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CHINA AND HUMAN RIGHTS IN INTERNATIONAL TRADE

*Daniel Chow**

INTRODUCTION

This article examines whether human rights are linked with trade between the United States and China at the multilateral and at the national levels. By linkage, this article refers to whether the United States can use human rights as a justification for imposing a trade restriction on China and other countries at the multilateral level¹ or for imposing restrictions at the national legislation level on domestic corporations and private actors conducting international business.²

At the multilateral level, the legal framework for trade is created by the World Trade Organization (WTO),³ the key international trade institution that now sets forth the general rules for trade in goods, services, and technology (or intellectual property)⁴ that all members are required to follow and implement into domestic law.⁵ Members

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¹ See *infra* Part I.

² See *infra* Part II.

³ For a discussion of the history and role of the World Trade Organization, see DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, INTERNATIONAL TRADE LAW: PROBLEMS, CASES, AND MATERIALS 25–29 (2d ed. 2012) [hereinafter, CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW].

⁴ There are four channels of trade in the world today: goods, services, technology (intellectual property), and foreign direct investment. See *id.* at 1. The WTO regulates trade in goods under the General Agreement on Tariffs and Trade 1994, services trade under the General Agreement on Trade in Services (GATS), and technology trade under the Agreement on Trade Related Intellectual Property Rights (TRIPS). *Id.* at 28. Only investment trade is not regulated by the WTO for historical reasons and due to opposition from WTO members. See *id.* at 567. Investment trade is regulated at the regional level in free trade areas such as the North American Free Trade Agreement. *Id.* at 571.

⁵ Each WTO member that undertakes obligations under the WTO agreements has a duty to implement those obligations into its domestic legal

of the WTO now number 157 countries, including the United States and China as well as all of the world's most important trading states.⁶ Part I of this article will examine whether the United States can use human rights as a justification for imposing restrictions, such as tariffs or quotas⁷ on imported goods, on trade with China or any other country within the framework of the WTO and consistent with WTO obligations. As we shall see, under current WTO law, human rights cannot be used to justify a trade restriction against China (or any other WTO country).

Part II of this article will examine whether the United States and China link human rights with trade at the national level. The WTO is concerned with trade and economic relations between states, not with how states regulate their own domestic corporate actors in the conduct of international trade, except insofar as that national regulation affects obligations under the WTO.⁸ To the extent that countries regulate their own internal affairs in a fashion that does not affect or impinge upon WTO obligations, this national level regulation is of no concern to the WTO. Part II will explain that the United States and China have different and competing approaches in regulating how their own corporations and persons can conduct international business. The United States has a "hands on" approach that links human rights with international business while China follows a "hands off" approach that holds that human rights are of no concern to the corporate actor or business person.⁹ These approaches are based upon contrasting long term political objectives of the two countries and may come into increasing conflict as China's economic

order. This is done by enacting domestic legislation that embodies the requirements of the WTO agreements. The United States has implemented its WTO obligations throughout various scattered provisions of federal and state statutes. For a detailed discussion of implementation of WTO obligations into the domestic legal orders of the United States and the European Union. *See id.* at 95–128.

⁶ *See Members and Observers*, WORLD TRADE ORGANIZATION (Aug. 24, 2012), http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

⁷ Tariffs and quotas are forms of trade restriction. *See discussion infra* Part I.A–B.

⁸ *See generally* CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 25–29. For discussion of how the WTO disciplines internal regulations that affect international trade. *See id.* at 142–72.

⁹ *See infra* Part II.A–B.

power and influence continues to expand rapidly and may begin to challenge the dominance of the United States approach in international trade and business.¹⁰

I. LINKING HUMAN RIGHTS TO TRADE WITH CHINA AT THE MULTILATERAL LEVEL

To understand the modern WTO approach to human rights and trade, it is important to first understand the background of the often contentious debate between the United States and China on whether China needs to respect human rights in order to trade with the United States. The next section explores this history and the legal issues involved.

A. HISTORY OF HUMAN RIGHTS IN U.S.–CHINA RELATIONS

Prior to 2001, the year in which China became a member of the World Trade Organization (WTO), the United States conditioned the use of tariff rates on imported goods from China on the basis of a review of China's human rights policies under the Jackson–Vanik amendment,¹¹ which requires an annual presidential certification that the country in question placed no obstacles to freedom of emigration of its citizens or, as in the case of a country such as China, a presidential waiver of such full compliance.¹² The tariff rates applied

¹⁰ *See id.*

¹¹ *See* Freedom of emigration in East–West Trade, 19 U.S.C. § 2432 (2006). The Jackson–Vanik amendment was passed as part of Title IV of the 1974 Trade Act, Pub. L. No. 93–618, 88 Stat. 2056, signed into law on Jan. 3, 1971 by President Gerald Ford. The purpose of the amendment was to create pressure on the Soviet Union to allow the emigration of Soviet Jews to Israel and the United States. For a fuller discussion of the background of the Jackson–Vanik amendment, see Thomas J. Probert, *The Innovation of the Jackson–Vanik Amendment*, in HUMANITARIAN INTERVENTION: A HISTORY (Brendan Sims & D.J.B. Trim eds., 2011).

¹² *See* 19 U.S.C. § 2432. As a technical matter, the Jackson–Vanik amendment was not targeted at China, but the Soviet Union. Moreover, the Jackson–Vanik amendment was intended to create pressures to allow emigration of Jews from the Soviet Union. However, since the Jackson–Vanik amendment in theory applied to all nations and required a presidential waiver in order for a nation to receive “most-favored-nation” (MFN)

to imports from China were a crucial issue in U.S.–China trade. A tariff is a duty or tax imposed on the imported good, usually expressed as a percentage of the good's value, when the import clears customs at a port of entry in the importing country.¹³ A higher rate of duty will result in a higher tax, with the cost passed onto the consumer; higher prices to the consumer tend to result in lower demand and fewer imports.

The United States, as an original contracting party to the General Agreement on Tariffs and Trade (GATT) in 1947¹⁴ and an original member of the WTO, established in 1995,¹⁵ is required to impose

treatment, the United States began to use the Jackson–Vanik amendment to pressure China on human rights issues. See L. Jay Kuo, *Farewell to Jackson–Vanik: The Case for Unconditioned MFN Status for the People's Republic of China*, 1 ASIAN L.J. 85, 101–103 (1994).

¹³ See DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS 133 (2d ed. 2010) [hereinafter, CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS].

¹⁴ See *GATT Members*, WORLD TRADE ORGANIZATION, http://www.wto.org/english/thewto_e/gattmem_e.htm (last updated 2012). In the aftermath of the Second World War, a number of countries, led by the United States, met at Bretton Woods, New Hampshire, to create a set of institutions that would help prevent the disastrous protectionist trade policies that contributed to the War. Two organizations, the World Bank and the International Monetary Fund, were approved right away by the parties, but the proposed International Trade Organization (ITO), designed to promote free trade, failed to win approval due mainly to opposition by the United States Congress, which believed that the ITO was too ambitious. To jumpstart trade liberalization, the parties agreed on a treaty in 1947, the GATT, which was designed to lower tariffs. The original plan was to have the ITO administer the GATT, but after the ITO failed to win approval, the GATT 1947 became a de facto international organization and was administered by a skeletal staff in Geneva, Switzerland, for close to fifty years. In 1995, as a result of the Uruguay Round of trade negotiations, the World Trade Organization came into existence, and assumed in many ways the role that was originally envisioned for the ITO. For further discussion, see CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 18, 26–28.

¹⁵ See *Members and Observers*, *supra* note 6. The purpose of the WTO is to promote free trade and to serve as a forum where nations can discuss and sometimes resolve trade disputes. The WTO administers three major disciplines: the General Agreement on Tariffs and Trade dealing with the trade in goods, the General Agreement on Trade in Services dealing with

tariffs based upon rates that are agreed upon by all WTO states after lengthy negotiations.¹⁶ These rates are much lower than the historical rates that the United States used prior to the GATT.¹⁷ The goal of the GATT is to reduce tariffs to the greatest extent possible in order to promote trade in goods and it has been remarkably successful in achieving this goal.¹⁸ GATT rates are extended to all WTO states under the “most-favored-nation” (MFN) principle—one of the bedrock principles of the WTO as enshrined in GATT Article I.¹⁹ In this context, the MFN principle requires equal treatment of all

services trade, and the Agreement on Trade-Related Intellectual Property Rights dealing with trade in technology (intellectual property). The WTO also administers a fourth agreement, the Dispute Settlement Understanding, which established an effective dispute settlement system within the WTO. See CHOW & SCHOENBAUM, *INTERNATIONAL TRADE LAW*, *supra* note 3, at 28.

¹⁶ See CHOW & SCHOENBAUM, *INTERNATIONAL TRADE LAW*, *supra* note 3, at 182. These rates are contained in each country’s GATT Schedule, i.e. a tariff schedule that is filed with the WTO. See *id.*

¹⁷ See CHOW & SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTIONS*, *supra* note 13, at 146–47. These pages contain an excerpt from the Harmonized Tariff Schedule of the United States. Column 1 General Rates are the GATT rates now in force in the United States. The Column 2 rates are the old Smoot–Hawley tariff rates still in force for countries that are not members of the WTO and do not otherwise have a special agreement with the United States. Only a few states fall into this category, mostly rogue states, such as North Korea and Cuba, and trade with these states are further subject to trade embargoes that block almost all trade for political reasons. The rates in Column 2 are up to ten times higher than the GATT rates than the Column 1 General Rates. The Column 1 Special Rates are even lower than the GATT rates. These are the rates applicable under free trade agreements reached by the United States and its trading partners.

¹⁸ For an example of the GATT’s success in lowering tariff rates, compare the rates in Column 1, the GATT rate, with the rates in Column 2, the non-GATT rates, in the Harmonized Tariff Schedule of the United States (HTSUS). For an excerpt from the HTSUS, see CHOW & SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTIONS*, *supra* note 13, at 146–47.

¹⁹ GATT Article I set forth the MFN principle, which provides in relevant part:

With respect to customs duties and charges of any kind imposed on or in connection with importation . . . any advantage, favour, privilege or immunity granted by any contracting party to any product . . . shall be accorded immediately and unconditionally to the like product originating in . . . all other contracting parties.

WTO states; all of these states are entitled to the GATT tariff rate, which tends to be much lower than the tariff rates for states that are not members of the WTO or that do not receive this treatment under a separate bilateral agreement with the WTO member.²⁰ In the case of the United States, the GATT rate is far lower than the non-GATT rate, established by the Smoot–Hawley Tariff Act of 1932, which set forth prohibitively high tariff rates during the period leading up to the Second World War.²¹ This period was marked by extreme trade protectionism and mutual mistrust among many nations, leading to tensions that contributed to the War.²² GATT rates are the so-called Column 1 rates²³ and the Smoot–Hawley rates are the Column 2 rates²⁴ in the Harmonized Tariff Schedule of the United States, the legal document that sets forth tariffs for all imports into the United States.²⁵

Prior to 2001, at stake annually for China was whether its goods would receive the Column 1 GATT rates under the MFN principle or the prohibitively high Column 2 non-GATT rates of the Smoot–Hawley Tariff Act.²⁶ Column 1, or the GATT rates, sets forth the normal rates imposed by the United States. Since the vast majority

As a consequence, a country's lowest GATT-bound tariffs must be extended to every member of the WTO. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, art. I, 61 Stat. pt. 5, 55 U.N.T.S. 194 [hereinafter GATT].

²⁰ For a further discussion of this point, see *supra* note 17. Countries can also enter into free trade agreements with the United States to receive tariff rates that are more favorable than the GATT rate. These are the so-called Column 1 Special Rates. *See* CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 146–47.

²¹ *See id.* at 145.

²² *See* CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 18.

²³ *See id.* at 188.

²⁴ *See id.* at 189.

²⁵ *See* CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 145.

²⁶ *See* VLADIMIR N. PREGELJ, CONG. RESEARCH SERV., RL 30225, MOST-FAVORED-NATION STATUS OF THE PEOPLE'S REPUBLIC OF CHINA (2001). In 2000, the last year of annual MFN review for China, over 95% of imports from China would have been subject to higher, prohibitive costs if China were denied MFN status. *See also* CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 146–47.

of nations receive Column 1 rates from the United States and only a few pariah nations receive the non-GATT rates,²⁷ the MFN term is misleading; MFN treatment is the norm in international trade, not a privileged exception. As a result, the United States now uses a different terminology—Normal Trade Relations (NTR) instead of the MFN term.²⁸ Thus, up until 2001, for China, not yet a member of the WTO, the annual issue was whether its goods would receive NTR tariffs rates, i.e., normal tariffs, or be subject to the punitive non-GATT rates.

Before 2001, the United States conditioned the granting of MFN or normal rates upon whether China met the requirements of the Jackson–Vanik amendment,²⁹ which required freedom of emigration but which over time came to stand for a general requirement of respect for human rights. In the 1990s, an attempt was made to introduce additional specific human rights criteria into the annual review of China’s MFN status, but these attempts ultimately were rejected by the U.S. Congress.³⁰ While the United States used the annual review to criticize and pressure China on human rights, the United States ultimately never denied MFN treatment or normal tariff rates for China during the period leading up to China’s accession to the WTO in 2001.³¹ Imposing the punitive non-GATT

²⁷ The non-GATT rate or the Smoot–Hawley Tariff Act rates apply only to goods imported into the United States from Cuba, Laos, and North Korea. See CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 145.

²⁸ See *id.*

²⁹ See 19 U.S.C. § 2432.

³⁰ Attempts were made by Congress in 1994 to introduce additional conditions for MFN renewal related to human rights, including China’s adherence to the Universal Declaration of Human Rights; release of and accounting for Chinese political prisoners; humane treatment of prisoners; and allowing visits to prisons by international organizations. All of these attempts to introduce general human rights into annual MFN renewal ultimately failed in Congress. See PREGELJ, *supra* note 26, at 4.

³¹ The whole process of China’s annual review began to take on an almost predictable pattern: criticism of China’s human rights record by the United States in the period leading up to the review, symbolic gestures by China in response, such as the release of a few high-profile imprisoned political dissidents, and then annual renewal of MFN status for China. See Alan Alexandroff, *Concluding China’s Accession to the WTO: The United*

rates on imports from China would have led to a de facto trade embargo with China, a result that neither China nor the United States was willing to accept.

B. THE WTO

In 2001, after a long negotiation, China acceded to the WTO, entitling China as a matter of right to MFN treatment in all areas of trade—goods, services, and intellectual property—from all WTO members, including the United States.³² China's accession meant that the United States could no longer conduct its annual review of China's human rights record under the Jackson–Vanik amendment. Once China became a member of the WTO, China had a legal right to GATT tariff rates under the MFN principle from all WTO members, including the United States.³³ The Jackson–Vanik amendment became irrelevant to China.³⁴

Within the WTO, a long debate occurred over whether human rights should be included within its formal purview.³⁵ Developing nations opposed the inclusion of human rights within the WTO because they were concerned that they would be subject to the high standards set by western-developed nations, such as the United States

States Congress and Permanent Most-Favored Nation Status for China, 3 UCLA J. INT'L L. & FOREIGN AFF. 23, 32 (1998).

³² Like every member of the WTO, China is entitled to MFN treatment as a matter of right under GATT Article I, setting forth the MFN principle. For the relevant language of GATT Article I, see GATT *supra* note 19, at art. I. See also PREGELJ, *supra* note 26, at 10. China's terms of accession to the WTO is governed by its Protocol of Accession. Accession of the People's Republic of China, *Protocol on the Accession of the People's Republic of China*, WT/L/432 (Nov. 23, 2011).

³³ See PREGELJ, *supra* note 26, at 10.

³⁴ Since the disintegration of the Soviet Union and China's entry into the WTO, the Jackson–Vanik amendment does not seem relevant to any country at all and there have been many calls for its repeal. Most recently, a congressional bill was passed by the U.S. House of Representatives on Nov. 16, 2012, to repeal the amendment. See Russia and Moldova Jackson–Vanik Repeal Act of 2012, H.R. 6156, 112th Cong. (2012).

³⁵ See CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 369.

and the countries of Western Europe.³⁶ Not only did developing countries not wish to have western standards imposed upon them, they also believed that their non-western standards concerning human rights gave them a competitive advantage.³⁷ For example, in the workplace, developing nations either had lower labor standards or did not enforce their labor laws.³⁸ Adopting laws embodying western standards in the workplace and enforcing these laws would create additional costs that would erode the competitive advantage of developing countries, such as China. An additional concern to all WTO members was that the WTO might collapse under the weight of being asked to solve all of the world's problems.³⁹ If human rights were to be a part of the WTO, then the WTO might be under pressure to consider many other social issues linked to trade and become the forum in which all of the world's problems would be resolved.

The debate over human rights culminated in 1996, when the WTO issued an official Ministerial Declaration that workers' rights would not be within the formal purview of the WTO, but instead would be within the domain of the International Labor Organization (ILO)⁴⁰—a non-governmental organization, which unlike the WTO, has no enforcement powers.⁴¹ One of the greatest achievements of the WTO is a dispute settlement system, which leads most nations to

³⁶ See Alan V. Deardorff & Robert M. Stern, *What You Should Know About Globalization and the World Trade Organization*, 10 REV. INT'L ECON. 404, 416–17 (2002) (describing how developing nations view human rights issues as thinly-veiled protectionist measures of developed countries).

³⁷ See T.N. Srinivasan, *Trade and Human Rights*, in CONSTITUENT INTERESTS AND U.S. TRADE POLICIES 225 (Alan V. Deardorff & Robert M. Stern eds., 1998) (describing how low labor standards can be a comparative advantage for developing countries).

³⁸ See Cleopatra Doumbia-Henry & Eric Gravel, *Free Trade Agreements and Labour Rights: Recent Developments*, 145 INT'L LABOUR REV. 185, 198–99 (2006) (stating that poverty, weak governments, and lack of political will all contribute to non-enforcement of labor standards).

³⁹ See CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 369.

⁴⁰ See *id.*

⁴¹ The ILO has no dispute settlement mechanism. Constitution of the International Labour Organization, June 28, 1919, 49 Stat. 2712, 225 C.T.I.A. 373.

comply eventually with their WTO obligations.⁴² Relegating human rights to the ILO meant that there is no effective enforcement mechanism for ILO standards.⁴³ Although some lingering debate over linking human rights to WTO law continues,⁴⁴ developing countries appear to have won their battle to keep human rights outside of the WTO.

The most important consequence of excluding human rights from the WTO is that human rights cannot be used as a justification for a trade restriction consistent with the WTO.⁴⁵ However, the WTO does recognize certain exceptions based on non-trade concerns, such as health and safety standards related to imported goods, which can be used to limit trade.⁴⁶ The effect of the 1996

⁴² See CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 63. The WTO dispute settlement system contains a tribunal of first instance, the WTO Panel, and an Appellate Body, which functions as a busy appellate court of international trade. The opinions of the Panel and Appellate Body are then adopted by the entire WTO membership sitting as the Dispute Settlement Body (DSB). See *id.* at 64. Once the opinions are adopted there is political and peer pressure on the offending WTO member nation to comply with the recommendations of the opinion. Failure by the offending nation to comply could result in the authorization by the WTO of trade sanctions against the offending member. See *id.* at 66. In most cases, members will comply with the recommendations or reach a mutually satisfactory solution with the complaining member. For a general overview of the WTO dispute settlement system, see generally CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at ch. 2.

⁴³ See Phillip R. Seckman, *Invigorating Enforcement Mechanisms of the International Labor Organization in Pursuit of U.S. Labor Objectives*, 32 DENV. J. INT'L L. & POL'Y 675, 684 (2003). Unlike the WTO, the ILO has no dispute settlement system. See *supra* note 42. This means that although the ILO promulgates standards, there is no recourse and no consequences if a nation refuses to abide by the ILO's standards.

⁴⁴ Some influential voices have called for the WTO to adopt an explicit Declaration on Human Rights and International Trade, but the vast majority of WTO members oppose any linkage between WTO law and human rights. See CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 371-72.

⁴⁵ CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 370.

⁴⁶ These exceptions are contained in GATT Article XX, creating general exceptions to trade:

Article XX General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;...

GATT, *supra* note 19, at art. XX. These general exceptions can be used to impose a justified trade restriction. See CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 305. For example, Article XX(b) allows a trade restriction when necessary “to protect human . . . life or health.” GATT, *supra* note 19, at art. XX. This provision has been interpreted to allow trade restrictions of imported goods that might be dangerous to human safety, such as products containing asbestos, or food products that are unsafe for human consumption. See, e.g., CHOW & SCHOENBAUM, INTERNATIONAL TRADE LAW, *supra* note 3, at 319–40 (discussing problems dealing with food safety and asbestos). A number of other exceptions relating to issues such as environmental protection are also recognized by Article XX. See *id.* at 301–18 (discussing environmental protection implications). Under current WTO jurisprudence, however, none of these exceptions apply to human rights. See *id.* at 371–72. For an

Ministerial Declaration is to remove human rights from the list of these exceptions.⁴⁷ The following examples examine the ramifications of this effect:

Example 1: Suppose that prior to 2001, when China joined the WTO, the United States passes a law that imposes trade restrictions on imports from China in the form of higher tariffs and quantitative restrictions (quotas) for human rights violations in China. Nothing in the WTO provisions prevent the United States from using human rights as a justification for trade sanctions against a non-WTO country. This is an internal political issue in the United States and a foreign trade or economic relations matter between the United States and China.

Example 2: Once China acceded to the WTO in 2001, however, the United States became bound to extend MFN treatment to all trade transactions with China. To illustrate this point, let us further suppose that in 2012, the United States imposes restrictions, e.g., tariffs and quotas, on imports from China, a WTO member, on the grounds that China tolerates or engages in many human rights violations in its territory. These trade restrictions deny China MFN treatment because they impose higher rates than the United States' GATT bound rates. In 2012, these trade restrictions are not lawful under the WTO. China can bring a challenge to these trade restrictions in the WTO dispute settlement system and will win.⁴⁸

overview of GATT Article XX, see generally CHOW & SCHOENBAUM, *INTERNATIONAL TRADE LAW*, *supra* note 3, at 300–72.

⁴⁷ It would have been possible to include human rights as an exception by issuing a formal WTO declaration or by interpreting the provisions of GATT Article XX, the general exceptions provision, to include human rights as a ground for imposing a trade restriction.

⁴⁸ Winning the dispute means that the WTO Dispute Settlement Body (DSB) will “recommend” that the United States withdraw the trade restriction. Most WTO members will follow the recommendations of the

Hence, the exclusion of human rights from the WTO means that even when there is a direct economic connection between trade and human rights, such as labor conditions, these rights still cannot be used to justify a trade restriction, such as in the following example:

Example 3: Suppose that due to poor working conditions, e.g., lack of sanitation, long working hours, low wages, and unsafe conditions at work, China is able to manufacture tablet computers at a very low cost. These conditions would violate U.S. labor laws as well as the standards set by the International Labor Organization. The United States seeks to impose extra tariffs on Chinese imports in addition to the normal GATT tariffs on the grounds that the poor labor conditions create a cost advantage to China, i.e., a subsidy that should be offset by a higher tariff, i.e., a countervailing duty.⁴⁹ The imposition of a higher tariff to offset

DSB because all WTO members have a stake in the effective functioning of the WTO system. WTO members who do not follow the recommendations of the DSB on a timely basis are subject to a variety of additional actions by the DSB, which can include authorizing the aggrieved state (the winning state in the dispute) to impose retaliatory trade sanctions on imports from the offending state (the losing state in the dispute). The WTO authorizes these retaliatory measures in addition to compliances with the recommendations of the DSB. CHOW & SCHOENBAUM, *INTERNATIONAL TRADE LAW*, *supra* note 3, at 67–68.

⁴⁹ The WTO allows an importing country to impose a countervailing duty, i.e., an additional tariff on top of the normal GATT rate, to offset the effect of a subsidy, i.e., a financial contribution by a foreign government to a manufacturer to assist in exports. The subsidy reduces the cost to the manufacturer, which can now charge a lower price for the export, creating a competitive advantage in the target import market. Article VI of the GATT allows the importing country to impose a countervailing duty equal to the amount of the subsidy to offset, or neutralize, the benefit of the subsidy. The WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) amplifies Article XVI of the GATT. *See* GATT, *supra* note 19, at art. VI. The purpose of the SCM Agreement is to discipline the use of subsidies. In other words, while countervailing duties are permitted to offset subsidies, the WTO does not want member states to abuse the use of subsidies to erect protectionist trade barriers. As a result, the SCM Agreements set forth strict standards that each WTO member must follow in

the lower costs due to poor working conditions is not justified under the WTO. China can challenge the trade restriction in the WTO dispute settlement body and will win. Labor rights are not within the purview of the WTO, but under the WTO Ministerial Declaration of 1996, labor rights are within the jurisdiction of the ILO. Therefore, the United States can challenge China's working conditions in the ILO, but the resulting decision has no enforcement power.

From these examples, the conclusion that may be drawn is that, at least as of 2012, the United States cannot use human rights to justify trade restrictions against China (or any other WTO member) consistent with the WTO.⁵⁰ While future attempts might revive the debate over whether there is a link between human rights and WTO law, China and other developing countries are likely to strongly oppose any efforts to introduce human rights as a trade criterion into the WTO because of the competitive advantage they maintain by not being subjected to western human rights standards. At least for the foreseeable future, WTO members will not be able to impose trade restrictions based on human rights.

II. NATIONAL APPROACHES TO INTERNATIONAL BUSINESS: A COMPARISON BETWEEN THE APPROACHES BY THE UNITED STATES AND CHINA

Below the multilateral level, nations are free to impose conditions that relate to human rights in international business on their own business entities and persons so long as the conditions do not violate any WTO obligations. This is because the WTO is concerned with trade between states, not with domestic regulation of corporations and private actors if the regulation does not infringe upon WTO obligations. These are matters reserved within the

imposing subsidies so that they are justified and do not, for example, impose a countervailing duty that is greater than the amount of the subsidy, which would result in a protectionist trade barrier.

⁵⁰ To the author's knowledge, the United States has yet to use human rights to justify a trade restriction in the WTO.

national sovereignty of each state. The United States and China have contrasting approaches to the use of human rights to discipline its own domestic corporations and private actors in the conduct of international business. The next sections set forth these two contrasting approaches.

A. *THE U.S. HANDS ON APPROACH*

As further set forth below, the United States views human rights as an important restraint on the conduct of international business by U.S. corporations and U.S. nationals. For countries the United States considers friendly, it uses a hands on approach that uses trade to benefit these countries and to punish countries that have authoritarian governments with poor records on human rights.⁵¹ The apparent long-term goal of the United States is to influence countries with a poor record on human rights to change their authoritarian form of government to a democracy.⁵² The United States has extensive national legislation that applies to both corporate and private domestic actors doing business abroad that have direct implications on doing business in countries with poor human rights records. The most important of these legal regimes are set forth below.

1. TRADE EMBARGOES

The United States has trade or investment embargoes with Cuba, Iran, Libya, Sudan, North Korea, and Burma implemented by the Office of Foreign Assets Control under the Trading with the Enemy Act and the International Emergency Economic Powers Act.⁵³ These

⁵¹ See Andrew B. Spalding, *The Irony of International Business Law: U.S. Progressivism and China's New Laissez-Faire*, 59 UCLA L. REV. 356, 380–83 (2011).

⁵² See DEBRA LIANG-FENTON, U.S. INST. OF PEACE, U.S. HUMAN RIGHTS POL'Y: A 20-YEAR ASSESSMENT (1999), available at <http://www.usip.org/files/resources/sr990616.pdf> (analyzing U.S. policy from the Carter administration through the Clinton administration, during which time the U.S. often viewed pushing countries towards electoral democracy as a means of protecting human rights).

⁵³ See CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 135.

embargoes effectively preclude any trade in goods with these countries,⁵⁴ with the exception of a small category of products used for humanitarian purposes, such as medicines.⁵⁵ In addition, the United States has many laws that limit trade with certain countries or persons.⁵⁶ The United States justifies these embargoes under GATT Article XXI, which provides an exception for national security.⁵⁷

2. U.S. LEGISLATION

The United States enforces the Foreign Corrupt Practices Act (FCPA), which prohibits the giving of bribes to foreign officials for the purpose of obtaining or retaining business.⁵⁸ The U.S. Department of Justice (DOJ) has recently begun to enforce the FCPA aggressively⁵⁹ by punishing anti-bribery violations through civil and criminal penalties.⁶⁰ The FCPA prohibits the giving of “anything of value” to foreign officials. This term includes not only the payment of cash but many other types of transactions. Recently, the DOJ has interpreted anything of value to include:

. . . paying for executive training programs at U.S. universities for Chinese foreign officials . . . when the programs did not specifically relate to the company’s products or business . . . payment of tuition for educational opportunities for Chinese officials . . . providing a paid internship for the

⁵⁴ *See id.*

⁵⁵ For example, the United States permits informational materials, donated food, medicine and medical devices, agricultural commodities and gift parcels to be exported to Cuba. *See* OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP’T OF THE TREASURY CUBA: WHAT YOU NEED TO KNOW ABOUT U.S. SANCTIONS AGAINST CUBA 16 (2012), *available at* <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba.pdf>.

⁵⁶ *See* CHOW & SCHOENBAUM, INTERNATIONAL BUSINESS TRANSACTIONS, *supra* note 13, at 135–36.

⁵⁷ GATT art. XXI, *supra* note 19.

⁵⁸ *See, e.g.*, Foreign Corrupt Practices Act, 15 U.S.C. §§ 78(b), (dd)(1)–(3) (2006). *See also* Spalding, *supra* note 51, at 372.

⁵⁹ Daniel Chow, *China Under the Foreign Corrupt Practices Act*, 2012 WIS. L. REV. 573, 574 (2012) [hereinafter Chow, *FCPA*].

⁶⁰ *See id.* at 576.

daughter of a Chinese official, and payment for sightseeing trips for Chinese officials to such places as Disneyworld, the Grand Canyon, and Las Vegas.⁶¹

Many U.S. corporations now consider the FCPA to be a major business issue (a so-called “bet the company” issue) and are actively creating compliance programs for their overseas operations.⁶² Due to China’s political system with many state-owned or -controlled enterprises, many persons will qualify as foreign officials⁶³ under the DOJ’s aggressive interpretations;⁶⁴ as a result, China poses higher risks under the FCPA than many other countries,⁶⁵ but the FCPA operates as a general constraint on all U.S. companies in doing business abroad.

Recent litigation has revived the Alien Tort Statute, dormant for nearly 200 years, which allows a foreign national to sue in a federal district court for a tort committed in violation of the “law of nations.”⁶⁶ The ATS has been used by foreign nationals to sue U.S. companies that act in concert with authoritarian governments in various foreign investment projects. For example, if a U.S. company works in partnership with a foreign government and government

⁶¹ *Id.* at 589–90.

⁶² In 2012, a Morgan Stanley employee in Singapore was convicted of violating the FCPA. The U.S. Department of Justice declined to file charges against the company because of the internal controls it has in place to prevent FCPA violations. *See e.g.* Press Release, U.S. Dep’t of Just., Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012), *available at* <http://www.justice.gov/opa/pr/2012/April/12-crm-534.html>.

⁶³ Only payments to “foreign officials” are covered by the FCPA. Payments to private individuals (i.e. commercial bribery) are not illegal under the FCPA, which is concerned only with government corruption. The DOJ interprets “foreign officials” so broadly that some U.S. companies take the position that anyone in China who works for a state-owned company is a foreign official. *See Chow, FCPA, supra* note 59, at 580.

⁶⁴ *Id.* at 578–89.

⁶⁵ *Id.* at 607.

⁶⁶ The Alien Tort Statute reads in its entirety: “[t]he district Courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Alien Tort Statute, 28 U.S.C. § 1350 (2006).

soldiers conscript and abuse workers, the foreign workers (with the help of a nongovernmental organization involved human rights) can bring a lawsuit against the U.S. company in federal district court in the United States for the abuse of human rights under the law of nations.⁶⁷ In another recent case, the Second Circuit refused to grant a motion to dismiss a complaint alleging human rights abuses by a U.S. pharmaceutical company that conducted dangerous drug trials on human subjects in a developing country.⁶⁸

3. FOREIGN AID

When the United States gives foreign aid in the form of grants or loans, either directly or through the World Bank or the International Monetary Fund, two sister institutions of the WTO,⁶⁹ the aid comes

⁶⁷ These facts are based on *Doe v. Unocal*, a decision later vacated by an en banc panel of the Ninth Circuit Court of Appeals. *Doe v. Unocal Corp.*, 110 F.Supp.2d 1294 (C.D.Cal. 2000), *rev'd en banc*, *Doe I v. Unocal Corp.*, 403 F.3d 708 (9th Cir. 2005). The crucial issue of whether the ATS applies to U.S. corporations is now pending before the U.S. Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, which is expected to be decided in 2012. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *cert. granted*, 132 S.Ct. 472.

⁶⁸ *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 172–83 (2d Cir. 2009) (discussing why claims under ATS survive motion to dismiss). For a discussion of recent cases and the current issues in ATS litigation, see Joseph G. Finnerty III et al., *Circuit Split Widens: Corporate Liability under the Alien Tort Statute*, FOR THE DEF., Nov. 2011, at 78.

⁶⁹ The World Bank and the International Monetary Fund (IMF) assist the WTO in promoting free trade. The World Bank's primary goal is to alleviate world poverty while the role of the IMF is to encourage predictability and stability in the flow of currency (money) across borders used for the payment of goods or to satisfy other financial obligations. The IMF encourages the free convertibility of currencies and discourages currency devaluation. For example, if Country A buys goods from Country B, Country B may insist that Country A pay for the goods in Country B's currency. If Country A lacks foreign currency reserves, Country A may be forced to pay Country B in Country A's own currency. The IMF will encourage Country B to exchange Country A's currency for its own. For a further discussion of the role of the World Bank and the IMF in assisting international trade, see CHOW & SCHOENBAUM, *INTERNATIONAL TRADE LAW*, *supra* note 3, at 19–23.

along with a package of required reforms that the beneficiary must accept. These reforms, called the Washington Consensus,⁷⁰ relate to fiscal discipline, trade liberalization, deregulation, privatization of state enterprises, and control of government corruption.⁷¹

B. CHINA'S HANDS OFF APPROACH

By contrast to the United States, China has a hands off approach to human rights. China views each country's form of government, its political system, and its track record on human rights as applied to its own citizens as an issue of national sovereignty that is its own concern and of no concern to anybody else in business, trade, or politics.⁷² The overview of China's laws and policies below demonstrate how China implements this approach.

1. CHINA'S LAWS

As a result of its hands off approach, China has no official trade embargoes with any country due to reasons of the human rights record of the trading partner.⁷³ In fact, China trades with regimes,

⁷⁰ Both the World Bank and the IMF are located in Washington, D.C., on the opposite sides of the same street. At one time, both institutions were in the same building. By tradition, the President of the World Bank is an American while the Chief of the IMF is a European. These traditions continue to this very day. Both the World Bank and the IMF also work closely with the U.S. Treasury Secretary. The term "Washington Consensus" was coined to describe this "clubby" power arrangement, with its locus in Washington, D.C. *Id.* at 19–21.

⁷¹ *Id.* at 21–22.

⁷² See Spalding, *supra* note 51, at 388–97.

⁷³ To the author's knowledge, China has no official trade embargoes with any country; unlike the United States, which has many private trading companies that act autonomously, all trading companies in China are subject to the control of the state, so China does not need an official embargo to control trade, but it can regulate trade effectively through internal controls.

such as Sudan,⁷⁴ that are considered by international organizations to have a poor human rights record.⁷⁵

China recently amended its criminal law, effective May 2011, to implement its own version of an FCPA.⁷⁶ China did so to fulfill its obligations under the United Nations Convention Against Corruption to which it is a signatory.⁷⁷ However, as of this writing, China has not enforced this law, and it is unclear whether China passed the law due to genuine concern about government corruption in foreign countries or in an attempt to satisfy a formal treaty obligation. China (or any other country) has no legislation that compares to the U.S. Alien Tort Statute, which is unique to the United States.

When China gives aid in the form of a grant or loan, it comes with “no strings attached” for the recipient country.⁷⁸ China uses this

⁷⁴ See THOMAS LUM, CONG. RESEARCH SERV., R40940 CHINA’S ASSISTANCE AND GOV’T SPONSORED INV. ACTIVITIES IN AFRICA, LATIN AMERICA, AND SOUTHEAST ASIA 9 (Nov. 25, 2009).

⁷⁵ See e.g., HUMAN RIGHTS WATCH, DAFUR IN THE SHADOWS: THE SUDANESE GOV’T ONGOING ATTACKS ON CIVILIANS AND HUMAN RIGHTS (June 2011), available at <http://www.hrw.org/sites/default/files/reports/sudan0611ForWebUpload.pdf>.

⁷⁶ The People’s Republic of China (PRC) enacted an amendment in 2011 to Article 164 of its Criminal Law, which now provides for the “Crime of Offering Bribes to Officials of Foreign Countries and International Public Organizations.” Article 164 states: “Whoever, for the purpose of seeking unjustified business interests, gives money or property to any foreign party performing official duties or officials of international public organizations shall be punished in accordance with the provisions of the preceding Paragraph.” Article 163, the preceding paragraph, provides for criminal penalties. See John M. Hynes, *China Beefs up its Anti-Bribery Law with its Very Own Version of the FCPA*, GOV’T CONT., INVESTIGATIONS, & INT’L TRADE BLOG (last updated Mar. 16, 2011), <http://www.governmentcontractsblog.com/2011/03/articles/fcpa/china-beefs-up-its-antibribery-law-with-its-very-own-version-of-the-fcpa/>.

⁷⁷ United Nations Convention against Corruption, G.A. Res. 58/4, U.N. Doc. A/RES/58/4, art.16 (Oct. 23, 2003), available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁷⁸ See, e.g., Patrick Barta, *Cambodia Says No Strings Attached in Recent Chinese Aid*, SE. ASIA REAL TIME BLOG (Sept. 6, 2012, 7:16 PM), <http://blogs.wsj.com/searealtime/2012/09/06/cambodia-says-no-strings-attached-in-recent-chinese-aid>.

approach to foreign aid to build relationships with countries in Africa, Southeast Asia, and Latin America.⁷⁹ Some of these countries—particularly those in Africa—do not receive aid from the United States or significant investments from U.S. corporations. The U.S. government avoids these countries for political reasons due to the authoritarian and corrupt nature of their regimes.⁸⁰ U.S. corporations find that the risks of doing business in these countries and transactions costs are high due to the need to comply with U.S. laws regulating international business, such as the FCPA.⁸¹

The U.S. approach creates risks and high transactions costs that deter U.S. companies from doing business with certain countries, which creates opportunities for China to step into the void and be a “Black Knight.”⁸² In recent years, China has begun to actively seize these opportunities to invest in countries that the United States avoids, particularly in Africa, and to create strong relationships with these countries.⁸³

2. CHINA’S LONG-TERM OBJECTIVES

China’s hands off policy on human rights in its international trade and business serves both economic and political purposes. These purposes involve core sovereignty issues for China.

⁷⁹ See LUM, *supra* note 74, at 1.

⁸⁰ For example, the Office of Foreign Assets Controls in the U.S. Department of the Treasury administers an almost complete trade embargo with Sudan due to human rights violations and national security concerns. See *Sudan Sanctions*, U.S. DEPARTMENT OF THE TREASURY, <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/sudan.aspx> (last updated Dec. 5, 2012). Other African nations subject to trade sanctions include Somalia and Zimbabwe. See *Sanction Programs and Country Information*, U.S. DEPARTMENT OF THE TREASURY, <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx> (last updated Dec. 19, 2012). The sanctions regime of the Treasury Department is only one of several U.S. sanctions programs, so other sanctions may overlap and apply in addition to the Treasury restrictions. See CHOW & SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTIONS*, *supra* note 13, at 134–42.

⁸¹ See Spalding, *supra* note 51, at 406.

⁸² See *id.* at 407.

⁸³ See LUM, *supra* note 74, at 8–12.

With its growing economy, China's long-term economic goal is to obtain natural resources, such as oil and minerals for its ongoing massive infrastructure projects, such as building roads and railroads to support its modernizing economy.⁸⁴ Many of the projects in Africa result in the shipment of oil and other natural resources to China as "payment" by the recipient country of foreign aid.⁸⁵

China also has a long-term political objective, which is to promote China's own competing vision of international business around the world: a hands off approach that vindicates the sovereign right of each nation to conduct its own internal affairs, including on matters of human rights, without any interference from other countries.⁸⁶ China does business with nations viewed as pariahs by the United States because China believes that how each nation deals with its own internal affairs is its own concern.⁸⁷ This vision allows

⁸⁴ See *The New Colonialists*, THE ECONOMIST (Mar. 13, 2008), <http://www.economist.com/node/10853534> (describing issues created by China's need to obtain large amounts of commodities); see also, Josephine Moulds, *China Boosts Economy with £99bn Infrastructure Plan*, THE GUARDIAN (Sep. 7, 2012), <http://www.guardian.co.uk/business/2012/sep/07/china-boosts-economy-infrastructure-plan> (describing a new infrastructure plan to build highways, waterways and urban rail).

⁸⁵ See LUM, *supra* note 74, at 9–10.

⁸⁶ This is the author's own analysis of China's long-term goals.

⁸⁷ See, e.g., XIANFA preamble (1982) (China) ("China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and culture exchanges with other countries."); Tom Ginsburg, *Eastphalia as the Perfection of Westphalia*, 17 IND. J. GLOBAL LEGAL STUD. 27, 39 (2010) ("China's consistent position has been one of sovereignty, mutual noninterference, and refraining from criticizing other countries for their internal behavior."). China believes that a country's policies towards the human rights of its own citizens are an internal affair of national sovereignty and not subject to interference. In particular, China objects to the attempts by the United States to impose its own view of human rights on other countries. See, e.g., Erin E. Douglas, *The Struggle for Human Rights Versus Stability: The Chinese Communist Party and Western Values Clash*, 29 DENV. J. INT'L L. & POL'Y 151, 159 (2011) ("Values are, in [China's] view, highly ethnocentric and alien to local cultures and thus have no relevance to the internal affairs in China. Therefore, China argues those human rights conditions in democratic and communist nations will differ. [China]

China's leaders, the elite of the Communist Party, to assert complete freedom in dealing with their own internal political affairs, including the use of force, if necessary, to maintain the Party's grip on power.⁸⁸ This vision also allows China to assert the right to use force against Taiwan, considered by China to be a renegade province, and, to a lesser extent, against Tibet.⁸⁹ In particular, Taiwan is a core sovereignty matter with which China has repeatedly warned the United States not to interfere.⁹⁰ The United States, however, has consistently and repeatedly ignored these warnings, and continues to supply advanced military weapons to Taiwan with the objective of allowing Taiwan to use them in defense against an attack by China.⁹¹

believes that [its] political system and economic policy do not lend themselves to a 'Western' definition.”).

⁸⁸ See DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA IN A NUTSHELL* 120 (2d ed. 2009) (“[T]he CPC (Communist Party of China), once having overcome seemingly overwhelming odds and paid the costly price of obtaining, is not likely to relinquish it voluntarily. In the more than 2000 years of Chinese history . . . , no ruling government of mainland China has ever voluntarily relinquished or transferred power to a succeeding government. No succeeding government has ever assumed power without destroying the presiding government.”). When China's Party leaders feel that their grip on power is challenged or in peril, they will not hesitate to use force against their own citizens. On June 4, 1989, the Communist Party ordered units of the People's Liberation Army to violently suppress pro-democracy demonstrators in Tiananmen Square, resulting in many deaths of unarmed civilians. In the following month, a massive nationwide manhunt for other “hidden enemies” ensued, resulting in many executions. *See id.* at 20.

⁸⁹ *Id.* at 14.

⁹⁰ *See id.*

⁹¹ The United States has sold advanced fighter jets to Taiwan over vehement objections by China. *See US Confirms \$5bn Taiwan F-16 Fighter Jet Upgrade*, BBC NEWS (Sep. 21, 2011), <http://www.bbc.co.uk/news/world-asia-pacific-15009033>. At one time, the United States and Taiwan had a mutual defense treaty: each country would come to the defense of the other in case of a military attack. Of course, the real purpose of this treaty was to send a message to China that the United States would come to Taiwan's defense in case of an attack by China. This treaty was abrogated after the United States established formal diplomatic relations with China. *See Mutual Defense Treaty, U.S.-China*, Dec. 2, 1954, 61 U.S.T. 433; *see also* Raoul Berger, *President's Unilateral Termination of the Taiwan Treaty*, 75 NW. U. L. REV. 577 (1980).

It is nearly impossible to underestimate the depth of China's feeling over the core issue of Taiwan and its impact on much of China's foreign policies, including foreign trade.

CONCLUSIONS

On the multilateral level of the WTO, human rights are not a criterion of fair trade. The most important consequence of this position is that human rights violations cannot be used as a justification for a trade restriction by the United States against China (or any other country) under the WTO. At least for the foreseeable future, this position is not likely to change. For years, China was subject to the United States' annual review of its human rights record in order to receive normal trade relations. The United States used this review as an occasion to criticize and pressure China on human rights. By joining the WTO, China has now escaped this process, perceived by China as an annual bullying ritual inflicted by the United States. China and other developed countries will likely strongly oppose any future attempts to include human rights within the WTO.

Outside of the WTO, on a national level, there now appears to exist an increasing competition between two opposing visions of the role of human rights in international business for companies and persons. This competition, although ostensibly about trade, implicates fundamental issues about national sovereignty and the power of states over their internal affairs. On the one hand, the United States' approach ties human rights to the conduct of international business by corporate and private actors. At its most fundamental level, this position is based upon the view that human rights form the foundation for a democratic form of government, a form of government that the United States seeks to promote around the world. This vision has been influential in international business in recent decades as the United States has used its economic power and political influence to promulgate this vision in the countries in which it does business around the world. By contrast, China is promulgating its own opposing vision, which holds that human rights are not related to international business. At its most fundamental level, China's approach is asserting a vision of national sovereignty under which each nation has complete authority to deal with its own internal affairs without any outside interference. This vision vindicates China's right to control its own internal affairs, including

the core issue of whether the Communist Party can use force to maintain its power and the core issue of whether China can use force, if necessary, to repatriate Taiwan. As China becomes more powerful and its influence spreads,⁹² China's approach may increasingly challenge the U.S. approach for supremacy around the world.

⁹² For a discussion of China's rise as an economic power, see DANIEL C.K. CHOW & ANNA M. HAN, *DOING BUSINESS IN CHINA: PROBLEMS, CASES, AND MATERIALS* 19–45 (2012).