically, the Central Committee and the Standing Committee of the Political Bureau (Politburo) at party level, and the Ministry of Foreign Affairs and the Ministry of Commerce (MOFCOM) at state level. The Central Committee is the main leading coordination body of the Communist Party of China, making it *de facto* one of the main authorities in the Chinese institutional and decision-making system. The Politburo's Standing Committee is the highest organ of the Communist Party of China, setting the long-term policy goal of the state (Ghislain and Ponjaert, 2018, p. 90). At the state level, the Ministry of Foreign Affairs deals with China's foreign policy and external relations. MOFCOM is the main institution that oversees trade policy and external trade relations with other countries. When

discussing trade relations, it seems necessary to highlight that China, unlike the EU, is not one of the founding members of the GATT/WTO (see discussion in Chapter 3). China applied for membership in the trade institution in 1986, but received member status only in 2001 (Michalski and Pan, 2017). Chinese accession to the WTO brought different domestic reforms not only at an economic level (see Shaffer and Gao, 2021), but also at an institutional one (Wang, 2021a).

MOFCOM comprises 29 departments, administered by the minister Wang Wentao (王文涛). As suggested by Jakobson and Manuel (2016), it is possible to look at how China prioritises certain issues more than others by the rank of the people in charge. Indeed, the more interest China has in certain issues, the higher the rank in the party of the person in charge. Minister Wang Wentao has been in charge since the end of 2020, having been nominated secretary of the Communist Party leadership group within the Ministry of Commerce (Wang, 2021b). Wang Wentao was a former colleague of President Xi Jinping during his time as secretary of the party in Shanghai. Since President Xi Jinping is considered as the 'ultimate decision maker on foreign policy issues' (Jakobson and Manuel, 2016, p. 108), concentrating most of the state powers in his person, high rank officials in the party have close personal connections with him. Together with Wang Wentao, there are seven vice-ministers who oversee specific departments. Wang Shouwen (王受文) is the vice-minister, deputy China international trade representative, as well as member of the Communist Party of China leadership group of MOFCOM (The US-China Business Council, 2021; OECD, no date). Within MOFCOM there is a department that deals specifically with WTO issues, the 'Department of WTO Affairs, China WTO Notification and Inquiry Center' (世界贸易组织司, 中国政府世界贸易组织通报咨询局) (The US-China Business Council, 2021). This department oversees WTO multilateral negotiations, dispute settlements, and other WTO-related affairs, as well as promoting import and export standardisation. Nonetheless, the department that deals with the WTO DSM is the Department of Treaty and Law (条约法律司), under the vice minister Ambassador Zhang Xiangchen

(张向晨).<sup>11</sup> While the Department of WTO Affairs deals with complaints notification and negotiations, the Department of Treaty and Law acts as the legal division of the Ministry, assisting it in the WTO ISM.

An important access point for Chinese companies is provided by the 'Investigation Rules of Foreign Trade Barrier' (Ministry of Commerce People's Republic of China, 2005). According to Article 5 of the Rules,

'domestic enterprises and industries or natural persons, legal persons on behalf of domestic enterprises and industries or other organizations [...] may make an application for trade barrier investigation to Ministry of Commerce' (Ministry of Commerce People's Republic of China, 2005).

Even though this instrument establishes a valuable access point for private firms, it has rarely been activated. It is more common that the Ministry undertakes investigations on its own initiative.<sup>12</sup> At the same time, Article 4<sup>13</sup> and Article 10<sup>14</sup> of the Rules determine that MOFCOM needs to, at least, examine all the complaints submitted by the applicants, and decide accordingly (Bahri, 2018, p. 104).

In terms of institutional actors involved, the European Commission is the main institutional actor when it comes to negotiations within the WTO. Specifically, DG Trade handles relations with the WTO and complaints to take to the DSM. At the Chinese level, the main institution involved in the domestic (and external) relations with WTO issues is MOFCOM. Looking at this picture, it can be affirmed that the institutional setting of China and the EU is similar. If the Commission is the executive branch of the EU (Craig and De Búrca, 2020), then Directorate Generals are its ministries. In this

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<sup>11</sup> Ambassador Zhang Xiangchen was nominated Deputy Director-General of the WTO by Director-General Ngozi Okonjo-Iweala on 4<sup>th</sup> May 2021 (World Trade Organization, no date a).

<sup>12</sup> One example is the anti-dumping investigation that eventually led to the dispute DS405.

<sup>13</sup> 'Article 4:

Ministry of Commerce may place the case on file for trade barrier investigation at the request of the applicant.

Ministry of Commerce may place the case on file for trade barriers investigation on its free will as it deems necessary' (Ministry of Commerce People's Republic of China, 2005).

<sup>14</sup> 'Article 10:

Ministry of Commerce should examine the application materials and makes the decision on starting an investigation or not within 60 days at the receipt of the application letter and relevant evident materials' (Ministry of Commerce People's Republic of China, 2005).

sense, the institutional structure of the EU and China is similar, as they have both designated an executive branch at ministerial level to deal with WTO related issues. The two actors are similar in terms of instruments available, as well. Indeed, the European Trade Barrier Regulation and the Chinese 'Rules' provide similar provisions on the kinds of applicants, as well as powers attributed to the DG Trade and MOFCOM to act after the complaint. They both give the tools to the institutional bodies to start an investigation. The major difference is in the use of these instruments. While the European Trade Barrier Regulation has become a successful example of private-public partnership for the identification of trade barriers by European business, the Chinese Rules have only been applied fewer times (Hsieh, 2010; Bahri, 2018). The reluctance of Chinese businesses towards the application of the Rules has been explained by the Confucianist 'psychological divide between the government officials (who were often referred to as 'masters' or 'rulers') and private individuals (who were referred to as 'subjects')' (Bahri, 2018, p. 104). This 'psychological fence', as explained by Bahri (2018), is evidence that a Confucianist worldview still drives the way civil society approaches institutions, or, at least, the way they interpret them. In this sense, it can be affirmed that domestic ideas that stem from the Confucianist worldview of institutional relations is still present and affect the state's behaviour in international settings.

What appears to be the main difference between China and the EU is the approach they have in dealing with complaints and the WTO system more widely. Being a more active and expert user of the WTO DSM, the EU has established and institutionalised rules and guidelines for proceedings with openly accessible prioritisation criteria (e.g. European Commission Directorate-General for Trade, 2020). Chinese institutions are still very cautious in being transparent with their prioritisation criteria or their documents, even after the conclusion of the WTO proceedings (Bahri, 2018; Shaffer and Gao, 2021b). Their approach is different not only in the management of proceedings, but in their interpretation of the DSM. It is evident that the EU is an active user of the WTO DSM, and this aligns with their active support and defence of values like the rule of law, democracy, and the judicial power. By saying that the EU is more active, it does not mean that every complaint or investigation automatically turns into a formal complaint in the WTO. As declared by the Commission, the EU 'initiates litigation only when it is not possible to find solutions

through other means' (European Commission Directorate-General for Trade, 2020). Nonetheless, the EU considers the DSM as 'an essential tool at the Union's disposal for ensuring that its partners play by the rules and respect their commitments' (European Commission Directorate-General for Trade, 2020, p. 2). The Commission needs to ensure that the DSM is used in an 'efficient and effective manner for the benefit of its companies, workers and citizens' (European Commission Directorate-General for Trade, 2020). It is interesting to highlight that the EU considers the mere existence of the DSM as a deterrent against misconduct in the international arena (European Commission Directorate-General for Trade, 2020). This is in line with legal scholarship that argues that a major purpose of the mechanism is to promote compliance with the rules and obligations of the WTO (Charnovitz, 2001; Lawrence, 2003; Schropp, 2009; Pauwelyn, 2010; Sykes, 2012). Ultimately, it strengthens the legalistic view that the EU gives to the mechanism, and, more widely, to disputes with third countries.

The Chinese approach, at least in its first years of membership in the WTO, seems more cautious and less litigious. It has been argued that this 'non-litigious culture' is embedded in Chinese society at different levels, making it hard, for instance, to implement the 'Rules' as businesses see the formal complaint to the government as a means of last resort (Bahri, 2018, p. 115). Indeed, Confucianist philosophy considers litigation as causing severe damage to relationships. Therefore, it is felt that litigation should always be avoided. Transposing this to international trade, it has been argued that an exporter that faces trade barriers would be keener to switch product or market, or would engage with the government in more informal manners, rather than litigating in court (Bahri, 2018, p. 116). This non-litigious approach is reaffirmed in the Chinese use (or, better, non-use) of the WTO DSM in the first years of its membership. Shaffer and Gao (2021, p. 203) argued that China tried to avoid litigation because it aligned with those Confucianist values of negotiations over disputes, not litigations. Furthermore, it has been argued that a reason why China participated less in the WTO DSM at its early stage was because of its Marxist-Leninist background. The Chinese historical background has been seen as preventing the state from recognising the value of international tribunals (Hsieh, 2010, p. 1033). The suspicion towards a liberal international arena does not collide with the Confucianist argument. Indeed, the common assumption here is that China did not use the DSM because it was believed

to be poorly aligned with its core values and ideas. The Chinese strategy in the use of the WTO DSM has been referred to as 'assertive legalism' (Hsieh, 2010, p. 1025), as its main aim is to protect its trade interests through compliance, referring to WTO rules without an aggressive use of the DSM.

Scholars agree with this interpretation of Chinese behaviour in the first decade of its membership in the WTO (see Chapter 4). The increase in Chinese engagement with the WTO DSM has been explained by the widescale investment that the government made in terms of legal capacity and understanding of the legal mechanism, learning from the examples of the US and the EU (Bahri, 2018, p. 116; Shaffer and Gao, 2021b, p. 203). There was a shift in Chinese perception towards the WTO DSM, going from one that sees litigation as far from their 'heritage' and 'culture', to a position more accepting of the dispute settlement as a channel to resolve international disputes (Shaffer and Gao, 2021b, p. 203). Indeed, 'China realized the benefit of the process because it experienced the "cooling effect" of a legal system: the contrast between the political "heat" followed by the cooling effect of trade lawyers in a technical process' (Guohua, 2016, p. 256). This new perception of the WTO DSM is interesting as it highlights a possible shift in the government's idea of litigation, remarking the role of domestic ideas in international arbitration (see Chapter 5). In addition, this apparent shift might be evidence of the role played by the WTO DSM in reshaping domestic ideas.

The research will examine the ideas that belong to the EU and China, identifying DG Trade and MOFCOM as main actors in the WTO DSM. More specifically, the study will look at the interactions of the two actors in the WTO DSM, analysing their approach. The thesis will not engage with the two actors as third parties in the disputes. Third-party participation has been extensively analysed in the literature on the WTO. Scholars have found that when larger groups of third countries join the dispute there are fewer chances of early settlement (Busch and Reinhardt, 2002). Interestingly, it has been found that participation as a third country does not significantly differ from the complainant status (Bown, 2005). In this sense, it might be coherent with the Chinese approach to the WTO DSM. Nevertheless, smaller and economically weaker countries are more likely to act as third parties (Elsig and Stucki, 2012). According to this argument, the expectation is that countries like China would have been involved in more disputes as complainants or defendants, rather than as a

third party (Bown, 2005; Elsig and Stucki, 2012). This is not true. The research, then, will be focused on the approach of the EU and China as users of the WTO DSM.

This section examined the main actors that will be studied in this project. It gave an overview of the institutional assets of the EU and China when managing complaints that reach the WTO DSM, focusing on empirical and methodological reasons like access points, institutional remedies, and other entry points available for external actors to be involved in international trade dispute settlement. The research will focus on the DG Trade as the main actor for the EU, representing the Union in the WTO DSM, as well as the Chinese MOFCOM as the main institutions that act in international trade dispute settlement.

### *2.5.2 Which programmatic beliefs and policy actions?*

The thesis will focus on the ideas of the DG Trade and MOFCOM, connecting domestic ideas to their approach to the WTO DSM, focusing on their domestic ideas on the functioning of the economy and legal systems. Building on constructivist literature, different ideas can lead to different outcomes. In this research, the main claim will be that Chinese programmatic beliefs guide trade officials to less involvement in the dispute settlement mechanism of the WTO, while the European programmatic beliefs lead to more involvement in the dispute. Building on Fearon's (1999) argument, it can be affirmed that states follow liberal ideas because being a 'liberal state' is part of their identity (Finnemore and Sikkink, 1998; Soave, 2020). Liberal ideas have been at the core of the EU's worldview, inspiring the entire administrative and functional structure. International organisations like the WTO have also been founded on liberal ideas like free trade, and the recourse to an independent and impartial tribunal for the settlement of a dispute. In this sense, liberal programmatic beliefs are embodied in the legal corpus of the WTO DSM, possibly making the EU more comfortable in initiating a dispute in a legal forum with its similar legal and normative framework. On the other hand, with China being a 'latecomer' to international fora, liberal programmatic beliefs are outside of domestic normative sets of beliefs. This is more evident when looking at Chinese normative ideas before its involvement in the international community and opening up to international markets with the open door policy (see discussion in Chapter 3). A recent interest in Chinese

Studies has been oriented towards Confucianist and traditional Chinese values in international organisations and arbitration (Lo, Li and Lin, 2016). This stream of literature is strictly connected to the win-lose/win-win approach that differentiates not only the EU from China, but the West from the East. Using this literature to explain and analyse states' behaviour in the WTO DSM will lead to the development of new tools and further insights from different perspectives.

If the study of ideas on the functioning of the economy is not new to international political economy scholars (Blyth, 2002; Hay and Rosamond, 2002), it is less common that ideas on the functioning of legal systems are investigated as drivers of policy action. Legal scholars have studied the link between domestic laws and states' behaviour in international public law (Hathaway, 2005), and, more specifically, in international trade (Shaffer, 2021). However, they have conceptualised domestic legal systems through doctrinal methods, or investigated how ideas on domestic legal systems are used by lawyers in international settings (Kelemen and Pavone, 2018; Soave, 2020).

Legal tradition is not just a simple body of rules that govern social life (Mousourakis, 2019). It is an expression of

'deeply rooted, historically conditioned attitudes about the nature of law [...] the role of law in [...] society and the polity, the proper organization and operation of a legal system, and about the way law is, or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective' (Merryman, 1985, p. 2).

Even if the concepts of legal culture and legal traditions are not always interchangeable, they often overlap (see Mousourakis, 2019). The concept of legal culture forces us to consider an essential aspect of law: its traditionality. It is traditional not only in regard to its forms and rituals, but also in terms of the understanding of 'how the past has authority for the present' (Mousourakis, 2019, p. 133). In this sense, ideas on legal systems can guide, inspire, or justify states' behaviour in a particular way (Kratochwil and Ruggie, 1986; Cho, 2010).

Rule of law and legal trust are embedded in every European state, and of the EU as a whole (Manners, 2002; Damro, 2012; Soave, 2020). China seems to differ.

Chinese people traditionally see the idea of legal disputes, bringing claims to courts, as a distant concept. According to Chinese tradition, legal claims and tribunals have little to do with the everyday lives of common people, giving more value to relationships (關係 - guan xi), and, therefore, to the long maintenance of the same relationships. In this sense, the court has different characteristics from Western tribunals, which are considered as independent and autonomous bodies, in order to ensure fairness and justice in legal judgements. According to Chinese traditions, the court is a place where people continue their relationship, and, in this sense, courts are not considered as third parties and independent, foreign to the matter of the dispute. The judge is an arbitrator, the law is a guideline towards an amicable resolution of the dispute.

Chinese ideas of dispute settlement are based on the Confucianist tradition of win-win relationships, 關係 (guan xi), in which the preservation of the relation of the other party is essential for the positive outcome of the dispute (Karton, 2016; Li and Lin, 2016; Jany, 2020). According to Jany (2020), the concept of legal tradition is broader than the mere corpus of laws and political acts that are part of a state's legislation. It embraces principles and traditions and practices of the state. In this sense, it seems fair to claim that legal traditions are part of a state's culture and might play a role in the government's behaviour. The administration of conflict resolution was originally left to family elders (heads of families or clans). This kind of local conflict resolution served as a way of preventing other conflicts among citizens. There was no procedural law, because it was the public official who adjudicated on the disputes. Public administration was not separated from the judiciary (Jany, 2020). This lack of separation of powers continued right up to modern times in China.

European and Western ideas, that have been absorbed by the WTO (Soave, 2020), are based on a dialectical vision of the dispute, in which one party wins and the other loses (Hirsch, 2017). This is also because the Western legal tradition has viewed the court as the main institution to turn to when a conflict arises (Mousourakis, 2019). In this sense, it can be argued that the WTO itself has been built on the Western idea of judicial remedy.

I will consider the EU and China as two representatives of different sets of ideas (worldviews and programmatic beliefs) (see discussion in Chapter 3). This distinction will allow me to focus on those ideas that guide the DG Trade and MOFCOM in their

approaches to the WTO DSM. In this sense, this thesis will look at the divide between East and West in the conceptualisation of economic and legal ideas.

### *2.5.3 How to trace ideas: methodology*

How can we identify ideas? How can we categorise them? Even though it is extremely difficult for social scientists to have direct evidence of ideas and normative beliefs, the political world provides plenty of indirect examples (Finnemore and Sikkink, 1998). Ideas leave a 'trail of communication among actors' (Finnemore and Sikkink, 1998, p. 892). This trail of communication is what we can study and analyse. The question then is to show *how* ideas matter, how they can 'restrict and enable actors' room for manoeuvre' (Erikson, 2015, p. 458).

Scholars that work on ideas tend to analyse them through discourse found in official documents or in political debate (Jandhyala, Henisz and Mansfield, 2011), or through the identification of frames (Surel, 2000). Frames have been used to identify 'a package of policy ideas', 'a set of ideas' of a specific policy issue (Erikson, 2015). What most of the theories that work on ideas have in common is the attention to the discursive element. The discourse is deemed and analysed as the closest representation possible to the ideational level. If ideas are intangible, discourse can represent the tangible manifestation of these ideas. In this sense, the research will rely on discourse as the main evidence for the identification of programmatic beliefs. The research will also build on the discursive institutionalism understanding of institutions (see Carstensen and Schmidt, 2016). According to discursive institutionalism, institutions are constantly built (and rebuilt) through discourse, and vice versa. Institutions can constrain or enable actors in their policy action. This mechanism will be fundamental to understand the premise of the research. To identify ideas and their role as drivers of policy action in causal mechanism I will use process tracing. Process tracing 'is a key technique for capturing causal mechanisms in action' (Bennett and Checkel, 2014, p. 9).

Process tracing allows qualitative researchers to delve into the core of their chosen case studies. Indeed, this is one of the preferred methods that researchers adopt when investigating the causal relations between ideas and social phenomena (Jacobs, 2014; Swinkels, 2020). Process tracing, as firstly conceived in cognitive

psychology, is that '[technique] for examining the intermediate steps in cognitive mental processes to understand better the heuristics through which humans make decisions' (Bennett and Checkel, 2014, p. 5). Applied to international relations and international political economy, process tracing allows us to understand how actors make decisions. This method of inquiry seems the most appropriate to identify causal relations between programmatic beliefs and the approach of the EU and China in the WTO DSM. Furthermore, process tracing has been used by social and political scientists to understand how biases influence individuals in their decision-making process. Process tracing will be a useful method to trace the 'intermediate steps in a process to make inferences about hypotheses on how that process took place and whether and how it generated the outcome of interest' (Bennett and Checkel, 2014, p. 6). Process tracing will be used to identify the causal mechanism that connects normative ideas to the approach of the EU and China in international trade dispute settlement. Indeed,

'process-tracing can identify single *or different* paths to an outcome, point out variables that were otherwise left out in the initial comparison of cases, check for spuriousness, and permit causal inference on the basis of a few cases or even a single case' [italics in original] (George and Bennett, 2005, p. 268).

Process tracing, then, will allow me to highlight the thread between normative ideas as causal factors and actors' approaches to international trade dispute settlement. The method of process tracing will facilitate the identification of the causal mechanism behind the EU and China's policy actions in the WTO DSM and their programmatic beliefs. Furthermore, process tracing allows qualitative researchers to combine different methods to develop a narrative that can highlight the causal relations between causal factors (independent variable) and outcomes (dependent variable). In this sense, '[p]rocess-tracing is particularly useful for obtaining an explanation for deviant cases, those that have outcomes not predicted or explained adequately by existing theories.' (George and Bennett, 2005, p. 269). Process tracing, then, fits with the theoretical premises of the research, as it helps explain social phenomena that are not fully captured by existing theories. Indeed, the research will look at scenarios that existing rational choice theories cannot fully explain. Process tracing will allow me to conduct research on normative ideas, examining their role as causal factors for actors'

policy outcomes in international trade dispute settlement. The research will adopt Jacobs' (2014) understanding of process tracing when referring to ideational explanations. Having the possibility to qualitatively analyse the cases opens new doors for an in-depth understanding of the role of ideas in the DSM.

After tracing the ideas of actors in the WTO DSM, the study will compare the results of process tracing between the two actors. By focusing on the EU and China as similar actors in the WTO DSM in terms of economic power, the comparison will allow me to better highlight the different sets of ideas carried by the DG Trade and MOFCOM. To do so, the thesis will firstly set the scene, analysing the domestic ideas and how they informed actors' approaches during the formation of the WTO (for the EU) or in the accession process (for China) (see Chapter 3). This work will be used as the necessary starting point for the analysis of the following empirical chapters.

The research will be based on document analysis, collected from the WTO unrestricted database, the European Commission online archives, and the Chinese MOFCOM database. It seems necessary to briefly highlight the value that scholars attribute to documents, and define their characteristics as primary and secondary sources. Indeed, documents should have four main characteristics: authenticity, credibility, representativeness, and meaning (Bryman, 2012, p. 544). Documents, then, need to be produced by an 'unquestionable' authority. They need to have specific features, being easily understandable, and without any error or mistakes (Bryman, 2012, p. 544). According to this definition, the research will be based on official documents of the European Commission regarding trade, the WTO, as well as speeches of their officials on trade policy, together with official documents and speeches of the Chinese Ministry of Commerce, and official documents of the WTO. All of these documents are produced by 'unquestionable' authorities in matters of trade policy and international trade dispute settlement and comply with the characteristics specified so far. Another highlighted feature of documents is their key role as tools for understanding governments' actions (Freeman and Maybin, 2011). Scholars in political science and international relations have extensively used documents as data for their analysis, seeing documents as invaluable sources to understand public actors' will and position on a certain topic. Documents, then, are 'vehicles of messages' (Freshwater, 2003; Freeman and Maybin, 2011). Indeed, they are produced to enact decisions that were taken before their concrete writing on the document itself, turning

what was a simple proposal into an official and binding decision. In this sense, they are treated like texts that need to be interpreted (Freeman and Maybin, 2011). This understanding of documents as primary data for ideational analysis fits well with the theoretical and methodological premises of the research (George and Bennett, 2005; Schmidt, 2008a; Bennett and Checkel, 2014; Jacobs, 2014).

The study is based on approximately 480 primary documents (see Appendix 1) from official documents, speeches, and legal texts. The data collection included documents from the WTO database, the EU Commission digital archive, and the Chinese Ministry of Commerce collection of documents and speeches. However, the availability of Chinese documents officially translated into English is reduced. Therefore, a database of Chinese-only resources have been consulted to fill the gap when English translation was not available, or to have a clearer understanding of the meaning of specific documents, especially for documents produced before 2000. In addition, articles from international media have been collected (e.g. Bloomberg, China Daily, Politico). For the EU, the majority of the documents were retrieved from the DG Trade's press corner, filtered by year (2001-2021), using the keywords *WTO*, *dispute settlement*, and *China*. For China, speeches and policy documents were retrieved from the MOFCOM online database, filtering by year (2001-2021), using the keywords *WTO*, *dispute settlement*, and *EU* (with the variance *European Union*, and *European Community*).

To have a better understanding of the analysis and the thread between ideas and policy actions, I uploaded the documents onto NVIVO. While the nature of the studies is qualitative in essence, and the method it relies on is process tracing, the use of software like NVIVO allows for a better organisation and visualisation of the documents analysed, resulting in more consistency throughout the process (Bazeley and Jackson, 2013; Paulus, Lester and Dempster, 2014; Saldaña, 2016a; Robins and Eisen, 2017). New tools offered by the software allowed more reflection and in-depth analysis of the texts. In line with the nature of process tracing, I used NVIVO as an instrument to analyse documents through deductive categorisations, refining them through an inductive process (George and Bennett, 2005; Bennett and Checkel, 2014; Jacobs, 2014). Having conducted a first screening and having acquired more familiarity with the texts, it became easier to identify analytical codes (Saldaña, 2016b). During the categorisation process, I looked for recurring themes in the public and

official discourse, applying categories like ‘liberal worldview’, ‘Confucianist’, or more specific themes that are connected to programmatic beliefs or policy actions (see Appendix 2).

The sample analysed in the research relates to the EU *and* China in the WTO DSM. As the main aim of the research is to assess the variance of the EU and China’s approaches in the WTO DSM, the documents analysed will refer to the relations of the EU and China in the WTO DSM. For example, when examining normative ideas of the EU, official documents and speeches that relate to China and the WTO DSM will be sampled and analysed.

All the documents analysed are official documents or speeches of trade officials. The analysis of these types of documents is in line with the theoretical premises of the research, as well as with the objective of the study. The research aims to analyse programmatic beliefs of the EU and China at the institutional level. Indeed, programmatic beliefs are associated with normative frameworks that are embedded in institutional practice and discourse. As official documents and speeches from trade officials are the language of institutions, they will be treated as necessary data to identify normative beliefs. This is in line with methodological practices of discursive institutionalist and constructivist scholars (Jacobs, 2014).

For thematic and timely reasons, not *all* the 480 documents will be referenced in the chapters. While every document has been reviewed to provide the background of the study, guiding the data collection and the analysis, only *some* documents are quoted or cited in the empirical chapters of the thesis. This is due to two main reasons. The first is due to the nature of the documents themselves. Official documents are often repetitive in their composition (i.e. legal *formulae* in dispute documents), and at times speeches are repeated in different venues. Therefore, when repetitions occur, either in terms of structure of the documents, or content, only one document will be cited. Secondly, this is due to theoretical reasons. Following the theoretical premises of the study, the documents reported and quoted in the thesis are the ones that deal with the EU and China in the WTO DSM. They are the ones that highlight change or consistency in actors’ ideational framework.

The use of these kinds of documents and methodology leads to specific constraints and limitations. Official documents of institutions and international

organisations can only offer one part of the story. Every document represents only a portion of reality and should be analysed for what it is (Abraham, 1994; Bryman, 2012, p. 550). At the same time, documents might be considered as unique pieces, as they always have specific characteristics that differentiate them from each other. In this sense, the selected documents need to be representative. However, official documents of institutions and international organisations are representative *per se*. Documents can be interpreted as ‘windows onto social and organizational realities’ (Bryman, 2012, p. 554). Documents need to be analysed taking into account the context of their production and their interconnection with other ones (Freeman and Maybin, 2011; Bryman, 2012). These definitions of documents fit the theoretical framework and ambitions of the research. As the main aim of the study is to look at the role of ideas in institution, and official documents are the main language through which institutions converse with each other and the rest of the international community, document analysis can provide useful insights.

The thesis will present data both chronologically and analytically. Chronologically, it will divide the analysis into three different time frames, highlighted by the three main empirical chapters, as single case studies to observe and scrutinise the shift in beliefs over time (see Chapter 4, Chapter 5, and Chapter 6). Analytically, data will be investigated through the theoretical framework proposed by this research, highlighting the thread between policy actions of the EU and China in the WTO DSM, and their legalistic and economic programmatic beliefs.

#### *2.5.3.1 Time periods*

In order to understand if and how ideas change over time, I will look at the approach of the EU and China over three main timeframes. After setting the scene in Chapter 3, identifying domestic ideas of the EU and China, and their approach during the Uruguay Round and the accession process to the WTO, the thesis will then analyse three main timeframes to understand how normative ideas guided trade officials’ approaches in international trade dispute settlement. Indeed, looking at variation of policy actions in a set period of time can allow for a deeper level of analysis into the ways in which normative ideas like programmatic beliefs reinforce and/or change within an institution (Jacobs, 2014). The project, then, will not start its analysis

from the Bretton Woods period and the establishment of the GATT for different reasons. First of all, the project aims to examine the programmatic beliefs related to the functioning of legal systems. The dispute settlement mechanism that was in place during the GATT was different. As a less judicialised system, it would not be appropriate to analyse ideas on legal traditions under a mechanism that was conceived as a political/diplomatic resolution forum. Secondly, from a methodological perspective, China was not a member of the GATT, and, due to its 'recent' exposure to international trade, it would not be useful to analyse a scenario that was different, in which the main actors analysed in this study were either playing a different role or not playing at all.

The first timeframe will analyse the EU and China's actions between 2001 and 2008. 2001 has been chosen as the starting point of the research, as it is the first year in which both the EU and China were members of the WTO DSM at the same time (see Chapter 4). Indeed, China completed its accession process to the organisation at the end of 2000 (see Chapter 3). Between 2001 and 2008 the approaches of the actors are very different. The EU initiates many disputes, while China is almost silent in the DSM.

The second time will look at actors' approaches between 2009 and 2017. This is the timeframe with more 'action' between the two actors in the WTO DSM. China initiates its first complaint against the EU in 2009. In these eight years the EU and China are also involved in the Solar Panel dispute, and they are both extremely active in the DSM (see Chapter 5).

Ultimately, the study will investigate Chinese and European actions between 2018 and 2021. In 2018 the WTO DSM underwent its major crisis over the nominee of the member of the Appellate Body. It is also the year of the 40<sup>th</sup> anniversary of the open door policy and Chinese opening up to the world. This timeframe is characterised by a reformist approach for both actors, which seems, once again, different from the previous timeframes (see Chapter 6).

## 2.6 Conclusion

This chapter provided the theoretical framework of the study. After the review of the literature on international trade and the WTO DSM, it offered an overview of

rational choice, constructivist, and discursive institutionalist scholars. Having recognised the gaps in the literature on the WTO DSM, the chapter identified ideas as both objects of the study and drivers of actors' policy action. The research will investigate the causal mechanism between domestic programmatic beliefs and the EU and China's policy action in the WTO DSM.

The chapter then demonstrated *why* ideas matter in the study of international trade and international arbitration, addressing *which* ideas will be studied, namely economic and legalistic programmatic beliefs, assessing *who* is involved, and *how* these ideas will be studied, identifying the main methodology of the study.

The next chapter will provide a more detailed investigation of the types of ideas that will inform the analysis of the single timeframes, identifying which worldviews and programmatic beliefs belong to the EU and China, and how they informed their actions during the negotiations of the Uruguay Round and China's accession to the WTO.

### **3 Where do ideas come from? Worldviews and programmatic beliefs of the EU and China in the GATT/WTO until 2001**

#### *3.1 Introduction*

Which ideas matter? Where do they come from? To answer these questions, it is necessary to take a step back. By giving a definition of ideas, and the different levels of ideas, this chapter will illustrate which domestic worldviews and beliefs belong to the EU and which to China, ultimately investigating if and how they guided their actions in the WTO and its DSM. Process tracing will allow us to identify the thread between policy action and domestic ideas. Ideas, then, will be traced through the analysis of speeches and primary documents of the EU and China's trade officials, as well as WTO documents. More specifically, this chapter will analyse how pre-existing domestic beliefs oriented governments' actions during the negotiations of the Uruguay Round and the accession to the WTO. Ultimately, this chapter will lay out an analytical starting point to study if, and how, changes in the domestic beliefs affected states' action toward the WTO dispute settlement.

The worldviews and programmatic beliefs that will be examined are those belonging to European and Chinese trade officials working in the GATT/WTO. The chapter will look at the EU as a unitary actor in terms of one European worldview shared by its institutions, as already discussed in the previous chapter. All the references to 'domestic' programmatic beliefs, or systems, or norms, need to be considered at the EU level. Furthermore, the chapter aims to identify economic and legal programmatic beliefs belonging to the DG Trade. The EU was founded on specific economic ideas, developing a complimentary, yet standalone legal system. The chapter will also examine China's worldviews and programmatic beliefs. In particular, it will focus on MOFCOM, and its institutional predecessors, as the main actor in Chinese foreign trade policy. MOFCOM not only has competencies in foreign trade policy, but was also in charge of the negotiations with the GATT/WTO for Chinese accession (see discussion in Chapter 2). Indeed,

'[t]he WTO is "member-driven" to a much greater degree than other economic IOs such as the IMF and World Bank that are governed by

executive bodies and have secretariats with a significant degree of autonomy. The role of the WTO Secretariat as an actor is circumscribed by design—the Director-General, for example, is not expected to try to advance negotiations’ (Hoekman and Wolfe, 2021, p. 3).

This passage confirms the fact that members can shape the way the organisation works, as they have the opportunity to orient the WTO’s core policy decisions according to their own domestic normative sets of ideas. The WTO and its DSM can be studied through the discursive institutionalist claim that institutions are ‘restraining structures and enabling constructs’ (Schmidt, 2008b).

The main aim of the chapter is to analyse the ideational background of the EU and China. More specifically, the chapter will identify their worldview, and how their economic and legalistic programmatic beliefs are connected to it. It will start from the creation of European institutions, tracing the EU’s worldview back to the European tradition of liberal thinkers, until the Uruguay Round. For China, the chapter will focus on ideas that were circulating during the open door policy, until the accession of China to the WTO, tracing the Chinese worldview to its Confucianist tradition. Ultimately, the chapter will underline if and how these ideas were developed and reinforced through the process of accession to (in case of China),<sup>15</sup> or negotiation of (for the EU) the WTO.

The GATT/WTO story begins in Bretton Woods. Originally conceived as the International Trade Organization, the GATT was supposed to be a transitional agreement between the founding members of the new multilateral organisation to start to negotiate tariffs among themselves (Bown, 2005). After the failure of the International Trade Organization, the 23 founding contracting parties decided to

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<sup>15</sup> When referring to China’s accession to the WTO (and its DSM), it is worth mentioning that China’s agreement to join the multilateral trade organisation was not unanimous. There were disagreements within the Chinese Communist Party on the terms of accession to the WTO. To avoid internal criticisms, pushing for structural reforms of the country, Chinese party members insisted on the entrance of China in the WTO as a developing country on its own terms (see Halverson, 2004). While acknowledging this is important to understand the internal politics behind Chinese accession to the WTO and its DSM, this thesis will focus on the *post*-accession period of China to the WTO. Furthermore, internal disagreements to the accession of China to the multilateral organisation represent further evidence of the Chinese commitment to their normative ideas. Despite internal frictions, China joined the WTO, signalling a renewed belief in economic growth.

integrate further provisions on trade and tariffs in the GATT, still considering it as an *interim* measure to advance multilateral trade in a post-WWII world.

Signed in October 1947 in Geneva, the GATT entered into force with 23 founding members on 1 January 1948.<sup>16</sup> Characterised by its 'Rounds',<sup>17</sup> the GATT system stood in place for almost five decades, growing in membership, as well as in products and provisions covered and discussed. At the time of the GATT, decisions could be blocked very easily as unanimity was needed. After the Uruguay Round and the establishment of the WTO, the rule of 'reverse consensus' was adopted, according to which a decision passes unless there is a unanimous vote against its adoption (Sacerdoti, 2010). Launched in 1986, the eighth Round, better known as the 'Uruguay Round', represented a turning point in the history of the multilateral organisation. It lasted for almost ten years, during which contracting parties covered negotiations on trade and services, as well as talks on reforming the organisation as a whole.<sup>18</sup> 15 December 1993 marked the date of the successful conclusion of the Uruguay Round, with the subsequent signature of the Uruguay Round Agreement in Marrakesh on 15 April 1994. On 1 January 1995 the WTO was established.<sup>19</sup> What was once the GATT 1947 became part of the WTO package in its updated version, the GATT 1994, together with the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), and other fundamental texts that gave birth to the multilateral trade organisation.<sup>20</sup> In March 1994, Mr. Renato Ruggiero was appointed Director-General, and in November the Appellate Body was established. The trade organisation shifted

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<sup>16</sup> Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom, and the United States.

<sup>17</sup> 'Round' is the term that was given to the multilateral meetings that took place under the GATT system (Zeiler, 2012).

<sup>18</sup> For a deeper discussion on the Uruguay Round and the negotiation of the WTO see Jackson and Sykes (1997).

<sup>19</sup> For one year the committees and bodies of both GATT 1947 and WTO coexisted, to facilitate the transition from one system to the other.

<sup>20</sup> The Marrakesh Agreement Establishing the WTO is composed by the GATT, the General Agreement on Trade in Services (GATS), the Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Dispute Settlement Understanding, and the Trade Policy Review Mechanism. The Uruguay Round resulted in a list of around 60 agreements, annexes, decisions, and understanding. For a complete list of the legal texts, see [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm).

from a 'power-based' GATT towards a 'rules-based' WTO (Goldstein and Martin, 2000; Rosendorff, 2005; Sacerdoti, 2010).

The chapter will be divided into three main sections, which are subdivided into three subsections. The first section will look at the EU. It will demonstrate how the worldview of the EU is liberal. From this liberal European worldview, the first subsection will highlight the development of the economic programmatic beliefs of free trade, as well as the legalistic programmatic beliefs of the rule of law. Then, the third subsection will investigate how these programmatic beliefs affected the Uruguay Round, influencing the negotiations that led to the establishment of the WTO.

The second section of the chapter will focus on China. It will show how the worldview of China is based on Confucianism with specific 'Chinese characteristics'. The analysis will move to the investigation of the specific economic and legalistic programmatic beliefs that were inspired by and developed after the open door policy of 1978/79, focusing on economic growth through trade liberalisation, and the maintenance of relationships. The open door policy for China marked an important juncture in the context of international trade. For the first time since the cultural revolution, China opens up to the world, opening its markets and economy to the international community, letting new ideas circulating in their domestic sphere. Ultimately, the final subsection will deal with Chinese accession to the GATT/WTO, underlining how the negotiation process was guided by the pre-existing domestic programmatic beliefs.

Ultimately, the chapter will compare the different worldviews and programmatic beliefs of the EU and China, focusing on how they led to different policy actions in the Uruguay Round and accession to the WTO.

### 3.2 *Worldview: a 'liberal Europe'*

Ideas do not operate in a 'vacuum' (see Guzzini, 2000; Bell, 2012b, 2012a). They are captured by institutional actors, which assimilate them, and turn them into guiding principles for their policy actions. It is, therefore, necessary to understand which ideas are at the core of a given institution. More specifically, to understand where programmatic beliefs come from, it is necessary to look at the institution's worldview.

If a worldview is that 'deep core' of an institution (Sabatier, 1998; Swinkels, 2020), then to understand it, it is necessary to trace it back to the foundation of the institution.

This section will look at the EU's worldview and programmatic beliefs, taking a historical and chronological approach. The main body of the section will illustrate which worldview and programmatic beliefs belong to the EU. Afterwards, it will demonstrate which ideas informed the foundation of the WTO DSM during the Uruguay Round, given the prominent role of the EU in the negotiation process.

It will highlight a thread between the liberal worldview that has characterised the EU since its foundation, and the programmatic beliefs that have been at the core of its action (mainly free trade, and the rule of law). Then, it will demonstrate how the EU promoted its programmatic beliefs during the establishment of the WTO in the Uruguay Round.

Even though ideas at the core of the EU have been extensively discussed in the scholarship (Guzzini, 2000; Hay and Rosamond, 2002; Vennesson, 2007; Schmidt, 2008b; Garcia, 2013; Parker and Rosamond, 2013), this section will illustrate more clearly which worldview belongs to the EU. This section will illustrate the worldview of the EU to highlight the thread that exists between different levels of ideas, from a worldview to the programmatic beliefs that descend from it. Even though the aim of this section is not to argue which definition of liberalism is more legitimate than others, it will clarify the characteristics of economic and political liberalism to which the EU adheres.

Liberalism has a longstanding tradition in Europe, often being associated with the concept of Western democracy (Freedman and Fernández Sebastián, 2019). Due to its widespread, broad usage among politicians and academics, different values and characteristics have been assigned to the terms 'liberal' and 'liberalism', depending on latitude or academic tradition (Friedman, Oskanian and Pardo, 2013a, 2013a; Fawcett, 2018). Different strands and definitions of liberalism have been developed since Locke's conceptualisation of liberal ideas (Friedman, Oskanian and Pardo, 2013a). Locke conceptualises property right as an individual's freedom from government (Locke, 1988). This principle of protection of property by and from the government is at the core of the economic and political stance of liberalism (Friedman, Oskanian and Pardo, 2013b). Since then, liberalism has been used as a theory to advance individual

freedoms. Thinkers like Jeremy Bentham, Alexis de Tocqueville, and John Stuart Mill have further contributed to the advance of liberal values in Europe (Freeden and Fernández Sebastián, 2019).

Even though the Treaty of Rome, with the consequent creation of the European Economic Community (EEC), was signed in the 1950s, the ideas on which it is based had been circulating for more than a century. The concept of a common ‘European liberalism’ started to circulate at the beginning of the 19<sup>th</sup> century. ‘Liberals across Europe’ shared, at least, six basic principles: ‘individual freedom, respect for property, freedom of expression, equality before the law, equitable distribution of taxes and equal access to public office based on personal merit’ (Freeden and Fernández Sebastián, 2019, p. 11). Decades after the French Revolution and Locke’s contribution, liberal ideas were associated with legal rights and economic freedoms. European liberalism, despite the different interpretations that states gave to those values, began to be related to ‘the recognition of a fact, the fact of liberty’ (De Ruggiero, 1927, p. 347). The concept of liberty, then, can be understood as the summary of liberal values as the importance of individual economic freedoms and the legal rights the individual can claim.

The ideas that were at the centre of the establishment of the EU, then, were liberal (Hallstein, 1972; Friedman, Oskanian and Pardo, 2013a; Moravcsik, 2015). Ideas like peace through democracy and economic prosperity were the foundations of the EEC, uniting Europe after WWII.<sup>21</sup> Ideas at the core of the historical and philosophical European tradition of liberalism found their application with the Treaty of Rome. As Fawcett (2018, p. 15) summarises, liberalism entails constitutional freedom, economic freedom, and democratic freedom. If looking at this triadic conceptualisation,

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<sup>21</sup> It is necessary to highlight the important role of the US during the formation of the EU. Within the EU and the formation of the EEC, liberal ideas of post-war capitalism from the US were influential in Europe. An example of this influence is the Marshall Plan, which fostered European integration. While the role of the US is undeniable (see Chapter 1; for a wider discussion on the role of the US in EU integration see Hallstein (1972), and Freeden, Fernández Sebastián and Leonhard (2019)), this thesis is primarily concerned with the interaction between the EU and China. The aim of this section, indeed, is to underline the ideational underpinnings of liberalism that are specific to EU institutions. In this sense, European liberalism is specific to the EU, and different from other strands in other Western countries. Nonetheless, this section aims to highlight the common liberal worldview of European institutions in order to identify what programmatic beliefs are connected with it. Indeed, as discussed in Chapter 1 and Chapter 2, the aim of the thesis is to study the role of programmatic beliefs (not worldviews) as causal factors in international trade dispute settlement. Worldviews, though, are necessary to understand where normative beliefs come from.

the EU embodies all of them. The idea of democracy, division of power, and, most importantly, economic growth through free trade, is at the core of its foundation. After all, the EEC began as a custom union under Article XXIV GATT.

The three major strands of liberalism (constitutional, economic, and democratic freedom) have been widely recognised in international relations by scholars like Keohane, who agrees on four types of liberalism. These are: commercial liberalism, that could bring peace among states through trade; democratic liberalism, which proclaims the positive effects of democracy; regulatory liberalism, which studies institutions and rules as major players in international relations; as well as a fourth sociological liberalism, 'which asserts the transformative effect of transnational contacts and coalitions on national attitudes and definitions of interests' (Nye, 1987, p. 246). These strands of liberalism have been at the core of theories like neofunctionalism and the regional integration theories of the 1950s/60s. These theories were centred on the EU as an example of successful regional integration focusing on economic integration (Haas, 2004) or political integration (Moravcsik, 1997). Be it neofunctionalism, liberal intergovernmentalism, or another theoretical position, scholarship on Europe tends to agree that the European DNA is fundamentally liberal.

Liberal values, indeed, are reflected in the European experience. Historically, the reason behind a united Europe was to maintain peace in a continent that witnessed two world wars over a few decades. Politically, the means by which it could be achieved was free trade. The idea of achieving peace among democratic countries through free trade is at the core of liberalism. Wilkinson (2021, p. 4) argues that for most European member states being part of the EU was not a choice, but a necessity to advance liberal democracy, and, consequently, its values, after WWII (for the founding members) or the collapse of autocratic regimes (for Spain, Portugal, and Greece). For other members, European membership represented a possibility to advance domestic liberal reforms (for the UK and Nordic countries), or to be part of the 'West' (for the Eastern European bloc). Arguing that member states founded and agreed to join the EU to be part of a liberal project reinforces the argument on a liberal worldview of the EU.

The study of the EU as a liberal entity is not new in the literature. Different scholars have demonstrated how liberal values are at the core of the European identity

and integration, being at the core of its external dimension (see Moravcsik, 1997, 2015; Haas, 2004). European integration has been explained through the lenses of economic liberalism, analysing it as the main driver that led member states to establish the European Communities (Haas, 2004; Moravcsik, 2015). Other scholars have identified economic liberalism as the foundation of the European identity, elevating the European single market as one of the main constitutional factors of the EU normative identity (Maes, 2004; Damro, 2012; Parker and Rosamond, 2013). Furthermore, the creation and the development of the Court of Justice of the EU embodies the liberal ideas of an independent judiciary system, and the protection of rights that is specific to the constitutional or legal strands of liberalism, as previously discussed. These liberal ideas, then, are part of the normative core of the EU, becoming fundamental guidance in officials' actions and decision making.

If liberalism has been defined as a driver, as part of the identity, and as a constitutional factor of the EU and its integration, then liberalism can be referred to as that set of general ideas that are at the deep core of the EU. In this sense, when referring to a European worldview, I consider sets of ideas that come from liberalism, and, more specifically, its economic and constitutional variants as that '[...] Western paradigm of thought that posits the individual as the normative standard of political and economic activity' (Friedman, Oskanian and Pardo, 2013b, p. 1). This broad interpretation of the liberal worldview will allow for a more comprehensive identification and analysis of the different economic and legalistic programmatic beliefs that derive from it.

### *3.2.1 Economic programmatic belief of the EU: free trade*

The liberal worldview of the EU, as its deep core set of ideas, represents then the ideational foundation of the European Communities and its Treaties. This subsection will look at the programmatic beliefs that derive from the liberal worldview of the EU. In particular, the subsection will highlight the existence of economic programmatic beliefs and legalistic programmatic beliefs. Ultimately, it will illustrate how these programmatic beliefs were at the core of the negotiations of the Uruguay Round, and the establishment of the new dispute settlement.

Even though one of the main drivers for the establishment of the European Communities<sup>22</sup> was to promote peace in a post-WWII Europe (Manners, 2002; Dinan, 2004), the emphasis on the economy quickly became the centre of European integration. As highlighted earlier in the chapter, the main rationale behind the creation of a European community of states was to overcome the disastrous events of WWII. European architects like Jean Monnet, Robert Schuman, and Altiero Spinelli believed in the role of free trade and a common market to promote and enhance peace in the European continent (Hallstein, 1972; Dinan, 2004). Indeed, the Treaty of Rome in 1957 establishing the European Economic Community (EEC) put the attention on the creation of a common market. According to Article 3 of the Treaty of Rome, the activities of the EEC were, *inter alia*:

‘(a) the elimination, as between Member States, of customs duties and of quantitative restrictions in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect;

(b) the establishment of a common customs tariff and a common commercial policy towards third countries; [...]

(f) the establishment of a system ensuring that competition shall not be distorted in the Common Market; [...]

(k) the association of overseas countries and territories with the Community with a view to increasing trade and to pursuing jointly their effort towards economic and social development.’

Following Article 3, and, more broadly, the wider mandate of the Treaty of Rome, it is clear how the economic liberal worldview was strong since the creation of the Communities (Parker and Rosamond, 2013). Furthermore, Hallstein, the first President of the European Commission, stated that ‘[t]he basic law of the European Economic Community, its whole philosophy, is liberal. Its guiding principle is to establish undistorted competition in an undivided market’ (1972, p. 29). The idea of free trade through the creation of a single market has been confirmed in the following years by the Single European Act (SEA) in 1986. The EU started to develop its

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<sup>22</sup> The three Communities were the European Coal and Steel Community (ECSC), the Economic Community (EEC), and the Atomic Energy Community (Euratom).

international power through its Common Commercial Policy (Smith and Woolcock, 1999; Young, 2021). Through the Common Commercial Policy, the EU has been able to develop its international presence. It was made clear that trade was an exclusive competence of the EU, making the European Commission the main actor in international trade negotiations and trade related matters. Article 113 of the Treaty of Rome, as well as two fundamental Opinions<sup>23</sup> of the European Court of Justice, marked a significant step for its international dimension and the key role of the European Commission.

Free trade as a programmatic belief then is well established and represented not only in the treaties, but also in the EU's officials' actions and speeches. In a speech in 1990 to the First Global Conference on Management Innovation, held in Tokyo, Martin Bangemann, vice president of the Delors Commission, claimed that '[b]ilateralism was a dead-end street; multilateralism was now the golden rule. [...] [T]here would be no "Fortress Europe". The EC had already demonstrated in both words and deeds that the internal market would be an open market' (European Commission, 1990).

Multilateralism is to be considered as a 'golden rule', another side of liberal free trade. Multilateralism is at the core of European action. It is 'in Europe's DNA' (European Commission. Directorate-General for Communication, 2020), especially in trade policy (Smith and Woolcock, 1999; Young, 2021). Indeed, the EU's faith in multilateralism will play a fundamental role in the shaping of the Uruguay Round and the birth of the WTO, and its DSM. Multilateralism is seen as a tool deployed by the EU to promote free trade in the international community, especially in international organisations like the WTO. Most importantly, the EU becomes promoter and exporter of these principles in 'international markets' (Smith and Woolcock, 1999; Parker and Rosamond, 2013; Young, 2021).

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<sup>23</sup> *Opinion 1/75 (Understanding on a Local Cost Standard)* [1975] ECR 1355; *Opinion 1/94 (WTO Agreement: GATS and TRIPs)* [1994] ECR I-5267. In *Opinion 1/75*, the Court clarified that the European Common Commercial Policy can be generally defined as the external trade policy of a member state. In this sense, the Court held that to prevent distortions in matters of competition, and to prevent the principle of loyalty among member states, the competence needs to be exclusive (Craig and De Búrca, 2020, pp. 372–373). Another important step towards the external trade policy dimension of the EU is *Opinion 1/94*. This *Opinion* was issued after the establishment of the WTO in 1994. The Court stated that if trade in goods was part of Common Commercial Policy, certain aspects of trade in service could fall within the competence of member states. The WTO Agreement, then, was intended as a mixed agreement. Mixed agreements are those whose subject matter does not fall under the exclusive competence of the EU. EU countries also have to sign the agreement.

The economic programmatic belief of free trade is the idea that descended from its liberal worldview, helping EU trade officials navigate trade related issues, shaping the European and international trade arena.

### *3.2.2 Legalistic programmatic belief of the EU: the rule of law*

Even though the economic power and importance of the EU is undeniable, the EU recognises legalistic principles as one of its fundamental values (Hallstein, 1972; Manners, 2002; Parker and Rosamond, 2013; Moravcsik, 2015; Soave, 2020; Young, 2021). Significant steps towards European integration were made possible through opinions or decisions of the European Court of Justice (i.e. Van Gend en Loos, Cassis de Dijon) (see Craig and De Búrca, 2020). EU institutions and the Union as a whole have always been advocating the legal principle of the 'rule of law'. The study of the 'rule of law' as a fundamental principle of the EU is not new to the literature. Scholars like Manners (2002) identified it as a 'core norm', a guiding principle of the EU's action in external relations. Furthermore, as discussed in the previous section on the European worldview, the idea of the rule of law is fundamental for a liberal actor. In other words, the rule of law is a programmatic belief of the EU.

Since the establishment of the European Communities in the 1950s, the idea of the rule of law has guided the policy actions of European institutions. Initial attempts to evidence legalistic principles like the rule of law can be found already in the Treaty of Rome. While setting the legal grounding for the Common Commercial Policy of the EEC, Article 3 connects trade issues and market integration with legalistic principles like the dutiful application of procedures and respect of the law. Even though there is no direct reference to rule of law in the Treaty of Rome, it has been established that the EEC was a 'community based on law' (Hallstein, 1972; Schroeder, 2021).

The legalistic programmatic belief of the rule of law has been deeply rooted in the Western political and judicial tradition.<sup>24</sup> Principles like separation of power, the independence of judges, and the respect for fundamental rights and freedoms are

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<sup>24</sup> One of the first thinkers to theorise this concept was the Greek philosopher Aristotle, who claimed that: 'the rule of law is preferable to that of any individual. On the same principle, even if it be better for certain individuals to govern they should be made only guardians and ministers of the law' (Aristotle, as cited in Tamanaha, 2004, p. 9).

based on it (see Hoogmartens, 2004, p. 31). The rule of law has been defined as ‘the only reliable bulwark against the arbitrary exercise of power and means, in essence, that any legal dispute must be resolved in accordance with—and only in accordance with—the applicable norms provided for by law’ (Lenaerts, 2019, p. 20). The principle of the rule of law has been deemed as fundamental by all the institutions of the EU, as well as by its Member States. Article 2 of the Treaty on European Union<sup>25</sup> is the legal foundation of the principle of the rule of law in the Treaties. While the interpretation in legal and international relations literature of the principle of the rule of law have been varied, it is consistently recognised that it includes the respect of the judiciary as well as access to an effective justice system (Pech, 2021). As stated by the Commission, access to an ‘efficient and independent’ justice system ‘contributes to trust and stability. Predictable, timely and enforceable justice decisions are important structural components of an attractive business environment. They maintain the confidence for starting a business, enforcing a contract, settling private debt or protecting property and other rights’ (European Commission, 2013c, p. 1). The connection between the principle of the rule of law and the access to an effective justice system is important to understand the key role that the European Court of Justice, and, more generally, the judiciary assumes within the EU core normative framework (Hoogmartens, 2004; Parker and Rosamond, 2013; Craig and De Búrca, 2020). From a strictly legal perspective, connecting access to the justice system to the rule of law means granting protection under Article 2 of the Treaty on European Union, elevating it as one of the core principles of the EU; from a wider political perspective, it means recognising, once again, the pivotal role of the Courts and the judicial power as essential part of the Union. In this sense, the Court of Justice of the EU has been fundamental in establishing pivotal principles that have then been transposed in the body of legislation and practices of the EU, contributing to its integration (Parker and Rosamond, 2013; Craig and De Búrca, 2020; Schroeder, 2021). This was also true with its Common Commercial Policy (De Bièvre, 2006; Damro, 2012; Young, 2021). Furthermore, the rule of law is one of the fundamental principles that are in the

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<sup>25</sup> ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’ (European Union, 2012a).

Copenhagen criteria for the accession to the EU and part of the *acquis communautaire* (Manners, 2002; Parker and Rosamond, 2013; Young, 2021).

The programmatic belief of the rule of law has been guiding European action in trade policy since the European Communities, or, at least, since the birth of the Common Commercial Policy, helping shape the multilateral trade order within the GATT system and its subsequent evolution in the WTO. The programmatic belief of the rule of law suggest that EU officials would support institutions that are in line with the normative structure of the EU, pushing for international dispute settlement that is as close as possible to the characteristics of their own judicial system.

### 3.2.3 *The EU: shaping a new organisation*

As previously discussed, the EU is a normative power (Manners, 2002, 2006). This means that through the projections of its programmatic beliefs ‘the EU is able to shape the identities of non-members and change their perceptions of what is “normal” in international relations’ (Damro, 2012, p. 684). In this sense, it has been established that the EU has the power to influence other actors according to its own sets of values and norms. This subsection will then demonstrate how the EU influenced the Uruguay Round and the consequent birth of the WTO according to its own economic and legalistic programmatic beliefs.

Even though the EU has always been part of the multilateral trade system since the GATT, the Uruguay Round provided the EU with the key opportunity to shape the essential core of the new multilateral trade organisation. Partly, this is evident from a chronological perspective. The GATT system was established in 1948, while the European Communities were established in the following decade. It is during the Uruguay Round (1986-1994) that the EU was able to leave its footprint on the negotiations for a new multilateral trade organisation (De Bièvre, 2006; Young, 2021). During the Uruguay Round, the EU promoted its economic and legalistic beliefs as frames for the development of the international organisation.

As already discussed in the previous sections, the EU as an ‘open and reliable partner in the world’ has always been at the core of the European liberal worldview (European Council, 1993). The Uruguay Round was the perfect opportunity then to promote its programmatic beliefs of free trade and the rule of law. In the historic European Council

conclusions of 1993 (that were released when the Uruguay Round was still in place) that led to the establishment of the Copenhagen criteria, the European Council stated that the WTO 'must, without exception, be based on multilateralism, both in spirit and in practice. The way it operates must be determined by other economic realities such as currency movements, capital flows, the need to share the cost of environmental protection fairly and to deliver the social progress to which everyone has a right by a gradualist approach compatible with economic progress' (European Council, 1993). Multilateralism and economic progress are linked to the programmatic beliefs that are at the core of the European identity. Multilateralism in free trade has been fundamental to set up the rulebook for the new organisation. In this sense, the EU played an active role in shaping the WTO (Young, 2021). The programmatic beliefs at the core of the EU were discussed and transported into policy action during the Uruguay Round. In one of the meetings of the Preparatory Committee for the WTO, the European Communities representative reflected on the importance of the dispute settlement mechanism for the new multilateral organisation. In his speech, the representative stated that '[...] the new dispute settlement system under the WTO would be an essential element of that organization, and that the Appellate Body would clearly play a paramount role therein' (World Trade Organization, 1994a, p. 11). This passage is fundamental to understand the EU's position as an architect of the WTO DSM. According to the EU representative, the new DSM should stress the importance of its Appellate Body. Furthermore, the Appellate Body should be independent, operating in a collegiate manner, and its members need to be of 'highest quality'. These characteristics clearly reflect the necessary elements of a permanent court according to European legal systems. As already stated in the previous sections, the independence of the judiciary, the appointment of its judges, and the equality of its members, are all part of the idea of the rule of law. Indeed, the Appellate Body should be 'permanently available', 'permitted to work as independently as possible, and its membership should reflect that of the WTO. Also, all members of the Appellate Body should be on an equal footing, and it should operate in a collegiate manner' (World Trade Organization, 1994a, p. 12).

At the core of the European agenda, then, was the shift from a power based system of the GATT to a more rule based multilateral organisation (Goldstein and Martin, 2000; Rosendorff, 2005; Sacerdoti, 2010). This is reflected in the speeches,

as well as the propositions that the EU made during the Uruguay Round (De Bièvre, 2006; Young, 2021). Apart from the officials in the DG Competition that preferred the more informal negotiation style of the GATT (Damro, 2006), the more 'rules based' system of the WTO was at the core of the negotiations in the Uruguay Round (De Bièvre, 2006; Bown, 2010; Sacerdoti, 2010; Young, 2021). A more legalistic, and quasi-judicial multilateral trade system based on the rule of law was a more natural environment for the EU, making it more 'attractive' to the EU than other venues or remedies for international dispute resolution (see De Bièvre, 2006; Soave, 2020; Young, 2021). This argument is in line with the theoretical propositions of the research. As the EU built the WTO DSM according to its own beliefs the expectation is that it will use the multilateral organisation more than other countries whose beliefs are different.

In the Trade Policy Review of 2002, EU representatives stated that:

'The WTO's system of rules, negotiated market access commitments, and its commitment to future progressive liberalisation and strengthened rules constitutes, in a sense, an external framework for agreement on and implementation of the right economic policies, comparable to the EU's own internal market programme, its own experience in international cooperation and rule making, and its commitment to sustainable development' (World Trade Organization, 2002a).

It is interesting to analyse this document. Since it represents one of the first Trade Policy Reviews of the EU in the newly established WTO, it refers to the founding principles and value of the Uruguay Round. The EU clearly compared its own 'internal market programme', as well its commitment to rule making and sustainable development, to the multilateral and liberalisation system of rules of the WTO. The similarities of the EU and the WTO are evident. The programmatic beliefs that guide the two actors are similar.

As discussed in Chapter 2, it has been argued that the EU has been an active member of the GATT and helped shape the new institutional asset of the WTO, especially its DSM (Young, 2021, p. 35). The DSM under the GATT system functioned as a political forum in which matters were discussed to find an agreed solution to the problem, rather than a judicial system with a proper procedure. In 1990 the EU delegation at the negotiations for the new dispute settlement advocated for 'a stronger

dispute settlement system' (Multilateral Trade Negotiations The Uruguay Round, 1990). It is clear how the EU helped create the new DSM, shaping the rules and procedures of the new multilateral organisation according to its own programmatic beliefs. Indeed, the EU sees the WTO DSM as the proper venue to settle disputes because it 'represents the rule of law rather than power' (Young, 2021, p. 36). The WTO DSM reflects the EU's programmatic beliefs because it was shaped and created around them.

The EU, then, helped shape the WTO according to its own programmatic beliefs. Evidence of multilateralism, competition policy, trade liberalisation, the rule of law, democracy and human rights are to be found in the new WTO rules-based system, in its DSM, and in its new practices (De Bièvre, 2006; Soave, 2020; Young, 2021).

### 3.3 *Worldview: a 'Confucianist China'*

After having analysed what the worldview and programmatic beliefs of the EU are, the chapter will look at the ideas that are at the core of Chinese institutions. This section will examine the Chinese worldview, highlighting the thread between its worldview and the programmatic beliefs that stem from it. In particular, the analysis will be focused on the period following the Chinese opening policy (1978/79), as it marked the opening of Chinese frontiers after decades of isolation. The section will then analyse the economic and legalistic programmatic beliefs that rose from the new opening policy, and that oriented Chinese participation in the international arena.

Even though the opening policy will be the starting point of the main analysis on the specific ideas that influenced Chinese actions in international trade, it is necessary to take a step back in time by a few centuries. As discussed in the previous chapter, Chinese people and, more specifically, Chinese government officials still refer to their tradition as Confucianist (Hsieh, 2010; Bahri, 2018; Shaffer and Gao, 2021a). Confucianism is at the core of Chinese identity and tradition, encompassing every aspect of society (Waley, 2011). In this sense, Confucianism can be seen as a set of general ideas that are at the core of a society, or a worldview. Confucius, or Master Kong (夫子孔 – fuzi kong), has been considered to be one of the fundamental thinkers of East Asia. His works have deeply impacted Chinese society, creating a system of social and ethical rules at the core of the Chinese educational and administrative

system. In Imperial China, Confucianism was at the core of the education of bureaucratic officers. Officials needed to pass a state exam mostly based on the ideas of state and bureaucracy of Confucius. Confucianism, then, has been deeply embedded in bureaucratic practice in China for centuries. Indeed, Confucianism has been studied as an 'effective sociopolitical tradition', embedded in Chinese state practice (Yang, 1961). Confucianist ideas on the functioning of society (summarised in the 禮記 – liji) are mostly based on harmonious relationships and trust within the community. Nonetheless, it is necessary to highlight that when referring to Confucianism (see discussion in Chapter 2), I refer to the Confucianist Chinese tradition (Breslin, 2010; Waley, 2011; Brook, Walt van Praag and Boltjes, 2018). It is recognised that Confucianism has been developed in different ways in China, Japan, Korea, and other Asian countries. The Confucianist worldview, then, will be interpreted as that general sets of ideas that come from Confucius and Mencius, adapted with 'Chinese characteristics' (Waley, 2011).

To better understand the Chinese contemporary worldview, it is necessary to look at specific moments in Chinese history that defined it. Before the Opium War started in 1839, China was reluctant to open its doors to foreign countries. Foreign delegations needed to pay tributes to acknowledge the superiority of Chinese culture to grant them opportunity for trade (Hoogmartens, 2004). While this 'Tributary System' was already superseded by a 'Treaty System' after the Opium War, with Western powers granting access and control over parts of the Chinese territory, it is still important to acknowledge that this sense of 'superiority' of Chinese culture over the rest of the world is embedded in Chinese history. Indeed, these events marked a pivotal moment for China and its ideas on the functioning of state. Reference to the Opium war and to that timeframe are still present in current discourse. Linguistically, the word China – Zhong Guo (中国) – means 'Middle Kingdom', as the centre of the world. This centrality of China is a recurring motif of Chinese culture and history. This concept of China at the centre of the world is key to my understanding of the Confucianist Chinese worldview (Waley, 2011).

A key policy of the Qing dynasty (1644-1911/12) was the strategic policy of 'Chinese Learning as Substance, Western Learning for application' (中学为体, 西学为用 - Zhongxue wei ti, xixue wei yong) (Huan, 1986, p. 2). This statement embodies

the concept of centrality of Chinese culture. Literally, it means that even though China might apply tools and instruments of the West, the core principles and values are Chinese. Bringing this concept back to foreign policy, it means that external (Western) practices and information are always mediated through Chinese principles and values. Furthermore, this concept suggests that China is willing to learn and internalise Western (external) information and ideas, even though its preferences will reflect China's traditional values and practices. In other words, this policy is evidence of the long-lived state practice of adapting external ideas through China's own domestic pre-existing sets of normative beliefs. This concept, then, is in line with the theoretical premises of the research, looking at the role of pre-existing normative ideas in the internalisation of external information (see discussion in Chapter 2).

Since China considers itself the centre of the world, and the greatest of all countries, the 19<sup>th</sup> and early 20<sup>th</sup> centuries have been referred to as the 'century of shame and humiliation' (Lubman, 1997). Restrictive tariffs, territorial cessions, and extraterritorial agreements were granted to foreign powers for decades. Even though contemporary China is very distant from the country that was *de facto* controlled by Western states, the concept of 'humiliation' and 'shame' from the West still haunts Chinese culture (Lubman, 1997; Hoogmartens, 2004; Feng, 2006; Shaffer and Gao, 2021a). This is in line with the idea of the importance and centrality of China and Chinese culture. If China is the centre, being considered as a periphery of foreign invaders is humiliating. In this sense, acknowledging that at the core of Chinese worldview there is a sense of 'primacy' and centrality of China is necessary to understand the evolution of its worldview, and its contemporary interpretation of the world. Chinese worldview, conceived as the pre-existing set of normative ideas at the core of institutional actions, will be fundamental to understand the role of ideas in international relations and international trade dispute settlement, and, at the same time, their role in change in policy action. Furthermore, part of the Chinese worldview is the sense of otherness from the West. Chinese worldview is different, and there has always been the will and desire to protect this from the Western dominance. This is in line with the arguments of Chinese constructivists on the different worldview of China compared to that of Western institutions (Pang, 2007; Kang, 2010; Wang and Blyth, 2013).

This definition of Chinese Confucianist worldview as that set of ideas that derived from the teaching of Confucius, and from the lessons learnt during the Opium war and the century of humiliation, will allow for a better understanding of the contemporary ideas behind Chinese behaviour in foreign policy, and, more specifically in international trade.

### *3.3.1 Economic programmatic belief of China: State-led economic growth*

The Chinese worldview consists of Confucianist practices, the idea of China at the centre of the world, and the sense of otherness from Western culture. By examining the open door policy of China of 1978/79, this section will look at the programmatic beliefs that arose from the new economic and legal reforms, identifying which economic and legalistic programmatic beliefs oriented Chinese policy action.

In 1979 the Chinese government implemented the new 'open door policy' (Huan, 1986). It has been argued that the 'open door policy' bridges the Qing dynasty's principle of 'Chinese Learning as Substance, Western Learning for application' to modern times (Huan, 1986). In this sense, although its concrete application and policy choices vary over time, and new information may be internalised as a result of interactions with the West, they are always filtered by the Chinese Confucianist worldview. In this sense, Chinese officials' policy choices are based on deeply rooted ideas that guide their policy action.

The open door policy brought a new strategy for Chinese foreign trade. Through the circulation of goods, services, and capitals, China opened its frontiers to new, more liberal ideas. At the core of the new open door policy is the liberal idea of progress through economic development. Until 1979, the programmatic beliefs that guided the Chinese government's trade policy were all centred on the 'strategy of self-reliance' (自力更生 - zili gengsheng), and the 'sovereignty and independence of the People's Republic of China (独立自主 - duli zizhu), which are clearly connected to the idea of the centrality of China (Hsiao, 1977; Feng, 2006). Ideas of economic growth through liberalisation were circulating. Their application, though, was different compared to the

approach of the West. Policy choices like state monopoly, and import substitution,<sup>26</sup> were at the core of Chinese economy, relying deeply on the Soviet economic model.

The programmatic beliefs at the core of the open door policy were different. The open door policy pushed for implementing technology transfer, facilitating joint-ventures between Chinese and Western businesses, as well as attracting foreign direct investments, through the (partial) abandoning of a monopoly system, and a more decentralised institutional setting (Hsiao, 1977; Huan, 1986). Four special economic zones<sup>27</sup> were established (Huan, 1986). Foreign trade institutions were decentralised, granting new powers at a provincial level. Local governments are now entitled to engage in import/export activities, while this was previously an exclusive competence of the former Ministry of Trade (transformed into the Ministry of Foreign Economic Relations and Trade – MOFERT) (Hsiao, 1977; Huan, 1986; General Agreement on Tariffs and Trade, 1987a, p. 11; Feng, 2006). The newly established MOFERT becomes the main administrative body for coordinating foreign trade policies between the different provinces, autonomous regions, and municipalities.<sup>28</sup>

According to the ‘Suggestions of the Central Committee of the Communist Party of China on Formulating the Seventh Five-Year Plan for National Economic and Social Development (Adopted at the National Congress of the Communist Party of China on September 23, 1985),<sup>29</sup> China should ‘[...] strive to basically lay the foundation for a

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<sup>26</sup> ‘Import substitution’ was ‘[...] a strategy designed to develop the indigenous capacity to produce domestically the manufactured goods initially acquired through imports’ (Lardy, 1993).

<sup>27</sup> They are Shenzhen, Zhuhai, Xiamen, and Shantou. Special economic zones and open coastal cities have experienced a differentiated and more favourable regime in trade and investment. This include the exemption from custom duties for key technological equipment and instruments, as well as tax cuts for joint ventures that are operating for technological development in special economic zones and coastal cities (General Agreement on Tariffs and Trade, 1987a, p. 22).

<sup>28</sup> In particular, MOFERT ‘is responsible for implementing foreign trade policies, making and amending rules and regulations; drawing up long-term foreign trade development program, medium-term and annual import-export plans in coordination with the State Planning Commission, and supervise their implementation; organizing bilateral and multilateral trade negotiations between governments, concluding trade agreements and documents and organizing their implementation; approving the establishment of foreign economic and trade enterprises; exercising import and export licensing system (including the allocation of export quotas for textiles and clothing); engaging in international market research and exchanging and disseminating information’ (General Agreement on Tariffs and Trade, 1987a, p. 12).

<sup>29</sup> Original text: ‘中共中央关于制定国民经济和社会发展第七个五年计划的建议 (一九八五年九月二十三日中国共产党全国代表会议通过)’ (pinyin: Zhōnggòng zhōngyāng guānyú zhìdìng guómín jīngjì hé shèhuì fāzhǎn dì qī gè wǔ nián jìhuà de jiànyì (yījiǔbāwǔ nián jiǔ yuè èrshísān rì zhōngguó gòngchǎndǎng quánguó dàibiǎo huìyì tōngguò)).

new socialist economic system with Chinese characteristics, vigorously promote scientific and technological progress and intellectual development'<sup>30</sup> (The People's Daily, 1985, p. 1). The new open door policy then instilled faith in development and progress. Economic reforms were guided by the idea of growth, which was deemed possible through technological progress and the gradual market reform of the Chinese economy (Huan, 1986; Feng, 2006). The Chinese economy was not growing as quickly as predicted, and living standards were still too low to advance the goals that were set by the Chinese Communist Party. This pressure urged political elites to open the market, gradually abandoning the socialist models that characterised its economy, welcoming new ideas of trade liberalisation (Hsiao, 1977; Huan, 1986; Lardy, 1993; Feng, 2006). China, then, opened its doors not only to new trading partners, but also, at least partially, to new ideas on economy and development. According to the Seventh Five Year Plan (1985-1990), China needs to solve, among others, the issues related to the modernisation of its economy. For the Chinese government, '[o]nly by conscientiously solving these overall problems while continuously improving the economic benefits of enterprises, can the labour productivity and comprehensive economic benefits of the whole society be fundamentally improved, and the continuous improvement of people's lives can be more reliably guaranteed'<sup>31</sup> (The People's Daily, 1985, pp. 1–2). Liberal ideas have been absorbed, mediated, and adapted through existing sets of ideas. In this sense, the idea of economic growth has been interpreted through a strong presence of the State in the economy. While the opening up has led China to be introduced to new ideas on the economy and growth, they have been mediated through pre-existing sets of beliefs. Indeed, the role of the state as the main actor in the economy is still strong and present, after the reforms. In this sense, beliefs like the 'sovereignty and independence of the People's–Republic of China' (独立自主

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<sup>30</sup> Original text: '[...]争取基本上奠定有中国特色的新型 社会主义经济体制的基础, 大力促进科学技术进步和智力开发, 不断提高经济效益' (pinyin: Zhēngqǔ jīběn shàng diàndìng yǒu zhòng guó tèsè de xīnxíng shèhuì zhǔyì jīngjì tǐzhì de jīchǔ, dàlì cùjìn kēxué jìshù jìnbù hé zhìlì kāifā, bùduàn tígāo jīngjì xiàoyì).

<sup>31</sup> Original text: '[...]只有在不断 提高企业经济效益的同时, 认真解决好这些全局性的问题, 才能 从根本上提高全社会的劳动生产率和综合经济效益, 也才能 使人民生活的持续改善得到更可靠的保证' (pinyin: Zhǐyǒu zài bùduàn tígāo qǐyè jīngjì xiàoyì de tóngshí, rènzhēn jiějué hǎo zhèxiē quánjú xìng de wèntí, cáinéng cóng gēnběn shàng tígāo quán shèhuì de láodòng shēngchǎnlǜ hé zònghé jīngjì xiàoyì, yě cáinéng shǐ rénmin shēnghuó de chíxù gǎishàn dédào gèng kěkào de bǎozhèng).

-duli zizhu) are still central in the Chinese understanding of economy. This has brought China to a State-led economic growth (Feng, 2006; Brown and Von Ruda, 2008; Basu and Bandara, 2009). Indeed, the idea of the state as the main actor in the economy is central in the Chinese Confucianist worldview. China, as a state, is 'central' both in international relations and in domestic affairs. China's set of pre-existing normative ideas mediated the Western liberal beliefs on the centrality of markets in economic growth. This led to the localisation of liberal ideas, making external information align to pre-existing sets of normative beliefs.

The programmatic belief that is at the core of the open door policy and the following economic structural reform is that of economic growth and prosperity through State-led reforms and modernisation. After the open door policy the economic programmatic belief that guided the Chinese government's policy action was based on State-led economic growth.

### *3.3.2 Legalistic programmatic belief of China: peaceful coexistence*

The open door policy brought more than economic reforms. Together with the transition towards a modern market economy, China had to adapt its legal system. However, it had to do more than reform its legal system. In some ways, it had to build from scratch a new system that was compatible with the requirements set up by the international community (Lardy, 1993; Feng, 2006). When China opened its doors in 1978, it lacked a legal system capable of supporting the international standards for trade exchange and foreign investments (Hsiao, 1977; Lardy, 1993; Hoogmartens, 2004, p. 39).

New rules and procedures were developed to comply with the request of foreign investors and institutions to guarantee protection of investments and fair practices (Lo, 1997; Shaffer and Gao, 2020). The creation of new rules and courts to advance claims in civil and commercial matters did not alter the pre-existing Confucianist idea of harmonious relations and peaceful coexistence, and its application in legal settings as a preference for alternative dispute resolution to settle a legal dispute (see discussion in Chapter 2) (Lubman, 1997; Bahri, 2018). The Chinese programmatic belief of peaceful coexistence is based on the Confucianist worldview of amicable and harmonious relationships, (關係 - guan xi), according to which the preservation of the

relation of the other party is essential for the positive outcome of the dispute (Karton, 2016; Li and Lin, 2016; Jany, 2020). The administration of conflict resolution was originally given to family elders (heads of families or clans) (Jany, 2020). This mechanism for the settlement of civil dispute was guided by the idea that relations need to be preserved. In jurisdictional matters, then, preserving these relations meant preference for alternative dispute resolution means (Lubman, 1997; Jany, 2020). Public administration was not completely separated from the judiciary body (Jany, 2020). This lack of separation of powers continued to modern times in China.

The open door policy brought changes in the Chinese judicial structure. While implementing a new legal framework and body of rules, procedures, and institutions,<sup>32</sup> the preference for alternative dispute resolution remained. As evidenced in the Chinese Civil Procedure Law (National People's Congress, 1991), alternative dispute resolution is preferred over litigation (Lo and Tian, 2005). In particular, scholars have started their analysis from the concept of 關係 (guan xi) or 'relation', which is fundamental for every business decision in China (Karton, 2016; Li and Lin, 2016). Analysing the different models of relations in Chinese culture throughout history, they explained the meanings of the Chinese term for mediation/arbitration, 公斷 (gong duan). The term 公 (gong) can have the meaning of fairness (公平 - gong ping), justice (公正 - gong zheng), and openness (公開 - gong kai); the second character, 斷 (duan),—means decision-making (決斷 - jue dan) or judging (裁斷 - cai duan) (Li and Lin, 2016). It is claimed that Chinese tradition prefers to restore harmony between disputing parties, rather than resorting to argument (Karton, 2016). Conciliation, mediation, or arbitration became the main means of dispute settlement for civil, commercial, as well as foreign trade and investment matters (National People's Congress, 1994).

The programmatic belief of peaceful coexistence is in line with the Confucianist worldview of China, guiding its actions in legal and commercial aspects.

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<sup>32</sup> Together with the new Civil Procedure Law, and the new Arbitration Law, the Chinese State Council approved the conversion of the Foreign Economic and Trade Arbitration Commission into the China International Economic and Trade Arbitration Commission (CIETAC), expanding its jurisdiction (Lo and Tian, 2005, p. 308).

### 3.3.3 *China: respecting tradition, embracing the new*

The structural domestic reforms that China undertook were closely intertwined with its application to the GATT/WTO. Firstly, domestic reforms and the GATT application are connected from a chronological standpoint. The open door policy was issued in 1978/79, and the application of China to the GATT system was submitted in 1986. Of note in the request of accession is that China continued to refer to itself as 'one of the original contracting parties', deciding 'to seek the resumption of its status as a contracting party to GATT.' Even though China was following all the formal procedures for a new membership, the government wanted to restate in the accession documents that the People's Republic of China was China (General Agreement on Tariffs and Trade, 1986).<sup>33</sup> Secondly, the complex structural reforms that China undertook in the two decades after the open door policy were mostly based on the requirements criteria set out by the GATT/WTO (for a list of legal reforms see World Trade Organization, 2000a, 2000b; Guohua and Jin, 2001; Feng, 2006). To accede the WTO, governments need to make a formal request to the WTO Secretariat, which will establish a Working Party that will oversee the documents, as well as granting the correct application of the procedures. In particular, the accession to the WTO is regulated by Article XII of the Marrakesh Agreement Establishing the World Trade Organization. According to Article XII,

'1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

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<sup>33</sup> Even though China opened its doors to international trade in 1980s after the opening policy, Chinese modern trade experience started after WWII. In 1947 China participated in the 'Second Preparatory Conference of the United Nations Conference on Trade and Employment', where the GATT was drafted (Guohua and Jin, 2001). This led to the signature of the 'Protocol of Provisional Application', becoming an original contracting party of the GATT on 21 May 1947. Chinese trade system and international presence is connected to its domestic history. In 1949 the Communist Party took over the government, founding the People's Republic of China as it is known today. As it has been extensively covered in the literature, the new People's Republic of China claimed its international status as the legitimate successor of the previous government (see Huan, 1986; Lubman, 1997; Guohua and Jin, 2001). The new People's Republic of China government took its seat at the UN Security Council in 1971 (United Nations General Assembly, 1971, p. 2).

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.’

Furthermore, the acceding country and the WTO members will meet in different formal and informal meetings to discuss the ‘Terms of Accession’. In this ‘package’, the acceding countries and the Working Party define what economic and structural reforms the country must undertake before (and/or after) entering the multilateral organisation. Indeed, according to the WTO accession rules, countries need to agree to sign a ‘package’ of treaties, which include not only economic and market access rules, but also provisions on necessary legal infrastructures.<sup>34</sup> Acceding countries need to assimilate and incorporate the WTO legal principles and instruments, making them work within their national legal system.

In the accession process of China to the GATT/WTO it is possible to extract the presence of economic and legalistic programmatic beliefs that inspired and guided the government after the open door policy. When applying for the membership in the GATT, ‘China is [...] pursuing the basic national policy of opening to the outside world and revitalizing the domestic economy and will adhere to it in the years to come’ (General Agreement on Tariffs and Trade, 1986).

This statement is fundamental to understand the domestic programmatic belief behind Chinese accession to the trade organisation. The ‘national policy of opening to the outside world’ and ‘revitalizing the domestic economy’ is evidence of the programmatic belief of State-led growth through trade liberalisation and technological development, moving forward from the socialist economic model. The ideas that were circulating after the open door policy, and then localised through existing sets of normative beliefs, are now at the core of Chinese discourse in international institutions. This passage, then, is evidence of the internalisation of external ideas, being mediated

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<sup>34</sup> E.g., Article X of GATT; Article 13 of the Anti-dumping Agreement; Article 11 of the Agreement on Custom Valuation; Article 2(j) of the Agreement on Rules of Origin; Article 4 of the Agreement of Pre-shipment Inspection; Article 23 of the Subsidies Agreement; Article VI of the GATS; Artt. 41-50 and 59 of the TRIPS; Article XX of the Government Procurement.

through existing normative beliefs, applied in domestic settings, and, now, guiding Chinese officials' action in international settings.

These principles that are guiding China towards the membership to GATT are reinstated in the 'Memorandum' it submitted to the contracting parties (General Agreement on Tariffs and Trade, 1987a). The Memorandum was a summary of the economic reform that China undertook to be prepared for joining the multilateral trade system, as well as a plan for further changes in its domestic structure. Furthermore, the Memorandum provides a list of treaties, laws, and other relevant documents to prove to the contracting parties that China was ready to join the GATT. The document represents a major part of the Chinese application to GATT. In this sense, it acts as an interesting example of China's approach to foreign trade. An example of it is the following extract:

'In view of the close economic and trade relations among different countries, and through summing up its own historical experiences and lessons in national economic construction, China adopted in 1979 opening to the outside world as its long-term basic State policy. Guided by the principles of independence, equality and mutual benefit, China has scored great successes in the past eight years in the pursuance of the open policy' (General Agreement on Tariffs and Trade, 1987a, p. 7).

In this passage, China acknowledges the importance of 'historical experiences' and 'lessons in national economic construction' as core elements of its opening policy. Since Chinese foreign trade policy was deeply entrenched in the concept of 'Middle Kingdom' and the primacy of Chinese culture, the principles of 'independence, equality and mutual benefit' are branches of the same tree. The programmatic beliefs of centrality of China and State-led growth guide China's application to the GATT system.

After its application, China started to attend the meeting of the GATT as an observer. In March 1987, GATT contracting parties established a working party on the accession of China (General Agreement on Tariffs and Trade, 1987b). The working party remained in place until 1994. During the seven years of meetings, China was asked to produce documents to answer the questions from different party members on its accession to the GATT as a contracting party (General Agreement on Tariffs and Trade, 1987c). In one of the answers from the working group, China's delegation

provided an illuminating comment on disputes on state import restrictions. When being asked which items were subject to state import restrictions, as well as the applicable regulations, which institutional actors were involved, and the possibility of an appeal process, China answered that '[d]isputes can be resolved through consultation or conciliation by the higher authorities' (General Agreement on Tariffs and Trade, 1987c, p. 129). It is interesting to highlight how Chinese domestic dispute settlement was based on consultation and conciliation, and averse to bringing the dispute to a court. This is in line with the programmatic belief of peaceful coexistence, that prefers more conciliatory remedies to facilitate the maintenance of harmony and good relationships instead of litigation.

After the start of the Uruguay Round, China reinstated its will to accede to the WTO, requesting 'that the existing 'ATT Working Party on China's Status as a Contracting Party be converted to the Working Party on China's Accession to WTO' (World Trade Organization, 1995). During his participation at the Asia-Pacific Economic Conference (APEC) held in November 1993, former Chinese President Jiang Zemin stated three main principles on China's accession to WTO negotiations: '(1) As an international organization, WTO is incomplete without China's membership; (2) China must undoubtedly attend as a developing country; (3) The principle of China's attendance is the balance of rights and obligations.' (Guohua and Jin, 2001, p. 314). These principles are an expression of the ideas behind China's accession to the WTO. The centrality of China is affirmed through the 'incompleteness' of the multilateral trade organisation without China as a member. The application of China to the GATT/WTO was driven by the idea that the Chinese economy was still developing. The grant of the status of developing country in the multilateral trade system was necessary to benefit from special grants and concessions (Gao and Chi, 1996; Guohua and Jin, 2001; Feng, 2006; Shaffer and Gao, 2021a). The status of developing country could grant China the necessary time to adjust its policies to the new idea of State-led economic growth.

It took eighteen sessions of the Working Party before China's application was approved. During the fourteenth session of the Working Party, the Head of the Chinese delegation, H.E. Vice Minister Long Yongtu, released a statement, answering the points raised by the Working Party. In his statement, he referred to 'a fundamental principle of [...] accession to the WTO' (WTO News, 2000). When referring to China's

accession to the WTO as a developing country, Long Yongtu said that 'China will decide whether to apply and on which conditions to apply the developing countries provisions in light of its own conditions and needs. I hope that the Working Party members will pay enough attention to China's concerns regarding the relevant developing country provisions of the Subsidies Agreement and the Agreement on Agriculture. China is willing to resolve this issue in a fair and balanced manner through consultations on equal basis' (WTO News, 2000). Even though this statement is mostly related to the Chinese developing country status in the WTO and to the policies related to agriculture, two interesting points can be raised. Firstly, it is necessary to highlight how China clearly stated it would decide 'whether' and 'on which conditions' to apply the WTO (external) rules to their own (domestic) policies, according to their 'own conditions and needs'. Secondly, once again, the Chinese delegation reinstated the importance of their will to solve any dispute in 'a fair and balanced manner through consultations on equal basis', underlining the legalistic programmatic belief of peaceful coexistence, stressing the preference for amicable remedies.

In 2001, the Working Party issued a report (World Trade Organization, 2001d, 2001e), summarising the discussions entertained by the Chinese delegation since 1987. The Working Party met 20 times between 1987 and 1995, under the GATT system. After the establishment of the WTO, it met for another 18 sessions (World Trade Organization, 2001d). In November 2001 the Ministerial Conference of the WTO decided to accept the Chinese application (World Trade Organization, 2001a). A day later China formally accepted the 'Protocol on Accession' (World Trade Organization, 2001c), becoming the 143<sup>rd</sup> member of the WTO on 11 December 2001.

The twenty years of negotiations for Chinese membership to the WTO have been characterised by the application of old and new normative ideas in international trade. China's approach was centred on traditional ideas on the functioning of its legal system, prioritising harmonious relationship and peaceful coexistence. On the other hand, the process of accession to the WTO provided China with an opportunity to test newly internalised ideas on the functioning of the economy, promoting State-led economic growth in domestic reforms. The programmatic beliefs that were at the core of the negotiations of its membership to the WTO, then, were the economic belief of State-led growth, and the legalistic belief of peaceful coexistence.

### 3.4 *The EU and China: different ideas for different policy actions*

The previous sections demonstrated the different worldviews and programmatic beliefs that belong to the EU and China, looking at how their domestic ideas impacted the EU's negotiations in the Uruguay Round, and Chinese accession to the WTO.

To better understand these scenarios, it is necessary to reflect on their difference. Firstly, they are different in terms of ideational factors. The EU and China's set of ideas have different origins and different starting points that lead them to different applications of policy choices. Secondly, they are different in nature. The EU was a founding member of the WTO. In this sense, its prominent role in the Uruguay Round gave the EU the opportunity to shape the new institution around its own domestic programmatic beliefs. China found itself at the other end of the spectrum. Its role was as applicant, adapting its policies and ideas to the new multilateral institution.

As summarised in Table 3.1, different worldviews and programmatic beliefs led the EU and China to different policy actions. The different historical background and philosophical traditions of the West and East are well exemplified in the two worldviews of the EU and China. The liberal worldview of the EU embodies those values that had been typically associated with the West. Values and principles like free market economy, the protection of individual rights and freedoms, and the rule of law are at the core of Western and European identity. It does not come as a surprise, then, that ideas like free trade and the rule of law have become guiding principles for the EU.

China's worldview and programmatic beliefs tell a different story. China's culture and tradition has been deeply impacted by Confucius' thoughts and predicaments, encompassing all areas of life, from the personal sphere to the administration of the country. Imperial bureaucracy was required to study and pass a state exam based on Confucianist classics (Mühlhahn, 2019). This recruiting system was in place for more than a thousand years (from the Tang dynasty, 618-907, until Qing dynasty, 1905). As discussed in the previous chapter, Chinese bureaucracy still relies on Confucianist principles and values (Shaffer and Gao, 2021a). Principles like harmonious relations and communication over dispute are still integral parts of bureaucratic behaviours. Furthermore, to understand fully Chinese ideas, it is necessary to acknowledge the period of domination by the West. Chinese culture mediated foreign Western ideas, building on the concept of China as a 'Middle Kingdom' and moral superiority and

primacy of the Confucianist thoughts. In this sense, the idea of State-led economic growth through trade liberalisation, which might appear as externally driven by Western influence, is actually the result of the interpretation of foreign values through pre-existing beliefs. The idea of the centrality of China in the international arena still remained (Huan, 1986; Gao and Chi, 1996; Feng, 2006). China still considers itself the centre of the world. Indeed, the Chinese open door policy was based on the idea of China's modernisation through the lessons learnt from the West, but filtered through its own institutional and cultural traditions (Huan, 1986, p. 1). In other words, the idea of the centrality of China, part of its worldview, filtered Western ideas. External ideas did not substitute pre-existing beliefs but were filtered, adapted, and internalised through them.

**Table 3.1** *The EU and China's worldviews, programmatic beliefs, and policy actions*

|              | <b>Worldview</b>            | <b>Programmatic beliefs</b> | <b>Policy actions</b>  |
|--------------|-----------------------------|-----------------------------|--|
| <b>EU</b>    | <i>Liberal</i>              | <i>Free Trade</i>           | <i>Promotion of multilateralism</i>  |
|              |                             | <i>Rule of Law</i>          | <i>Preference to litigation in courts (prominent role of CJEU)</i>                         |
| <b>China</b> | <i>Chinese Confucianist</i> | <i>State-led growth</i>     | <i>Open door policy</i><br><i>Trade liberalisation</i><br><i>Technological improvement</i> |
|              |                             | <i>Peaceful coexistence</i> | <i>Preference to alternative dispute settlement remedies</i>                               |

This dichotomy of West/East can be seen at the WTO level as well. As shown in the previous sections and summarised in Table 3.2, domestic programmatic beliefs led the EU and China to different behaviours in the WTO/Uruguay Round. European ideas on free trade and the rule of law were guiding EU officials during the negotiations on the new multilateral institution, especially in the discussion of the new multilateral dispute settlement mechanism. This process shows how domestic ideas of the EU helped shape the new WTO and its dispute settlement mechanism. On the other hand, China's domestic ideas of State-led growth and peaceful coexistence were guiding Chinese officials during the accession process to the new multilateral organisation. Western liberal ideas of the WTO Working Group, requesting China to open its market

and reform its institutions, were mediated through their own domestic programmatic beliefs.

**Table 3.2** *Programmatic beliefs and policy actions in the Uruguay Round/WTO*

|              | <b>Programmatic beliefs</b> | <b>Policy actions</b>  |
|--------------|-----------------------------|--|
| <b>EU</b>    | <i>Free Trade</i>           | <i>Creation of a multilateral organisation for free trade</i>                          |
|              | <i>Rule of Law</i>          | <i>Reform of the GATT DSM to a new 'quasi' judicial rules-based system</i>             |
| <b>China</b> | <i>State-led growth</i>     | <i>Trade liberalisation and institutional reforms as part of the accession process</i> |
|              | <i>Peaceful coexistence</i> | <i>Preference for consultations and mediation</i>                                      |

### 3.5 Conclusion

The chapter analysed the ideational background of the EU and China. Having identified their worldviews, the chapter examined how their economic and legalistic programmatic beliefs are connected to their worldview, and how they were developed and reinforced through the process of accession to (in the case of China), or negotiation of (for the EU) the WTO.

In particular, the chapter demonstrated how the worldview of the EU is liberal. From this liberal European worldview, the EU developed its economic programmatic beliefs of free trade, as well as its legalistic programmatic beliefs of the rule of law. Then, the chapter underlined how these programmatic beliefs affected the Uruguay Round, influencing the negotiations that led to the establishment of the WTO. The

ideas that circulated during the establishment of the new multilateral organisation were based on the European programmatic beliefs.

The second part of the chapter demonstrated how the worldview of China is based on Confucianism with specific Chinese characteristics. The analysis then moved onto the investigation of the specific economic and legalistic programmatic beliefs that inspired, and evolved after, the open door policy of 1978/79. In particular, the new policy gave birth to the new programmatic belief of State-led economic growth. Nonetheless, the chapter underlined how pre-existing programmatic beliefs like peaceful coexistence were reinforced even after the new economic and legal reforms. Ultimately, the discussion moved onto the analysis of Chinese accession to the GATT/WTO, underlining how the negotiation process was guided by the programmatic beliefs of State-led growth, and peaceful coexistence. If the EU helped shape the WTO, the opposite happened for China.

Ultimately, the chapter analysed the differences in the EU and China's worldviews and programmatic beliefs, which led to different policy actions in the Uruguay Round and the accession to the WTO.

This chapter served as the starting point of the analysis of the EU and China's programmatic beliefs in the WTO. The analysis that will be undertaken in the following chapters will assess whether and how the EU and China reinforced the programmatic beliefs highlighted in this chapter or developed new ones.

## **4 Ideas in the WTO DSM: the EU and China between 2001 and 2008**

### *4.1 Introduction*

The years between 2001 and 2008 represented the first timeframe in which the EU and China coexist as members of the WTO DSM. In 2001 the EU was formed by 15 member states, as the world's largest importer of services, accounting for 24% of total world services imports (World Trade Organization, 2002a, p. 7). At the time, the highest trade deficit was recorded with China at EUR -45.7 billion. China represented one of the biggest suppliers to the EU with the US, Japan, Switzerland and Russia, and one of its largest export markets (World Trade Organization, 2002a, p. 7). External merchandise trade of the EU kept growing, increasing by 15.3% and 6% in 2006 and 2007, reaching EUR 2,642 trillion in 2007, accounting for 17.2% of total global trade (World Trade Organization, 2009c, p. 8). In the same years, China was a full member of the multilateral organisation, benefitting from the rules-based system of the WTO. Chinese GDP grew from USD 1,324.8 billion in 2001 to USD 2,225.7 billion in 2005, at an average annual growth rate of 9.5% (World Trade Organization, 2006a, p. 5). Chinese trade grew exponentially since its accession to the WTO. From a trade balance of USD 28 billion in 2001, China's balance reached one of its highest in 2008 with more than USD 348 billion. From USD 266,098 million in 2001, Chinese merchandise export reached USD 1,430,693 million in 2008, while China's merchandise import grew from USD 243,553 in 2001 to USD 1,132,567 in 2008 (World Trade Organization, no date b). The accession to the multilateral trade system through membership to the WTO had clearly been beneficial to China, rapidly increasing its trade volume and growth. Indeed, import and export volumes increased at around 20% each year from 2002 to 2005, reaching 34% from 2002 to 2003 (UNCTAD, 2007, p. 5). Despite the rapid growth in the Chinese economy, as the country chased the EU and US in the race to become the largest global economy, its activity in the WTO DSM was almost non-existent, especially when compared to the EU's participation. Between 2001 and 2008 the EU initiated 24 complaints, while China only pursued 3 (see figure 1.1 in Chapter 1). According to rational choice theories (see discussion in Chapter 2), larger economies and bigger traders should become more involved in

trade disputes (see Sattler and Bernauer, 2011). Considering the rapid growth of China and its increased engagement in global trade, according to that argument China should have initiated more disputes, especially if compared to the EU. While it is true that the total trade volume of the EU between 2001 and 2008 is higher than China's total trade volume in the same period, the picture is different when comparing the time periods where trade volume was similar. For instance, the merchandise export level of China between 2005 and 2008 was very similar to the merchandise export level of the EU between 2001 and 2005.<sup>35</sup> Between 2005 and 2008 China brought 2 complaints to the WTO DSM (one in 2007 and one in 2008), while the EU initiated 15 disputes between 2001 and 2005 (1 in 2001, 4 in 2002, 3 in 2003, 5 in 2004, and 3 in 2005), when their levels of trade were similar. The argument linking trade volume and disputes in the DSM, then, does not apply in China's case. Furthermore, according to the same argument, if the trade volume grows, the expectation would be that the number of disputes would grow as well. If looking at the number of complaints initiated by the EU, though, the situation is the opposite. An increase in trade corresponds to a decrease in the number of disputes. Indeed, in 2002 the EU initiated 4 disputes and its extra EU exports in goods accounted for USD 945,083 million. In 2007 extra EU exports in goods arrived at USD 1,868,309 million, but the EU initiated 0 complaints in the WTO DSM. Despite an increase of almost USD 1,000,000 million in merchandise export, the level of disputes initiated in the dispute settlement did not increase accordingly. What determined this different approach? If rational choice theories based on trade volume and economic growth cannot fully explain this picture, other factors need to be taken into consideration. The main aim of the chapter is to explain the different approaches of the EU and China in international trade dispute settlement between 2001 and 2008, looking at the role of programmatic beliefs in DG Trade and MOFCOM officials' policy action.

The years between 2001 and 2008 have been characterised by one of the main institutional challenges of the WTO. Starting in November 2001, the Fourth WTO Ministerial Conference marked the beginning of the Doha Round. Centred on the

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<sup>35</sup> Chinese merchandise exports in USD million were: 761,953 (2005), 968,978 (2006), 1,220,456 (2007), 1,430,693 (2008). Extra EU merchandise exports in USD million accounted for: 878,558 (2001), 945,083 (2002), 1,095,111 (2003), 1,319,702 (2004), 1,420,597 (2005). Source: WTO Stats (World Trade Organization, no date b).

implementation of the Doha Development Agenda, the Doha Round negotiations focused on development, following the recent accession to the WTO of countries including China.<sup>36</sup> The Doha Round was supposed to end in 2003, concluding with the negotiations of new multilateral rules on agriculture, services, and market access.<sup>37</sup> The Doha Round never saw an agreement reached, causing the stall of the negotiating function of the multilateral trade organisation. Indeed, since the failure of Doha, very few goals related to multilateral negotiations have been met in the trade organisation, especially in sectors like agriculture. The subsequent Ministerial Conference held in 2003 in Cancún ended in failure. Only at the Hong Kong Ministerial Conference in 2005 fewer results could be visible, following the 2004 General Council Framework Agreement. Nonetheless, none of these Ministerial Conferences lived up to the expectations that were set up in 2001, with the Doha Development Agenda still under discussion. While the failure of the Doha Round was to be declared a whole decade later, the crisis of the negotiating system was already evident between 2001 and 2008. Despite the stall of the Doha Round, the WTO DSM continued to function, becoming *de facto* the main working institution of the multilateral trade organisation. In this fragmented context, then, it is necessary to examine the approach of actors towards the WTO DSM.

In the previous chapter I examined the EU liberal beliefs of the rule of law and free trade, and China's Confucianist beliefs of peaceful coexistence and economic growth. I discussed the ways in which these informed trade officials' policy actions in the WTO. This chapter will analyse the period from 2001 to 2008, looking at whether there was a shift in Chinese or EU officials' policy actions compared to the previous period. Should a shift in policy actions have occurred, the aim of the chapter is to investigate whether it corresponds to a shift in the belief system of the EU and/or China. Alternatively, do different policy actions still have foundations in the same programmatic beliefs that guided actors in the previous timeframe?

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<sup>36</sup> Since the previous Ministerial Conference in Seattle in 1999, Albania, China, Croatia, Georgia, Jordan, Lithuania, Moldova and Oman joined the WTO.

<sup>37</sup> The Doha Development Agenda contained chapters on Implementation-related issues and concerns, Agriculture, Services, Market access, TRIPS, Trade and investment, Trade and competition policy, Government procurement, Trade facilitation, WTO rules, Dispute settlement understanding, Trade and environment, Electronic commerce, Small economies, Trade, debt and finance, Transfer of technology, Technical cooperation, Least-developed countries, Special and differential treatment (World Trade Organization, 2001b).

The chapter will be divided into three main parts which together will show how normative beliefs affect actors' approaches in the WTO DSM. The first part will be focused on the EU. One section will analyse the policy actions taken by the EU towards its international trade policy, linking them to the programmatic belief of free trade. The second section will be dedicated to the analysis of the policy actions connected to the belief of the rule of law. I will argue that the EU has been guided by the same normative beliefs that characterised its action in the Uruguay Round, leading to an active use of international trade dispute settlement.

The second part will analyse China and its policy actions. One section will deal with the policy action of the Chinese government in international trade, connecting them to the belief of State-led growth. The other section will focus on the policy actions related to the belief of peaceful coexistence. I will argue that Chinese officials are still guided by the same programmatic beliefs that characterised their action during the accession to the WTO, leading to a more silent approach to the DSM in this timeframe.

The last part of the chapter will analyse the interaction of the EU and China in the WTO, examining the change of rhetoric in the discourse, and the main events and frictions during the analysed timeframe.

#### *4.2 The EU: Free trade and multilateralism in the WTO DSM*

As already discussed in the previous chapter, the EU's worldview is liberal. As worldviews are those ideas that are at the core of actors' belief systems, they are the hardest to shift or change. This section, then, will briefly show how the liberal worldview of the EU is evident in Commissioners' speeches and official documents of EU institutions between 2001 to 2008. According to the literature on ideas, actors are not aware of their own worldview until they face critical events (Goldstein, Keohane and Social Science Research Council (U.S.), 1993; J. A. Hall, 1993; Blyth, 2002; Wang and Blyth, 2013). While this section will not determine whether the EU was consciously aware of its worldview or not, it is certain that the beginning of the new millennium was a time of challenge both domestically and internationally, where awareness – according to the literature on ideas – was likely to be high. At a domestic level, the EU's institutional structure undertook major reforms with the Treaty of Nice, signed in 2001 and entered into force in 2003, and the Treaty of Lisbon, signed in 2007 and

enforced in 2009. At the same time, the EU's membership grew with its Fifth and Sixth enlargements in 2004 and 2007. Internationally, after the success of the Uruguay Round establishing the WTO, the EU and the other 'quad' members (Canada, EU, Japan, and the US) were facing major challenges with the Doha Round in 2001, balancing the claims of developing economies (like China) with the new rules-based multilateral system of trade. In this sense, it is not surprising that the worldview of the EU is more evident in its officials' speeches and documents. In line with the literature on ideas, actors tend to explicitly refer to their normative beliefs in times of uncertainty or deep crisis (see discussion in Chapter 2) (see also Blyth, 2002; Béland, 2019). Therefore, the discussion in the WTO and its DSM provides useful insight into members' programmatic beliefs in this period following the stall of multilateral negotiations after the Doha Round in 2001.

In the following subsections I will analyse how the liberal beliefs of the EU guide their trade officials' actions in the WTO and its DSM, taking into consideration the programmatic belief of the rule of law, and of free trade.

As discussed in the previous chapter, free trade was the main belief that guided the EU in the establishment of the WTO. It is evident that the main scope of the WTO is to promote free trade in a multilateral forum. The EU has been one of the strongest proponents of multilateralism in international trade. In this section, I will examine how the EU continues to prefer multilateralism as a policy action in international trade.

In its 2002 Trade Policy Review the EU recognised that trade policy is a specific 'means' by which the Union can promote economic prosperity, showing its ongoing commitment to 'an open and dynamic market economy' (World Trade Organization, 2002a, p. 4). In the same document the EU continues to articulate its economic policy choices, acknowledging that the principles 'embodied in the WTO Agreement' of an 'open multilateral trading system' are at the core of its trade policy agenda (World Trade Organization, 2002a, p. 4). This statement is interesting as it recognises the importance of the principles laid out during the Uruguay Round. A multilateral trade system, that is the ultimate mandate of the WTO Agreement, is at the core of the European trade policy. In the 2002 Trade Policy Review the EU acknowledges the similarities of mandates of the Union and the WTO, both as entities based on 'international cooperation and rule making' (World Trade Organization, 2002a, p. 4). The EU sees the WTO as 'necessary' and 'one of the most effective ways' to promote

economic growth, environmental protection, social development, and globalisation (World Trade Organization, 2002a, p. 4). The passage shows the EU's belief in the liberal argument of the automatic and inevitable spill-over effect of trade to sectors like economic growth, social advancement, and environmental protection.

Multilateralism and regionalism are intended as policy actions that lead to the liberalisation of trade towards its partners. To choose multilateralism, regionalism, or bilateralism means to agree to the belief that international trade should be liberalised, and the international arena should conform to the liberal worldview of the EU. Due to the stall in negotiations of the Doha Round, the WTO was not capable of fulfilling its commitment to deepen trade rules multilaterally. For these reasons, then, the EU put an emphasis on concurrent ways to achieve multilateral free trade, through bilateral and regional agreements. Indeed, the EU's 'trade policy is geared towards the liberalization of its trade regime, through both the multilateral and preferential routes' (World Trade Organization, 2004, p. viii). According to the EU representative at the WTO, regional integration '[...] RTAs could rebalance the whole multilateral trading system' (World Trade Organization, 2005, p. 33). Indeed, '[...] bilateral, bi-regional and other trade policy instruments and measures existing preferential trade' are considered as '[...] a complementary manner to the priority granted to the multilateral route' (World Trade Organization, 2007, p. 15). This section will highlight the various policy actions that have been taken to pursue the programmatic belief of free trade.

As evidenced in the previous chapters (see discussion in Chapter 3), the EU exercises its normative power through its policies in international settings like multilateral institutions (see Manners, 2002; De Bièvre, 2006; Damro, 2012). Evidence of this can be found in the Trade Policy Review documents, where the EU recognises its power and is aware of its influence not only in terms of material incentives but also in terms of principles and values. In the conclusions of its 2002 Trade Policy Review, the EU acknowledges its 'considerable influence on global trade and investment' (World Trade Organization, 2002a, p. 23). Furthermore, it recognises its role as a coordinator of activities with its trading partners, promoting 'open and fair trade not only at a multilateral but also at a bilateral or regional level' (World Trade Organization, 2002a, p. 23). This passage gives extremely important takeaways on the belief system of the EU. It is clear that multilateralism is seen as a means to promote the liberal idea of free trade in the international arena. Indeed, the EU '[...] is convinced, however, that

regional free trade agreements develop their full potential only where they build on commitments to basic international principles such as those embodied in the WTO. Increasingly, the EU's approach to FTAs will extend beyond goods and services liberalisation to more comprehensive rule-making engagements' (World Trade Organization, 2002a, p. 23). The EU reinforces its commitment to liberal free trade through different parallel policy actions, undertaken at the same time and in different venues other than the WTO, promoting bilateralism and regionalism. Choosing multilateralism to achieve free trade is evident in the words of the EU Commission in the WTO:

'Given its own success and experience with multilateral cooperation based on common rules, the EC views the multilateral approach as its preferred instrument. In particular in trade policy, the benefits of the multilateral approach are clearly manifested in the size of economic gains, which dwarf what bilateral agreements could achieve, and the predictability created by common rules' (World Trade Organization, 2007, p. 11).

The WTO and its DSM are seen as the appropriate venue for the EU to promote multilateralism, boosting free trade and economic gains, through the 'predictability created by common rules'. The use of the DSM in the multilateral trade organisation enhances the influence of the rules-based system of trade. Nonetheless, stressing the importance of concluding free trade agreements within the rule-system and framework of the WTO, the EU connects its bilateral and regional commitments to the policy choice of multilateralism. In other words, due to the strong belief of free trade, and the leading role of the EU in the WTO, bilateralism and regionalism are seen as different sides of the same multilateral coin. Bilateralism and regionalism, then, do not contradict the multilateral commitments of the EU in free trade. On the contrary, looking at these policy actions through the rules-based framework of the WTO, they are both complementary insofar as they both lead to multilateralism, as guided by the liberal principle of free trade. Indeed, the EU '[o]nly where appropriate and necessary, [uses] new bilateral or bi-regional initiatives [...] as complements' (World Trade Organization, 2007, p. 5). The promotion of multilateralism in the WTO is pursued through the maintenance and strengthening of the rules-based system of free trade. Amidst the crisis of the Doha Round, and the consequent stall in the negotiating function of the multilateral trade organisation, this promotion and strengthening of multilateralism can

only effectively be realised through the intensive use of the DSM. Activating the DSM through the filing of complaints is a way of promoting a fair rulebook in international trade. Ensuring free trade and multilateralism in the international community is a priority for the EU, as it is part of its core set of liberal beliefs. The normative idea of free trade is then based on the promotion of multilateralism and the effective implementation of 'predictable common rules' for international trade. The WTO dispute settlement, then, is seen as the appropriate venue to promote its normative beliefs, as it ensures the proper enforcement of multilateral rules, ultimately safeguarding free trade in the international community.

The EU's trade policy, as discussed in the previous chapters, is used as a means of advancing its belief of free trade. This is evidenced by the Commission's documents in the WTO, highlighting how the Union's trade policy 'reflects the external dimension of the EC's customs union and Internal Market' (World Trade Organization, 2007, p. 5). The EU sees the WTO and its DSM as a venue within which it can promote its trade policy. Indeed, the EU 'firmly believes in the need for further multilateral liberalisation and a strengthening of the multilateral trade policy rule book as the only guarantor of true development for all WTO Members. [...] The EC continued to subordinate its other trade policy instruments and measures to the priority granted to the multilateral route' (World Trade Organization, 2007, p. 5). The EU is seen as the 'guarantor' of a multilateral system that enforces and promotes liberal values among WTO member states. European trade policy is seen as a tool of promoting free trade, even in the WTO.

The analysis confirms the European approach towards multilateralism, and the interpretation of bilateralism and regionalism as ways to promote the multilateral agenda in the WTO and its DSM. Promoting multilateralism in international trade is in line with the policy actions that the EU took during the Uruguay Round. Promoting free trade and multilateralism in the international community is a priority for the EU, which advocates for deeper trade rules. The belief in free trade is, indeed, part of the EU's core normative framework. As the WTO negotiating function had been stuck since the Doha Round in 2001, the dispute settlement of the organisation is seen as the appropriate (and only) venue to promote its normative beliefs at a global level, as it ensures the proper enforcement of multilateral rules, ultimately safeguarding free trade in the international community.

### 4.3 *The EU: Promoting the rule of law and a rules-based system in the DSM*

In the first years after the establishment of the WTO, the EU behaves as a protector of the principles at the core of the organisation. When giving a speech on the international economic community at the US Chamber of Commerce in Washington, the European Commissioner Pascal Lamy highlighted the pivotal role of the EU in international trade and global economic governance. Indeed, in terms of '[...] influence in, and on, the global economic system, we both have the potential, and the incentive, to deploy leverage - whether that is in Geneva, in a regional trade agreement, or in a bilateral deal. (*This leverage can be seen most obviously, perhaps, in the WTO dispute settlement system.*)' [italics added] (European Commission, 2001a). This passage marks a new policy action by the EU in the context of the WTO dispute settlement, as well as in the wider international arena. Commissioner Lamy directly refers to the WTO DSM as one of the main venues in which the EU can exercise its potential and leverage in international trade. When interacting with the US, the other major player in the WTO DSM, Commissioner Lamy refers to them as the 'landlords' of the system. Indeed, the Commissioner affirms that both the EU and the US 'both behave as rather vulgar landlords from time to time' (European Commission, 2001a). As founding members of the WTO, and, consequently, the WTO DSM, the EU and the US shaped the organisation according to their own beliefs and sets of rules (see discussion in Chapter 3). At the same time, by labelling itself as one of the landlords of this organisation, the EU recognises the power imbalance and the influence that some member states have towards newer or less influential members, that need to comply with the rules set by these landlords. According to Commissioner Lamy, the EU and the US '[...] have the fundamental interests of the landlord in the system: in other words, we both have an incentive not just to be power brokers, but to respect the system, to nurture it, and to safeguard it' (European Commission, 2001a).

The EU sees itself as an active shaper of the multilateral organisation and of trade order in general, believing that the main tasks of this privileged position are to respect, nurture, and safeguard the system. In other words, the Union is a guardian of

the liberal status quo. This highlights the tendency of the EU to preserve the status quo, the rules-based system as it is, confirming the need for a strong and secure multilateral organisation as negotiated during the Uruguay Round.

The Commission's commitment to the rule of law continues to be present in the discourse around (and about) the WTO DSM. Indeed, it is '[...] the European Commission's responsibility to defend EU trade interests vis-à-vis third countries and within multilateral organisations notably the World Trade Organisation' (European Commission, 2002d). Examples of the multilateral approach of the EU in the WTO can be found in the Commission negotiations of the GATS (European Commission, 2003b). When explaining the reasons why an agreement on trade in service is needed, the Commission acknowledged the importance of the WTO as a multilateral venue where each country has the possibility to share its voice, notwithstanding its economic size. Indeed,

'[t]he creation of a multilateral framework of principles and rules aimed at progressive opening of trade in services will help to promote trade in services and thereby economic development worldwide. The right of states to regulate services must be preserved and respected by all members of the WTO Services contribute to development, in particular by strengthening the capacity and competitiveness of economies in developing countries' (European Commission, 2003b).

When talking about the WTO and its DSM, the Commission refers to a 'framework of principles and rules'. The discussion in the document revolves around services, but the reasoning encompasses all the areas of international trade. The passage highlights the close connection with the rule of law and economic development, which, as already established in the previous chapter, is more evidence of liberal values. This is an example of the extent to which ideas are intertwined in discourse and policy documents (see discussion in Chapter 2). In this passage economic and legalistic beliefs are both part of the liberal worldview of the EU that inform the Commission's actions towards the negotiation of the TRIPS in the WTO. Nonetheless, in this specific passage the legalistic belief is the central point of discussion. It is the clear framework of rules and principles that is the necessary condition for economic development, especially for developing countries. In this sense, the words and actions of the Commission in the WTO are (still) guided by the legalistic

liberal belief of the rule of law. In addition, the Commission stressed the importance of the dispute settlement body of the WTO, where 'disputes can be resolved using agreed procedures rather than by unilateral measures taking advantage of size and political clout' (European Commission, 2003b). The WTO DSM, as an institution that represents legal certainty and the rule of law, appears to be a strong incentive for the EU to promote multilateral agreements in the WTO. The fact that agreements like the GATS can be protected and challenged within a multilateral (quasi)judicial system like the DSM guides European trade policy choices.

In its first Trade Policy Review after the accession of China (World Trade Organization, 2002b), the EU Commission provided useful insights on its commitments to the multilateral organisation and the future of its trade policy. In particular, the Commission highlighted that '[...] one of the main achievements of Doha was that it maintained the direction of the WTO towards being a forum concerned as much with rule-making as with liberalization, and recognized fully the WTO's place in the collective international efforts to combat poverty, ensure more equitable growth, and support sustainable development' (World Trade Organization, 2002b, pp. 4–5). The WTO is seen as the rightful place where members can liberalise free trade through rule-making. In this sense, the multilateral trade organisation is as strong as its capacity to fulfil its mandate through a rules-based system which is easily enforceable for its members. The EU knows that a system of rules will allow countries to trade. A strong and certain set of rules, then, is the necessary requirement for countries to engage in free trade. This legalistic view of international trade is based on the EU's strong respect for the rule of law as a guide towards multilateralism in international venues like the WTO. In this sense, the EU recognises the power that the WTO has in the domestic reform process of Members' legislations, acknowledging its own leverage to harmonise domestic rules according to its own principles.

The policy action that the EU undertakes in this timeframe is the preservation of the rules-based system. Preserving the rules-based order that was created by the EU is in line with the approach of the previous timeframe. In this sense, no shift seems to be identifiable in European policy action. The discourse around the WTO DSM is evidently based on the promotion of a rules-based system. International trade dispute settlement, then, is necessary to achieve the EU's normative beliefs. The use of the WTO DSM by the EU is connected to its own normative beliefs of the rule of law.

Despite the deep crisis of the Doha Round, the EU still believes that the WTO DSM is the proper venue to protect and promote a multilateral trade system based on the rule of law.

#### *4.4 China: Structural reforms and State-led economic growth*

The year 2001 marked an important landmark in Chinese foreign policy. The entrance into the WTO was perceived as a major step towards the openness of China to foreign markets (Wang, 2002; Ching and Ching, 2003). The first years of Chinese membership to the multilateral trade organisation, then, are extremely relevant in understanding how new ideas, coming from China's interaction with a new institution and international partners, permeated and affected its belief system. This section will analyse the policy actions of China connected to their beliefs of State-led growth and peaceful coexistence.

To further promote free trade and to advance harmonisation with international rules and standards, Chinese accession to the WTO brought different domestic reforms not only at an economic level (see Shaffer and Gao, 2021), but also at an institutional one (Wang, 2021a). As analysed in the previous chapter, Chinese policy action in trade policy was guided by the belief of State-led growth. This section will examine how the economic reforms that China continued to undertake during the first years of its membership to the WTO had been guided by the belief of State-led growth. In particular, this section will show how the tentative approach of China to international trade dispute settlement is guided by its normative ideas on the functioning of the economy, guiding its first years of membership to the WTO.

After joining the trade institution in December 2001, China continued reforming its governmental institutions to better tackle the new commitments to which it had subscribed by signing the accession package to the WTO. In March 2003 MOFCOM was created, building on the former Ministry of Foreign Trade and Economic Cooperation, as well as taking functions from the State Economic and Trade Commission and the State Development Planning Commission (Wang, 2021a). MOFCOM is an executive agency under the State Council.

According to the State Council General Office, MOFCOM has, '[i]n line with the mandate, to handle the relationship with the World Trade Organization on behalf of the

Chinese government, undertake such responsibilities under the framework of the WTO as multilateral and bilateral negotiations, trade policy reviews, dispute settlement, and notifications and inquires and to coordinate trade and economic activities with foreign parties' (Ministry of Commerce People's Republic of China, 2003). As stated in its mandate, MOFCOM was created as the main institution to deal with the new reforms in the Chinese market and economy in general. In particular, the new Ministry was given the mandate to deal with the WTO in its negotiation rounds in Geneva, as well as disputes in the WTO DSM.<sup>38</sup> Nonetheless, other less manifest reforms were guided by the WTO, which prompted Chinese transition from a planned economy to a market economy (Wang, 2002). Within MOFCOM there is a department that specifically deals with WTO issues, the 'Department of WTO Affairs, China WTO Notification and Inquiry Center' (世界贸易组织司, 中国政府世界贸易组织通报咨询局). This department oversees WTO multilateral negotiations, dispute settlements, and other WTO-related affairs, as well as promoting import and export standardisation. Nonetheless, the department that deals with the WTO DSM is the Department of Treaty and Law (条约法律司), under the vice minister Ambassador Zhang Xiangchen (张向晨). While the Department of WTO Affairs deals with complaints notification and negotiations, the Department of Treaty and Law acts as the legal division of the Ministry, assisting it in the WTO DSM. Apart from the institutional asset of its ministries, China underwent different reforms that resulted in an annual real GDP growth rate in excess of 10% between 2004 and 2008, becoming the third largest trader in the world (World Trade Organization, 2008c). It has been recognised that China continued on 'a liberalising trend' (World Trade Organization, 2006b, 2008c). By implementing structural reforms in multiple sectors, China continued to fulfil the requirements and standards set up by the international community when entering the WTO, guided by the beliefs that economic reforms would lead to economic growth. Chinese structural reforms encompassed different sectors like taxation, the restructuring of state-owned enterprises, labour, and the financial sector (World Trade Organization, 2006b). In this sense, '[...] the main orientation of China's economic structural reform in the next few

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<sup>38</sup> According to the EU, '[...] [T]he establishment of a one-stop Ministry of Commerce, dealing with both domestic and external trade, is to be welcomed since this will hopefully lower the risk of discrimination' (European Commission, 2003a).

years will still be to change the economic development mode' (World Trade Organization, 2008d, p. 22). This passage highlights the main assumptions behind China's bolstering of structural reforms. From the words of the Chinese government in this Trade Policy Review it is clear how growth, development, and change are the underlining principles that were guiding China's actions in economic and trade policy, both domestically (e.g. boosting domestic demands) and internationally (e.g. investments and exports). Indeed, by adhering '[...] to the policy of boosting domestic demand especially the consumption-led demand, the Chinese Government will make every effort to change the underlying mechanism for economic growth from solely relying on investment and export to an approach that coordinate consumption, investment and exports as an integrated force for growth' (World Trade Organization, 2008d, p. 22). The role of the government is central to economic reforms; it can intervene in specific sectors to boost growth. From the words of the Chinese government, and, more specifically, MOFCOM, in multiple domestic and WTO documents, it is possible to affirm how their policy action in international trade has been guided by the belief of State-led economic growth.

It is interesting to highlight how the Chinese understanding of WTO rules and principles is different to the Western/European expectation. Even though the reforming process of the Chinese domestic market and institutional structure was dictated by and followed international standards and recommendations, the interpretation of WTO documents from Chinese officials was different. As underlined by different scholars (see Hsieh, 2010; Guohua, 2016; Shaffer and Gao, 2021), to implement their knowledge and technical capacity on the WTO, the Chinese government heavily relied on the assistance of WTO centres, think tanks, and academics, especially in its first years of membership. Important evidence for Chinese behaviour in the WTO can be drawn by key academics in the field, as already discussed in Chapter 2. As stated by Wang (2002), the Chinese understanding of the WTO was based, *inter alia*, on the principle of 'progressive free trade'. Wang (2002) argues that the WTO is not a 'total free trade organisation', as countries can opt out from the main requirements established by the agreements due to their development status. While these studies have been fundamental, allowing ideational explanations of the Chinese approach to the WTO and its DSM, they all heavily rely on socialisation theories of norm diffusion (see Chapter 2). They are mostly interested in the role of international norms and how

they permeate the ideational framework of actors. These theories are not fully equipped to explain the Chinese approach to the WTO and its DSM in its first years of membership for two main reasons. Firstly, by looking at the role of international norms in international institutions, theories on socialisation do not take into consideration domestic pre-existing normative beliefs that actors bring to the same institutions. Secondly, a necessary requirement for theories on socialisation is adequate time for actors to be 'socialised' in the different normative framework of the institution. While it is true that in the early 2000s China was already a member of the WTO, it would still be too early for any kind of norm diffusion through socialisation to be reflected in policy action. What happens, then, to domestic normative ideas in international contexts like the WTO and its DSM?

According to Article 44 of the 'Doha Mandate', developing countries in the WTO enjoy a Special and Differential treatment (World Trade Organization, 2001b). This is in line with the documents that China provided in the WTO (World Trade Organization, 2006b, 2008d), claiming their developing country status, as well by important publications as the 'Handbook on China's WTO Accession And Its Impacts' (Ching and Ching, 2003). The main takeaway from this discussion is that the Chinese community of officials and experts working on the WTO saw the multilateral organisation as a 'partial' free trade organisation, as it provides members with the possibility to pursue bilateral and regional agreements, and the chance to opt out of specific rules due to their developing status (World Trade Organization, 2006b, 2008d).

This interpretation of the WTO as a 'partial' free trade organisation is in contrast with the European and Western narrative, in which the organisation is praised for its multilateral nature as a way to promote global free trade. This different interpretation and view of the multilateral trade organisation is further evidence of the role of normative beliefs in international trade dispute settlement. While the WTO has been considered as the main promoter and enabler of liberal free trade, Chinese normative beliefs that are focused on the central role of the state in the economy see the multilateral organisation as 'partially' devoted to free trade. The possibility to opt out, as well as the inclusion of different exceptions to main principles (e.g., Article XXIV GATT), are seen as not fully in line with the liberal idea of free trade. In this sense, China has filtered its interpretation and view of the WTO through its domestic programmatic belief. Consistent with its view of liberal ideas during the open door

policy (see discussion in Chapter 3), China has now processed external information and ideas belonging to the liberal international community and the WTO and its DSM through its pre-existing normative sets of ideas. Chinese normative beliefs are then responsible for its view of the WTO as ‘partial’ free trade organisation. As the state is at the centre of the economy, mitigating the liberal ideas of free markets, the possibility to opt out of specific rules mitigates the liberal mandate of the multilateral trade organisation. This interpretation, then, suggests not only a difference in the approach to the institution and its DSM, but a wider specific view of international organisations and global governance. The divide between the East and the West, then, is even more prominent whenever different normative ideas lead to different approaches.

The policy actions taken by China during this timeframe seem to be consistent with those examined in the previous chapter. China continues to be guided by the belief of State-led growth, translated as ongoing structural reforms at its institutional and market level. The first years of membership to the WTO and its approach to the DSM have been guided by its normative ideas on the functioning of the economy. The WTO has been interpreted through Chinese ideas on State-led growth.

#### *4.5 China: Peaceful coexistence in the first years of the WTO DSM*

The Chinese approach, at least in its first years of membership in the WTO, is more cautious and less litigious in terms of the use of the DSM. It has been argued that this ‘non-litigious culture’ is embedded in Chinese society at different levels (Bahri, 2018, p. 115). As highlighted in the previous chapter, Confucianist philosophy considers litigation as the cause of severe damages to relationships. In their first Trade Policy Review since the accession, Chinese officials recognised the importance of harmonious relationships in international trade, stating that ‘China attaches great importance to bilateral consultations and exchange of views with all countries and regions on economic and trade issues [...] and [...] promote[s] the harmonious and healthy development of economic and trade relations’ (World Trade Organization, 2006a, p. 18). This non-litigious approach is reaffirmed in the Chinese use (or, better, non-use) of the WTO DSM in the first years of its membership. Shaffer and Gao (2021, p. 203) argued that China had tried to avoid litigation because it aligned with those Confucianist values of negotiations over disputes, not litigations. The Chinese strategy

in the use of the WTO DSM has been referred to as 'assertive legalism' (Hsieh, 2010, p. 1025), as its main aim is to protect its trade interests through compliance and to resort to WTO rules without an aggressive use of the DSM. Scholars agree with this interpretation of Chinese behaviour in the first decade of its membership in the WTO. The increase in Chinese engagement in the WTO DSM has been explained with the wide investment that the government made in terms of legal capacity and understanding of the legal mechanism, following the examples of the US and the EU (Bahri, 2018, p. 116; Shaffer and Gao, 2021b, p. 203). Chinese promotion of 'harmonious' economic and trade relations among countries is evidence of the normative beliefs on the functioning of the legal system that have characterised its approach during the accession negotiations (see discussion in Chapter 2). Indeed, what scholars tried to explain through interest-based explanations is not inconsistent with the argument on the role of programmatic beliefs in international trade dispute settlement. However, these studies look at 'assertive legalism' as a rational interest, claiming that the Chinese interest was to invest in legal capacity without engaging in litigation. This explanation does not explain why China would align with Confucianist norms, and does not account for an endogenous pre-existing normative driver like programmatic beliefs. The normative belief of peaceful coexistence, then, guides Chinese officials in international trade dispute settlement, causing China to choose strategies that value the maintenance of bilateral relations over aggressive disputes.

This approach is highlighted by MOFCOM in the first Trade Policy Review presented at the WTO. In the section dedicated to the 'Proper Handling of Trade Disputes', trade disputes are considered a 'normal phenomenon' in global trade (World Trade Organization, 2006a, p. 17). Nonetheless, 'China has constantly sought to resolve trade disputes properly in accordance with WTO principles and rules, through dialogues and consultations on equal footing and in the spirit of reaching compromise acceptable to both parties' (World Trade Organization, 2006a, p. 18). Dialogue and consultations, then, are the preferred methods for the Chinese government to deal with possible frictions in international trade, and, more specifically, in the WTO. This passage is evidence of the importance of domestic ideas in the functioning of the legal system, and their impact on international trade dispute settlement. For China, dialogue is to be sought to promote amicable solutions to trade disputes. The focus, then, is on compromise that is acceptable to both parties, in line with the ideas of win-win

cooperation that have characterised the Chinese narrative and Confucianist principles (see discussion Chapter 2 and Chapter 3). This approach reflects the domestic situation of the Chinese legal system. As highlighted in one of the Trade Policy Review, 'the role of mediation has been emphasized in China's legal system. Mediation is formally recognized as part of the civil procedure, and more than half the cases brought to court are resolved through mediation' (World Trade Organization, 2006b, p. 33). According to the domestic legal system of China, then, alternative dispute resolution tools like mediation or arbitration are widely encouraged (see discussion in Chapter 3). Article 9 of the Civil Procedure Law of the People's Republic of China states that:

'In trying civil cases, the people's courts shall carry out mediation on a voluntary and lawful basis, failing which, a judgment shall be rendered forthwith' (National People's Congress, 1991).

This article shows how embedded the concept of mediation is within the Chinese legal system (see discussion in Chapter 2 and Chapter 3). Chinese officials are led towards the recognition of tools like consultations, which are recognised and encouraged in the Dispute Settlement Understanding, rather than requesting the establishment of a panel (see Ching and Ching, 2003, pp. 157–159). In other words, Chinese officials immediately accept the use of conciliation, as it is in line with Chinese domestic legal tradition, being consistent with the belief of peaceful coexistence at the core of its judicial system. Chinese business culture is based on 'the spirit of mutual cooperation and friendly consultation' (Ching and Ching, 2003, p. 158). China sees itself as a 'responsible member of the international trade community' (World Trade Organization, 2006a, p. 18). Indeed, '[i]n the formulation and implementation of domestic economic and trade policy, China always gives due consideration to international factors and the impacts on other WTO Members' (World Trade Organization, 2006a, p. 18). China gives, then, great importance to the international community in trade policy, taking into consideration WTO rules and practices when formulating and implementing domestic laws. This passage confirms what I have argued in this section, as Chinese officials observe international norms in the multilateral organisations, and process them domestically through their own belief system, modifying, if necessary, their behaviour. Furthermore, this passage is in line with the theoretical propositions of this research (see discussion in Chapter 2).

External information is filtered through existing normative beliefs. New ideas that come from international institutions like the WTO DSM are processed through pre-existing sets of beliefs, being localised, and, ultimately, fully internalised. This passage demonstrates the Chinese process of internalisation of international norms, and their application to domestic policy.

While it is true that the Chinese legal system encourages and prefers mediation and conciliation over courts' decisions and judgements, there is a gradual shift in the Chinese preference for alternative dispute resolution. According to the 2008 Trade Policy Review, '[l]aw enforcement has traditionally been based on intermediation rather than recourse to the courts, although this appears to be changing gradually; according to the authorities, most legal disputes are now resolved through the courts, with some resolved through intermediation under the auspices of the courts' (World Trade Organization, 2008e, p. 26). This passage highlights a gradual shift in the domestic use of judicial remedies. Domestic judicial behaviour, then, represents an indicator of actors' understanding of the judicial system. As stated in the passage, China is witnessing a gradual shift in the use of the judicial remedies available domestically. From the traditional preference for mediation, and conciliation, legal disputes are now increasingly settled in courts. This domestic shift appears in line with the behaviour of China in the multilateral organisation. In the WTO DSM this can be seen as a gradual shift in approach, leading to more involvement in disputes. While China is still relatively dormant in the DSM between 2001 and 2008, it brought three complaints to the WTO DSM (one in 2002, one in 2007, and one in 2008). Even though the number of complaints is still low, especially if compared to the rapid growth in trade volume and GDP, these disputes might be evidence of the impact of external ideas acquired through the participation of China in the WTO and its DSM. As anticipated by the constructivist literature on ideas, Chinese behaviour in the WTO at the beginning of its membership was 'silent', observing what more experienced members like the US and the EU were doing (Hsieh, 2010; Bahri, 2018; Shaffer and Gao, 2021b, 2021a). At the same time, WTO rules directly influenced the legal system of China with the structural reforms undertaken for its accession (Wang, 2002). The WTO, then, is seen as a 'constraining structure', stimulating a process of internal reforms within China's structures, and as an 'enabling construct', provoking change in officials and practitioners' domestic and international behaviour (Schmidt, 2008b). In the WTO

China is exposed to new information. This is in line with the theoretical proposition of the research. China's presence in the international organisation is an opportunity to be in contact with new ideas and practices. These new ideas, though, are interpreted through pre-existing sets of beliefs (see discussion in Chapter 2).

While the analysis confirmed a coherence between Chinese policy actions and the preference for mediation and consultation, the documents highlighted an interesting new policy action. China's 'silent' presence in the WTO and its DSM is due to its pre-existing sets of normative belief: it acts according to the Confucianist idea of peaceful coexistence. At the same time, in this timeframe China has had the opportunity to be exposed to new information in the WTO DSM, observing more experienced members, and internalising new practices according to its own belief system. The exposition to a jurisdictional space like the WTO DSM prompted Chinese officials' internalisation of new information without abandoning the Confucianist idea of peaceful coexistence.

#### *4.6 The EU and China's interaction in the WTO DSM*

The interplay of the EU and China in the WTO and its DSM gradually evolved from 2001 to 2008. While at the beginning the EU demonstrated an apparent openness towards China, praising its new membership to the multilateral organisation, the last years of this timeframe are characterised by more direct threats regarding disputes in the DSM, which culminated in the first dispute between the EU and China in the WTO.

In the first years of Chinese membership in the WTO the EU was active in promoting itself as the 'principal champion' for Chinese accession to the WTO and as one of the main advocates for multilateralism in trade (European Commission, 2002b). According to the Mid-Term Review of the Prodi Commission, the EU Commission considered Chinese accession to the WTO as an 'important multilateral achievement' (European Commission, 2002b), after intense negotiations. What is important to highlight is the consideration that multilateralism has in the words of the Commission. The document clearly defines multilateralism as a success in the new setup of a rules-based international trade system. The positive value and the close connection that the EU Commission gives to multilateralism as an expression of the rule of law, then,

seems evident. As a 'champion' of multilateralism, then, the EU believes that the WTO is 'both necessary and one of the most effective ways to reconcile the varying demands of economic growth' in international economic cooperation, providing 'the equitable integration of developing countries into the global economy, and improved environmental protection and social development, in order to better to harness the process of globalisation' (World Trade Organization, 2002a, p. 4). Multilateralism in free trade is perceived as an efficient way to promote economic growth in developing countries, like China. According to the EU, then, the multilateral venue of the WTO provides the necessary framework to address these issues.

EU-China bilateral exchanges increased after 2001, not only from a purely economic and trade perspective, but also from an institutional point of view. Since 2002, European Commissioners have visited China on a regular basis, to promote bilateral relations and facilitate an open dialogue between the institutions and businesses. Speeches focused mostly on bilateral relations, but Trade Commissioners have always referred to the Chinese experience in the WTO as an achievement for multilateral global trade. In a speech at the Chamber of Commerce in Beijing, Commissioner Lamy underlined key themes in EU-China relations in the WTO. In his speech, Commissioner Lamy refers to a distinctive 'European approach' to WTO issues. In particular, the EU is focused on 'avoiding the rather excessively legalistic approach used by some other major trading partners of China in the Transitional Review Mechanism', looking at 'results, and concrete actions by the Chinese side' (European Commission, 2002c). Indeed, '[i]t is one thing to ensure that the framework of legislation is in line with international standards, and quite another to ensure that enforcement, particularly against piracy and counterfeiting, is rigorously pursued' (European Commission, 2002c). The Commissioner recognises the specific European approach to the WTO. From the words of Commissioner Lamy the European approach seems to be in contrast with the beliefs and policy actions analysed in the previous sections. Nonetheless, this divergence is only apparent. The claim that the EU is not 'legalistic' does not stand even when looking at the domestic level. Only a few months before the speech of the EU Commissioner in Beijing, the Council adopted a Regulation imposing anti-dumping duty and collecting the provisional duty imposed on imports of sulphanilic acid originating in the People's Republic of China and India (European Commission, 2002a).

Lamy declared the European approach towards China to be less legalistic than other members in the WTO, valuing economic results over the letter of the law. Some passages of his speech, though, suggest the opposite. Firstly, the Commissioner recognises the existence of different approaches to problems in the WTO. By recognising a distinctive European approach to WTO problems, he automatically distances himself and the EU from approaches taken by other members of the organisation. This means that the EU is aware of their different approach towards issues in the WTO, acknowledging that members can act differently within the multilateral organisation. Linked to this discussion, there is the further evidence of the recognition of a set of norms and principles that specifically refer to the WTO. Commissioner Lamy recognises the challenge for Chinese businesses and the government in abiding 'by the spirit of WTO rules' (European Commission, 2002c). When talking about the spirit of WTO rules, he means 'that it is relatively straightforward - from an administrative viewpoint - to deliver lower tariffs, for example. Much harder to set in place the necessary mechanisms and structure to ensure full transparency and predictability. This means for China and others a step change in day to day business practice' (European Commission, 2002c). Acknowledging the 'spirit of the WTO' means, then, that officials and practitioners recognise a specific culture or set of norms that are specific to the multilateral trade organisation. According to the EU official, China's membership could happen because of the will of Chinese officials to embark on domestic reform, adapting Chinese economic and legal system to follow the standards requested by the WTO. Indeed, 'Prime Minister Zhu Rongji and Minister Shi will be remembered - and for many other things, of course - as the statesmen who really made Chinese WTO membership happen, who had the vision to see how it would fit with domestic economic reform, and followed up on the detail to make it happen' (European Commission, 2002c). In line with the theoretical assumptions laid out in the previous chapters (see Chapter 2 and Chapter 3), the WTO and China have two different belief systems, or, at least, belief systems that do not immediately align. As a result, the Chinese experience in the multilateral organisation has involved internalisation (through structural reforms), and exposure to new information (through the silent observation of more experienced members).

One of the most evident examples is given by the European Commissioner for external relations Chris Patten. When discussing the impossible choice for a country

to abstain from the Bretton Woods and neoliberal global economy, he referred to Chinese accession to the WTO as a major example, claiming that '[n]o fundamental rejection of economic liberalism has stayed the course. [...] [I]n the medium term, if stability is to be preserved in China, economic opening will have to be followed by increasing political freedom - this is why so many human rights groups support the policy of bringing China into the WTO' (European Commission, 2001b). The WTO is perceived as a way of preserving stability in China. According to the Commissioner, a multilateral organisation like the WTO will enforce the rule of law through economic stability, ultimately leading to political freedom. The liberal worldview of the EU, which was at the core of the establishment of the WTO, is reaffirmed by the words of Commissioner Patten. Countries entering the WTO will have to be compliant with a liberal worldview, as this is the belief system on which the WTO is based.

The speech of Commissioner Lamy continues describing three different types of solutions that the EU will use to tackle possible issues with China in the WTO. He distinguishes between an immediate diplomatic solution (an open dialogue with the EU delegation in Beijing), a 'medium term' multilateral solution (the use of the Transitional Review Mechanism in the WTO), and a more judicial 'final stage' (the use of the WTO DSM). While it is true that the WTO DSM has been proposed as a final stage solution, the other two options are not less legalistic. What the Commissioner proposed was nothing less than what is included in the WTO Treaties and Protocols. More specifically, according to the Article 3 par. 7 of the DSU,

'Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. [...]' (World Trade Organization, 1994c).

The Dispute Settlement Understanding clearly indicated the need to go through a more amicable solution before requesting the establishment of a panel in the DSM. Articles 4 and 5 provide consultations, good offices, conciliation, and mediation as necessary pre-conditions for the request of the establishment of a panel, as well as parallel procedures to undertake together with the formal panel dispute. Therefore, the words of the Commissioner Lamy are not suggesting any less a legalistic approach

for the EU towards Chinese accession. On the contrary, they are affirming a difference in the European and Chinese approaches towards international trade and international organisations. In particular, the EU is aware of the importance of bilateral relationships and the cost that a legal dispute might signify in terms of fruitful economic partnerships with Chinese counterparts. This passage, then, highlights the different belief system of China and the EU. Furthermore, Commissioner Lamy continues mentioning the importance of the use of the WTO DSM, explaining its relevance and importance to the EU. The trade official emphasises that, if the EU initiates a dispute in the WTO DSM, it is to maintain amicable relations with those countries, and, more specifically, China (European Commission, 2002c). While refuting the possibility that the EU does not want to 'upset' China by refraining action in the WTO DSM, the Commissioner clearly states that the EU is 'ready to go to the WTO where other courses of action have produced no effective results'(European Commission, 2002c). According to the trade official, then, the European 'preferred approach is to recognise the size of the challenge, and to try to build confidence in the systems, both in the EU and China, to facilitate trade' (European Commission, 2002c). This passage summarises, once again, the Articles of the DSU, and the practices that more experienced members have towards international trade dispute settlement. From this speech, though, the Commissioner seems interested in building 'confidence in the systems' in the EU and China. In the first years of Chinese membership to the WTO, one of the architects of the WTO, the EU, affirms that an immediate use of the WTO DSM would be detrimental to the overall confidence of China towards the new multilateral organisation. In other words, the EU seems to be more interested in building and strengthening confidence in the new multilateral free trade system, than the use of the WTO DSM. However, this approach is not in contrast with its guiding beliefs. The promotion of the multilateral system is, indeed, the chosen policy action of the EU both in its domestic free trade policy, and in its wider approach towards the WTO. As already discussed in the previous sections by advancing the idea of multilateralism in the WTO, the EU is guided by its belief of free trade.

The tone of the Commissioner towards the Chinese approach to the WTO changes only one year after his visit in 2002. Even though there is still a positive attitude towards bilateral relations with China, Commissioner Lamy points out 'some difficulties, related to delays, lack of clarity or apparent discrepancies with the WTO

agreement' (European Commission, 2003a). In 2002 China joined the EU in its request for consultations with the USA under the WTO-Safeguard Agreement (European Commission, 2002d), which led to the disputes DS252. This means that China was being proactive in its engagement with the dispute settlement and the use of international organisations. Even though this initiative by China might seem like an independent and active gesture, it is in line with the theoretical expectations of the thesis, as examined in the previous sections. China has had the possibility to be exposed to new information in the WTO DSM, observing more experienced members like the EU, and internalising new practices according to its own belief system.

#### 4.6.1 *EU-China disputes in the WTO DSM*

A few years after China's accession to the organisation, EU-China trade dialogue got more intense. Although always open and conciliatory, the tone became gradually more direct and threatening. After the expiry of the WTO Agreement on Textiles and Clothing<sup>39</sup> on 1<sup>st</sup> January 2005, quotas on textile trade were lifted, bringing this textile and clothing sector under the rules of the GATT. This scenario opened up new issues for European textile manufacturers, that could hardly cope with the new wave of competition from Chinese exports. The EU started a new inquiry into nine categories of products from China, evaluating whether to introduce new limitations for Chinese imports (Meller, 2005; *EU-China textiles dispute: timeline*, 2005). Shortly after that, Commissioner Mandelson warned China to act, restricting their textile exports, and threatening temporary sanctions (Gow, 2005). After an intense period of threats and consequent actions, the EU and China managed to arrive at an agreement in June 2005. After months of negotiations, the DG Trade and MOFCOM, '[...] pursuant to the WTO principle of encouraging its Members to settle their differences by way of consultation, engaged in consultations on the export of certain Chinese textile and clothing products to the European Union until the end of the year 2008 in Shanghai, China on June 10, 2005' (European Commission, 2005a). Even through bilateral

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<sup>39</sup> The WTO Agreement on Textiles and Clothing was a transitional instrument that replaced the 1974 Multifibre Arrangement (MA) during the Uruguay Round. The Agreement on Textiles and Clothing regulated quotas in textile trade. Under the Agreement, WTO Members committed to remove all quotas after a 10-year period (by 1<sup>st</sup> January 2005), fully integrating the textile sector under the GATT rules. See [https://www.wto.org/english/tratop\\_e/texti\\_e/texintro\\_e.htm#MFA](https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm#MFA).

agreement, the principles of the WTO are evidently present in the trade dialogue between the EU and China. This agreement positions itself within the WTO framework, and, more specifically, within the WTO DSM. Even if it had never reached the stage of the establishment of a panel, the trade controversy over textiles and clothing was still dealt with according to the rules and principles of the DSU, terminating at the stage of the initial consultation through the EU-China Textile Agreement. This is even clearer in the speech of Commissioner Mandelson during his visit to Shanghai to conclude the Agreement. According to Mandelson, '[...] [t]he explosion in imports of Chinese textiles and clothing has created alarm in many European member states, and the issue has threatened to mushroom into a major trade dispute between Europe and China' (European Commission, 2005b). The European approach towards China, then, appears closer to the legalistic belief to which the EU abides, activating the jurisdictional procedure whenever a possible infringement arises. Only one year later, indeed, the EU requested the establishment of a panel in the WTO DSM against Chinese unfavoured measures on European (DS339), American (DS340), and Canadian (DS342) exports of automobile parts to China. The dispute went through all the stages, concluding with a report of the Appellate Body (Appellate Body World Trade Organization, 2008), confirming most of the panel's report, and finding Chinese policies inconsistent with the GATT. The dispute ended with a communication by China and the EU that they agreed on a 'reasonable period of time to implement the recommendations and rulings' of the Dispute Settlement Body ("DSB") in the dispute China – Measures Affecting Imports of Automobile Parts' (World Trade Organization, 2009a).

Two years after the first panel, the EU requested the establishment of a panel against China. This time the EU was claiming Chinese policies towards financial information services were inconsistent with GATS and TRIPS provisions. The complaint related to financial information suppliers that, according to Chinese laws, were treated as news agencies. Therefore, foreign investment in financial information services was prohibited, excluding foreign companies from accessing the market (World Trade Organization, 2008b). The dispute terminated with a mutually agreed solution after few months of consultation and the signature of a Memorandum of Understanding (World Trade Organization, 2008a).

The heated dialogue and the dispute are further evidence of the approaches of the EU and China in the WTO DSM between 2001 and 2008. From a European perspective, it shows how normative ideas on the rule of law guided European action in this timeframe. Even though reluctant at the beginning of this timeframe in order to leave room for dialogue with the newly entered member, the EU did not hesitate to protect its interests activating the WTO DSM against China. From a Chinese perspective, it shows how its normative ideas on peaceful coexistence guide its action. China did not retaliate or initiate any further complaints against the EU, showing a preference for alternative dispute resolution informed by its Confucianist normative framework. Nonetheless, the heated dialogue, the exposure to Western concepts on litigation in courts and the rule of law, and the domestic structural reform, show how China is on the verge of internalising new information acquired to the exposure to the WTO DSM. The dialogue in the WTO and its DSM between the EU and China is exemplary of their distinctive approaches during the timeframe analysed.

#### *4.7 Policy actions of the EU and China in the WTO DSM*

After the analysis of European and Chinese behaviour in the WTO, both in the multilateral approach, and in their bilateral interactions, it is necessary to summarise the main findings. As discussed in the previous sections, and summarised in Table 4.1, the beliefs that guide the EU and China between 2001 and 2008 are the same as those that informed their approach during the Uruguay Round (for the EU), and the accession negotiations (for China). The economic belief of free trade has been interpreted by EU officials as a preference for multilateralism. What is interesting in this timeframe is the wide interpretation they give to multilateralism. While the preference to use the WTO both as a forum for the discussion and as a valued instrument (e.g., Trade Policy Reviews) to pursue international trade policy, the analysis shows how bilateralism and regionalism are intended as a means to pursue the multilateral trade agenda. As a consequence of the stall of the negotiations of the Doha Round, bilateral and regional policies are seen as ways to enhance multilateralism, as they are to be intended within the framework of the WTO. The legalistic belief of the rule of law is pursued through the promotion of a rules-based system of international trade, and the use of the DSM. As already discussed, clear evidence of this approach can be found both in the approach of the EU towards its

trade policy, as well as towards China. The Chinese economic belief of State-led growth guides China's policy action towards continuing reforming their institutions to comply with the trade liberalisation standards, as shown by the analysis in the previous sections. The legalistic belief of peaceful coexistence is translated into policy action with a preference for mediation and consultation, or, at least, the avoidance of a fully jurisdictional measure (i.e. a report of a panel in the DSM), as evidenced by the textile case.

**Table 4.1** *Programmatic beliefs and policy actions between 2001 and 2008*

|              | <b>Programmatic beliefs</b> | <b>Policy actions</b>  |
|--------------|-----------------------------|--|
| <b>EU</b>    | <i>Free Trade</i>           | <i>Promotion of multilateralism, use of WTO instruments like Trade Policy Review</i> |
|              | <i>Rule of Law</i>          | <i>Maintenance/promotion of a rules-based system, use of the WTO DSM</i>             |
| <b>China</b> | <i>State-led growth</i>     | <i>Trade liberalisation through institutional reforms</i>                            |
|              | <i>Peaceful coexistence</i> | <i>Preference for consultations and mediation in the WTO DSM</i>                     |

#### 4.8 Conclusion

This chapter analysed the first years of coexistence of the EU and China in the WTO from 2001 to 2008. In particular, the chapter examined how ideational factors like programmatic beliefs guided policy actions in international trade and in the WTO.

In particular, the chapter demonstrated how the EU is guided by the beliefs of free trade and the rule of law. The chapter examined the approach of the EU in international trade and the WTO, connecting the economic belief of free trade to the promotion of multilateralism and the use of WTO instruments, and the legalistic belief of free trade to the promotion of the rules-based system of international trade, and the use of the WTO DSM.

Furthermore, the chapter moved onto the analysis of China and its beliefs. It linked the belief of State-led growth to the ongoing structural reforms that were necessary to further trade liberalisation in the country. Then, it connected the legalistic belief of peaceful coexistence to the preference for consultations and mediation, as well as the learning approach that China has shown in the WTO DSM.

This analysis showed no substantive shift both in terms of policy action, and, most importantly, in the beliefs that guided the EU and China in the examined timeframe. In this sense, policy actions and beliefs are in line with those discussed in the previous chapters.

Ultimately, the chapter further analysed the interaction of the EU and China and their behaviour in the WTO and its DSM, looking at how discourse evolved in a short period of time, and how different trade disputes were handled. The exchange of dialogue in the WTO and its DSM between the EU and China reveals that their distinctive approaches during the timeframe analysed is consistent with their policy actions and programmatic beliefs.

This analysis will form the necessary groundwork to continue the examination of programmatic beliefs and policy actions of the EU and China in the following timeframes, where I will assess any possible shift.

## **5 Action in the WTO DSM: the EU and China between 2009 and 2017**

### *5.1 Introduction*

The years between 2009 and 2017 are full of significant turning points in EU-China relations, marked by intensive interaction in the WTO DSM.

While the global economy was witnessing one of its major recessions, following the 2008 financial crisis, trade between the EU and China flourished. In terms of trade volume, since China's accession to the WTO, trade in goods between the two actors saw an increase of 400%, going from €101 billion in 2000 to €395 billion in 2010 (Directorate-General for External Policies of the Union, 2011, p. 7). The trade value between the EU and China reached US\$616.9 (Mission of China to the European Union, 2019, p. 6). The EU became China's top trading partner, surpassing Japan, and the US. In this timeframe, European exports of goods to China increased by more than 10% a year on average, while its services exports grew by more than 15% a year (European Parliament. Directorate General for External Policies of the Union., Bruegel., and Kiel Institute of the World Economy., 2020, p. 6).

Even though the 2008 crisis has contracted global trade, bilateral relations between the two actors did not suffer like other markets, showing steadiness in the face of unexpected market changes. Indeed, the 2008 economic growth rate was at 19.5% (Hongjian & Tianqi, 2010). Even though the global financial crisis did not have remarkable effects in terms of international trade, it was a moment of reflection on the overall economic policy approach for every global actor. According to scholarship on ideas, crises can either represent a critical juncture for actors to replace a belief system that had guided them, in an attempt to find new ideas to overcome the crisis; or they can reinforce sets of beliefs, as actors refer back to pre-existing beliefs which help them navigate uncertain times (Blyth, 2002; Béland, 2009). While this thesis does not directly address the concept of crisis as an analytical factor of the discussion, the global financial crisis can be characterised as a 'favourable' moment for scholars on ideas because it helped identify actors' beliefs. Indeed, scholars on ideas seem to agree that crises, however interpreted, force actors to reflect on their beliefs, evaluating whether they are suitable to overcome uncertain times. In this sense, this

chapter will look at the global financial crisis as a moment in which the EU and China questioned their overarching sets of ideas on economy, openly reflecting on them in speeches and documents, and thereby making them more visible to the public.

These years are also characterised by important milestones in domestic politics for the EU and China. From the European side, the Treaty of Lisbon entered into force in January 2009, giving the EU more power in international trade. At the same time, China experienced a change of leadership in 2013, when Xi Jinping (习近平) became President of the People's Republic of China, succeeding Hu Jintao. At the WTO level, discussions around the Doha Development Agenda were still ongoing. Apart from the Seventh Ministerial Conference held in Geneva in 2009, which served as a forum of discussion to reflect on how to move forward rather than discussing the Doha Development Agenda, the Eighth Ministerial Conference of 2011 was still centred on the issues of the Doha Round. At the Closing Session of the 2011 Ministerial Conference Director General Pascal Lamy declared that the Doha Development Agenda had been '[...] declared dead so many times, lambasted as a negotiation of the past, decried as a failure – is all the more important today, with an ever deeper crisis looming, than it was in the past' (World Trade Organization, 2011b). In this gloomy scenario, the adoption of the 'Bali Package' at the end of the Ninth Ministerial Conference held in Bali in 2013 was then taken as a step forward. The Bali Package was mostly centred around trade facilitation measures, as well as measures on agriculture and development and least developed countries issues. Nonetheless, the Bali Package was still considered as a limited attempt to revive of the negotiating function of the WTO in the international community (see Hopewell, 2016). The subsequent Ministerial Conference held in Nairobi in 2015 culminated in the adoption of the 'Nairobi Package', composed of six decisions on agriculture, cotton, and other issues related to least developed countries. Despite the Ministerial Conference resulting in the negotiations of some form of agreement, the rules that had been agreed were still far from the aims set up by the Doha Development Agenda. Finally, the Eleventh Ministerial Conference was held in Buenos Aires, focusing on e-commerce duties and fisheries subsidies. The years between 2009 and 2017 were still characterised by a slow process of negotiations in the multilateral trade organisation, with the Doha Round still open. At the same time, negotiations on the

reform of the Dispute Settlement Understanding were running on a parallel track.<sup>40</sup> Significantly, the negotiations for an updated rulebook of the dispute settlement have been left separated from the Doha Development Agenda (see Van Den Bossche, 2005). The separation of the two different negotiations tracks reflects the different functions of the WTO. The negotiating function, represented by the Ministerial Conferences and the Doha Development Agenda, has been separated from the legislative function of the dispute settlement. The separation of the negotiating tracks, then, constitutes further evidence of the importance of the DSM for the multilateral organisation. The jurisdictional function of the WTO has been preserved from the stall in negotiations of other more substantive issues, leaving the procedural aspects to a different forum. This background, then, confirms the importance of studying the WTO DSM, and, more specifically, the ways different countries approach international trade dispute settlement.

The years between 2009 and 2017 is the timeframe in which the EU and China used the DSM of the multilateral organisation extensively, as they were involved in eleven of the fourteen disputes examined in the research. As evidenced in Chapter 1 and summarised in Figure 1.1, between 2001 and 2008 the EU initiated 24 disputes in the WTO DSM, while China only initiated 3 (see discussion in Chapter 4). Between 2009 and 2017, though, the situation seems different. The EU started 18 disputes; China advanced 12 complaints. There are two main takeaways from this scenario. One on the EU, that experienced a reduction of the number of disputes in the second timeframe. The second on China, that quadrupled its complaints in the WTO DSM in less than a decade. What does this scenario tell us in terms of approaches to the DSM? Does it suggest a shift in both actors' normative framework?

The previous chapter showed how the EU trade officials were guided by the programmatic beliefs of free trade and the rule of law between 2001 and 2008, leading to an intense use of the WTO DSM. It compared this to the approach of Chinese officials, who were instead guided by the beliefs of State-led growth and peaceful

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<sup>40</sup> Members of the WTO have been discussing updated rules on twelve main issues, like mutually agreed solutions, third party rights, strictly confidential information, sequencing, post-retaliation, transparency and amicus curiae briefs, timeframes, remand, panel composition, flexibility and member control, effective compliance, developing country interests, including special and differential treatment (World Trade Organization, 2017a).

coexistence in the same timeframe, leading China to a more silent approach to the DSM.

This chapter will analyse the timeframe between 2009 and 2017. It will look at the policy actions of the EU and China in the WTO and its DSM, analysing whether a shift in their policy action corresponds to a change in their sets of beliefs. The chapter will be divided into three main parts. The first one will look at the EU, highlighting the thread between policy actions in the WTO DSM related to the economic belief of free trade, and policy actions related to the belief of the rule of law in two different subsections. Following the same structure, the second part will focus on China, analysing whether the policy actions of its officials in the WTO DSM are still connected to the beliefs of State-led growth and peaceful coexistence. Ultimately, the third part will analyse the evolution of the discourse between the EU and China in the WTO and its DSM, analysing their disputes in the settlement mechanism.

## *5.2 The EU: A commitment to multilateralism in free trade*

Through its trade policy and its engagement in the WTO and its DSM the EU reaffirms its commitment, based on ‘common values of democracy, the rule of law, human rights and shared principles such as open markets and rules-based international system’ (European Commission, 2015). The following sections will analyse if and how EU’s trade officials’ policy action is still guided by the economic programmatic belief of free trade and the legalistic principle of the rule of law.

Despite the financial crisis of 2008, and the consequent contraction of international market and trade volume, the EU firmly positions itself in the fight against protectionism, seeking multilateralism in international fora like the WTO and the DSM.

The WTO DSM, indeed, still provides the chosen venue for the EU to promote multilateralism and free trade. In the opening statement of the 2009 Trade Policy Review, the European Commission representative stated that ‘the basic objective of [the EU’s] trade policy has always been to support sustainable development at home and abroad, to effectively contribute to an open, balanced and well-functioning international trade regime. While the basic objective has not changed, we have continuously refined our toolbox’ (World Trade Organization, 2009b, p. 6). This passage is relevant with regard to analysing the EU’s approach in this new timeframe.

In the first Trade Policy Review of this new timeframe, in the middle of the financial crisis, the EU reminds the other member states of the multilateral trade organisation, addressing the continuity of their approach. The basic objective behind the EU's approach towards the well-functioning international trade regime remains unchanged. The EU's commitment towards the WTO DSM and the multilateral trade system is still strong. The EU is acknowledging that policy action (the toolbox) might be refined, but the core normative ideas on the functioning of the economy and trade policy remain the same. This suggests that the EU is still committed to its multilateral approach in the promotion of free trade through the use of the WTO and its DSM. This is evidenced by the consistent discursive commitment on multilateralism and the 'fight' against protectionism in this new timeframe (European Commission, 2013a).

Open and rules-based trade is at the forefront of EU's discourse in the WTO. In their report for the 2013 Trade Policy Review, the European Commission acknowledges the EU's commitment to multilateral free trade, advocating for a strengthened rules-based system in international trade. According to the Commission, in the second decade of the 21<sup>st</sup> century, international trade has been fundamental for EU's economy, promoting 'free, fair and open trade', and 'fully committed to a strong, rules-based multilateral trading system' (World Trade Organization, 2013c, p. 3). These words from the Trade Policy Review in the WTO confirm the EU's approach towards trade policy and the multilateral trade system. It makes clear that trade needs to be free, fair, and open. The EU keeps on stressing the importance of multilateralism, when '[p]articularly in times of crisis, the temptation to resort to protectionism can indeed be high' (World Trade Organization, 2013c, p. 18). Indeed, '[t]he WTO represents the multilateral bedrock of the European Union trade policy as it provides a forum for enforcing rights under WTO rules and ensures that Members benefit of WTO membership' (World Trade Organization, 2013c, p. 11). The EU, then, considers the WTO not only as a venue within which it can promote multilateral rules-based trade, but also 'as a vital backbone for the development of international trade' (World Trade Organization, 2013c, p. 18). The EU advocates for a 'reliable, transparent and enforceable' rules-based trade policy (World Trade Organization, 2013c, p. 3). According to the EU Commissioner, Cecilia Malmström, the *'goal is to develop an EU trade policy that improves people's lives, in Europe and around the world, by providing economic opportunity and supporting a more integrated, innovative and peaceful*

*world'* [italics in original] (World Trade Organization, 2013c, p. 3). From the words of the Trade Commissioner and the 2013 Trade Policy Review it is clear how the EU stresses the importance of the multilateral trade organisation. The WTO and its DSM still remain the preferred fora to address issues in international trade and economic relations. According to the EU Commission, international trade is a fundamental tool to promote peace and prosperity. The EU is still attached to the liberal ideas that have characterised their approach to international trade and to the WTO DSM in the previous decades (see discussion in Chapter 3 and 4). Indeed, to achieve multilateral free trade, the WTO still remains essential. In the 2013 Trade Policy Review the Commission stated that 'the main vehicle' for this promotion is the WTO (World Trade Organization, 2013c, p. 3). Indeed, the WTO's 'core functions of rulesetting, dispute settlement and monitoring of trade policies plays an invaluable role in ensuring an open global trading system and creating a level-playing field to the advantage of its members, notably developing ones' (World Trade Organization, 2013c, p. 3). The Trade Policy Review opens with the EU claiming to promote transparent, reliable, and enforceable trade rules. The emphasis on the WTO as the main vehicle for pursuing a rules-based international trade agenda is evident. As already stated in previous chapters, in times of crisis, institutions reveal their worldview, their core sets of ideas and beliefs. According to scholarship on ideas, crises are the most indicative times for institutions to go back to their core sets of ideas, helping them navigate turbulent times. At this time, the WTO is stalled in its negotiating function, and the discussion on updated rules of its DSM are still ongoing. Nonetheless, the support of the EU for the multilateral trade institution and international trade dispute settlement does not change. This document, addressing the consequences of the financial and economic crisis in the EU, is clear evidence of an even stronger commitment of the EU towards the multilateral dispute settlement of the WTO.

After the entry into force of the Treaty of Lisbon, there is a renewed focus on free trade, due to the boost of confidence in the Unity of Europe. According to the European Commissioner for Trade Karel De Gucht, 'trade is a key policy instrument for sustaining the EU's economic growth. Trade has been a key driver of the recovery of the European economy since the crisis, with net exports contributing between half and one percent to EU GDP growth figures every year since 2010' (European Commission, 2014b, p. 1). The Commissioner's vision is not 'a simplistic belief in free trade or open

markets as goals in themselves. But free trade as a tool to generate prosperity, stability and long-term development' (European Commission, 2014b, p. 1). This passage from the Commissioner De Gucht shows a firm belief in free trade, that goes over the 'simplistic' view of open markets. Free trade for the EU means prosperity, stability, and long-term development. Most importantly, this passage represents a clear and explicit reference to the sets of beliefs used by trade officials in the WTO and its DSM. The idea of free trade is associated with liberal values. In their view, promoting free trade, and open markets, will generate prosperity, and economic growth for countries. When reporting to the Committee on International Trade of the European Parliament,<sup>41</sup> Commissioner De Gucht connects the belief of free trade to the use of the WTO DSM. Among the trade policy achievements and developments, the Commissioner mentions the successful use of the WTO DSM against China, Canada, and Argentina. Indeed, '[w]henever needed, [DG Trade] ha[s] also defended EU interests through WTO dispute settlement cases like for instance our successful case against export restrictions on raw materials by China or against feed-in tariffs for electricity in Canada, or input restrictions in Argentina' (European Commission, 2014b, p. 3). This link between the use of the WTO DSM and the protection of European ideas and beliefs like free trade is evident. The EU sees the WTO DSM as a way to pursue not only legal and economic interests, but also ideas and values. Protecting free trade through the WTO DSM means to protect not only open markets, but also a belief in prosperity, stability, and long-term development. For the European Commissioner, trade is a powerful driver of international relations, and, consequently, trade policy is seen as a tool to shape them. European trade policy, '[...] can play a key role in maximising the benefits of globalisation: It can boost economic growth both at home in Europe and in the developing world' (European Commission, 2014e, p. 1). According to the DG Trade, European trade policy can be used as a tool to promote European 'values', 'defending Europe's economic and political interests, and is therefore at the core of our overall external policy' (European Commission, 2014e, p. 1).

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<sup>41</sup> The Commission also reports to the European Parliament on key issues of the WTO, specifically to the International Trade Committee. The Committee is divided into working groups that deal with specific treaties under negotiations, or with targeted countries. The Committee is responsible for the evaluation of the Union's trade and investment agreements, as well as the Common Commercial Policy more generally (see discussion in Chapter 2).

The belief in free trade is deeply rooted in the European approach towards trade policy and its action in international institutions. Free trade not only promotes growth and development, but it is also at the core of European external policy, as it is key to the defence of the EU's economic and political interests. Free trade, and the “progressive abolition of restrictions to international trade” [are] a constitutional objective of the European Union under the Treaty of Lisbon [...] [pursuing] this objective bilaterally with our individual trading partners as well as in wider group negotiations and multilaterally through the World Trade Organisation’ (European Commission, 2014e, p. 2). The fight against protectionism, and the promotion of free trade are at the EU constitutional framework with the Treaty of Lisbon. The implementation of this mandate is sought after at both bilateral and multilateral level, with trading partners and in the WTO. The link between free trade and the WTO DSM is evident in a speech of President Barroso. When talking about the connection between the rule of law and open economies, President Barroso affirms that ‘[e]nforcement is the bedrock of obligations’ (European Commission, 2014a, p. 3). Indeed, the WTO DSM represents ‘[t]he biggest success story of international trade negotiations [providing] a relatively quick and effective way to settle disputes over our international trade obligations’ (European Commission, 2014a, p. 3). The WTO DSM is a way to promote free trade, as it ensures the enforcement of the principles and values at the core of the EU and its external policy. Through the Commission’s speeches it is evident how the EU’s approach in the WTO DSM is oriented towards the promotion, and protection of beliefs like free trade. Free trade is linked to the WTO DSM, considered as the proper venue in which it can be protected, and promoted. Indeed, the EU considers its own domestic sets of beliefs, based on its history and tradition, as the paradigm for external action. Evidence of this is the reference in different venues of the European Commissioner for Trade Karel De Gucht to the fact that international success of trade and European businesses is based on tradition. According to the Commissioner, ‘[t]he international success of the European [...] industry is based on tradition’ (European Commission, 2014d). This is in line with the words of the representative of the European Union at the WTO, Mr Redonnet, in the opening remarks of the 2015 Trade Policy Review session. Indeed, ‘[t]he EU's belief has always been that international institutions were necessary to enable Governments to solve economic and sometimes very acute trade conflicts in an orderly manner’ (World Trade Organization, 2015, p. 6). The discourse of the DG Trade in the WTO

and its DSM is consistent. The EU believes in the WTO and its DSM as a forum in which trade conflicts can and should be solved. Indeed, this is part of the European '[...] "DNA" since the very notion of European integration is based on trade and economic integration among [...] member States' (World Trade Organization, 2015, p. 6). This passage represents fundamental evidence to understand the internal 'DNA' of the EU. The EU's economic beliefs are deeply entrenched in the idea of a fair and effective dispute resolution. Therefore, the EU sees the WTO DSM as the appropriate venue for solving economic conflicts and, at the same time, promoting its domestic beliefs like free trade. When asked about European trade policy measures during the meetings of the Trade Policy Review, EU representatives answered that '[...] EU trade policy matters for many of you and why our policies have the potential to impact the WTO Membership as a whole' (World Trade Organization, 2015, p. 4). Indeed, the EU '[...] is conscious of this situation and of our responsibilities when it comes to designing and implementing trade policies that benefit the WTO Membership' (World Trade Organization, 2015, p. 4). The EU is conscious of its own normative and market power (see Manners, 2002; Damro, 2012), and is aware that its policies will inevitably affect the policies within the WTO. The EU keeps on shaping the WTO through its ideas and policy actions, knowing the impact it has on the multilateral community of international trade. The approach of the EU remains unchanged in the following Trade Policy Review. Commissioner Malmström reaffirms that trade makes '[...] a vital contribution to the EU's economic and external policy', delivering 'real benefits for citizens' (World Trade Organization, 2017, p. 3). The EU, however, needs to maintain and strengthen the multilateral trading system. The WTO and its DSM, then, are necessary institutions to preserve the European normative framework in international trade. In this passage, the EU Trade Commissioner confirms the connection between domestic values and the Union's external dimension. Trade, indeed, is a vital component of the EU's external dimension, fundamental to its economic development. The document continues affirming that '[t]he EU trade policy is grounded in broader European values [...]' (World Trade Organization, 2017, p. 3). For the EU, then, trade is extremely interlinked with domestic values, making it 'consistent with its wider foreign policy objectives' (World Trade Organization, 2017, p. 3). External trade, then, is the reflection of internal ideas of EU bureaucracy. According to the Vice President Katainen's Speech at the Atlantic Council, '[...] [w]hat is true for Europe is true for the

world. Open, rules-based and fair trade is a positive engine for prosperity, innovation and peace' (European Commission, 2017).

This passage very explicitly confirms my research propositions. 'What is true for Europe is true for the world'. If the belief of free trade has brought economic growth, prosperity, and peace for Europe after WWII, then this should be valid for the world as well. Trade, however, '[...] must not only be open but also rules-based and fair' (European Commission, 2017). These ideas, then, are deeply embedded in the EU's understanding of international trade. These ideas have been so deeply internalised by the EU bureaucratic apparatus that the EU appears now as an 'exporter' of ideas. In other words, liberal ideas of free trade have become so widely accepted by the EU in its domestic ideational system, that the approach in multilateral settings like the WTO DSM is to export them.

In this time frame the EU confirms the strong belief in free trade at the core of its trade policy. At the same time, the EU's approach in the WTO DSM is clearer and more explicit. The promotion of the belief of free trade is achieved through the use of the WTO DSM, using the platform to promote its ideas to the world. Despite the controversies and the crises faced by the EU in the WTO and its DSM connected to the stall of the Doha Round, the EU reaffirmed its existing normative ideas on trade. Indeed, these scenarios provided the EU with the opportunity to question the appropriateness of its normative beliefs, strengthening its domestic sets of ideas. This behaviour is in line with the theoretical expectation of the thesis (see discussion in Chapter 2). The EU's normative beliefs are congruent with the norms and values of the WTO and its DSM. In this sense, actors that are aligned with international norms are more incentivised to be part of the international community as their normative beliefs are similar. Building on the literature on ideas (Checkel, 1999; Blyth, 2002; Acharya, 2004; Pang, 2007; Yan and Xu, 2008; Wang and Blyth, 2013; Shaffer, 2021; Calvert, 2022), ideas are reinforced and strengthened if they are in accordance with the international community. European programmatic beliefs on the functioning of the economy and trade are reinforced because they resonate with the normative sets of beliefs of the WTO and its DSM.

### 5.3 *The EU: Supporting the rule of law in the multilateral rules-based system*

The previous chapters showed how the programmatic belief of the rule of law guided the EU's action in the WTO DSM. This section will look at the policy action of the EU between 2009 and 2017, examining whether the legalistic programmatic belief of the rule of law continues to guide European trade officials.

After the two disputes initiated by the EU in 2006 and 2008, this timeframe is characterised by a frequent use of the WTO DSM. Out of 18 total disputes started in the WTO DSM, the EU initiated six complaints against China. Significantly, the number of disputes was not the only factor that changed. The discourse of the EU towards China seems more upfront and confrontational, oriented towards the respect of the rule of law in international trade. An example of this is the Trade Policy Report of 2009. The EU Commission outlines the main themes that will be recurrent in their discourse in this new timeframe. As the largest exporter, and one of the main trading powers in goods and services, the EU 'has a significant interest and also responsibility in maintaining and strengthening a set of transparent and balanced rules for global trade' (World Trade Organization, 2009c, p. 11). In this passage, the EU highlights the key themes of this new timeframe. The EU is one of the major players in international trade globally. This position, though, comes with responsibility. The EU recognises the responsibility to maintain the rules-based system of international trade, acknowledging the importance of transparent and balanced rules in the multilateral organisation. Despite the stall of the negotiations of the Doha Development Agenda, the EU continues to support the WTO as 'its primary trade policy vehicle'. Indeed, only the WTO and its DSM can provide an 'improved set of multilateral rules and tariff reduction commitments' to 'boost stability and business confidence and –ct as a deterrent against protectionism - a contribution that is only more significant in the current context of a global financial and economic crisis' (World Trade Organization, 2009c, p. 11). The EU feels a responsibility to maintain the status quo, and to strengthen the rule of law in global trade, recognising the power it has in international trade.<sup>42</sup>

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<sup>42</sup> It is interesting to notice how this speech on China is given in Germany, as it is in this time period that Germany's investment in China and Chinese investments in Germany are increasing. It is worth noting that Germany is one of the first EU member states with the highest inward (or outward or both) investments with China. Indeed, '[...] Germany is by far the biggest contributor to bilateral trade

When referring to the EU strategy in international trade towards China, EU official Antonio Tajani mentioned the importance of the WTO and its DSM. Indeed, according to the EU official, DG Trade's main aim is to 'establish a true level-playing field', challenging Chinese exports restrictions on raw materials in the WTO DSM (European Commission, 2012, p. 4). This passage is relevant as it shows the importance of the WTO DSM for the EU as a venue where 'differences' can be addressed when multilateral dialogue fails. What is specific to this new timeframe is the overall more direct discourse on the use of the WTO DSM. If the EU, at least in the first years of the WTO (see discussion in Chapter 4), seemed more oriented towards amicable solutions for trade issues, now speeches of officials explicitly refer to the use of the WTO as a place in which the EU can protect its values. One example is provided by the conclusions of the European Councils of February 2013, where it is clearly stated that the EU '[...] will ensure the effective and robust enforcement of its rights under existing rules, 'including through the recourse to the WTO's dispute settlement system and to its own trade defence instruments where appropriate' (European Commission, 2013b, p. 3). The strategic importance of the WTO DSM is well embedded in the European DNA, as it transcends strictly legal documents. The WTO DSM is seen as the appropriate venue in which fundamental interests and assets of the EU core economy can be protected. It is, then, considered as the appropriate forum to pursue not only economic and political interests, but also 'to project [European] values' (European Commission, 2014e, p. 4). According to the EU Commissioner of Trade, Karel De Gucht, the WTO DSM is 'unique' in international relations, as there is 'no international institution with such a powerful tribunal' (European Commission, 2014e, p. 4). In this speech from 2014, Commissioner De Gucht clearly expresses the importance of trade policy and the WTO DSM as a way to protect and project European values in multilateral trade. The WTO DSM '[...] provides legal certainty, as it has exclusive jurisdiction over the enforcement of WTO obligations. At the same time, it ensures predictability, as there is a steadily evolving body of WTO law'

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between the EU and China. Germany alone accounted for 43% of EU exports to China in 2008 (with €34 bn) and 21% of total imports from China (€51 bn). If one adds France, Italy and United Kingdom, the combined exports of these four countries represent 70% of EU exports to China in 2008. No EU member state registers a trade surplus with China, but this is in part due to the re-exportation to the EU of goods produced by EU firms or their subsidiaries in China' (Directorate-General for External Policies of the Union, 2011, p. 7). This might suggest a deeper involvement of European member states in the EU international trade approach to the WTO DSM (see discussion in Chapter 7).

(European Commission, 2014e, p. 4). Ensuring ‘predictability’, or legal certainty, the WTO DSM is the unique institution that can ensure the rule of law. Indeed, this passage summarises what the WTO DSM represents for the EU, and, more generally, what a court system means for European legal values. Ultimately, the WTO DSM provides a platform to deal with trade frictions, ‘without the issue affecting our overall bilateral relationship’ (European Commission, 2014e, p. 4). The DSM allows the EU to keep trading with its partners, using the DSM in a ‘judicious but firm manner’ (European Commission, 2014e, p. 4). In other words, the WTO DSM allows it to transfer an issue that is political in nature into a legal venue, allowing economic relations to continue without interference. This is in line with both legal and international relations scholars on the meaning of the rule of law for the EU (see discussion in Chapter 2 and 3). Furthermore, this passage is in line with the theoretical proposition of this research. Indeed, the EU Commissioner for Trade stated that the EU does not only use the WTO DSM to protect economic interests, but, most importantly, the EU is ‘using the WTO framework to stand up for [their] broader political interests and values where necessary’ (European Commission, 2014e, p. 5). Ideas like the promotion of a rules-based system in international trade are at the core of the European use of the WTO DSM.

In another speech of the same year, Commissioner De Gucht highlights again the consequential use of the WTO DSM to tackle ‘unfair trade practices’ when they appear (European Commission, 2014c, p. 5). It is, then, interesting to highlight how EU officials clearly ‘use the dispute settlement procedures in the WTO or bilateral agreements’ as a logical response in multilateral trade. The Commissioner continues her speech acknowledging that ‘[t]he purpose of trade law after all is to establish international rules of engagement’ that need to be enforced (European Commission, 2014c, p. 5). This passage gives evidence that the EU sees the WTO DSM as an opportunity to promote ideas, which are specific and distinct of the Union as a whole, not just as the sum of its members. In this sense, then, this confirms the theoretical proposition of a unitary set of ideas that belong to the EU as a whole when engaging in multilateral trade dispute settlement (see Chapter 2 and 3). The EU approaches international trade and domestic policies with the same principles. Indeed, ‘[t]he underlying goal of the European Union’s trade policy is to make sure that those decisions are made in a fair and balanced way’ (European Commission, 2014d, p. 2).

The EU is committed towards the WTO, as it 'must remain' the first priority (European Commission, 2014d, p. 2). Through its DSM, the WTO preserves and expands uniformity in the rules of international trade and the entire world economy. This passage is further evidence of the centrality of the WTO DSM in the EU's approach. The DSM is the key institution for the EU that can ensure the establishment of uniform rules in multilateral rules, in line with its own domestic ideas and principles. The WTO, then, with its DSM, is essential for the delivery of EU's trade policy for the promotion of a fair and balanced rules-based multilateral system.

The timeframe that is under analysis in this chapter, then, is fundamental to understand the main ideas at the core of actors' policy actions. One of the most illustrative speeches of this time period was given by the President of the European Commission Barroso in 2014. When giving a speech at his alma mater Georgetown University, he summarised the fundamental ideas at the core of the EU, and, more specifically, of the European Commission. President Barroso starts by claiming that the European Commission is a 'community of law, rule of law', highlighting the indivisible link between 'law and politics, and law and economy of the European Union' (European Commission, 2014a, p. 2). He continues, stating that the fact that 'the economy and the rule of law [...] are so intrinsically and logically related is often underrated and misunderstood' (European Commission, 2014a, p. 2). With his speech President Barroso explicitly affirms the main ideas of the EU and the Commission. The importance of this speech is evident. The President of the European Commission, one of the highest officials of the EU, connects the ideas of the entire Union to the fundamental Treaties. The relations between law and economy, between the ideas of the rule of law and free trade, is at the core of the EU. In this sense, Barroso highlights the link between the European external action and its constitutional domestic ideas. Indeed, 'Europe's external action is explicitly, even constitutionally based on the same principles as its internal organisation, as described in the Lisbon Treaty (Article 10A)<sup>43</sup> (European Commission, 2014a, p. 2). The approach that the EU has in international

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<sup>43</sup> 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law' (European Commission, 2014a, p. 2).

trade, then, is guided by the same principles on which it was constituted, as they 'run through our external relations action' like trade policy (European Commission, 2014a, p. 2). The speech continues, acknowledging the importance of the rule of law in trade policy. What trade agreements do, indeed, is not only to liberalise, but also to regulate trade (European Commission, 2014a, p. 3). The rule of law is deemed essential for the delivery of free trade. The liberal worldview of the EU, based on the rule of law, the certainty of the law, and the promotion of free trade, comes to the surface in this passage. The rule of law, then, is the main idea that is behind the EU's policy action in trade policy. Therefore, institutions like the WTO and its DSM cannot be anything but the 'biggest success story of international trade negotiations', as it provides 'a relatively quick and effective way to settle disputes over our international trade obligations' (European Commission, 2014a, p. 3). Relying on its normative sets of beliefs, the EU chooses the WTO DSM to implement the rule of law multilaterally. The WTO DSM, indeed, remains the preferred venue for the EU to enforce and promote the rule of law in international trade because it is congruent with the European sets of normative ideas. President Barroso moves on, closing his speech by explaining why the rule of law has been fundamental for the EU in these years of crisis. He explains that '[...] the commitment to the rule of law was so critical in the most acute moments, where the trend was, and you have to understand that politically the temptation was to put in question the law' (European Commission, 2014a, p. 5). According to the literature on ideas (see Chapter 2), worldviews and normative beliefs are more evident in times of crisis. Actors question their sets of ideas, evaluating their appropriateness as guiding principles in uncertain times. Even though the 2008 global financial crisis has had a relatively low impact in international trade and in the WTO DSM compared to other sectors (as noted earlier in the chapter), it was still a major event in global economy. In this sense, President Barroso's words are even more important. This passage clearly shows how institutions question their principles in times 'of emergency'. The answer of the EU remains the same. Trust in the rule of law as a guiding principle, even in times of emergency, is untouched. Indeed, both the European Commission and the European Court of Justice 'were there to say that we are Union based on law. And we have to keep these fundamental principles' (European Commission, 2014a, p. 5). Once again, the EU has called into question the capability of its normative framework to guide its actions in times of crisis. The answer of EU officials does not change in times of crisis or emergency. Normative ideas on the rule

of law are appropriate to navigate the uncertain times that the WTO and its DSM are facing, as they are congruent to the ideas upon which the multilateral organisation (and the wider international trade system) has been built. According to the literature on ideas (Checkel, 1999; Blyth, 2002; Acharya, 2004; Pang, 2007; Yan and Xu, 2008; Wang and Blyth, 2013; Shaffer, 2021; Calvert, 2022), ideas are strengthened if they are in accordance with the international community. Indeed, 'the European Union has shown its resilience but has not abandoned in the most acute of times since the beginning of the European integration process this commitment to the rule of law, because we know that without the rule of law there is no real freedom in our society' (European Commission, 2014a, p. 5). European programmatic beliefs on the functioning of the legal system and international trade dispute settlement are reinforced because they resonate with the normative sets of beliefs of the WTO and its DSM. President Barroso acknowledges the work of the Commission and the European Court of Justice in promoting a European Union based on law. This commitment to the rule of law has been at the core of the European integration process, permeating every aspect of the institutional life of the Union. In this passage President Barroso confirms the theoretical propositions of this study, clearly stating that in time of emergency the EU could not forget about the rule of law, as it is at the core of its fundamental principles. For the EU, going back to the rule of law and its commitment to free trade is a specific part of its worldview.

The EU uses the WTO DSM as a way to enforce a rules-based trade system, as it provides for 'minimum rules and channels of cooperation to address trade relations and disputes' (European Commission, 2017). Indeed, according to the European Commission Vice-President Katainen, the WTO and its DSM 'are like the rules of the game and the referee in a football or a baseball match. If we get rid of them this will get ugly and will rather look like "rollerball" or "hunger games". I don't think this is the kind of game we want to play' (European Commission, 2017). The promotion of a rules-based system is at the core of the EU's policy action in the WTO DSM. In this passage, it is clear how the WTO is still relevant for EU officials for the promotion of rules-based free trade multilateral system. Indeed, the EU 'sees the WTO as playing a central role in developing and enforcing the rules of global trade' (World Trade Organization, 2017, p. 20).

This section demonstrated how the policy action of the EU between 2009 and 2017 is guided by the programmatic belief of the rule of law through the promotion of a rules-based system and the use of the WTO DSM. Despite financial and institutional crisis, the EU continued to choose the WTO DSM as the appropriate venue to protect its economic interests, reinforcing its commitment to a multilateral rules-based system. The stall of the Doha Round, the negotiations of updated rules of the Dispute Settlement Understanding, and the global financial crisis only made the EU's belief in the rule of law stronger.

#### *5.4 China: Reforming the economy to achieve State-led growth*

In the first years of its membership, China could have been perceived as silent, or, rather, dormant (see discussion in Chapter 4). In this timeframe China initiated 12 disputes in the WTO, 5 of which were complaints against the EU. What does this shift in policy action tell us? Does this shift correspond to ideational change? Or is China still guided by the same economic and legalistic ideas? This section will analyse if and how a shift occurred in terms of programmatic beliefs in the WTO DSM, or if the policy actions of China had still been guided by the same normative ideas.

In 2008 China was facing multiple crises. In 2008 and 2009 China experienced an unprecedented earthquake in Sichuan Province, as well as 'heavy snow and ice storms in the south and severe drought in large areas of the north that had been rarely seen before' (World Trade Organization, 2010c, p. 6). Despite the slower growth linked to natural disasters and the global financial crisis, the Chinese economy was still thriving after the first years of membership in the WTO. This decade of the new century was particularly interesting for China. While major economies were suffering due to the 2008 global financial crisis, China saw a constant increase in its GDP. In this economic context, Chinese trade kept on expanding. China's commitment to the WTO and its DSM was stronger than ever. In this timeframe China had more than ten years of experience in the multilateral organisation and had become a major player in the international community. Since joining the WTO, China has focused on domestic reforms and opening up process, pursuing State-led economic growth. In its 2010 Trade Policy Review, the Chinese government reaffirmed its commitment to 'reform and opening up' to become an advocate for multilateralism in trade and international

affairs (World Trade Organization, 2010c, p. 5). Although committed to external (Western) rules of multilateralism, China still adheres to its own 'win-win principle' (World Trade Organization, 2010c, p. 5). This document, then, confirms the Chinese policy action of commitment to reforms and opening up that has been dominant for decades. In addition, it is evidence of a Chinese normative framework that leads trade officials to interpret external rules through their own domestic beliefs. Institutional reforms have been at the core of Chinese policy actions to participate in the multilateral trade system. Furthermore, this document is evidence of the importance of domestic normative ideas of China in the reforming process of its economic structure. Indeed, the measures adopted by China 'are not in conflict with the general policy of reform and opening up. Instead, the process of accelerating the transformation of the pattern of economic development will be reenergized and driven by further deepening reform and intensifying opening up' (World Trade Organization, 2010c, p. 26). In other words, the Chinese government is guided by the domestic belief of economic growth when reforming and opening up to international markets.

In the report for the 2010 Trade Policy Review, MOFCOM officials directly connect reforms and adaptation to the international status quo with the process of economic development and economic growth. In other words, China confirms its commitment to reforms as a way to promote economic growth in a multilateral trade system. According to the 2010 Trade Policy Review, 'opening up to the outside world is one of the basic state policies that China has long been pursuing' (World Trade Organization, 2010c, p. 20). China's ongoing policy action of reforms has continued despite the challenges presented by the financial and climatic crisis, reaffirming the Chinese commitment to the multilateral trade system and its cooperation in the WTO DSM. Indeed, the 'Chinese Government's efforts to further promote opening up have continued and not been affected by the global financial crisis. In many fields, the level of opening up has been further raised' (World Trade Organization, 2010c, p. 20). In this new timeframe China is no longer a newcomer in the multilateral organisation, and it is no longer trying to establish its relevance in international trade. Instead, it is an established player. In this sense, while reforming its own domestic rules, it also complies with the multilateral system. Indeed, 'China's evident success in competing for global markets [...] leaves it vulnerable to trade friction with its trading partners. Membership in the WTO provides China with considerable legal security against a

significant tightening of restrictions on its exports' (World Trade Organization, 2010b, p. vii). The WTO and its DSM have provided China with the necessary legal framework to navigate the international arena. This passage highlights the importance of legal security in multilateral trade, as well as the Chinese will to comply with the rules of the WTO and its DSM. If 'trade frictions' with trading partners are inevitable, then the WTO DSM is the venue that can guarantee legal certainty in economic relations, enabling economic growth.

While continuing its reforming path, this new decade is characterised by the compliance of China with the multilateral system. In the opening statement of the 2014 Trade Policy Review, the Chinese representative to the WTO, Mr Wang Shouwen, explained the Chinese approach to the WTO and its DSM. According to Mr Wang Shouwen, 'China is an active participant, staunch supporter and important contributor of the multilateral trading system' (World Trade Organization, 2014a, p. 5). According to its trade official, then, China is committed to following the multilateral rules-based system and the reports of the DSM. It is not only a supporter, but also a contributor to the multilateral trade system. Indeed, '[t]hrough concrete actions, China has unswervingly supported the WTO, and has assumed the due responsibilities of a major developing trading nation' (World Trade Organization, 2014a, p. 5). In this sense, China is no longer passively following the rules of the system but is actively engaged in the process. In the same passage, Mr Wang affirms that 'China strictly implements WTO rulings. China has one of the best track records of implementing WTO rulings. [...] China cancelled or revised all the measures that had been determined inconsistent with WTO rules within the period of implementation' (World Trade Organization, 2014a, p. 5). This passage is fundamental as it is evidence of China's commitment to the WTO DSM. In a timeframe that is characterised by an intense use of the DSM, China is eager to follow multilateral institution rules, in order to have a rightful seat at the table of the major players in international trade. In other words, China's compliance with the multilateral system and the DSM is a way to pursue economic growth. According to MOFCOM officials in their 2014 Trade Policy Review report, China's reforms and compliance with the multilateral system are part of the same strategy. Indeed, 'in views of China, opening up and reform have been launched as integral parts of the same initiative as they are mutually reinforcing' (World Trade Organization, 2014b, p. 15). In this passage it is evident how reforms and opening up

are connected. New domestic reforms allow the market to play a role in an open economic system with a central role for the government in the domestic economy. In other words, this reform is an attempt by the government to liberalise the market according to external/Western rules with 'Chinese characteristics'. China, then, mediated the liberalisation of the market through the idea that the state is at the core of the economy. Indeed, while complying with the multilateral trade organisation's expectations in the liberalisation of the markets, China has still put the state at the centre of its reform. This is exemplified by the legislation on state-owned enterprise in China. The legal standing of state-owned enterprises in China has been the object of multiple critiques by members of the WTO, and, more specifically, most of the cases in the DSM have revolved around the issue of subsidies to state-owned enterprises (see Levy, 2017; Bown and Hillman, 2019). State-owned enterprises usually receive numerous advantages both in terms of subsidies, and in terms of deregulation by the state. Most of the disputes in the WTO DSM concerning China are, in fact, around the market distortion caused by subsidies to state-owned enterprises. Relying on the lack of universal definition of state-owned enterprises (Bown and Hillman, 2019), China has been able to comply with most of the WTO demands without abandoning the idea of a strong presence of the state in the economy. In this sense, this is in line with the theoretical propositions of the role of worldviews and programmatic beliefs in the harmonisation of external rules in the domestic sphere. In these years China is still undertaking major reforms in its institutional setting. In this timeframe, then, China '[...]' has driven and expanded its opening up to new degree of depth, while comprehensively deepening its domestic reform' (World Trade Organization, 2016b, p. 4).

This section demonstrated how Chinese trade officials were still guided by the belief of State-led economic growth which was translated into policy action through reforms of opening up and compliance with WTO multilateral rules and its DSM. Between 2009 and 2017 China was more eager to participate in international trade, complying with the international trade liberal rules, without abandoning its normative beliefs on the central role of the state in the economy.

### 5.5 *Is China's coexistence still peaceful?*

The previous chapters examined how the programmatic belief of peaceful coexistence guided Chinese action in the WTO DSM. This section will look at the policy action of Chinese officials between 2009 and 2017, examining whether the legalistic programmatic belief of peaceful coexistence is still guiding them.

This new timeframe is interesting to understand Chinese policy action in the WTO DSM. China filed all its requests for consultations against the EU in the WTO DSM between 2009 and 2016.<sup>44</sup> The previous chapters have demonstrated how China's policy action in the WTO DSM has been characterised by a preference for conciliation and mediation in solving economic tensions, highlighting the thread with the programmatic belief of peaceful coexistence. This section will then analyse whether the intense use of the DSM of these years is still connected to the same programmatic belief or if a shift in policy action corresponds to a change in Chinese ideational sets of ideas.

In the 2010 Trade Policy Review, Chinese officials conclude their report explicitly acknowledging the commitment of China towards 'peaceful development' and 'mutual benefits' in multilateral trade. Indeed, 'China will follow the road of peaceful development and adhere to the basic principle of seeking mutual benefits and win-win results in the grand course of its opening up' (World Trade Organization, 2010c, p. 26). At the core of Chinese trade policy and policy action is the belief of peaceful coexistence. This is highlighted by the words of Chinese officials, that claim that economic growth and a stable multilateral system bring mutual benefits, and win-win results. The quest for mutual benefits and win-win results is connected with the belief of peaceful coexistence. China is committed to maintaining 'a stable international trade environment and opposing protectionism' (World Trade Organization, 2010c, p. 26). The Chinese approach in this new decade, then, is characterised by a more intensive use of the DSM. China is no longer dormant in the multilateral organisation, applying what it has observed since joining the WTO. China has been internalising the rules of international trade and is now a major actor in the multilateral system. What is notable, then, is the interpretation of multilateralism that Chinese officials give in the 2014 Trade Policy Review. Multilateralism in international trade is seen as the necessary tool to

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<sup>44</sup> DS397 in 2009, DS405 in 2010, DS452 in 2012, DS492 in 2015, and DS516 in 2016.

ensure the proper fulfilment of win-win relationships in economic and trade partnerships. In this sense, China has implemented economic and trade relations based on the 'WTO-based multilateralism as the main channel' (World Trade Organization, 2014b, p. 22). Once again, Western ideas, even if applied and used by Chinese officials, are understood through China's own normative beliefs. As evidenced in previous chapters (see discussion in Chapter 3), China has filtered Western concepts through its own normative framework. Indeed, the Qing dynasty's policy of 'Chinese Learning as Substance, Western Learning for application' (Zhongxue wei ti, xixue wei yong – 中学为体, 西学为用) is still relevant in Chinese officials' approach to international trade dispute settlement (Huan, 1986, p. 2). After more than ten years of membership to the WTO, then, China has been exposed to Western external ideas. In this sense, multilateralism becomes internalised as a win-win strategy to achieve domestic economic growth through international trade with global partners. The win-win idea that is representative of the Chinese Confucianist worldview is now associated with the concept of multilateralism derived from the Western institution. In this sense, this passage represents further evidence of the theoretical premises of the research (see discussion in Chapter 2), highlighting how Chinese (domestic) sets of normative beliefs influence the understanding of external information. Domestic programmatic beliefs are responsible for the way Chinese officials understand Western concepts like multilateralism. Programmatic beliefs, indeed, act as filters that actors use when navigating policy decisions, processing external information according to their normative sets of ideas. The association of win-win cooperation and multilateralism continues in different documents. Example of this is the 2016 Trade Policy Review. In this document, Chinese officials confirm their win-win outlook in multilateral trade, claiming that 'China will continue to develop its economic and trade relations with various countries and regions in the world based on the principles of mutual benefit and win-win' (World Trade Organization, 2016b, p. 26). This passage highlights the link between China's commitment towards the multilateral trading system and the principles of mutual benefit and win-win. In this document, multilateralism in international trade is interpreted through the lenses of win-win cooperation. These words highlight that Chinese officials are exposed to new information from the multilateral institutions and its members, adapting it according to its own domestic ideas. This passage, then, is further evidence that, despite the

apparent change of approach in the WTO DSM, Chinese officials are still guided by the same sets of ideas that have informed their policy actions in the previous timeframe.

This section showed how Chinese policy action in the WTO DSM between 2009 and 2017 was still connected to the legalistic programmatic belief of peaceful coexistence. This section demonstrated the role of normative beliefs of peaceful coexistence in understanding Western concepts of multilateralism, linking it to the Chinese Confucianist win-win approach in international trade dispute settlement.

Nonetheless, the idea of peaceful coexistence does not seem to fully explain Chinese approach in the WTO DSM between 2009 and 2017. While it is evident that China is still attached to ideas like win-win cooperation, and peaceful development of economic relations, it is less clear how the increase in initiation of disputes fits into this picture. How is it possible to explain this shift in policy action? Is it possible that Chinese officials have been guided by a different programmatic belief?

#### *5.6 China: Internalising to rule 'by' law*

In the first years of membership in the WTO, China could be defined as dormant in the DSM, characterised by an attentive observation of major players, learning how to act in the multilateral organisation (see discussion in Chapter 4). This new timeframe though shows a different approach. While the previous section demonstrated that Chinese beliefs are still present in its policy action in the WTO DSM, this does not fully explain the new more active approach. China is more litigious, bringing to the WTO DSM 12 complaints, quadrupling the numbers from the previous timeframe. This difference in approach might suggest a shift in its ideational sets of beliefs.

As showed in Chapter 3, China had to undertake several reforms to satisfy the entry requirements to the WTO, both in terms of economy and in their legal system. The development of new civil courts, as well as the preparatory works for the new Civil Code and Civil Procedural Code started when China entered the multilateral trade organisation (Lubman, 1997; Orts, 2000). Access to the WTO has been perceived as a milestone in Chinese administrations (Wang, 2002). What happened with Chinese accession to the WTO can be assimilated to the open door policy of early 1980s. Both the open door policy and the WTO accession are moments that forced China to

engage with the international community in a different and new way, as it was exposed to different ideas. Both moments are driven by the will of China to grow its economy. In both cases China had to adapt its domestic policies in order to comply with the standards of the West, applying new ideas to its economy (see discussion in Chapter 3). The Chinese government made use of this momentum to undertake structural reform, according to the idea to 'link up with the international track' (与国际接轨— yu guoji jiegui) (Orts, 2000; Wang, 2007). This concept was at the core of Chinese political debate during the first years of membership to the WTO. China welcomes the international community, appreciating its new active role in international organisations. Through structural reforms, then, the Chinese government practically applied new and foreign ideas to their own domestic administrations.

One of the major changes during this time was certainly the legal system. The legal system of China needed to be reformed to ensure its consistency with international standards of legal certainty, or the independence of the judiciary (Ching and Ching, 2003). In other words, the Chinese legal system had to adapt to Western concepts like the rule of law. Evidence of ideas like the rule of law in Chinese discourse can be found after Chinese accession to the WTO. The term to indicate the rule of law in Chinese is (法治 – fa zhi). The term fa zhi, though, can be translated both with 'rule of law' and 'rule by law' (Lo, 1997; Orts, 2000). The way this term is key. If interpreting 'fa zhi' as the rule of law, then it would refer to the Western based concept of democracy, separation of powers, human rights, and all the characteristics that legal and political scholars have attributed to it (see discussion in Chapter 3). If the meaning of 'fa zhi' is the rule *by* law, then the situation changes. The idea of rule by law gives meaning to 'ruling by law'. In other words, laws are needed to govern the state. The rule by law, then, does not carry all those principles associated with the rule of law of Western tradition. This difference needs to be taken into account when examining the role of the rule of law in the Chinese system.

These were the years in which China changed its Civil Procedure Code, establishing new courts, reinforcing the role of judges in civil and commercial matters. By doing so, China tried to comply with its international commitments in venues like the WTO. Normative beliefs of peaceful coexistence and State-led reforms guided Chinese action in its domestic reforms to comply with the rules of the WTO, advocating

for harmonious relationships in the international trade system. Nonetheless, its behaviour in the first years of membership is still in line with the Confucianist belief of peaceful coexistence (see discussion in Chapter 2). At the same time, though, China has been exposed to this idea of the rule of law, and its practical implications in the WTO DSM. As evidenced by the discussion in the Trade Policy Reviews of this new timeframe, China clearly references the rule of law in its official documents of the WTO. This new timeframe gave China other chances to learn from the WTO members. The 2012 Trade Policy Review offers invaluable insights on this matter. When discussing State-led growth and development in their report to the WTO, Chinese officials talk about the concept of the rule of law for China and what it means for their country, stating that:

‘Rule of law is a fundamental principle for China to effectively govern the country. China needs to bring into being a comprehensive system of laws with Chinese characteristics so as to ensure that there are laws to abide by for the carrying on of state affairs and social life. This is a precondition and foundation for China to implement the fundamental principle of rule of law and an institutional guarantee for China’s development and progress’ (World Trade Organization, 2012b, p. 13).

At first glance this passage might suggest that Western sets of ideas like the rule of law have entered the Chinese belief system, replacing their previous domestic ideas (see discussion in Chapter 2 and Chapter 3). Indeed, the Chinese officials affirm that the rule of law is a ‘fundamental principle’ for governing the country. However, the rule of law that is mentioned in this passage is not the same principle of Western origin. The rule of law discussed here has ‘Chinese characteristics’, meaning that the principle of the rule of law is mediated and, therefore, interpreted, through domestic sets of beliefs. The rule of law is rather the rule by law. The focus of the rule of law is not to have a fair and equitable rules-based system, but is rather to ‘abide by’ laws. Rules, then, are there to be followed. In this sense, China’s new active use of the WTO DSM is a way of following the rules of the multilateral organisation. China’s application of the principle of the rule of law, then, is different to the European one, as it is mediated through its pre-existing sets of ideas and values. This is acknowledged by the fact that the rule of law needs to have ‘Chinese characteristics’. In this sense, this passage

confirms the theoretical propositions of the research, highlighting how external ideas are internalised through domestic sets of beliefs.

As discussed in Chapter 2, the process of internalisation of external ideas relies on the localisation of external norms through pre-existing sets of normative beliefs. External information is adapted and harmonised with existing normative ideas. In the case of Chinese internalisation of the concept of the rule of law, domestic normative ideas on peaceful coexistence and harmony from the Confucianist worldview mediate and process the internalisation of this external idea. The Western idea of the rule of law has been embedded into the concept of democracy, including the respect of the judiciary, access to an effective justice system, as well as the respect for the law (see discussion in Chapter 3). Chinese pre-existing normative ideas localised the Western concept of the rule of law, adapting it and harmonising it to best fit its worldview and programmatic beliefs. In the Chinese administrative and legal context the idea of the rule of law does not retain all the characteristics and meaning that it carries in the West. What is important to China is to 'ensure that there are laws to abide by for the carrying on of state affairs and social life', as a necessary element to implement the fundamental principle of rule of law and an institutional guarantee for China's 'development and progress'. The rule of law, then, is fundamental to ensure the *respect* of the law, to guarantee *development* and *progress*. The Western idea of the rule of law in the WTO DSM acquires 'Chinese characteristics', meaning that it is internalised through pre-existing ideas on the functioning of legal system and the economy, to better fit trade officials' programmatic beliefs. The rule of law is seen as a way to *respect* the law, ensuring harmony in all the aspect of social life, promoting peaceful coexistence in domestic and external relations. Furthermore, the rule of law needs to promote *development* and *progress*. Respecting the laws of the state is seen as a way to maintain harmonious relationship to pursue State-led economic growth. The passage above, then, is evidence of Chinese officials' process of internalisation of the idea of the rule of law that circulated in the WTO and its DSM according to their pre-existing programmatic beliefs of peaceful coexistence and State-led economic growth. As noted by scholars in Chinese studies (see Brown and Bērziņa-Čerenkova, 2018), in the contemporary political debate of President Hu Jintao and Xi Jinping, the concept of harmony (和谐 – he xie), that comes from the Confucianist notion of 天下 (tian xia – all under heaven) (see discussion in Chapter 3), has been used to describe

stability and prevention of conflict in society. Building on pre-existing normative beliefs, the concept of the rule of law internalised through the idea of harmonious relations, then, takes on the meaning of maintaining stability through law.

The internalisation of the concept of the rule of law is not inconsistent with the assertive legalism argument that has been used to explain Chinese behaviour in the WTO DSM (see discussion in Chapter 4) (Hsieh, 2010, p. 1025). China's assertive legalism has been used to explain Chinese behaviour in the WTO DSM in its first years of membership, as its main aim is to protect its trade interests through the compliance and resort to WTO rules without an aggressive use of the DSM in the first years of membership. However, arguments on China's assertive legalism are based on theories of norm diffusion like learning and socialisation (see discussion in Chapter 2). While these theories have been necessary to illuminate how ideas circulate in international institutions, they have been focused on external ideas as drivers of change. Theories on socialisation are based on the assumption that actors can be socialised into the same idea (see Shaffer and Gao, 2021b). In other words, for theories of socialisation it is possible that external ideas can pass from one actor to another in a specific venue (like an international institution), as the focus is on the external ideas that remains the same once socialised into actors' normative frameworks. Similarly, theories on learning are focused on the role of the 'norm entrepreneur' or 'teacher', assuming that they would transmit the same idea to the learner. Again, for theories of learning, ideas remain stable once learnt by actors. According to these theories, though, once in the WTO, China would have had to receive the normative idea of the rule of law as conceived by other members of the WTO (like the EU). However, China's understanding of the rule of law has been filtered and adapted through its pre-existing normative framework. Indeed, while theories on socialisation and learning focus on external ideas, the process of internalisation draws attention to domestic programmatic beliefs as drivers of change in international trade dispute settlement. The internalisation of the rule of law, then, can explain the change in approach to the WTO DSM of China in the new timeframe.

While Chinese behaviour in the WTO DSM does not indicate a complete acceptance of Western principles, it represents explicit evidence that China is filtering Western concepts through its own domestic ideas of peaceful coexistence. China has proven to be an active learner in the WTO, applying the lessons learnt during its

membership through its own set of ideas. Indeed, '[f]or a long time, China has respectfully regarded the U.S. and the E.U. Member States as our teachers [...]' in economic matters (World Trade Organization, 2010b, p. 57). When filing a complaint in the WTO DSM, China demonstrates that it has internalised the Western understanding of how to use the DSM through its own sets of ideas. Internalising, then, means to process the Western/external approach through China's own domestic set of programmatic beliefs in the multilateral organisation. In other words, filing a complaint in the WTO DSM is no longer seen as a detrimental action for bilateral relations; on the contrary, it is now perceived as a way to pursue peaceful coexistence through the depersonalisation of the dispute, lessening economic friction in the relations (see discussion in Chapter 2 and Chapter 3). Once again, China is looking at the West through its own traditional beliefs.<sup>45</sup> Filing a complaint, for Chinese officials, then, no longer represents a threat in bilateral relations, but a way of maintaining them. This is confirmed later in the same document. Indeed, '[w]hen consultations fail to settle a dispute, China, as a WTO Member, will seek to handle the issue appropriately with its trading partners through the WTO dispute settlement mechanism' (World Trade Organization, 2012b, p. 24). However, China's pre-existing normative ideas are still present in trade officials' approaches to the WTO DSM. The same passage, indeed, specifies that '[...] China has always preferred dialogue to confrontation and cooperation to pressure, and chooses to have them settled through consultations and negotiations by giving full consideration to the interests of all parties and in the spirit of seeking common ground while shelving differences' (World Trade Organization, 2012b, p. 24). This passage underlines two main issues that are demonstrative of the Chinese approach in the WTO DSM. Firstly, Chinese trade officials still believe that dialogue is preferred over confrontation and pressure, confirming the relevance of peaceful coexistence in their policy action in the DSM. Secondly, this passage highlights how China filters and internalises new and foreign ideas through its existing sets of ideas. Even though dialogue is still the preference in trade matters, to preserve amicable relations between partners China has internalised

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<sup>45</sup> See discussion in Chapter 3 of the Qing dynasty's policy of 'Chinese Learning as Substance, Western Learning for application' (Zhongxue wei ti, xixue wei yong - 中学为体, 西学为用) (Huan, 1986, p. 2).

how to formally address disputes' seeking 'to handle the issue appropriately' using the WTO DSM.

The new understanding of the rule of law in China, then, has two main implications. Firstly, new ideas are internalised through existing sets of beliefs, according to actors' worldview. This is in line with the main argument of the thesis (see discussion in Chapter 2). Secondly, even if new ideas enter in the sets of beliefs of one actor, pre-existing beliefs are not erased. Even if trying to act according to the newly internalised idea of the rule by law, the Chinese approach to the WTO DSM is still bound to its pre-existing Confucianist normative sets of belief of peaceful coexistence.

### *5.7 The EU and China: interacting in the WTO DSM*

The previous sections have highlighted the approach of the EU and China in the WTO DSM between 2009 and 2017. This section will look at the interaction of the two actors in the DSM, and how it evolved, becoming more confrontational with an increased number of disputes against each other. Indeed, 11 of the 14 disputes that see the EU and China<sup>46</sup> as complainant or respondent happened in this timeframe.

China and the EU's economic relations are increasingly interconnected, making a stable partnership necessary. In this sense, despite the active use of the DSM by both parties, the EU and China seem to reach for dialogue in the WTO and its DSM. An example of that is represented by the EU's Trade Policy Review in 2011. In this document, the Chinese representative to the WTO affirms that both the EU and China advocate for 'free trade, multilateralism and peace in the world' (World Trade Organization, 2011c, p. 21). This passage highlights the Chinese commitment to the multilateral free trade system, connecting it with 'peace in the world'. The words of the Chinese official, then, are further evidence of China's interpretation of multilateralism according to its belief of peaceful coexistence, giving, when possible, preference to dialogue over a legal dispute in the DSM. Indeed, '[d]uring the visit of President Van Rompuy to Beijing in May this year, President Hu Jintao highlighted that "an

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<sup>46</sup> The EU will initiate two more disputes against China in December 2022 (DS610 and DS611), but they are not part of this research as they are outside of the timeframes analysed.

economically stable and prosperous Europe is good for both the world and China” (World Trade Organization, 2011c, p. 21). Chinese President Hu’s words, together with the action of MOFCOM in the WTO DSM, represent evidence of China’s aim to maintain ‘mutually beneficial cooperation’ with the EU. This is in line with the theoretical propositions of this research (see discussion in Chapter 2). According to constructivist literature, ideas can change, but this takes time. What is evidenced by the documents analysed so far is in line with the constructivist argument. Even if China has been internalising new beliefs like the rule of law, this does not mean that they have immediately replaced traditional beliefs. In other words, Chinese officials’ actions can still be guided by the belief of peaceful coexistence in the WTO DSM.

As evidenced in the previous sections, the EU is now more open, and self-conscious in its role as exporter of specific ideas like multilateralism in free trade and the preservation of a rules-based system in international trade. One example of this new approach can be found in the minutes of the 2012 Trade Policy Review of China. In his speech, the EU official remarks that after 10 years of Chinese accession in the WTO, it is clear how the multilateral rules-based trade system ‘has contributed greatly to China’s development, including to its transformation from an emerging economy to the global economic power it has become today’ (World Trade Organization, 2012a, p. 35). Through the mechanism of the Trade Policy Review, the EU reminds the newer key player of the multilateral system of the rules (World Trade Organization, 2012a, p. 37). The EU gives China indications on how to use the instrument of the Trade Policy Review in the WTO, acknowledging the importance of the ‘rights of all WTO members’ that need to be preserved and upheld. This is practically executed through the use of instruments like the Trade Policy Review and the activation of the DSM. Once again, the EU is acting as the ‘landlord’ of the system, teaching China (and other members) the rules of the WTO. Indeed, after ten years of membership in the WTO, China ‘shoulders a great responsibility to other countries, particularly developing ones, to comply fully with international rules’ (World Trade Organization, 2012a, p. 37).

Another interesting interaction between the EU and China can be found in the minutes of the meeting for the 2013 Trade Policy Review of the EU. In 2013 the EU started 7 of the 9 disputes against China, while China initiated 3 of the 5 disputes against the EU. This information is important to understand the evolution of the discourse between the two actors. The tone of the exchange of opinions is, indeed,

heated. The Chinese representative to the WTO interrogates the EU over market issues that China is facing, considering EU trade defence policies ‘totally unacceptable’ (World Trade Organization, 2013b, p. 63). Complaining about domestic investigations of the EU against Chinese businesses, China urged ‘the EU to reflect soberly on the problem of its trade policies and the negative impact on the bilateral trade relations, and refrain from recourse to such measures to the extent possible, especially those that are not based on complaint’ (World Trade Organization, 2013b, p. 63). The discourse is certainly different from the first years of China’s membership in the WTO. Chinese officials claim the EU’s measures are a ‘sign of abuse’ of the Union’s power against China, urging the counterpart to reflect ‘soberly’ on the impact of trade remedies on the Eastern country. This passage is further evidence of the different approach of China in the WTO and its DSM. China has been internalising the rules of the game from the EU and other members on how to act in the multilateral organisation, having been exposed to new and different ideas. The answer of the EU official is no less direct.

The EU, indeed, acted ‘surprised about the tone of the Chinese statement’, considering it ‘unacceptable’ and ‘unusual’ in a context like the WTO (World Trade Organization, 2013b, p. 66). Drawn on the legitimacy of its internal investigations and disputes in the DSM, the EU reacts by expressing what its actions mean, according to its own belief system. The reference to the rule of law seems logically consequent. The WTO DSM is considered the preferred venue to pursue alleged abuses and discriminations. Indeed, ‘if there are disputes, [the EU has] the rule of law [...], the dispute settlement procedures and those procedures will decide whether these actions or lack of actions from certain Members of the WTO to meet their legal obligations’ (World Trade Organization, 2013b, p. 66). As a follower and firm believer of the rule of law, the EU cannot do anything but stress the importance of the DSM for the settlement of disputes. What is interesting to highlight in this passage (and, overall, in the entire exchange of opinions) is the different interpretation that the two actors give to the same policy actions. What China thinks is ‘discriminatory’, the EU considers in line with the ‘rule of law, the WTO, and the EU law’ (World Trade Organization, 2013b, p. 66). For the EU, the DSM remains the only institution in international trade dispute settlement to ‘decide what is use and what is abuse’ (World Trade Organization, 2013b, p. 66). The rule of law, then, is explicitly considered as a standalone value, that comes even

before the WTO (that is the institution whose rules need to be followed), and EU law (upon which the Union is based). This passage, then, is further evidence of the importance of the principle of the rule of law for the EU. The final words of this exchange, though, come from the Chinese representative. This conclusive passage from the Chinese official reveals a specific point within this heated exchange. China admits its perception that the WTO is based on EU values, implicitly favouring EU claims in the DSM over those from China (World Trade Organization, 2013b, p. 67). China, then, recognises the different sets of beliefs on which the WTO is based, acknowledging the similarities with the EU. This passage, then, is in line with the theoretical expectation of this research, providing further evidence for what was discussed in the previous chapters (see discussion in Chapter 3). China agrees that the WTO follows the EU. The EU shaped the WTO and the principle of the rule of law that the WTO is following. This exchange between the representatives of the EU and China in the Trade Policy Review is relevant to understand their approach to the DSM. In these passages it is clear that ideas matter. The EU believes in the role of the WTO DSM as the proper venue to solve the bilateral tensions with China. Its strong commitment to the rule of law and a rules-based multilateral system makes European officials choose the WTO DSM to address any perceived exploitation by China of the international trading system. At the same time, China's idea of peaceful coexistence still orients its approach to the DSM, preferring, when possible, amicable resolution of tensions against the EU. These passages not only highlight a difference in approaches, but, more deeply, a difference in ideas.

In this timeframe the EU and China follow a more confrontational discourse in the multilateral institution. While the EU, concerned by the growing economic size of China, reconvenes its role as protector of multilateralism and the rule of law, China has been practising its newly internalised belief of the rule by law, trying new ways to approach the WTO and its tools,<sup>47</sup> becoming proactive in the use of the DSM and the Trade Policy Review mechanism.

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<sup>47</sup> This is evidenced by the increased number of questions that China asks during Trade Policy Review meetings, as well as the breadth of topics discussed (e.g., technical questions on trade measures, political matters on how to overcome the 2008 financial crisis).

### 5.7.1 *Complaints in the WTO DSM*

This new decade is characterised by an active usage of the DSM by the EU. Between 2009 and 2017 11 disputes between the EU and China had been initiated.

In 2009 the EU filed a complaint against China on the restrictions on the export of certain raw materials (DS395). While this is not the first case that the EU brought to the WTO DSM against China (see discussion in Chapter 4), 2009 represents the beginning of a more intense use of the WTO DSM of both the EU and China. The case revolved around European industries concerning the restrictions applied by the Chinese government on yellow phosphorous, bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide and zinc, giving Chinese companies – it was claimed – an ‘unfair advantage’ on these rare materials, given their access to cheaper products than their competitors (European Commission, 2009). For these reasons, ‘[t]he EU has raised the issue with China repeatedly over the past years without success, and now hopes to use the WTO consultation process to arrive at a mutually satisfactory solution with China’ (European Commission, 2009, p. 1). This passage is evidence of the importance of the DSM as a consultation process where conflicts can be addressed, and solutions can be found. This is in line with the EU’s discourse on the WTO DSM. The dispute went through all the stages of the DSM, ending with a report from the Appellate Body favourable to the EU. A few days after the request for consultation from the EU, China filed its first complaint against the EU. On 31st July 2009, China formally requested consultations on iron and steel fasteners (DS397). China’s claim was that the EU acted inconsistently with the Anti-Dumping Agreement. The Appellate Body found that the EU was inconsistent with the Anti-Dumping Agreement.

These years were interesting as the EU and China went through one of the biggest trade fights over solar panels. The ‘Solar Panel dispute’ was the widest anti-dumping investigation in the history of the EU Commission, initiated in 2010, ending only in 2018 (Young, 2021). While this dispute has been extensively covered by legal and international relations scholars (see Young 2021), it can still add value on the approaches of the EU and China to the WTO DSM. How does the Solar Panel dispute relate to the WTO DSM?

What is commonly referred to as the Solar Panel dispute is, actually, a prolonged set of policies and measures of the EU Commission and the Chinese Government on solar panels' related products. It is not one single major dispute in a strictly legal sense, but refers instead to different domestic and international legal disputes and actions that have been pursued by both parties. The Solar Panel dispute, then, can be more easily referred to as a Solar Panel war. Nonetheless, what is interesting for this research is that China, as one of its first acts in response to the EU's investigation on solar panels, requested consultations of the WTO DSM, activating the system. China showed initiative in the international arena, alerting the designated authority in the international system. Even though the Solar Panel dispute was resolved bilaterally, it can be argued that the dispute was initiated through the WTO DSM. As already stated in the previous chapters, the DSU encourages bilateral resolutions of the dispute outside the WTO. Bilateral negotiations can take place during the DSM procedures. The Solar Panel dispute is part of the analysis of this research, at least for the part that concerns the Chinese claim within the DSM in the dispute DS425.

For the sake of this research, the Solar Panel dispute indicates, on the EU's side, the strong commitment towards a rules-based multilateral trade system. This dispute was one of the largest investigations by the EU Commission. From the Chinese side, the implications are two-fold. Firstly, the fact that this dispute was formally initiated by China is further evidence that it is starting to act according to its internalised idea of the rule by law. Secondly, this dispute shows how a real ideational shift takes time. China still preferred to solve the main dispute in a bilateral setting, in line with its long-standing belief of peaceful coexistence.

Most of the disputes initiated in the DSM were about anti-dumping issues. This is the case for the Chinese complaint on 'Anti-Dumping Measures on Certain Footwear from China' (DS405), and 'Measures Related to Price Comparison Methodologies' (DS516), or the EU's 'Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union' (DS407), 'Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union' (DS425), and 'Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union' (DS460).

Other disputes concerned export restrictions, tariffs, and quotas, like the EU's 'Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum'

(DS432), 'Measures Affecting Tariff Concessions on Certain Poultry Meat Products' (DS492), 'Duties and other Measures concerning the Exportation of Certain Raw Materials' (DS509), or like China's 'Certain Measures Affecting the Renewable Energy Generation Sector' (DS452).

What is interesting to notice in the documents presented to the DSM, is the different style adopted by the two actors. When the EU is the complainant, the language, and the style of the 'Request for Consultations' is more direct, and confrontational (World Trade Organization, 2011a). Even though most of this kind of legal document is made up of legal fixed forms, there is still some room for stylistic differences. The EU starts its request without any hesitation, directly addressing the reasons why it is requesting the consultations. China, on the other hand, seems more careful when requesting consultations. Indeed, China starts the document with a more 'respectful', or, at least, cautious style (World Trade Organization, 2010a). As evidenced in Table 5.1, the different style in the legal documents reflects the different beliefs that characterise the EU and China's action in the DSM. While the EU is more openly versed in the judicial mechanism, guided by the belief of the rule of law, China approaches the DSM as a venue to pursue its belief of peaceful coexistence.

**Table 5.1** *Language in the Request for Consultations in the WTO DSM*

|              | <b>Introduction</b>  | <b>Body</b>  | <b>Conclusion</b>  |
|--------------|--|--|--|
| <b>EU</b>    | <p>'The European Communities hereby requests consultations [...] (World Trade Organization, 2008b, p. 1)</p>     | <p>'China imposes [...] (World Trade Organization, 2016a, p. 2)</p>        | <p>'China's measures also appear to nullify or impair the benefits accruing to the European Union directly or indirectly under the cited agreements.</p> <p>The European Union reserves the right to address additional measures and claims regarding the above matters in the course of the consultations.' (World Trade Organization, 2016a, p. 7)</p> |
| <b>China</b> | <p>'My authorities have instructed me to request consultations [...] (World Trade Organization, 2010a, p. 1)</p> | <p>'China considers that [...] (World Trade Organization, 2013a, p. 2)</p> | <p>'This request is made without prejudice to China's rights under the WTO. China reserves all of its WTO rights with respect of all other aspects of the purported compliance by the EU with its obligations in this dispute.' (World Trade Organization, 2013a, p. 3)</p>  |

A different explanation for the differences in style, and the overall strategy in the DSM, has been attributed to the different legal capacity of the two actors. It has been argued that China did not possess the legal capacity to be an active user of the WTO, in terms of legal expertise and knowledge of the institution (Hsieh, 2010). To tackle this issue, local governments have established different think tanks, known as WTO

centres, to create a bridge between government, experts, and academia. These think tanks are not necessarily independent non-governmental organisations (NGOs), but rather they are governmental entities (Hsieh, 2010, p. 1013). These centres act as trade organisations, holding conferences, assisting private companies to identify trade barriers, and submitting information to MOFCOM, which might include it in the annual Foreign Market Access Report. The main centres are in Beijing, Shanghai, and Shenzhen (Shaffer and Gao, 2021b, p. 184). WTO centres, think tanks, and academia have contributed to raising awareness of WTO laws and practices, training generations of students and officials for defending China in international disputes (Hsieh, 2010; Guohua, 2016; Shaffer and Gao, 2021b). The extensive investment of the Chinese government in legal capacity and training to close the gap between Chinese legal practitioners and international competitors is a sign of ideational shift. According to the literature on norm diffusion (see Acharya, 2004), external ideas are localised to fit the pre-existing normative framework when actors experience a major event of systemic change, crisis, or political change (P. A. Hall, 1993; Blyth, 2002; Béland, 2009). The creation of WTO centres and think tanks is evidence of the political will of a change in Chinese administrative structure. Together with the domestic reforms on the legal system and economic structural reforms it undertook to comply with the multilateral trade organisation's standard discussed in the previous sections, then, this constitutes further evidence of ideational change in Chinese trade officials' actions.

Although China has always been reluctant to rely on foreign firms and companies to represent its interests, in the case of a technical subject like the WTO DSM the government has been assisted by foreign firms. This is even more interesting when thinking about the qualitative difference in the language of the requests for consultations of the EU and China. If China is assisted by foreign (i.e., Western) law firms, then it would follow that the language would be the same as their European counterparts. The difference in language, then, proves the role of ideas in two ways. Firstly, actors' ideas play a role in the institutional setting. As the lawyers who wrote the documents are Western based and share the same training, their language would be expected to be the same. If it is not, then, ideas of the institution, whether China's MOFCOM or Europe's DG Trade, matter. Secondly, this picture tells a story on the role of ideas as filters for external information and new ideas. Even if exposed to a different

litigation strategy, Chinese institutions still interpret reality through their pre-existing set of ideas. In this sense, the Confucianist belief of peaceful coexistence mediates external ideas, making new ideas and information coherent with the pre-existing sets of beliefs. This is in line with the theoretical proposition of the research (see discussion in Chapter 2). Worldviews and pre-existing beliefs, then, are necessary for actors to process and interpret new information when exposed to new ideas.

The Chinese government has been assisted by domestic firms for collecting documents, while the foreign firm sets up the strategy (Hsieh, 2010; Guohua, 2016). When choosing the foreign company, the Chinese government selects according to the counterpart of the dispute. In other words, if the other party of the dispute is the EU, China will choose a European firm to assist it in the proceedings because of their specific knowledge of the system (Hsieh, 2010; Shaffer and Gao, 2021b). Shaffer and Gao (2021) have highlighted how China hires foreign companies for those proceedings that move forward the establishment of a panel in the WTO DSM, while for those complaints that end before the establishment of a panel or when it acts as third party, it relies only on domestic firms. This behaviour might suggest that China already knows when it wants to move forward with the request of the establishment of a panel. Furthermore, the claim that Chinese reluctance in using the WTO DSM is because of a lack of legal capacity does not seem to stand, as evidenced. When the Chinese government believes that some complaints are worth pursuing through all the stages of the WTO DSM, it hires a foreign firm, compensating for the potential lack of legal capacity. At the same time, if China is able to hire foreign (Western/European) firms for its disputes against the EU, it is evident how the difference in style is a conscious choice of Chinese officials, indicating, then, a different set of beliefs.

In this timeframe, then, the EU and China have experienced more open confrontations in international trade dispute settlement. Despite the crisis of the Doha Round and the stall in multilateral negotiations, the EU is still firmly convinced that the WTO DSM is the appropriate venue to protect its economic interests. The programmatic beliefs at the core of its action remain stable. At the same time, China increases the number of disputes in the dispute settlement, internalising the Western idea of the rule of law through its existing programmatic beliefs, balancing it with the pre-existing Confucianist normative beliefs.

### *5.8 Policy actions of the EU and China in the WTO DSM*

The analysis of the timeframe between 2009 and 2017 offered interesting insights on the approaches of the EU and China in the WTO DSM.

As already discussed earlier in the chapter, and summarised in Table 5.2, there is continuity in the sets of beliefs that informed the approach of the EU to the WTO DSM. The EU appears stable, then, both in terms of policy actions followed in this timeframe, and in programmatic beliefs. The economic belief of the EU is still free trade, interpreted by EU officials as the promotion of multilateralism. The legalistic belief of the rule of law is translated into policy action through the maintenance and promotion of the rules-based international trade system.

What changes in this timeframe is the approach of China in the WTO and the DSM. The Chinese belief of State-led growth is still pursued through domestic trade liberalisation reforms of opening up of the economy. What is new is the explicit will to comply with, and, as shown in the previous sections, to be an advocate of the multilateral system. The most evident shift in policy action is the use of the WTO DSM. As already discussed earlier in the chapter, the use of the DSM is connected to the development of the new idea of the rule of law with Chinese characteristics, or, rule by law. Nonetheless, the internalisation of this new idea does not correspond to a complete erasure of pre-existing ideational sets of beliefs. The idea of peaceful coexistence still guides the action of Chinese officials in the WTO DSM.

**Table 5.2** *Programmatic beliefs and policy actions between 2009 and 2017*

|              | <b>Programmatic beliefs</b> | <b>Policy actions</b>  |
|--------------|-----------------------------|--|
| <b>EU</b>    | <i>Free Trade</i>           | <i>Promotion of multilateralism</i><br><i>Use of WTO tools like Trade Policy Review</i>              |
|              | <i>Rule of Law</i>          | <i>Maintenance/promotion of a rules-based system</i><br><i>Intensive use of the WTO DSM</i>          |
| <b>China</b> | <i>State-led growth</i>     | <i>Opening-up reforms</i><br><i>Compliance with the multilateral system</i>                          |
|              | <i>Peaceful coexistence</i> | <i>When possible, preference for outside settlement</i><br><i>Cautious style in formal documents</i> |
|              | <i>Rule by Law</i>          | <i>Active use of the WTO DSM</i>   |

### 5.9 Conclusion

The chapter analysed how Chinese and European officials acted in the WTO DSM between 2009 and 2017. It showed how policy actions are connected to ideational domestic factors, that guided officials in the WTO DSM.

The chapter demonstrated how the EU continued to be guided by the programmatic beliefs of free trade and the rule of law. The chapter highlighted the thread between the promotion of multilateralism and the economic belief of free trade; as well as the thread between the maintenance of the status quo, the promotion of the rules-based international trade system, and the use of the DSM and the legalistic belief of the rule of law.

The chapter, then, analysed the Chinese approach in the DSM, concluding that in this timeframe China was still guided by the programmatic beliefs of State-led growth and peaceful coexistence. The chapter demonstrated how Chinese domestic

reforms of opening-up, and the partial compliance with the multilateral system, were connected with State-led economic growth, as well as the activation of the DSM are still linked to the belief of peaceful coexistence. The chapter has also demonstrated how China internalised the Western concept of the rule of law as a programmatic belief of the rule by law due to its participation in international organisations like the WTO. This new idea is at the core of China's different and more aggressive use of the DSM in this timeframe. However, the chapter concluded by confirming that it takes time for ideas to completely replace pre-existing sets of beliefs.

Ultimately, the chapter analysed the interrelation between the EU and China in the WTO and its DSM, examining the evolution of their relationship through their discourse. In particular, the discourse evolved towards a more confrontational tone, which corresponds to an increase in the number of complaints presented to the WTO DSM.

The analysis conducted in this chapter will be necessary to examine the last timeframe of the research, studying the policy actions and programmatic beliefs in the most recent period of analysis of the EU and China's interaction in the WTO DSM.

## 6 Reforming the WTO DSM: the EU and China between 2018 and 2021

### 6.1 Introduction

Between 2018 and 2021 the EU and China's economic relations were flourishing, growing more than 20% each year (European Commission, 2021a). In 2019, China was the EU's second largest partner, while for China the EU was the first (EEAS Press Team, 2020). In 2018 the EU had a share of 15.7% (EUR 5.6 trillion) of global trade in goods and services (World Trade Organization, 2019b, p. 4). Trade in goods was worth over €1.5 billion a day in 2019, and the total value of export from the EU to China accounted for €198 billion, while the import amount was €362 billion (EEAS Press Team, 2020). In 2018, services export from the EU to China was worth €46 billion, while China exported €30 billion (EEAS Press Team, 2020). 2018 also marked 40 years since the open door policy of China was adopted. In 2018 Chinese GDP reached RMB 91,928.1 billion, increasing by 6.7% over the previous year, arriving at RMB 98,651.5 billion in 2019, reaching RMB 101,598.6 billion in 2020 (World Trade Organization, 2021b, p. 5).

In spite of promising economic relations between the two actors, the years between 2018 and 2021 were extremely challenging for the WTO DSM. In 2018 the Appellate Body of the WTO DSM *de facto* stopped its working after the lack of consensus on the nominee of its members. This created tensions in the WTO, blocking the two-step dispute settlement system that had been at the core of the multilateral organisation, stopping all disputes at the panel report stage, and preventing any possibility of appeal. To overcome this obstacle, the EU stepped up as a leader in the proposal of a reform process of the WTO, advancing the creation of a parallel institution to momentarily replace the Appellate Body in this time of crisis. These years, then, were characterised by the proposal and negotiation of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), as an external body to overcome the paralysis of the appeal institution of the WTO.

Between 2018 and 2021 the WTO experienced lots of turmoil. The Doha Development Agenda was still open after the limited the results of the Ministerial Conference held in Buenos Aires in 2017. In addition to the already slow process of

negotiations, the multilateral trade organisation suffered from the COVID-19 outbreak. The Twelfth Multilateral Conference was originally scheduled to be held in Geneva in June 2020. Because of COVID-19, it was firstly postponed, due to take place from 30 November to 3 December 2021. Because of an additional outbreak of the pandemic, it was then decided to postpone the Conference indefinitely.<sup>48</sup> At the same time the WTO DSM was facing its own crisis. As previously anticipated in Chapter 5, the dispute settlement was facing criticism from member states, which were involved in negotiations to update the rules of the Dispute Settlement Understanding.

The WTO DSM has been defined as the ‘jewel in the crown’ of the multilateral trade organisation. Part of the reason why it is unique in international dispute settlement is because it offers two levels of adjudication with the report from a panel, and the appeal provided by the Appellate Body (see discussion in Chapter 1). According to Article 17.6 of the Dispute Settlement Understanding, panel reports can be appealed for ‘issues of law covered in the panel report and legal interpretations developed by the panel’ (World Trade Organization, 1994b). The Appellate Body should be composed of seven Members appointed for a four-year term (World Trade Organization, 1994b). The appeal panel should be composed of three Members. According to Article 17.2 and Article 17.3 of the Dispute Settlement Understanding, Members of the Appellate Body are appointed by the Dispute Settlement Body by consensus, and they should be ‘persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally’ and ‘shall be unaffiliated with any government’ (World Trade Organization, 1994b). Members should be appointed when vacancies arise. Due to the simultaneous end of term of Ricardo Ramírez Hernández and Peter van den Bossche, and the resignation of Hyun Chong Kim in 2017, three vacancies had to be filled at the same time. After numerous rounds of negotiations on the procedures to apply to the appointment of new Members, the US opposed all the proposals in 2018 and beyond.<sup>49</sup> After Shree Baboo Chekitan Servansing ended his term in 2018, and Ujal

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<sup>48</sup> Eventually, the Twelfth Multilateral Conference took place in Geneva from 12 to 17 June 2022, leading to a major advancement in multilateral negotiations of trade rules with the adoption of the ‘Geneva package’, containing advanced measures on fisheries subsidies, the WTO response to the pandemic, food insecurity, e-commerce, and other issues.

<sup>49</sup> For a complete summary on the events that led to the crisis of the Appellate Body, see Lehne (2019).

Singh Bhatia and Thomas R. Graham ended their term in 2019, the Appellate Body stopped its workings at the end of the term of its last Member, Hong Zhao.<sup>50</sup>

To overcome the crisis of the Appellate Body, WTO members proposed the activation of the provision contained in Article 25 of the Dispute Settlement Understanding. According to Article 25, '[e]xpeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties' (World Trade Organization, 1994b). Following Article 25 of the Dispute Settlement Understanding, then, the EU together with other WTO members like Canada and China advanced a proposal for a parallel agreement on dispute settlement that could provide an appeal for those trade disputes blocked at the first stage of the dispute settlement, overcoming the paralysis caused by the lack of Members of the Appellate Body. On 30<sup>th</sup> April 2020 the EU, China, and another eighteen members<sup>51</sup> of the WTO advanced a 'Multi-Party Interim Appeal Arbitration Arrangement pursuant to Article 25 of the DSU' (World Trade Organization, 2020a). WTO members agreed to 'resort to arbitration under Article 25 of the DSU as an interim appeal arbitration procedure [...], as long as the Appellate Body is not able to hear appeals of panel reports in disputes among them due to an insufficient number of Appellate Body members' (World Trade Organization, 2020a). With the selection of a pool of arbitrators, the MPIA became operative in August 2020.

This reformist approach of the EU, followed by China as a signatory party of the MPIA, might suggest a lack of trust in the WTO institution, considering that these members were advocating for a reform process of procedures. Nonetheless, both the EU and China were still relatively active in the WTO DSM during this time period. Between 2018 and 2021 the EU initiated 8 complaints, while China started 7 disputes in the DSM. What can explain this incongruence?

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<sup>50</sup> Due to Rule 15 of the Working procedures for appellate review, '[a] person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body' (World Trade Organization, 2010e). Members of the Appellate Body whose term expired could continue working on the appeals that had already been active before their end of term. Rule 15, then, allows Members of the Appellate Body to continue working on existing proceedings, but not to undertake new appeals.

<sup>51</sup> Members of the MPIA are: Australia; Brazil; Canada; China; Chile; Colombia; Costa Rica; the European Union; Guatemala; Hong Kong, China; Iceland; Mexico; New Zealand; Norway; Pakistan; Singapore; Switzerland; Ukraine and Uruguay.

The previous chapter demonstrated how EU trade officials were guided by the programmatic beliefs of free trade and the rule of law between 2009 and 2017. The EU presented itself as one of the leaders of liberal free trade in the international organisation, exporting its beliefs through the intensive use of the WTO DSM. At the same time, China's newly 'aggressive' approach to the WTO DSM was characterised by the progressive internalisation of the new idea of the rule by law. Nonetheless, Chinese officials were still guided by ideas of State-led growth and peaceful coexistence. This demonstrated how new ideas can be internalised by an actor through their pre-existing sets of beliefs (see discussion in Chapter 2 and Chapter 5).

This chapter will analyse the timeframe between 2018 and 2021. It will look at the policy action of the EU and China in the WTO and its DSM, analysing whether a shift in their reformist policy action corresponds to a change in their sets of beliefs. The chapter will be divided into three main parts. The first will look at the EU, highlighting the thread between policy actions in the WTO DSM related to the economic belief of free trade, and the actions related to the belief of the rule of law, focusing on the role of the EU in the reform process of the WTO and the creation of the MPIA. At the same time, the second part will focus on China, analysing whether the policy actions of its officials in the WTO DSM were still connected to the beliefs of State-led growth, tracing which legalistic belief has been guiding its action in the DSM, looking at the newly formed idea of the rule by law and the more traditional belief of peaceful coexistence. Ultimately, the third part will analyse the evolution of the discourse between the EU and China in the WTO and its DSM, analysing their dispute in the settlement mechanism.

## *6.2 The EU: Reinforcing free trade in the multilateral system*

Between 2018 and 2021 the EU's discourse around the WTO and its DSM was mainly focused on the reform of the multilateral trade system. In this new reform process, the EU saw itself as a leader, reinforcing its primary role in the multilateral organisation. This section will analyse if the reformist approach of the EU was still guided by the same ideas that characterised Europe's actions in the WTO DSM in the previous timeframes.

Since the establishment of the WTO and its DSM, the EU was committed to enforcing and maintaining a multilateral rules-based trade system. As evidenced in the previous chapters (see discussion in Chapter 4 and Chapter 5), this is clear both from the use of the WTO DSM and its commitment in the reform process of the rules and procedures of the Dispute Settlement Understanding. What changed then? As previously anticipated, in 2018 the Appellate Body entered in a *de facto* paralysis with the US blocking consensus in the appointment of new Members, leaving the WTO DSM blocked at the panel report stage. The EU, having always supported more court-like systems through the reform of the Dispute Settlement Understanding, advocated for the establishment of a parallel agreement – the MPIA. The long-standing reform process of the WTO DSM had been entangled with the creation of the MPIA, with the EU acting as a leader. This section, then, will analyse the ideas behind the reform process of the WTO DSM and the creation of the MPIA.

This new timeframe is predominantly characterised by a discourse around the reform of the multilateral organisation, putting the DSM at the centre of this process. The EU seems to confirm its will to promote multilateralism, advocating for new rules of the system. When presenting the concept paper on the modernisation of the rules-based system in international trade, Commissioner Malmström praised the role of the WTO as a stabiliser in multilateral trade, providing ‘open, fair and rules-based trade’ (European Commission, 2018c). The EU is taking, once again, a leading role in promoting a multilateral system of trade through the WTO, assisting the organisation in this transition, adapting to a new set of rules and mechanisms to preserve the role of the WTO and its multilateral framework. The promotion of a multilateral rules-based system is at the core of European action in the DSM, even in this timeframe. The multilateral trade organisation needs to change to adapt to new global challenges. However, the WTO and its DSM have not been able ‘to adapt sufficiently to the rapidly changing global economy’ (European Commission, 2018c). Indeed, [t]he world has changed, the WTO has not’ (European Commission, 2018c). The WTO needs to change to ensure continuity in its mandate and effects to provide ‘predictable and effective framework’ in international trade. Reforming the multilateral trade organisation was seen as a way to ensure continuity in EU officials’ ideas in the DSM, advocating for a rules-based system in global trade as ‘universal values’. Commissioner Malmström reaffirmed the reformist approach of the EU to the WTO.

The WTO has not changed when the world has, leading to the need for reforms. According to the trade official, the EU keeps on shaping the WTO, adapting the multilateral trade organisation to their own set of normative beliefs and ideas, modernising the WTO rulebook to face new challenges. While reforming the WTO, then, EU officials keep on advocating for the same ideas of free trade and multilateralism, assuming once again a leading role in the creation of new and updated rules in international trade dispute settlement. In other words, even if the approach of the EU to the WTO DSM in this timeframe is reformist, it is still based on the same ideas. According to Trade Commissioner Malmström the WTO DSM is going towards 'a cliff's edge' (European Commission, 2018a). Indeed, '[w]ithout this core function of the WTO, the world would lose a system that has ensured stability in global trade for decades' (European Commission, 2018a). The leading role of the EU in the WTO is even more prominent in times of crisis. The crisis of the DSM with the stall of the Appellate Body forces the EU to act. This action shows the importance that the Appellate Body, and the consequent enforcement system of rules, has to the EU. The DSM, and the Appellate Body, represent the institutional incarnation of the belief of the rule of law, ensuring certainty of the law, and rules in international trade. Creating an alternative court, and proposing a solution to this ongoing issue, then, is a way of preserving the *status quo ante* the crisis of the DSM, ensuring the rule of law and the certainty of the rising international trade legal system, created and maintained by the EU since the negotiations of the Uruguay Round (see discussion in Chapter 3). The main driver behind the creation of the new rulebook for the international institution seems to remain the strong belief of a multilateral free trade system. In one of her speeches, Commissioner Malmström emphasises the importance of the dispute settlement mechanism, stating that the DSM is 'vital' for the WTO and the multilateral system (European Commission, 2018d. The DSM is essential for the WTO and its members to enforce rules and to promote free trade in the international system. The dispute settlement of the multilateral organisation is necessary to 'tackle all distortions to the trading system', ensuring the correct functioning of liberal free trade. While reforming the system, the EU is still convinced that international trade dispute settlement and the DSM of the WTO are the right venue in which to promote free trade and multilateralism. In this sense, the normative beliefs behind the reform of the Appellate Body and the overall approach to the DSM are still grounded on the protection and promotion of a multilateral free trade system. In the opening remarks

of the 2019 Trade Policy Review, the representative of the EU reinforces the leadership position of the Union in the reform of the WTO and its DSM. The approach of the EU in this new timeframe, then, is oriented towards the ‘modernisation of WTO rules’ as ‘[...] indispensable to ensure the continued relevance of those rules in today’s economy’. An ‘[...] updated rulebook should facilitate all forms of trade and investment’ (World Trade Organization, 2020b, p. 5). This passage confirms the reformist approach of the EU in this timeframe. Furthermore, it shows that the EU reformist approach is based on the will to ensure continuity and stability in the preservation of a rules-based system in multilateral trade.

In the 2019 Trade Policy Review, EU officials emphasised the importance of the preservation of the multilateral trading system that is ‘open’ and ‘rules-based’ (World Trade Organization, 2019c, p. 10). For the EU, the WTO is still at the ‘core’ of the multilateral trading system, but a ‘comprehensive reform’ of the organisation is long overdue (World Trade Organization, 2019c, p. 10). The EU acknowledges the importance of a reform of the multilateral organisation. As a champion of multilateralism (see discussion in Chapter 3 and Chapter 4), the EU believes that the WTO and its DSM need to be reformed in order to keep preserving their mandate to promote multilateralism in a rules-based system. What is interesting, though, is that the EU is still using the WTO and its DSM as the preferred venue for complaints in international trade. Despite the reformist approach of the new timeframe, the EU has still made notifications on ‘agriculture, trade remedies, technical regulations, regional trade agreements and preferential rules of origin. It was a complainant in five new dispute settlement cases and a respondent in one new case’ (World Trade Organization, 2019c, p. 10). This approach, then, suggests that the drivers at the core of the EU’s policy action are still the same. The promotion of a multilateral free trade system is at the core of European discourse in their reform agenda. Evidence of this can be found in the 2019 Trade Policy Review, in which the EU representative stated that “‘a balanced and progressive trade policy to harness globalisation”, premised on the idea that global trade is a key contributor to a competitive and prosperous EU but needs to be proactively shaped and managed to ensure that it is fair, projects values and remains firmly anchored in a rules-based system’ (World Trade Organization, 2019c, p. 9). This passage is useful to understand the reformist approach of the EU in this timeframe. European officials see trade policy as an instrument to promote values

within and outside the WTO and its DSM. The EU and its commitment to multilateral trade is 'firmly anchored in a rules-based system', promoting universal values to advance free trade in the international community. In this sense, the promotion of free trade can be possible through a stronger multilateral approach that includes the protection of a rules-based system. While the EU promotes and advances negotiations for a reform of the multilateral trade organisation, the ideas at the core of its actions remain grounded in multilateralism and free trade in a rules-based system, in line with the ideas that characterised its action in the previous timeframes (see discussion in Chapter 4 and Chapter 5). The EU, then, has been focused on the reform of the WTO and, more prominently, of its DSM. European officials have been at the forefront of the proposal of the reform of the system, looking for support in the international community.

When speaking at an EU-US business event, the EU Commission Executive Vice-President for an Economy that Works for People, Acting EU Commissioner for Trade, Valdis Dombrovskis, reinstated EU's commitment to reform the WTO, especially after COVID-19 (European Commission, 2020a). This passage confirms EU's approach in the WTO and its DSM in the preceding years. In his speech, Commissioner Dombrovskis highlights an important point. A strong and renewed WTO can only push for a stronger economy, protecting the environment, enhancing multilateralism in international trade. Indeed, a "strong WTO can help to rebuild a truly resilient global economy; an economy that protects workers, companies and supply chains; an economy that does more to drive climate action and digitalization; yet also an economy that safeguards international trade, keeping our markets open and discouraging import and export restrictions' (European Commission, 2020a). This passage confirms the EU's approach in the WTO and its DSM in the preceding years. In his speech, Commissioner Dombrovskis highlights an important point. A strong and renewed WTO can only push for a stronger economy, protecting the environment, enhancing multilateralism in international trade. The COVID-19 pandemic is not seen as detrimental for the reform of the WTO. On the contrary, the pandemic is seen as another reason to push forward the already advocated reforms for the system. Then, the pandemic is seen as an accelerator of existing issues, rather than a driver of change (Barillà, 2021).

The EU's approach to the WTO DSM in these years has been oriented towards the reformist side. The EU promoted itself as the leader of the reforms both externally and domestically with its own member states. At an informal meeting of EU Trade Ministers, European Trade Commissioner Phil Hogan addressed the importance of the EU as a leader in the WTO reform process (European Commission, 2020c). As a former leader in the Uruguay Round and a responsible landlord for more than two decades (see discussion in Chapter 3 and Chapter 4), the EU's natural role in this moment of crisis is to take the lead, once again, in the reform of the WTO. Indeed, the EU has 'very strong multilateral credentials and is recognised as a force that could shore up the WTO and protect the multilateral trading' (European Commission, 2020c). To preserve and enhance multilateralism in international trade, the EU sees its role of leader in WTO reform as necessary. Furthermore, this passage highlights how the EU considers itself as a 'recognised force' that can 'protect the multilateral trading system'. Again, then, the EU acknowledges its responsibility in the WTO as a protector of the multilateral rules-based system, interpreting it through the necessity to take the lead in its reform process.

This section demonstrated how the new reformist approach of the EU in the WTO DSM is still guided by the belief of free trade. Ideas at the core of its policy actions are the same. The political scenario changes, but, in times of crisis, the EU still looks at the same ideas to navigate uncertain times.

### *6.3 The EU: The rule of law in the reform of the DSM*

The dispute settlement function of the WTO has been questioned and put into jeopardy by the crisis of the Appellate Body. The EU's approach to the WTO DSM seems to have changed, advocating for a reform of the system. An example of European leadership in these years is offered by a speech of Commissioner Malmström. In 2018 Trade Commissioner Malmström stated that 'the GATT, and later the World Trade Organisation, was established to create a stable global environment for open trade. This approach was built on two values – one idealistic, and the other realistic. First, that as human beings we have common universal values, like freedom, democracy, open trade, and a rules-based world order. Second, that in global politics – power speaks' (European Commission, 2018d). This passage is evidence of the

liberal worldview and its beliefs that guided the EU in the formation of the WTO during the Uruguay Round. By reminding the audience of this, Commissioner Malmström makes a comparison between the essential role of the EU as an architect of the WTO during the Uruguay Round, and its leadership role in its reform process in 2018.

When proposing the new concept for the reform of the WTO, Commissioner Malmström highlighted that the 'appellate body function of the WTO dispute settlement system is moving towards a cliff's edge. Without this core function of the WTO, the world would lose a system that has ensured stability in global trade for decades' (European Commission, 2018f). In her speech, Commissioner Malmström summarises what the DSM means for the EU. For the Union the WTO DSM ensures stability in the multilateral trade system, enforcing the rule of law and legal certainty across its members. For these reasons, the EU chooses to be at the forefront of the reform process, preventing the entire the system from collapsing. This is even more evident in the report of the European Commission in the 2019 Trade Policy Review. According to European officials, the EU 'firmly believes' that the WTO still 'remains the cornerstone of the multilateral trading system and is indispensable for ensuring free and fair trade' (World Trade Organization, 2019b, p. 16). This passage, then, shows the central place of the international organisation in the multilateral trade system. Even though its rulebook needs to be updated, the EU still recognises the fundamental importance of the WTO in ensuring stability and fairness in multilateral trade. Despite the paralysis of the Doha Round, and the US blockage of appointment of new Members of the Appellate Body, the EU is still committed to preserving international trade dispute settlement through the reform of the WTO and its DSM. The EU officials acknowledged the 'deepest crisis' of the WTO 'since its inception' (World Trade Organization, 2019b, p. 16). Indeed, the 'origin of the crisis' of the WTO and its Appellate Body lies in the 'collective inability [...] to update [its] rulebook' (World Trade Organization, 2019b, p. 16). Members of the WTO have not been able to agree on deeper rules on trade through the negotiations of the Doha Development Agenda, and they failed to find an agreement on the update of the rules and procedures of the Dispute Settlement Understanding. The crisis of the multilateral organisation, then, lies on the failure to address the necessary reforms of the WTO and its DSM, not on its validity and appropriateness in protecting free trade. In the 2019 Trade Policy Review EU officials keep on stressing the importance of 'preserving and strengthening the

multilateral trading system, resisting any move to managed trade' (World Trade Organization, 2019b, p. 16). This passage is important to understand the approach of the EU in the WTO DSM reform process. The DSM remains the 'cornerstone of the multilateral trading system' as it contributes to the development and preservation of free and fair trade. In this sense, despite the crisis of the WTO and its Appellate Body, the EU is still sure of the role of the multilateral organisation in international trade. The EU's priority is to 'preserve and strengthen the main features of the dispute settlement system'. In this passage, the EU highlights the importance of the reform of the WTO in general, and of dispute settlement in particular. In taking the lead, once again, of the reform of the DSM, the EU is eager to shape the next generation of the jurisdictional life of the multilateral organisation. In this sense, the main features of the dispute settlement system for the EU are the more jurisdictional aspects of the WTO DSM. This is in line with the belief of the rule of law that has informed the EU's policy action in the WTO and its DSM since the Uruguay Round (see discussion in Chapter 3). The crisis of the DSM and its Appellate Body is an opportunity for the EU to continue its work in exporting its beliefs (see discussion in Chapter 5) in the multilateral rules-based system according to its own sets of ideas. The need to reform the WTO DSM is agreed by the entire European Commission.

According to the Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, the crisis of the Appellate Body is a priority for the Union. Indeed, the reform of the WTO needs to 'strengthen, rather than dismantle the system which has greatly benefitted its members. [...] The most urgent task is to unblock the appointment of the Appellate Body Members and ensure that that the dispute settlement mechanism can continue to function as until now' (European Commission, 2019c). According to Commissioner Moscovici, the WTO does not need to be completely dismantled, as it offered great benefits to the international trade community. The Commissioner confirms that one of the most pressing priorities in the reform of the WTO is its DSM. This is even more urgent given the crisis of the Appellate Body caused by the lack of renewal of its membership by the US. This passage is further evidence of the importance of the WTO in the European bureaucratic apparatus. This passage, then, might suggest that the idea of a strong DSM to promote free trade and a rules-based system is common to other Directorates-General in the EU. This is in line with the theoretical propositions of the research, which considers a

shared worldview for European institutions (see discussion in Chapter 3). While this research focuses on specific beliefs of the DG Trade, this passage might be evidence of the importance of different institutional actors in the construction of the discourse on free trade in the EU (see discussion in Chapter 7).

Despite the crisis, the importance of the WTO DSM for the EU seems unchanged. In a speech at the Centre for Strategic and International Studies in Washington, DC, the European Commissioner for Trade, Phil Hogan reinstated that European officials ‘remain absolutely unwavering in our conviction that an open trading system with a firm and fair rulebook is the best hope for every country around the world to achieve sustainable economic progress’ (European Commission, 2020e). Commissioner Hogan confirms the necessity for open and fair multilateral trade. Even though the approach of the EU in the WTO is reformist, European officials are convinced that the multilateral trade organisation can still promote economic progress with a firm and fair rulebook. This speech takes place in 2020, two years after the blockage of consensus on the approval of new Members of the Appellate Body from the US. At the same time, the EU was involved in the proposal for the creation of the MPIA as a parallel system to overcome the stall of the Appellate Body, providing an alternative second level of adjudication in international trade dispute settlement. In his speech, Commissioner Hogan continues acknowledging the importance for updating the rulebook of international trade, stating that: ‘Global challenges need global rules. Unfortunately, the current rulebook is out of date, and the rules-based multilateral system has drifted away from economic and business realities’ (European Commission, 2020e). The European Commissioner recognises the necessity to reform the multilateral trade organisation, so that the rules-based system can continue to ensure free trade in global economy. Commissioner Hogan stresses the need for a proper enforcement mechanism for new rules to have value (European Commission, 2020e). Indeed, ‘[n]obody can play the global trade game without a good referee’ (European Commission, 2020e). This passage is fundamental to understand the strong belief of the EU in the WTO DSM. The multilateral trade organisation is still suited to promoting free trade in the international community. To continue ensuring an ‘open trading system’ that promotes ‘sustainable economic progress’ its rulebook needs to be updated. The speech from Commissioner Hogan confirms the reformist approach of the EU in the WTO and its DSM, stressing the importance of substantive

updates in the multilateral trade rulebook. From this speech it is evident how the need for the certainty that only an effectively enforced and updated rules-based system can give is at the core of European approach in the reform of the WTO and its DSM. In other words, the belief of the rule of law is still strong and present in the EU's approach in the DSM. This passage, then, confirms that the EU's action in the WTO and in its reform of the DSM is guided by the rule of law, and the need for certainty and strong enforcement in the multilateral international trade system. This is confirmed by the words of the Commissioner to the Trade Ministers of EU Member States. In an informal meeting, Commissioner Hogan acknowledged once again the development of the MPIA 'as a stop-gap to maintain an independent, two step dispute settlement function' (European Commission, 2020d). This informal meeting is fundamental to understand the EU's approach in these years. The EU's reform efforts of the WTO DSM culminated in the design of the new MPIA. The MPIA is supposed to become a substitute for the Appellate Body for all the parties that signed the agreement. The creation of the MPIA, then, might suggest a willingness of the EU to move on from the DSM, replacing it with new institutions. However, the MPIA fits into the reform process of the WTO DSM of the EU. By ensuring the second step of the WTO dispute settlement, the MPIA is the tool for the EU to protect the rules-based system. In this sense, the MPIA should be seen as consistent with the pre-existing sets of ideas that guided the EU in the WTO and its DSM, promoting and ensuring the functioning the multilateral trade system, based on the rule of law. Indeed, the EU has continued 'to make use of our trade defence instruments to address unfair trade and we will continue to enforce [its] rights through WTO dispute settlement' (European Commission, 2021b). Furthermore, the creation of the MPIA is evidence of the will of the EU to safeguard the jurisdictional life of the multilateral trading system, ensuring an appeal system in international trade dispute settlement.

Despite the turmoil around the DSM, the EU has continued to be an active user of the jurisdictional branch of the WTO, even without the possibility of appeal. The WTO DSM, then, remains the preferred venue to 'enforce rights' and promote the EU's ideas based on the protection of the rule of law in multilateral trade. The reformist approach of the EU to the WTO and its DSM, with the creation of the MPIA, is still based on the same normative belief that characterised EU's policy action in the past.

The rule of law is still at the core of European officials' action in the reform process of the WTO DSM and in the creation of the MPIA.

#### *6.4 China: State-led growth and the reform of the WTO DSM*

From 2018 to 2021 China seems to act in the WTO DSM with more ease than ever before. Initiating seven disputes in this new timeframe, China's approach seems to have changed. No longer reluctant to participate in the WTO DSM, China engages with the top players of international trade according to the rules of the institution. At the same time, though, China is one of the signatories of the MPIA, promoting the reform of the WTO. This section will investigate which ideas are behind this shift in approach.

In 2018 China's economy was flourishing. Its GDP grew by 6.6% on the previous year (Saber, 2018). China's structural reform continued, reflecting the willingness of the country to open up, focusing on economic growth. This approach is reflected in international trade, and in Chinese action in the WTO. In the 2018 Trade Policy Review, Chinese officials recognised the beneficial effects of the participation in the multilateral trade organisation. Since its membership to the WTO and its DSM, 'China has established an economic and trade system in line with both its national conditions and international prevailing rules and practices. It ha' greatly contributed to the development of China's open economy and its integration with the world economy' (World Trade Organization, 2018b, p. 22). The words of Chinese MOFCOM officials clearly highlight the major role of the WTO in the economic growth of the country. China integrated external rules and practices to its own domestic economy. This passage, then, is further evidence of Chinese integration of foreign rules and practices in its domestic legal and economic system through its own sets of ideas. Merging 'international prevailing rules and practices' according to its own 'national conditions', China succeeded in becoming a major international player in international trade. This economic success in global trade is still based on their grounding principles and ideas that guided their action in the WTO. In the same 2018 Trade Policy Review report, MOFCOM officials highlighted that 'China will follow the principle of achieving shared growth through discussion and collaboration, work together with all parties to press ahead with the Belt and Road Initiative, and strive to make the initiative a broad

platform for international cooperation keeping up with the historical tide of economic globalization' (World Trade Organization, 2018b, p. 3). This passage opens the 2018 Trade Policy Review of China, highlighting two important aspects of the Chinese approach in the WTO DSM. In this timeframe China is committed to its own interpretation of multilateralism. While it is necessary to 'firmly safeguard the multilateral trading system', this is done through initiatives like the Belt and Road Initiative, or other projects that promote a more 'open, inclusive, and balanced' economic and sustainable growth. In other words, China recognises the need for multilateralism in international trade, interpreting it through its own sets of beliefs, as a way to promote economic growth, advocating for a different multilateral system, going against the Western based status quo supported by the EU. Indeed, 'China will spare no efforts in making economic globalization more open, inclusive, and balanced so that its benefits are shared by all' (World Trade Organization, 2018b, p. 3).

In line with the principle that characterised the Chinese open door policy in the late 1970s, China follows the policy of 'Chinese Learning as Substance, Western Learning for application' (Zhongxue wei ti, xixue wei yong - 中学为体, 西学为用) (Huan, 1986, p. 2) (see discussion in Chapter 3). Western concepts like multilateralism in free trade are processed through domestic normative beliefs. As demonstrated in previous chapters, (see discussion in Chapter 4 and Chapter 5), China's approach is indeed guided by domestic pre-existing normative beliefs. Chinese normative beliefs on the functioning of the economy put the state at the centre of economic governance. China continues to open up and modernise through comprehensive reforms of its domestic system. China reaffirms its policy action throughout its entire experience in the WTO, pursuing reforms to promote State-led growth. The Trade Policy Review moves on, highlighting the opening up reforms that China is undertaking. According to Chinese officials, 'China will continue to adhere to the fundamental national policy of opening up, pursue development with the strategy of opening up for win-win results, and develop its open economy aiming at higher standards' (World Trade Organization, 2018b, p. 4). Chinese involvement in the WTO and its dispute settlement, and its active role in the negotiation of new updated rules for the Dispute Settlement Understanding, are still connected to its belief in economic growth. To open up the economy, China believes in the central role of the state, providing win-win results through the reform of multilateral trade. This passage, then, is fundamental to understand how Chinese

normative beliefs on state-led economic growth are at the core of its approach to the WTO DSM in this new timeframe. The Chinese approach is different compared to its previous actions in the WTO and its DSM (see discussion in Chapter 4 and Chapter 5). It is more active and central in negotiation debates around the future of the multilateral trade organisation and the entire trading system. Nonetheless, Chinese normative beliefs are still the same. The Trade Policy Review confirms Chinese officials' firm belief in opening up, following the 'fundamental national policy', which promotes the central role of the state in economic and market reforms. China's approach to international trade dispute settlement has been guided by programmatic beliefs. Alternative theories on norm diffusion are not suitable to understand the way China interprets multilateralism in free trade. As already evidenced in Chapter 2 and Chapter 5, theories on learning and socialisation have been focused on external ideas as drivers of change. According to these theories, China would have had to understand multilateralism in free trade like other (Western) members of the WTO. However, China's understanding of multilateralism and free trade has been filtered and adapted through its pre-existing normative framework. Indeed, while theories on socialisation and learning focus on external ideas, the process of internalisation draws attention to domestic programmatic beliefs as drivers of change in international trade dispute settlement.

The Trade Policy Review continues stating that China 'will stick to the path of peaceful development and strive to forge a new type of international relations featuring mutual respect, fairness, justice, and win-win cooperation. China will continue to take an active part in the global economic governance systems, work to promote an open world economy and the building of a community with a shared future for mankind' (World Trade Organization, 2018b, p. 4). This passage highlights how China's reforming process is still ongoing and based on the same ideas that characterised its approach since the open door policy in the late 1970s (see discussion in Chapter 3). Indeed, the discourse around opening up is not just focused on Chinese domestic economic growth, but also on the expansion of world economy and 'the building of a community with a shared future for mankind'. According to Chinese officials, the reform of the international trade system needs to be based on principles like 'mutual respect, fairness, justice, and win-win cooperation'. Indeed, 'China will firmly support the multilateral trading system, unswervingly advance economic globalization and trade

and investment liberalization and facilitation, further the construction of free trade areas' (World Trade Organization, 2018b, p. 4). These principles have been at the core of the Chinese Confucianist worldview (see discussion in Chapter 3). This passage, then, demonstrates how the Chinese approach in the reform of the multilateral trade system is based on the same normative beliefs that have been at the core of its policy action in the previous timeframes. China, then, is using the WTO as a platform to promote its own values, proposing a version of multilateralism that is more resonant with its domestic beliefs and ideas. In this sense, Chinese reform of the WTO and its DSM is guided by its own domestic programmatic beliefs. This new approach as reformist of the international trade system is confirmed in the following Trade Policy Review. Chinese officials recognise the commitment of China to open up and reform the market, that is based on 'its belief in openness, cooperation, and unity for achieving win-win outcome' (World Trade Organization, 2021b, p. 26). Chinese officials confirm Chinese commitment in turning 'the market of China into a market for the world, a market shared by all, and a market accessible by all and bring more positive energy to the international community' (World Trade Organization, 2021b, p. 26). This passage is fundamental to understand the role of normative beliefs in the most recent developments in Chinese policy action. As argued by scholars on ideas (see discussion in Chapter 2), normative ideas are more visible in times of crisis, as actors tend to question the appropriateness to overcome the uncertain times. Despite the deep impact that COVID-19 pandemic had on Chinese society and economy, Chinese officials call on their normative beliefs to guide them through uncertain times. 'Openness, cooperation, and unity for achieving win-win outcome' are still guiding China's action in its new reformist approach, helping Chinese official navigating the crisis of the WTO and its DSM, as well as the COVID-19 pandemic. After two decades of membership in the WTO, China is still undertaking reforms to adapt to the multilateral trading system, guided by its beliefs in openness, cooperation, and unity in win-win outcome. Chinese opening up, though, is not just focused on a domestic economic growth. The outlook is no longer domestic, but international. China's commitment is not only towards its domestic market, but to a mutual 'shared' benefit and governance.

This new openness to the world is at the core of Xi Jinping new vision for China in international relations. Indeed, '[f]ollowing the guidance of Xi Jinping Thought on

Socialism with Chinese Characteristics for a New Era, China pursues high-quality development as the main theme, grounds its efforts on the new development stage, applies the new development philosophy, and fosters a new development paradigm' (World Trade Organization, 2021b, p. 4). China has been liberalising its market, facilitating trade and investments. The Chinese Trade Policy Review in 2021 starts with an explicit reference to Xi Jinping and his thought of a 'Socialism with Chinese Characteristics'. In this new timeframe Xi Jinping has extensively reformed Chinese administrative, economic, and legal system, justifying his new approach with his own Thought on Socialism with Chinese Characteristics.<sup>52</sup> Xi Jinping's approach, then, might seem new and different from the previous Chinese trajectory of relations with the WTO. This passage, though, highlights how the 'new development paradigm' in international trade is still based on a commitment for opening up 'on all fronts'. China, indeed, is still committed to undertake reforms to open up its economy, in order to promote a 'shared future for mankind'. This is confirmed by Chinese officials in the 2021 Trade Policy Review meeting. Mr Wang Wentao (王文涛), Minister of Foreign Commerce, when presenting at the Trade Policy Review meeting, 'stressed that as a proponent of economic globalization, China adheres to the basic state policy of opening-up. China has, on many occasions, called upon all sides to defend the multilateral trading system and build an open world economy. [...] China has embraced the strategy of opening-up for win-win cooperation. Its development has brought enormous opportunities for the world and made remarkable contribution to the global economy' (World Trade Organization, 2021a, p. 4). This passage is important to understand how China's action is still based on the same principles of opening up and win-win cooperation that characterised its experience in the WTO and its DSM in its twenty years of membership. According to Wang Wentao, China's commitment to open up to the world economy has not changed. This is in line with the theoretical propositions of this thesis (see discussion in Chapter 2), confirming that normative ideas need time to change.

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<sup>52</sup> According to scholars in Chinese studies, President Xi Jinping is considered as the 'ultimate decision maker on foreign policy issues' (Jakobson and Manuel, 2016, p. 108), concentrating most of the state powers in his person. In this sense, his new Thought is extremely relevant not only in domestic policy, but also when looking at foreign policy like international trade.

Chinese action in the WTO and its DSM, then, is still based on the same principle of State-led economic growth that guided its actions in the previous timeframes. The role of the state is still central in economic reforms. Despite the new reformist and more active approach to the WTO and its DSM, Chinese action is still based on the same normative beliefs that characterised its action in the previous timeframes.

#### *6.5 China: Reforming the DSM: peaceful coexistence or rule by law?*

China's approach to the DSM has changed in its twenty years of membership. The last chapter demonstrated how Chinese action in the WTO DSM was still guided by the idea of peaceful coexistence, but it also showed how the new idea of the rule by law entered Chinese officials' sets of beliefs (see discussion in Chapter 5).

In 2018 China initiated 5 disputes (see Chapter 1). This is the highest number of complaints started by China in a year. As demonstrated in Chapter 5, this new litigious approach in the WTO DSM suggests that China has internalised the rules of the game, playing accordingly. In the 2018 Trade Policy Review report, MOFCOM officials acknowledge the importance of the DSM for China. Indeed, China 'respects the rulings of the Dispute Settlement Body of the WTO', actively participating in the negotiations of the reform of the WTO DSM (World Trade Organization, 2018b, p. 14). Chinese officials show China's commitment to the 'stability and authority of the multilateral trading system through recourse to and reliance' on the WTO DSM (World Trade Organization, 2018b, p. 14). This passage is extremely important to understand the Chinese approach. In this timeframe China is a self-conscious key player in the multilateral trading system, and is more active in the DSM. Building on the experience acquired since China's accession to the WTO, Chinese officials recognise the importance of taking an active role in the reform of the system. China 'respects the rulings' of the DSM, but it is also committed to the reform of the Appellate Body and the multilateral organisation. For China, then, updating the rules of the system with new values that are more in line with its sets of ideas is essential for the WTO to fulfil its dispute settlement function and maintain peaceful coexistence in international trade. In this sense, China now perceives itself 'as one of the main participants' in the WTO DSM. In its active role as one of the main users of the DSM, then, China is now ready to export its own sets of values and principles in the multilateral community,

shifting its approach from silent follower to active shaper of the organisation. In the same Trade Policy Review report MOFCOM officials declared that 'China will continue to comprehensively deepen reform, advance law-based governance in every dimension, and keep promoting the modernization of China's governance system and capacity' (World Trade Organization, 2018b, p. 3). This passage confirms the Chinese will to open up through strategic reforms, reinforcing ideas that have been circulated in the WTO DSM. In the reform of its legal system, China is building a country 'based on the rule of law'. China is committed to undertaking structural reforms as its 'main task'. Though, '[w]hile accelerating efforts to improve the socialist market economy, China will improve further the Chinese socialist system of laws, at the heart of which is China's Constitution, and build a socialist country based on the rule of law' (World Trade Organization, 2018b, p. 3). This passage, then, is evidence of the new idea of China that characterised its approach in the previous decade (see discussion in Chapter 5). External ideas acquired through the membership and the participation in the WTO and its DSM are settling as guiding principles in domestic reforms.

This new approach is evident in the 2021 Trade Policy Review report, in which MOFCOM officials comment on China's position in the WTO reform proposal. In November 2018 China released a Position Paper on WTO reform. This document highlighted three basic principles: 'the reform shall preserve the core value of the multilateral trading system; safeguard the development interests of developing members; and adhere to the practice of decision-making by consensus' (World Trade Organization, 2021b, p. 14). Alongside the three principles, the document made five main suggestions on the WTO reform: 'the reform should uphold the primacy of the multilateral trading system; the priority of the reform is to address the existential problems faced by the WTO; the reform should address the imbalance of trade rules and respond to the latest developments of the times; the reform should safeguard the special and differential treatment for developing members; and the reform should respect members' development models' (World Trade Organization, 2021b, p. 14). This passage provides important insights to understand China's action in the WTO DSM. Firstly, China actively participates in the reform process of the WTO DSM, proposing three principles and five suggestions on the new and improved dispute settlement system. Secondly, China's principles in the reform of the WTO DSM reflect its position and action in the multilateral organisation. Indeed, according to MOFCOM

officials the reform should preserve the 'core value' of the trading system. This is in line with the Chinese approach of compliance with international norms that characterised its action in the previous two decades of membership. China confirms its willingness to follow and maintain the status quo, preserving the same rules of the multilateral trading system. The second principle is focused on China's new role as 'representative' of developing countries values in the multilateral organisation. In exporting its values and principles in the multilateral trading system, China undertakes this leadership role in representing developing countries in the reform of the organisation. In 2021 Trade Policy Review MOFCOM officials continued to support the DSM. According to the document, China considers itself 'a victim' of unilateral and protectionist measures, including economic coercive ones (World Trade Organization, 2021a, p. 75). Chinese officials consider the WTO DSM as the trusted venue that 'could be relied on to find a satisfactory resolution to any trade dispute' (World Trade Organization, 2021a, p. 75). China has been complying with international norms and the rules of the multilateral trading system, learning how to act in the WTO and its DSM, knowing how to handle its trade tensions within and outside the multilateral organisation. In this passage, it is evident how China has now internalised the norms of the rules-based system, using them to its own advantage, complying with multilateral rules, and, at the same time, advocating for a reform of the same system. Respecting the rules-based system for China means to comply with the international norms and rules of the international community. Then, China is reinforcing the idea of ruling by law. At the same time, though, China does not seem to have completely replaced its pre-existing sets of ideas. According to MOFCOM officials, China is 'fully engaged in reviving the WTO Appellate Body', restoring the functioning of the DSM (World Trade Organization, 2021b, p. 15). This passage is important to understand the Chinese approach in the WTO DSM. While China is willing to comply with the already pre-existing multilateral institutions, it is also at the forefront of its reform. By participating in MPIA negotiations, China has a chance to influence the creation of the new institution according to its own sets of beliefs, or, at least, to have a say in the international community. What is extremely interesting to highlight in this passage is the commitment of China to protect the existing multilateral trade rules and its DSM, stressing the importance of multilateralism and mutual respect. Chinese officials reiterate their 'serious concern' and 'strong opposition' to 'unilateral and protectionist actions' in the multilateral trading system that are 'in serious violation of the

fundamental rules and spirit of the WTO' (World Trade Organization, 2021b, p. 15). Indeed, the Chinese government 'calls on all members to maintain open markets, and promote trade liberalization and facilitation. Trade frictions between members should be resolved in the framework of the WTO according to multilateral trade rules, and based on mutual respect' (World Trade Organization, 2021b, p. 15). While following the new idea of the rule by law in the protection of the rules-based system, China still values principles like mutual respect, as part of the idea of peaceful coexistence. This is evidence, then, of the theoretical propositions of the thesis (see discussion in Chapter 2). Ideas cannot be replaced overnight. New ideas can enter actors' belief system, but they are interpreted through existing paradigms. As demonstrated in the previous chapter (see discussion in Chapter 5), the new idea of the rule by law has been internalised by Chinese officials when using the WTO DSM. Since its accession to the WTO, China has been exposed to different ideas on the functioning of legal systems. The Western concept of the rule of law has been internalised (see discussion in Chapter 2) through domestic pre-existing normative beliefs, reforming their judicial system to pursue the standards imposed by the WTO. Nonetheless, the Western concept of the rule of law takes the meaning of the rule by law (see discussion in Chapter 5). International norms have been internalised by domestic actors, shaping new information, adapting new norms to the pre-existing normative framework. Chinese reforms of the judicial system to comply with international standards and requirements set out by the WTO and its DSM have been undertaken because of the adaptation of external information to the domestic normative framework (see discussion in Chapter 4 and Chapter 5). In this timeframe, the Chinese approach to international trade dispute settlement is more active, leading China to a frequent use of the WTO DSM. Furthermore, in this timeframe China takes part in the negotiations of the reform of the WTO and its DSM, as well as the creation of the MPIA. Chinese officials' action in this timeframe shows how the normative belief of the rule by law has been internalised, leading to a more intense use of the WTO DSM. As evidenced in this section, internalisation does not mean replacement of pre-existing normative beliefs. Indeed, pre-existing normative ideas are still present in the Chinese ideational framework. The programmatic belief of peaceful coexistence is still part of China's normative sets of ideas. This is in line with the proposition of the research and the theoretical framework proposed. Existing programmatic beliefs are not replaced by new ideas. New ideas are internalised to fit into the pre-existing sets

of beliefs.

This section showed how newly internalised normative ideas on the rule by law guided Chinese officials' action in the WTO DSM in the analysed timeframe. At the same time, the section highlighted how the pre-existing programmatic belief of peaceful coexistence is still present in Chinese officials' policy action towards the WTO DSM, guiding them in the reform of the multilateral organisation and in the negotiations for the creation of the MPIA.

### *6.6 The EU and China in the WTO and its DSM: reforming the system*

The previous sections have investigated the approach of the EU and China in the WTO DSM between 2018 and 2021. This section will look at the interaction of the two actors in the DSM, and how it evolved, from an openly litigious approach (see discussion in Chapter 5) to the joint proposal of the MPIA.

While this thesis is focused on the EU and China in the WTO DSM, it is necessary to highlight an important event in their bilateral relations during the timeframe under analysis. In 2019 EU institutions issued a Joint Statement on relations with China (European Commission, 2019b). In this document the EU refers to China as a 'systemic rival' and a 'strategic competitor'. China, then, is no longer considered a developing country. This is confirmed by the words of the Trade Commissioner Phil Hogan to the European Parliament. When the EU Commissioner for Trade Phil Hogan presented the Trade Policy Review<sup>53</sup> to the European Parliament's Committee on International Trade meeting, he referred to 'China's rise as an important partner but also a systemic rival' (European Commission, 2020b). For EU-China relations, this is a turning point. Even though the EU has been consistently more confrontational in the previous years (see discussion in Chapter 5), this is the first time that EU officials call China a rival. This new rhetoric against China, though, has not stopped the two countries from cooperating in the development of a joint proposal to overcome the

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<sup>53</sup> The Trade Policy Review of the EU differs from the Trade Policy Review of the WTO. Within the EU, the Trade Policy Review launched by the Commission and presented to the European Parliament was a comprehensive consultation on the strategic role of trade policy for the EU. While the EU Trade Policy Review takes into consideration the WTO and its instrument, it does not correspond to the Trade Policy Review required by the WTO for all its members.

crisis of the Appellate Body in the WTO. Indeed, the same document advocates for closer cooperation between the EU and China on the reform of the WTO and its DSM.

As already mentioned in the previous sections, in 2018 the EU advanced a proposal for the modernisation of the WTO (European Commission, 2018e). Even though the proposals for a new reform of the WTO and the creation of the MPIA were led by the EU, China has been part of the negotiations. In a statement by the Department of Treaty and Law of MOFCOM, Chinese officials acknowledged the importance of the reform. In July 2020, the participants in the MPIA, including the EU and China, nominated the arbitrators of the new dispute settlement system, notifying the WTO. Among them, Chinese delegates supported Professor Yang Guohua, who was selected as a member. According to Chinese officials, '[t]he establishment of the pool of arbitrators is a necessary step to fully implement the Multi-party Interim Appeal Arbitration Arrangement, which is of great significance for maintaining the effective operation of the dispute settlement mechanism and safeguarding the multilateral trading system based on rules' (Ministry of Commerce People's Republic of China, 2020). This passage highlights the integration of China in the multilateral trading system, as it is now part of the negotiations and the establishment of new institutions like the MPIA. Chinese officials value its 'significance for maintaining the effective operation' of the WTO DSM, 'safeguarding the multilateral trading system based on rules'. This passage, then, is further evidence that China has been internalising external norms like the rule of law, advocating for a multilateral rules-based trading system. This willingness to maintain a rules-based system based on the rule of law is evidenced in the participation of China in the working group on WTO reform. In the EU 2020 Trade Policy Review report, European officials reinstated the EU's 'great importance to preserving an open, rules-based multilateral trading system, with the WTO at its core but, at the same time, emphasizes the need for a comprehensive reform of the WTO in respect of its negotiating, monitoring and dispute settlement functions' (World Trade Organization, 2019c, pp. 39–40). In this passage the EU confirms its approach to the WTO DSM, stressing the importance of a multilateral rules-based system, which is based on a well-functioning WTO DSM. Furthermore, the Trade Policy Review report highlighted the bilateral work that the EU and China are doing in the reform process of the WTO and its DSM. Indeed, the EU and China created a working group on WTO reform. The EU took the lead in the proposal of the

MPIA and the reform of the WTO DSM, cosponsoring proposals, enhancing transparency, improving 'compliance with notification requirements and to provide procedural guidelines for WTO Committees and Councils dealing with trade concerns' (World Trade Organization, 2019c, pp. 39–40). Furthermore, the EU participated in discussions on WTO reform in different venues, like the joint EU-China Working Group on WTO reform established in 2018 (World Trade Organization, 2019c, pp. 39–40). Despite the bilateral cooperation between the two actors, the discourse between the two actors is still animated. Continuing the trend seen in the previous timeframe (see discussion in Chapter 5), Chinese and European interactions in the WTO were extremely heated. Evidence of this behaviour is found in the minutes of the meetings for the WTO Trade Policy Review. In the 2020 Trade Policy Review of the EU, China opened the meeting, jumping directly on the critiques of the European approach in tackling the WTO crisis. In particular, the Chinese representative stressed the disagreement with the 'EU's assessment that the current crisis of the WTO roots in the lack of rules to address distortions caused by so called "non-market policies and practice"' (World Trade Organization, 2020b, p. 13). According to the Chinese official, '[i]t is a dangerous misconception, which will lead the WTO reform to a wrong direction and bring about further fragmentation among its members' (World Trade Organization, 2020b, p. 13). This passage offers interesting insights on the Chinese approach to the WTO. In the minutes of the meeting of the 2020 Trade Policy Review of the EU, the Chinese representative to the WTO offers a valuable insight on the new approaches of the EU and China in this timeframe. Not only is the discourse against the EU more confrontational and openly hostile, but China is also now taking a clear and different position in the WTO in terms of understanding of multilateralism and rules-based system. According to the Chinese official, the EU's approach to WTO reform is not correct, possibly leading to a reform in a 'wrong direction'. They blame the EU for taking protectionist and defensive measures against China and other members, that – in their view – work against the same rules-based system which the EU is meant to protect. The two actors are representatives of two different sets of ideas that guide their action in the WTO DSM. China has specific ideas and is now willing to export its own sets of values to the multilateral community, challenging the Western based approach that is represented by the EU. The conversation continues with the words of the EU Commissioner Dombrovskis, who states that 'China must do its fair share to

renew the multilateral system, and show a willingness to go further in opening up and maintaining a level playing field' (European Commission, 2020a).

According to the EU, China needs to acknowledge its role as a key player in the multilateral trade system. This is in line with the discourse between the EU and China analysed in the previous chapter, where the EU wanted China to push forward its reform, and openness of its market. In this timeframe, the discourse evolves with an even more direct tone of the EU against China, encouraging it to follow the multilateral rules of the system in the reform of the WTO and its DSM.

### *6.6.1 EU-China dispute in the WTO DSM*

Between 2018 and 2021 the EU and China initiated 8 and 7 complaints respectively in the WTO DSM. However, only one of those disputes concerned the two actors as complainant and respondent. On June 2018 the EU requested consultations with China concerning measures on the transfer of foreign technology in China (World Trade Organization, 2018a). When the EU requested consultations against China in the WTO, Trade Commissioner Malmström acknowledged the importance of technological innovation and know-how as the 'bedrock' of European knowledge based economy (European Commission, 2018b). According to the trade official, it is against international trade rules to 'surrender this hard-earned knowledge at its border' (European Commission, 2018b). Indeed, '[i]f the main players don't stick to the rulebook, the whole system might collapse' (European Commission, 2018b). This passage is important as it highlights the confrontational tone of the discourse between the EU and China. Furthermore, Commissioner Malmström emphasises the prominent role of China as a key player in the WTO and in the multilateral trading system. As a main player, China needs to 'stick to the rulebook'. When it fails to do so, Europe is ready to use the tools of the system to remedy the alleged wrongdoing of China, initiating a complaint in the DSM. Even if the trend seems to suggest a decrease in complaints in the WTO DSM (see Chapter 1), and the reform of the WTO DSM has been mainly promoted by the European institutions, the EU still refers to the WTO DSM as the main venue to protect its values and interests in international trade. Despite the will to reform the system and the creation of the new MPIA, the EU's

approach is still based on the same normative beliefs that characterised its actions in the previous timeframes.

The EU claims revolved around the inconsistency of Chinese laws with Articles 3, 28.1(a), 28.1(b), 28.2, 33, 39.1 and 39.2 of the TRIPS Agreement, Article X:3(a) of the GATT 1994, and Paragraphs 2(A)(2) of Part I of China's Protocol of Accession (World Trade Organization, 2018a). After Chinese Taipei and the US joined consultations, the EU presented an additional and revised request for consultations, providing more detailed examples of the measures that were the subject of the dispute (World Trade Organization, 2019a). The panel has never been established, and the dispute is still marked as 'in consultation' as of 2023.

### *6.7 Policy actions of the EU and China in the WTO*

The approach to the WTO of the EU and China between 2018 and 2021 seems different compared to the other timeframes (see Chapter 4 and Chapter 5) because both actors are engaged in the reform of the WTO DSM and the establishment of the new MPIA. While actions seem to change, and the discourse seems different to the other timeframes, the programmatic beliefs are still the same (see summary in Table 6.1). The need for a rules-based system is deeply intertwined with European policy action. As leader and main proponent of the reform process of the WTO, the EU's action is still guided by ideas of free trade, promoting multilateralism through the reform of the DSM and the creation of the MPIA. At the same time, the establishment of the new MPIA and the consequent maintenance of the two-step dispute settlement process are evidence of the strong belief of the rule of law in international trade. At the same time, China's actions in the WTO DSM are still guided by the idea of State-led growth. While acknowledging the need to reform the domestic economy according to international standards set up by the WTO and its DSM, China's belief in the presence of the state in the economy is still strong. The previous chapter evidenced the internalisation of the new belief of the rule by law that was at the core of China's actions in the WTO DSM in the previous timeframe (see discussion in Chapter 5). The behaviour of China during 2018 and 2021 confirms the presence of this new belief in China's ideational framework. The belief in the rule by law led China to a more litigious approach in the WTO DSM. This is also highlighted by the crystallisation of this

external idea in the domestic legal system through structural reforms. At the same time, though, pre-existing beliefs have not disappeared. The Chinese approach in the reform of the WTO DSM and the creation of the MPIA is not the same as the European one. Chinese officials still stress the importance of mutual respect and win-win cooperation in the establishment of the new institution. Chinese officials still operate in line with the belief of peaceful coexistence that characterised their actions in the previous decades (see discussion in Chapter 3 and Chapter 4). The findings of this chapter, then, are in accordance with the theoretical propositions of the thesis. Ideas can change, but actors need time to adjust to them and to act accordingly.

**Table 6.1** *Programmatic beliefs and policy actions between 2009 and 2017*

|              | <b>Programmatic beliefs</b> | <b>Policy actions</b>  |
|--------------|-----------------------------|--|
| <b>EU</b>    | <i>Free Trade</i>           | <i>Promotion of multilateralism in the reform of the WTO DSM</i> |
|              | <i>Rule of Law</i>          | <i>Leadership role in MPIA proposal</i>                          |
| <b>China</b> | <i>State-led growth</i>     | <i>Opening-up reforms</i>  |
|              | <i>Peaceful coexistence</i> | <i>Mutual respect in the reform of the WTO DSM</i>               |
|              | <i>Rule by Law</i>          | <i>Use of the WTO DSM, domestic reforms</i>                      |

### 6.8 Conclusion

The chapter analysed the approach of Chinese and European officials in the WTO DSM between 2018 and 2021. It showed how their actions were connected to ideational domestic factors, guiding officials in the WTO DSM.

The chapter demonstrated how the EU continued to be guided by the programmatic beliefs of free trade and the rule of law. The chapter highlighted the link between the promotion of multilateralism in the reform of the WTO DSM and the economic belief of free trade. The chapter, then, demonstrated how the leadership in

the creation of the MPIA with the promotion of the rules-based international trade system was connected to the legalistic belief of the rule of law.

The chapter analysed the Chinese approach in the DSM, concluding that in this timeframe China was guided by the programmatic beliefs of State-led growth and rule by law. The chapter demonstrated how Chinese domestic reforms of opening-up and the participation of China in the WTO DSM were connected with State-led economic growth. The chapter showed that Chinese officials acted according to the newly internalised belief on the rule by law, linking it to the more litigious use of the WTO DSM. Nonetheless, one of the chapter's findings is that normative ideas cannot be quickly replaced. The programmatic belief of peaceful coexistence is still present in the Chinese approach to the WTO DSM, guiding Chinese officials in the reform process of the organisation and in the creation of the new MPIA.

Ultimately, the chapter analysed the relationship between the EU and China, examining the evolution of their bilateral discourse, confirming the role of their domestic programmatic beliefs in their exchange in the WTO and its DSM.

## 7 Conclusion

The approach of the EU and China in twenty years of membership of the WTO DSM has changed. This study showed the evolution of their different approaches in the three timeframes of analysis, tracing the normative ideas that guided European and Chinese trade officials in the DSM. Normative beliefs on the functioning of the economy and legal systems matter in trade officials' approaches to the WTO DSM, orienting their policy action in the multilateral institution. They are at the core of actors' policy actions in international trade dispute settlement, effecting change in their approaches to the WTO DSM. The study found that change in actors' approaches is due to their programmatic beliefs. The EU and China have changed their approach in the WTO DSM either to align it to their pre-existing programmatic beliefs, or to internalise new external information.

As summarised by Table 7.1, between 2001 and 2021 the two actors have changed their approaches to the WTO DSM. Despite the multiple crises of the WTO with the stall of the negotiations of the Doha Development Agenda, and the lack of consensus over the reform of the DSM and the approval of Members of the Appellate Body, the EU has shown a firm belief in international trade dispute provided by the WTO DSM. Despite a reduction in the number of disputes initiated in the WTO DSM between 2009 and 2017 compared to the previous years, and the reformist approach with the creation of the MPIA between 2018 and 2021, the EU has been guided by the same programmatic beliefs that oriented their approach since the Uruguay Round. While the EU's approach changed from being an active user, to an exporter of its normative ideas, and, ultimately, to an advocate for reforms, the programmatic beliefs at the core of European officials' action in the WTO DSM remained stable. Normative ideas on free trade, protecting multilateralism in a rules-based system, and the rule of law had been fundamental to navigate uncertain times in the WTO and its DSM. These programmatic beliefs are linked to a liberal worldview. The liberal worldview of the EU embodies those ideas that had been typically associated with the West. Ideas like free market economy, the protection of individual rights and freedoms, and the rule of law are at the core of Western and European identity. The study demonstrated how normative ideas on the rule of law and free trade remained stable throughout the twenty years of analysis, guiding European action in the WTO DSM. The study

demonstrated how actors' worldviews remained constant during the analysed period. The EU's programmatic beliefs remained the same. European officials have been guided by beliefs of free trade and the rule of law throughout the three timeframes, despite the change in their approach.

**Table 7.1** *Approaches to the WTO DSM of the EU and China in the three timeframes*

|              | <b>2001-2008</b> | <b>2009-2017</b>  | <b>2018-2021</b> |
|--------------|------------------|-------------------|------------------|
| <b>EU</b>    | Active user      | Exporter of ideas | Reformer         |
| <b>China</b> | Silent user      | Active user       | Reformer         |

The Chinese approach to the WTO DSM changed over the twenty years examined. The study showed how China started its membership in the WTO and its DSM as a silent user of international trade dispute settlement, initiating only 2 disputes between 2001 and 2008. After 2009 the Chinese approach to the WTO DSM was more active, initiating more disputes in the dispute settlement. The research showed how this more active approach to international trade dispute settlement was connected to the internalisation of new ideas on the rule of law. The membership to the WTO led China to be in contact with new ideas on the functioning of the legal system. Domestic reforms and the need to comply with international standards contributed to the internalisation of the Western principle of the rule of law. Nonetheless, the study showed that new ideas are adapted and internalised in actors' normative frameworks through their pre-existing sets of beliefs. Indeed, the Western principle of the rule of law has been adapted and internalised through Chinese normative pre-existing ideas, in order to fit with its Confucianist worldview and its programmatic beliefs on State-led economic growth and peaceful coexistence. This process led to the internalisation of the Western principle of the rule of law in the Chinese normative belief of the rule by law. The study showed how new information is internalised through pre-existing sets of beliefs, in line with actors' worldviews. Furthermore, it demonstrated how pre-

existing normative beliefs are not replaced. Even if trying to act according to the newly internalised idea of the rule by law, the Chinese approach to the WTO DSM is still bound to its pre-existing Confucianist normative sets of belief of peaceful coexistence. Between 2018 and 2021 the Chinese approach changed again, with it being focused on the reform of the WTO and its DSM, while continuing to use dispute settlement. The research showed how the policy action of Chinese officials was guided by the programmatic beliefs of State-led growth, peaceful coexistence, and the newly internalised rule by law. The study demonstrated how normative beliefs are slower to change. The research showed how the programmatic belief of peaceful coexistence was still present in the Chinese normative set of beliefs between 2018 and 2021, guiding trade officials' action in the negotiations of the reform of the WTO DSM and the creation of the MPIA. The research demonstrated how new information is received by actors through the process of internalisation, fitting with the pre-existing worldview and programmatic beliefs.

The thesis showed that even when approaches might become similar, the normative beliefs underpinning them are different. Both the EU and China have been active members of the WTO DSM, and both have been involved in the reform of the dispute settlement and the trade organisation. However, the normative ideas at the core of their policy action were different. European officials' policy action was guided by liberal beliefs of free trade and the rule of law, while Chinese action was based on Confucianist programmatic beliefs. Peaceful coexistence and State-led economic growth have guided Chinese officials in the WTO DSM. The EU and China's normative ideas are different. Further evidence of their different normative sets of ideas is represented by Chinese internalisation of the Western concept of the rule of law. New information that circulates in international institutions like the concept of the rule of law is mediated through actors' pre-existing worldviews and programmatic beliefs. New information, then, is internalised to fit into the pre-existing normative set of ideas. This process of internalisation is further evidence of the claim that similar approaches to international trade dispute settlement do not necessarily correspond to similar normative frameworks. Worldviews and programmatic beliefs are responsible for actors' policy action, as new information is processed through them.

Ultimately, the thesis showed the causal mechanisms between programmatic beliefs and policy actions of EU's DG Trade and China's MOFCOM in the WTO DSM,

demonstrating *how* and *why* ideas matter. This conclusion will summarise the theoretical contribution of the study in the next section. Then, it will go through the limitations of the study, suggesting new areas of future research.

### 7.1 From programmatic beliefs to policy actions

The thesis showed how normative domestic ideas like programmatic beliefs can be conceptualised as drivers of actors' policy actions in international trade dispute settlement. The study analysed the policy actions of the EU and China in the WTO DSM over a twenty-year timeframe, connecting them to normative ideas on the functioning of legal system and the economy.

**Table 7.2** *The EU and China's programmatic beliefs and policy actions between 2001 and 2021*

|                   | EU                   |  | China                       |  |
|-------------------|----------------------|--|-----------------------------|--|
|                   | Programmatic beliefs | Policy actions   | Programmatic beliefs        | Policy actions   |
| 2001<br>-<br>2008 | <i>Free trade</i>    | <i>Promotion of multilateralism,<br/>Use of WTO instruments like Trade Policy Review</i> | <i>State-led growth</i>     | <i>Trade liberalisation through institutional reforms</i>        |
|                   | <i>Rule of law</i>   | <i>Maintenance/promotion of a rules-based system,<br/>Use of the WTO DSM</i>             | <i>Peaceful coexistence</i> | <i>Preference for consultations and mediation in the WTO DSM</i> |
| 2009<br>-<br>2017 | <i>Free Trade</i>    | <i>Promotion of multilateralism<br/>Use of WTO tools like Trade Policy Review</i>        | <i>State-led growth</i>     | <i>Opening-up reforms</i>  |

|                    |                    |   |                             |  |
|--------------------|--------------------|---|-----------------------------|--|
|                    |                    |   |                             | <i>Compliance with the multilateral system</i>   |
|                    | <i>Rule of Law</i> | <i>Maintenance/promotion of a rules-based system</i><br><br><i>Intensive use of the WTO DSM</i> | <i>Peaceful coexistence</i> | <i>When possible, preference for outside settlement</i><br><i>Cautious style in formal documents</i> |
|                    |                    |   | <i>Rule by Law</i>          | <i>Active use of the WTO DSM</i>   |
| <b>2018 - 2021</b> | <i>Free Trade</i>  | <i>Promotion of multilateralism in the reform of the WTO DSM</i>                                | <i>State-led growth</i>     | <i>Opening-up reforms</i>  |
|                    | <i>Rule of Law</i> | <i>Leadership role in MPIA proposal</i>   | <i>Peaceful coexistence</i> | <i>Mutual respect in the reform of the WTO DSM</i>   |
|                    |                    |   | <i>Rule by Law</i>          | <i>Use of the WTO DSM</i><br><br><i>Domestic reforms</i>   |

As shown in Table 7.1, the EU evolved from being an active user to a reformer of the system: a clear change in its approach to the WTO DSM. However, European officials had been guided by the same programmatic beliefs throughout the time period in question. My analysis of the EU's approach to the WTO DSM between 2001 and 2021 confirms that European officials were guided by programmatic beliefs of free trade and the rule of law.

Between 2001 and 2008, the EU's policy action of multilateralism was linked to the programmatic belief of free trade. In this timeframe, the EU's discourse was

oriented towards the promotion of multilateralism in international trade, demonstrating that it chose the WTO and its DSM to enhance free trade. The belief in free trade was, indeed, part of the EU's core normative framework. As the WTO negotiating function had been stuck since the Doha Round in 2001, the dispute settlement of the organisation was seen as the appropriate (and only) venue to promote its normative beliefs at a global level, as it ensured the proper enforcement of multilateral rules, ultimately safeguarding free trade in the international community. Between 2009 and 2017, the EU confirmed the strong belief in free trade at the core of its trade policy. The promotion of the belief of free trade was achieved through the WTO DSM. Despite the controversies and the crises faced by the EU in the WTO and its DSM connected to the stall of the Doha Round, the EU reaffirmed its existing normative ideas on trade. Indeed, these scenarios provided the EU with the opportunity to question the appropriateness of its normative beliefs, strengthening its domestic sets of ideas. This behaviour, then, was in line with the theoretical expectation of the thesis as outlined in Chapter 2. Actors that are aligned with international norms are more incentivised to be part of the international community as their normative beliefs are similar to those norms. Building on the literature on ideas (Checkel, 1999; Blyth, 2002; Acharya, 2004; Pang, 2007; Yan and Xu, 2008; Wang and Blyth, 2013; Shaffer, 2021; Calvert, 2022), ideas are strengthened if they are in accordance with the international community. European programmatic beliefs on the functioning of the economy and trade were reinforced because they resonated with the normative sets of beliefs of the WTO and its DSM. Ultimately, between 2018 and 2021, the EU's approach to the WTO DSM was oriented towards reforming the system. The EU promoted itself as the leader of the reforms both externally and domestically with its own member states. At an informal meeting of EU Trade Ministers, European Trade Commissioner Phil Hogan addressed the importance of the EU as a leader in the WTO reform process (European Commission, 2020c). As a former leader in the Uruguay Round and a responsible landlord for more than two decades (see discussion in Chapter 3 and Chapter 4), the EU's natural role in this moment of crisis is to take the lead, once again, in the reform of the WTO. To preserve and enhance multilateralism in international trade, the EU saw its role of leader in WTO reform as necessary. Again, the EU acknowledged its responsibility in the WTO as a protector of the multilateral rules-based system, interpreting it through the necessity to take the lead in its reform process.

As also shown in Table 7.2, the EU's programmatic belief of the rule of law remained stable, guiding trade officials' policy actions in the WTO DSM throughout the twenty years analysed. Between 2001 and 2008, the policy action that the EU undertakes is the preservation of the rules-based system. The discourse around the WTO DSM is evidently based on the promotion of a rules-based system. International trade dispute settlement is necessary to promote the EU's normative beliefs. Despite the deep crisis of the Doha Round, the EU believes that the WTO DSM is the proper venue to protect and promote a multilateral trade system based on the rule of law. Between 2009 and 2017, the policy action of the EU is guided by the programmatic belief of the rule of law through the promotion of a rules-based system and the use of the WTO DSM. Despite financial and institutional crises, the EU continued to choose the WTO DSM as the appropriate venue to protect its economic interests, reinforcing its commitment to a multilateral rules-based system. The stall of the Doha Round, the negotiations of updated rules of the Dispute Settlement Understanding, and the global financial crisis only made the EU's belief in the rule of law stronger. Relying on its normative sets of beliefs, the EU chooses the WTO DSM to implement the rule of law multilaterally. The WTO DSM, indeed, remains the preferred venue for the EU to enforce and promote the rule of law in international trade because it is congruent with European sets of normative ideas. According to the literature on ideas (see Chapter 2), worldviews and normative beliefs are more evident in times of crisis. Actors question their sets of ideas, evaluating their appropriateness as guiding principles in uncertain times. Even though the 2008 global financial crisis had a relatively low impact on international trade and the WTO DSM compared to other sectors, it was still a major event in the global economy. Normative ideas on the rule of law are appropriate to navigate the uncertain times that the WTO and its DSM faced, as they are congruent to the ideas upon which the multilateral organisation (and the wider international trade system) was built. According to the literature on ideas (Checkel, 1999; Blyth, 2002; Acharya, 2004; Pang, 2007; Yan and Xu, 2008; Wang and Blyth, 2013; Shaffer, 2021; Calvert, 2022), ideas are strengthened if they are in accordance with the international community. European programmatic beliefs on the functioning of the legal system and international trade dispute settlement are reinforced because they resonate with the normative sets of beliefs of the WTO and its DSM. Between 2018 and 2021, the EU has continued to be an active user of the jurisdictional branch of the WTO, even without the possibility of appeal. The WTO DSM remains the

preferred venue to 'enforce rights' and promote the EU's ideas based on the protection of the rule of law in multilateral trade. The reformist approach of the EU to the WTO and its DSM, with the creation of the MPIA, is grounded in the normative belief that guided EU's policy action in the past.

China's membership to the WTO and its DSM was contentious (see discussion in Chapter 3). The Chinese approach to the WTO DSM changed throughout its first twenty years of membership. While the programmatic beliefs of State-led growth and peaceful coexistence remained stable throughout the analysed period, China internalised the programmatic belief of the rule by law.

Between 2001 and 2008, China was guided by the belief of State-led growth, connected to structural reforms at its institutional and market level. It is interesting to highlight how the Chinese understanding of WTO rules and principles was different to the Western/European expectation. Even though most of the reforming process was due to Chinese obligations after its accession to the WTO DSM, the Chinese interpretation of WTO documents was different. As discussed in Chapter 4, the Chinese understanding of the WTO was based on the principle of 'progressive free trade'. The Chinese community of officials and experts working on the WTO saw the multilateral organisation as a 'partial' free trade organisation, as it provided members with the possibility to pursue bilateral and regional agreements, and the chance to opt out of specific rules due to China's developing status (World Trade Organization, 2006b, 2008d). This interpretation of the WTO as a 'partial' free trade organisation was in contrast with the European and Western discourse. This different interpretation and view of the multilateral trade organisation is further evidence of the role of normative beliefs in international trade dispute settlement. While the WTO was considered as the main promoter and enabler of liberal free trade, Chinese normative beliefs that were focused on the central role of the state in the economy saw the multilateral organisation as 'partially' devoted to free trade. Chinese normative beliefs were responsible for its view of the WTO as 'partial' free trade organisation. As for China the state was at the centre of the economy, programmatic beliefs on the functioning of the economy adapted the liberal ideas of free markets. Between 2009 and 2017, China was more eager to participate in international trade, complying with international trade liberal rules, without abandoning its normative beliefs on the central role of the state in the economy. The analysis in Chapter 5 demonstrated how Chinese trade officials

were still guided by the belief of State-led economic growth which was translated into policy action through reforms of opening up and compliance with WTO multilateral rules and its DSM. Ultimately, between 2018 and 2021, Chinese actions in the WTO and its DSM were still based on the same principle of State-led economic growth that guided its actions in the previous timeframes. The role of the state is still central in economic reforms. Despite the new reformist and more active approach to the WTO and its DSM, Chinese action was still based on the same normative beliefs that characterised its action in the previous timeframes.

My analysis of Chinese programmatic beliefs on the functioning of legal systems resulted in the identification of the normative idea of peaceful coexistence, as a pre-existing domestic belief, and the normative idea of the rule by law, as a result of the internalisation process after Chinese accession to the WTO and its DSM. Between 2001 and 2008, the Chinese programmatic belief of peaceful coexistence guided trade officials in their policy action of dialogue and consultations as preferred methods of dispute settlement. According to the domestic legal system of China, alternative dispute resolution tools like mediation or arbitration were widely encouraged (see discussion in Chapter 3). As demonstrated in Chapter 4, Chinese officials accepted the use of conciliation, as it was in line with its domestic legal tradition, being consistent with the belief of peaceful coexistence at the core of their judicial system. At the same time, Chinese action in the WTO DSM suggested a gradual shift in its preference for alternative dispute resolution. As discussed in Chapter 4, an increasing number of legal disputes in domestic courts corresponded with a gradual shift in the Chinese approach to international trade dispute settlement. While China was still relatively dormant in the DSM between 2001 and 2008, it brought three complaints to the WTO DSM (one in 2002, one in 2007, and one in 2008). Even though the number of complaints was still low, especially if compared to the rapid growth in trade volume and GDP, these disputes were evidence of the impact of external ideas acquired through the participation of China in the WTO and its DSM. In the WTO China was exposed to new information. China's presence in the international organisation was an opportunity to be in contact with new ideas and practices. These new ideas, though, were interpreted through pre-existing sets of beliefs (see discussion in Chapter 2). While the analysis confirmed a coherence between Chinese policy actions and the preference for mediation and consultation, China had the opportunity to be exposed

to new information in the WTO DSM, observing more experienced members, and internalising new practices according to its own belief system. The exposure to a jurisdictional space like the WTO DSM prompted Chinese officials' internalisation of new information without abandoning the Confucianist idea of peaceful coexistence. Between 2009 and 2017, China was guided by the newly internalised programmatic belief of the rule by law, without abandoning the normative belief of peaceful coexistence. While China still preferred alternative dispute settlement remedies, and used a cautious style in formal documents and expressions connected to a 'win-win' approach, its approach in the WTO DSM became more aggressive. The Western idea of the rule of law in the WTO DSM acquired 'Chinese characteristics' (see discussion in Chapter 3 and Chapter 5), internalised through pre-existing ideas on the functioning of legal system and the economy, to better fit trade officials' programmatic beliefs. As demonstrated in Chapter 5, the Chinese idea of the rule of law, or, better, the rule by law, meant to *respect* the law, ensuring harmony in all the aspect of social life, promoting peaceful coexistence in domestic and external relations. Following the letter of the law was conceived to maintain harmonious relationship to pursue State-led economic growth. Building on pre-existing normative beliefs, the concept of the rule of law internalised through the idea of harmonious relations, then, took on the meaning of maintaining stability through law. The newly internalised programmatic belief of the rule by law showed that new ideas were internalised through existing sets of beliefs, according to actors' worldviews. Furthermore, it showed how pre-existing beliefs were not substituted by new normative ideas. Even if acting according to the newly internalised idea of the rule by law, the Chinese approach to the WTO DSM was still bound to its pre-existing Confucianist normative sets of belief of peaceful coexistence (see definition in Chapter 3). The coexistence of the two programmatic beliefs was also evident between 2018 and 2021. The belief in the rule by law led China to an active role in the WTO DSM, in which it initiated more disputes. At the same time, though, pre-existing beliefs have not disappeared. The Chinese approach in the reform of the WTO DSM and the creation of the MPIA was not the same as the European one. Chinese officials still stressed the importance of mutual respect and win-win cooperation in the establishment of the new institution. Chinese officials were still in line with the belief of peaceful coexistence that characterised their actions in the previous decades.

## 7.2 *Theoretical contribution*

The thesis showed how programmatic beliefs can be studied in the WTO DSM. I argued that programmatic beliefs guide actors' policy action in the WTO DSM. I defined programmatic beliefs as 'guiding' ideas, providing guidance for actors when reaching policy actions in an institution. Programmatic beliefs are those ideational frameworks that lead actors to behave in a certain manner, developing specific policies or deciding to act in a specific way. This understanding of programmatic beliefs allowed me to trace the causal mechanism behind trade officials' policy action in the WTO DSM, connecting domestic ideas related to the economy and legal systems to states' approaches to international dispute settlement.

Furthermore, this study contributed to the literature on ideas by conceptualising and empirically analysing different categories of ideas. Scholars on ideas have differentiated between normative beliefs as those ideas that help actors to distinguish just from unjust, and causal beliefs as those ideas that provide a framework on how to act. Building on this distinction, I proposed a more nuanced categorisation of ideas, looking at worldviews and programmatic beliefs as normative ideas, and policy actions as closer to causal ideas. In addition, the study proved that normative ideas like programmatic beliefs can be explanatory frameworks for social phenomena in international political economy. By mapping the origin of the EU and China's domestic worldview, I highlighted the thread between different levels of normative ideas, connecting worldviews to programmatic beliefs.

The liberal worldview of the EU has been associated with ideas on economy of free trade, as well as the legalistic idea of the rule of law. These two beliefs have guided the DG Trade in its policy action in the WTO DSM. The Chinese Confucianist worldview has been associated with the programmatic beliefs of State-led growth and peaceful coexistence. Both programmatic beliefs have been guided by the policy action of MOFCOM in the WTO DSM. One key finding of the research is that worldviews do not change, or, rather, compared to programmatic beliefs and policy actions, are least subjected to change. As the normative core of actors' ideational framework, worldviews are embedded in the bureaucratic system of states. Programmatic beliefs are connected to them, and new information is processed to

conform with the pre-existing normative framework. In line with the literature on ideas (P. A. Hall, 1993; Blyth, 2002; Schmidt, 2008a), uncertain times like the crisis of the Doha Round, the Global Financial Crisis, or the stall of the work of the Appellate Body are favourable moments for actors to reflect on the appropriateness of their normative framework to overcome times of crisis. The study showed how the EU relied on its liberal worldview and programmatic beliefs to navigate the different crises encountered during the three timeframes analysed. This suggests that uncertain times like economic or institutional crisis in international institutions can strengthen domestic normative beliefs when actors' normative beliefs are aligned with those of the international community. As European programmatic beliefs were in line with the normative framework on which the WTO was built, practice and discourse in the WTO and its DSM reinforced them. This suggests that when actors' normative ideas are in line with the normative ideas of international institutions, they are less likely to change. Furthermore, in times of uncertainty, actors' normative beliefs are reinforced because they are in accordance with the normative framework of international institutions, confirming their appropriateness to overcome crisis.

Nonetheless, one of the main findings of the study is that some ideas *can* change, or, better, when exposed to new information, actors internalise new ideas according to their pre-existing normative framework. This happened to China twice. The first example of this internalisation was during the open door policy, when neoliberal ideas were filtered through existing ideas on economy, leading to the belief on State-led growth. Indeed, the Chinese open door policy was based on the idea of China's modernisation through the internalisation of Western ideas, filtered through its own institutional and cultural traditions (Huan, 1986, p. 1). In other words, the idea of the centrality of China, part of its worldview, filtered and resisted Western ideas. External ideas did not substitute pre-existing beliefs but were filtered, adapted, and internalised through them. The second example happened after China joined the WTO DSM. When exposed to new and different ideas on law and legal systems, China absorbed and internalised the concept of the rule of law according to its pre-existing sets of beliefs. In both cases, then, new information has been processed through the pre-existing normative framework available to the actor. In this sense, the argument on programmatic beliefs as guides of policy action still stands. In other words, programmatic beliefs are guides of norm diffusion and ideational change. The study

showed how the accession of China to the WTO and its DSM was a major opportunity for systemic change (see discussion in Chapter 3 and Chapter 4), leading local and central government to structural reforms. The study, then, contributed to explain *how* and *why* actors internalise new ideas that circulate in international organisations like the WTO DSM.

Ideational change, though, takes time, especially at the level of normative ideas. The thesis demonstrated how new and old ideas can coexist and guide actors in their policy actions. Chapter 5 and Chapter 6 showed how MOFCOM officials internalised the idea of the rule by law, resulting in a more intense use of the DSM. At the same time, Chinese officials still had a strong belief in peaceful coexistence, which oriented their negotiation of the MPIA and the reform of the WTO (see Chapter 6), and, when possible, their preference for alternative dispute resolution (see Chapter 5).

The study contributed to the literature on norm diffusion and ideational change, conceptualising and testing the process of internalisation. Internalisation has been understood as the process that allows programmatic beliefs to acquire external information, leading to a change in policy action in international institutions. Building on the concept of localisation, which ‘describes a process in which external ideas are simultaneously adapted to meet local practices’ (Acharya, 2004, p. 251), local practices are made consistent with an external idea. Building on this process, internalisation looks at how external information is mediated and incorporated in pre-existing sets of normative beliefs, leading to a change in policy action in international institutions. Internalisation looks at how external information becomes part of normative beliefs, through practice and discourse.

Building on the literature on norm diffusion and change (P. A. Hall, 1993; Acharya, 2004; Shaffer, 2021), I conceptualise internalisation to understand change in policy behaviour. Contributing to the constructivist literature on ideas and norm diffusion, the study showed how external information is processed through normative domestic beliefs in international settings, leading to a change in decision-making. This is fundamental in two ways. Firstly, by conceptualising internalisation as a domestic process, the focus shifts onto the role of domestic normative beliefs as drivers of change in international institutions. Secondly, empirically, it helps understand how new information available through states’ participation in international economic organisation like the WTO and its DSM is processed through domestic normative

beliefs. Ultimately, this framework helped explain how international norms are received and internalised by developing countries. In this sense, this theoretical framework can shed a light on the role of the rise of China in international institutions, and, more specifically, in global economic governance.

The theoretical framework adopted highlights the importance of normative factors in states' approaches to international dispute settlement, focusing on the causal mechanism behind actors' policy actions and programmatic beliefs. This is fundamental to understand the nuances in states' behaviour in international dispute settlement, providing additional evidence of the relationship between domestic norms and international institutions.

### 7.3 *Limitations of the study and further research*

The purpose of the study is not to discard all the previous theories through which we can explain the participation of states in international trade dispute settlement, but to underline how the inclusion of normative ideas as causal factors can provide a richer explanation. The aim of this study is not to argue that rationalist theories are ill-suited as explanations for causal mechanisms in the WTO DSM. On the contrary, this research aims to add a different perspective to structural and interest-based drivers on the participation of states in international trade arbitration. By clarifying that normative ideas *matter* as explanatory factors in the WTO DSM, the main aim of the thesis is to supplement previous studies on the matter, offering a different but complementary point of view.

In addition, this study is limited both in *space* and *time*. The research focuses on the EU and China as representatives of different ideational sets. The two actors have been chosen also because of their different worldviews. While they can offer possible generalisation on the approach of Western and Eastern countries in international dispute settlement, the EU and China are also unique. The EU is *not* a state, and, while acting as one in international trade, it does not have the same characteristics and history as a unitary state actor, both in terms of domestic policy and international relations. Given the recent history of China in the past century, it is widely recognised that it is an 'extraordinary' case in international relations. Its rapid economic growth after only a few years of its opening up to the world, and newfound status as one of

the global powers, represents an unusual case. In *time* the study is limited as it focuses on a twenty-year period of specific interaction of two actors in one institution. The findings of this study, then, are limited to that specific interaction.

From a methodological and empirical perspective, this thesis treated the EU as a unitary actor. While the reasons for this choice have been discussed already in Chapter 2, this can be summarised as follows. First, from a legal perspective, the EU acts as one in trade negotiations. Second, from a methodological perspective, treating the EU as one unit of analysis allowed for the necessary comparative element of the research design, ensuring more nuanced and rich findings through the qualitative comparison of the EU and China. However, treating the EU as a unitary actor in international relations can limit the nuances of the findings. While assigning one worldview and specific programmatic beliefs to the EU made sense both from a theoretical and empirical standpoint, expanding the role of other actors in the EU could provide additional nuances to the study of ideas. Indeed, the analysis of documents and primary data showed that EU member states do play a role in the WTO and its DSM. This is shown by disputes that can be brought against and by individual member states (e.g., DS452 was initiated by China against the EU, Greece, and Italy), and the reference of European officials to member states in difference documents (see speeches of European Commissioner to member states in Chapter 5 and Chapter 6). For this reason, further research on possible differences (and similarities) of other European actors in international trade can be beneficial. Do member states share the same ideational backgrounds as DG Trade in international trade? Are there other actors (e.g., the European Parliament) that can have different programmatic beliefs to the DG Trade? Further research on these topics can be beneficial for the advancement of the study of ideas in international trade, building an understanding of the origin of ideas according to different actors. At the same time, when it comes to China, given the distinctive nature of its bureaucratic apparatus, concentrated on the party system, it might be useful to expand the research to other decision makers in the Chinese Communist Party. What are the ideas that drive the party in the global economy, and, more specifically, in international trade? Are they compatible with MOFCOM? Further research should focus on the role of the Belt and Road Initiative, and the new multilateral approach that China is undertaking in global economy. Is Xi Jinping's politics changing institutional ideas of international trade? How is the new Beijing

consensus affecting Chinese participation in the WTO and in the multilateral trade system? Is China's new foreign policy compatible with the existing system?

#### *7.4 The way forward: studying international trade dispute settlement*

Despite the limitations presented in the previous section, this study provides an alternative and a complementary tool in the study of international dispute settlement. Ideas can represent the subject and the explanatory frameworks for states' approaches in international political economy and international relations. Ideas matter, but, more fundamentally, different ideas matter in different ways. Similar ideas can also matter in different ways. These findings have different implications in the study of international dispute settlement from both an academic and policy perspective. Studying ideas as drivers of change and policy action can offer a more nuanced and in-depth explanation of social phenomena. By integrating the conceptualisation of ideas as explanations of behaviour in international political economy, researchers in international trade can address the implication of the divide between the East and the West, as well as the Global North and the Global South.

The analysis of the thesis hinged on the stall of the WTO negotiating function after the failure of the Doha Round and the Doha Developmental Agenda. The timeframe analysed in the last chapter, though, might suggest that, due to the jurisdictional function of the WTO with the stall of the Appellate Body, and the success of the Twelfth Ministerial Conference in 2022, the negotiating function of the WTO might be revitalised. In this sense, further research on the resurgence of the WTO negotiating function, and its ability to overcome crises, could represent interesting fields of research. This century has been characterised by multiple crises, whether at the institutional or economic level. Likewise, the WTO itself has faced multiple crises: the stall of the Doha Round, the Appellate Body crisis, the multiple economic crises of 2008 onwards, and the effects of Covid. While this thesis has not engaged with the concept of crisis directly, it showed how uncertain times provided necessary windows of opportunities to recognise ideational frames in actors. From a theoretical perspective, it might be interesting to analyse the role of crises in ideational change and ideational formation. The theoretical framework I adopted recognises the role of crises as necessary windows of opportunity for actors to question their own beliefs,

and, at times, even worldviews, assessing the relevance of their core sets of ideas. This questioning, together with material incentives, can prompt the adoption of new sets of ideas. While the research did not engage specifically with the type of crises that are needed for actors to question their worldviews, further theoretical work can be done to elaborate on a definition of 'crisis' that is necessary, or, at least, relevant for ideational theorists. The thesis touched upon the crises of the Doha Round, the 2008 financial crisis, and the stall of the Appellate Body as important markers for methodological purposes in the analysis of the data. Addressing the role of crises, ascribing them a central role in theoretical frameworks, might advance the constructivist literature on ideas.

Building on this debate on emerging power, the thesis proposed an alternative and complementary explanation for the rise of global powers in global economic governance. By not focusing on the US-centric vision of the WTO but proposing the EU as main 'protector' of the status quo, it helped explain additional nuances in the explanation of 'traditional' powers' behaviour in the multilateral trade organisation. It also proposed a different and complementary understanding of the rise of emerging powers. By focusing on the role of normative ideas, the rise of China in the WTO, then, can be seen not as disruptive of the status quo, but as a consequence of the adaptation of international norms to fit pre-existing domestic beliefs.

By contesting the neoliberal assumption that norms are global, acknowledging the regionalisation and domestic sphere of norms in international trade can be beneficial in this global context. International trade has been facing a move toward protectionism and geopolitics, securitising what was traditionally understood as economic instruments and policy. Understanding the ideas behind this shift can provide invaluable insights. At the same time, given the crisis of neoliberal institutions, and the ongoing rise of non-Western global actors, acknowledging the difference in domestic ideas between the East and the West can be of interest for policymakers in reforming the system. How can different ideas lead to a different approach in the neoliberal order? Under what conditions can programmatic beliefs guide states in their action in international organisations and international courts? While this study does not give direct answers to these questions, it provides a starting point for future research on ideas in international relations and international political economy.

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## Appendix 2

### Codes on NVIVO

| Name  | Files | References |
|---|-------|------------|
| Bilateralism  | 9     | 10         |
| China   | 17    | 24         |
| Confucianist Worldview                                      | 3     | 3          |
| EU  | 41    | 101        |
| EU-China relations  | 58    | 89         |
| Liberal Worldview   | 14    | 18         |
| MPIA discussions  | 2     | 3          |
| p.b. economic growth  | 25    | 47         |
| p.b. free trade   | 45    | 74         |
| p.b. peaceful coexistence                                   | 13    | 24         |
| P.b. rule of law  | 58    | 83         |
| Policy action - China's compliance with multilateral system | 9     | 18         |
| Policy action - learning                                    | 15    | 21         |
| Policy action - multilateralism                             | 27    | 42         |
| Policy action - preservation of the status quo              | 4     | 4          |
| Policy action - reforms (adaptation to the status quo)      | 17    | 31         |
| Policy action - use of mediation-conciliation               | 3     | 3          |
| Policy action - use of the WTO DSM                          | 16    | 16         |
| Solar-panel   | 15    | 17         |
| West-East   | 4     | 4          |
| win-win   | 8     | 10         |
| WTO   | 35    | 40         |
| WTO DSM   | 57    | 72         |
| WTO reform  | 16    | 25         |