

Hong Kong as an Actor in International Economic Law: Multilateralism, Bilateralism, and Unilateralism

Julien Chaisse
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The rapid economic growth of the “Four Asian Tigers” – a term referring to Hong Kong, South Korea, Taiwan and Singapore to signify their rapid and significant economic growth and high income – illustrates the success of export-oriented industrialization (EOI) (Bhagwati, 1979). As a British colony, Hong Kong functioned primarily as a trade hub under a free-market system – a legacy that persists today under its status as a Special Administrative Region (SAR).

Hong Kong possesses a unique political system that operates under the “One Country, Two Systems” framework since its 1997 handover from Britain to China, making it a compelling case study. Initially ceded to Britain in 1842 under the Treaty of Nanjing, Hong Kong was returned to Chinese sovereignty in 1997 under the condition that it retain a distinct constitutional framework – the Basic Law – which preserves its economic liberal model for 50 years (until 2047). Given its deep reliance on the international economic system, Julien Chaisse in *Hong Kong as an Actor in International Economic Law* examines the unique interplay of geography, history and social factors that have shaped Hong Kong’s role in international economic law (IEL).

Despite its modest size, absence of military might and colonial legacy, Hong Kong has strategically leveraged its unique position to emerge as a global economic powerhouse (Chaisse, 2024). This analysis grows even more pertinent amid recent uncertainties about Hong Kong’s autonomy following China’s imposition of the National Security Law. However, Chaisse avoids the politicized debate over Hong Kong’s autonomy, focusing instead on the institutional structures, legal frameworks and policy considerations that define its role in IEL (Chaisse, 2024, pp. 10–11).

While Chaisse has not explicitly indicated the influence of his experience teaching and working in Hong Kong in this book, it is difficult to ignore the depth of understanding present in this thoroughly researched and intricate book. By examining Hong Kong’s economic policies through its domestic, bilateral and multilateral endeavours, the book makes a laudable and ambitious attempt to map the territory’s complex role and policy in IEL. In a time when trade is increasingly weaponized, Hong Kong’s enduring commitment to IEL offers a timely reminder of the benefits that open markets and free trade can bring.

The book is divided into four sections, each examining a different facet of Hong Kong’s engagement with IEL – Section I explores its domestic economic policies; Section II examines Hong Kong’s bilateral instruments; Section III assesses its engagement with



multilateral economic institutions; and Section IV analyses its engagement with international dispute settlement in IEL. Across all four sections, the author limits the analysis of Hong Kong to three areas of IEL – trade, investment and taxation.

Together, these sections presents a comprehensive case for Hong Kong’s distinct IEL model as a critical factor in its economic ascendancy. While the territory’s commitment to free trade, strong investment protections and low taxation reflects contemporary policy decisions, the author skilfully contextualizes these choices within Hong Kong’s historical, social and political evolution through a constructivist lens. This narrative is anchored in a constructivist theoretical lens, which understands states as social actors shaped by ideational and environmental factors (Cho, 2018). Constructivism proves especially illuminating for analysing Hong Kong’s post-1997 domestic economic policies (Section I) and its proactive engagement in bilateral (Section II) and multilateral economic arenas (Section III), offering a compelling explanation for how and why Hong Kong’s economic policies diverge from those of mainland China.

However, the constructivist analysis is less persuasive in Section IV, which deals with international dispute settlement. This is due to two limitations. First, the use of investor-state dispute settlement (ISDS) mechanisms primarily reflects private actors leveraging Hong Kong’s bilateral investment treaties rather than state policy, particularly in cases where Hong Kong investors invoke treaties to which Hong Kong is not a party. Second, there is little evidence tying Hong Kong’s historical or cultural identity to its dispute settlement practices, especially in tax treaties which feature few arbitration clauses and virtually no recorded disputes, and in its limited participation in WTO dispute resolution.

While the constructivist lens may not be as effective for Section IV as it is for other sections of the book, this section stands out for its meticulous examination of the US decision to suspend the special status granted to Hong Kong under the United States–Hong Kong Policy Act of 1992. Central to this Act is Section 301, which recognizes Hong Kong as a separate entity from China (Shapiro, 2024). However, perception of its distinct identity began to erode following a series of legislative measures enacted by China that criminalized a wide array of dissenting activities in Hong Kong. These laws sparked widespread protests, prompting the USA to pass the Hong Kong Human Rights and Democracy Act in November 2019, reflecting growing concerns over deteriorating human rights conditions and the erosion of Hong Kong’s autonomy.

Amid escalating tensions and reciprocal sanctions between the USA and China, Hong Kong initiated a dispute at the World Trade Organization (DS597), challenging the US measure that required goods from Hong Kong to be labelled as “Made in China” [1]. The WTO Panel sided with Hong Kong, rejecting the US argument that the measure was justified under the national security exception (Article XXI(b)) of the GATT. The author’s meticulous analysis of the dispute, which builds on his earlier scholarship, not only carefully unpacks the arguments advanced in the Panel Report but also situates the conflict within the broader shift in perceptions of Hong Kong’s autonomy (Chaisse and Laoye, 2023). As the author keenly notes, the ruling carries significant implications for the selfjudging nature of the national security exception; in particular, it reaffirms that the clause can still be subject to legal scrutiny. Notably, the Panel’s evaluation of the geopolitical tensions between the USA and China drew comparisons to the *Russia–Ukraine “Transit”* dispute, raising important questions about the threshold for invoking national security defences in economic relations. Despite the well-reasoned analysis provided by the Panel, the USA ultimately rejected its findings.

Beyond the robust analysis of the limits of Article XXI, the sections also provides an expansive legal analysis of the U.S. violations of Articles I:1, IX:1, and X:3(a) of the GATT 1994, as well as Article 2(c), (d), and (e) of the Agreement on Rules of Origin and Article 2.1 of the TBT Agreement. However, what stands out most is the shifting perception of Hong

Kong. Once heralded as a liberalized and autonomous economic entity, it is now increasingly seen as compromised by Beijing's growing influence over its internal affairs [2]. While the author seems to be leaning towards the idea that Hong Kong continues to retain its autonomy over its economic policies despite Beijing's recent attempts, the change in US position, once one of the staunchest supporters of Hong Kong, signals a geopolitical shift in the international economic system. As the author grimly reminds us, Hong Kong has become a "pawn in a complex geopolitical struggle between China and the U.S." and as seen in recent orders from the USA, it will continue to be the case (Chaisse, 2024).

As a reader, it would have been particularly fascinating to discuss the book's themes in light of recent economic policies under the second Trump presidency that were implemented post the publication of this book. Notably, the Trump administration's decision to impose new tariffs on China and the revocation of the "*de minimis*" rule which had permitted duty-free entry for low-value shipments. These development directly affect Hong Kong, as it is no longer recognized as a separate customs entity from China.

Nonetheless, the detailed and prescient analysis in the book remains a vital resource for understanding the shifting legal and geopolitical landscape surrounding Hong Kong. As the author succulently states, Hong Kong's story can act as a "microcosm of the broader challenges and opportunities faced by dynamic economies navigating the intricate web of twenty-first-century international economic governance" (Chaisse, 2024, p. 255).

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Notes

- [1.] United States – Origin Marking Requirement (WTO Doc. WT/DS597/R).
- [2.] *Hong Kong National Security Law: What is it and is it Worrying?* BBC (June 3, 2024, 13:50 PM), <https://www.bbc.com/news/world-asia-china-52765838>; Fong (2024)

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