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The US-China Trade Negotiation: A Contract Theory Perspective

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Commentator: Professor Zhiwu Chen

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In this talk, I apply contract theory to analyze the dynamics of the ongoing trade negotiation between the United States and China. The United States complained that previous bilateral engagements with China had yielded empty promises from China without substantial progress in the legal protection for the intellectual property owned by US businesses. Thus, in this round of trade negotiations, the United States insisted upon a rigid trade agreement, hoping that China would more credibly commit to its promises. China, on the other hand, preferred a flexible agreement that would allow it substantial leeway in determining how to write and enforce its own laws. The row regarding contract specificity directly resulted in an impasse. I argue that the US trade negotiators have overlooked the incomplete nature of the trade agreement. As such, the US negotiators have overestimated the benefit of writing a rigid contract while underestimating the price of dignity to the Chinese government in acceding to the US demand. Instead of continuing with the legalistic approach of attempting to draft a more complete contract, I urge the US trade negotiators to take an economic approach in dealing with China — sometimes, less is more.

Dr Angela Zhang is Director of the Centre for Chinese Law and Associate Professor of Law at the University of Hong Kong. Her research focuses on applying an interdisciplinary approach to the study of transnational legal issues that bear on businesses. Dr Zhang's work has appeared in leading international law journals and she is a four-time recipient of the Concurrence Antitrust Writing Award. Before joining academia in 2013, Dr Zhang practiced for six years in the United States, Europe, and Asia. She received her LLB from Peking University in 2004 and her JSD (2011), JD (2008), and LLM (2006) from the University of Chicago Law School.

Professor Zhiwu Chen is Director of Asia Global Institute and Victor and William Fung Professor in Economics at the University of Hong Kong. Professor Chen is a former Professor of Finance at Yale University (1999-2017). His research covers finance theory, the sociology of finance, economic history, emerging markets, as well as China's economy and capital markets. Professor Chen has been a member of HKU Council since November 2018. He is on the International Advisory Board of the China Securities Regulatory Commission while serving on the board of directors of Noah Holdings.

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