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How China's Employment Problems Became Trade Problems: China, Labour Law and the Rule of Law

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Abstract

In this article, I focus on the potential trade spillovers of Chinese policies to maintain employment. Chinese leaders are determined to maintain employment and have long ignored employment laws that could empower workers. But in 2007, China reformed its labor laws and allowed wide public comment. The new laws enhanced protections for workers, but the consensus among scholars, NGOs, and the US State Department is that these labor laws, like earlier laws, are unevenly and rarely enforced. I argue that Chinese failure to enforce these laws breach its WTO obligations. WTO members could use GATT Article XXIII, which establishes a "right of redress" for changes in domestic policy that systematically erode market access commitments even if no explicit GATT rule has been violated. Used creatively, this strategy could enable WTO member states to encourage China to do a better job of enforcing its labour laws.

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How China's Employment Problems Became Trade Problems
China, Labor Law and the Rule of Lawⁱ
Introduction

The global downturn that began in 2007 has left the world poorer and less stable. For many people, the greatest loss has been in jobs and opportunities.ⁱⁱ International Labor Organization (ILO) Director General Juan Somavia claims the world is facing a “*global jobs crisis*,” but policymakers have made creating *domestic* jobs their top priority.”ⁱⁱⁱ Presidents, prime ministers, and premiers all recognize that if they can't establish an environment conducive to generating private sector jobs, their country may experience stalled economic growth, increased poverty, rising social tensions, political upheaval, and/or emigration. If these men and women can't create jobs for their fellow citizens, they may be out of a job.^{iv}

Perhaps the pressure to create jobs is greatest in China, the world's most populous nation.^v According to China's state council, “China has a population of nearly 1.3 billion, and is the most populous country in the world. To solve the employment issue in China is a strenuous, arduous and pressing task... China has a proactive employment policy...and has done everything possible to... keep the unemployment rate within a socially tolerable range.”^{vi} Not surprisingly, in March 2009, Chinese Premier Wen Jiabao stated, “We will do everything in our power to stimulate employment.”^{vii}

But China's willingness to “do everything” may also effect employment and economic growth in other countries. Job creation is not a

zero sum game, where the jobs gained in one nation are lost in another. But how a nation creates or preserves jobs can have implications for the terms of trade in another. For example, policymakers can stimulate the demand for workers by increasing demand for various goods (as through domestic stimuli). Such stimuli may or may not distort trade.

Alternatively, they can reduce the cost of workers to firms by decreasing payroll taxes, ignoring minimum wages or other job-related costs. They can also reduce the supply of workers (by restricting immigration) or encouraging workers to retire. Some governments promote job sharing to keep more people employed. And finally, policymakers can keep the costs of workers artificially low by reducing the power or ability of workers to organize, bargain collectively, or strike. However, in so doing, such officials ignore international human rights obligations as well as domestic law.

In this article, I focus on the potential trade spillovers of Chinese policies to maintain employment. The argument unfolds as follows: Chinese leaders are determined to maintain employment and have long ignored employment laws that could empower workers. But in 2007, China reformed its labor laws and allowed wide public comment. It did not change these laws as a quid pro quo to join the WTO, but in revising these laws, China acted in accordance with WTO norms of transparency, due process, and public participation. The new laws enhanced protections for workers, but the consensus among scholars, NGOs, and the US State Department is that these labor laws, like earlier laws, are unevenly and rarely enforced.

Herein we define labor laws as laws that encompass the employer/employee relationship. Some labor laws relate to conditions of work; others are designed to encourage employment. Labor laws can include regulations of hours of work; laws to regulate labor supply or to prevent unemployment; laws to protect child workers or provisions related to freedom of workers to associate.^{viii} It is important to note that although national governments decide their labor laws, some labor laws address fundamental human rights which governments are obligated to respect under international law. These include the right to work, freedom of association, the right to join a trade union, and the right to work for a fair wage in a safe environment.^{ix}

In recognition that employment laws in one country can affect employment conditions in another, the signatories of the Treaty of Versailles established the International Labor Organization (ILO) in 1919. Its Preamble states, “the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”^x If a government ignores its own labor laws, it is effectively allowing its labor intensive firms to become more cost competitive with imports. As economist Drusilla Brown has noted, if the country has international market power (as does China), the contraction in the demand for imports will also reduce the world price of imports, giving rise to a terms-of-trade improvement. If governments attempt to achieve a strategic advantage through their labor standards they are effectively nullifying market access for some of their trade partners. ^{xi}

The WTO does not cover employment issues explicitly, but policymakers who are concerned about the trade spillovers of China's employment policies have leverage on China. Under GATT Article XXIII, any country in the WTO is entitled to "right of redress" for changes in domestic policy that systematically erode market access commitments even if no explicit GATT rule has been violated.^{xii} Used creatively, this strategy could enable WTO member states to encourage China to do a better job of enforcing its labor laws and an incentive to meet its market access commitments.

Moreover, as part of its accession agreement, China was "required to enforce the rule of law throughout all of its territories."^{xiii} China revised its labor laws in an attempt to empower workers. However, policymakers also recognize if workers were empowered, labor prices might rise and unemployment could increase. Herein I hypothesize that with the downturn in trade; it seems likely that China has not made sufficient effort to either educate workers and managers about their rights and responsibilities under the law or to educate policymakers throughout China as to their enforcement obligations.

I begin the article by describing the unusual political economy of China. I then discuss a little remembered fact—that the postwar planners who designed the world trade system saw trade liberalization as a means to achieving greater employment. They developed rules to regulate not only protectionism, but the use of trade or labor policies to distort trade. Their belief that trade and employment policies should be linked is expressed in the preamble of the GATT and the WTO, but until recently,

this linkage was ignored. However, I argue, the global downturn and the threat of “beggar thy neighbor” policies have reminded government officials of the necessity of collaboration in trade and employment. I next discuss rule of law in the WTO. I note that norms regarding the rule of law underpin the GATT/WTO but they are implicit. However, China became the first (*but not only*) nation to have *explicit* rule of law obligations. These obligations include the responsibility to enforce all of its laws including those governing labor. (Obviously China is not the only country with difficulties enforcing the rule of law regarding labor as well as other trade related policies). I then suggest a way in which WTO members can address this problem, while at the same time provide incentives to China to improve its rule of law.^{xiv} Finally, I explain why all WTO member states will benefit by working multilaterally to encourage China to take steps that improve the rule of law. I do not include a separate section on previous scholarship on the relationship of labor law and trade, but instead embed it in the various sections of the article.

Background on China, Jobs and Trade

China’s regulatory and trade practices can move global markets. China acceded to the WTO in 2001.^{xv} In some 10 years of WTO membership China has moved from the 7th largest trading nation in 2000 to the world’s 3rd largest trading nation in 2010. It has supplanted Germany as the greatest exporter; it is also the world’s largest recipient of investment, and the world’s leading provider of manufactured goods.^{xvi} By importing a wide range of manufactured goods and commodities such as oil, turbines, electrical machinery and plastics, China has clearly created

jobs abroad.^{xvii} However, the efficiency and scale of China's manufacturing has pushed down the price of many manufactured products relative to other goods and services.^{xviii}

China's competitive advantage is derived from several factors. Many analysts believe that Chinese policymakers deliberately keep the value of its currency, the renminbi (also known as the yuan), low in order to stimulate exports.^{xix} Economists and policymakers increasingly rail against China's currency practices.^{xx} Second, Chinese policymakers actively promote and subsidize exports and provide exporting firms with cheap credit and energy.^{xxi}

In addition, China's workers are unusually productive, docile, and relatively inexpensive, compared to workers in other developing countries and the industrialized world (although this is changing). Foreign investors have been willing to be patient and to transfer technology, business practices, and business processes in order to possibly serve China's growing and already sizeable consumer markets.^{xxii} Firms in other countries which rely on higher priced and even more productive workers find it difficult to compete with many Chinese manufacturers.

China has about one quarter of the world's workers and about 1.5 times the combined workforce of all developed states. Many of these workers are literate and productive. They are also plentiful--the Chinese workforce is growing some 11% per year. Finally, these workers are relatively cheap. Although the nominal exchange rate appreciated by 15% from 1998-2008, Niall Ferguson and Moritz Schularick find that

manufacturing in China “is much cheaper in dollar terms than it was eight years ago.”^{xxiii}

Foreign investors are eager to take advantage of this unusual combination of efficient, productive, low wage labor to serve China’s growing internal market or to produce goods for exports. However, many of these same investors, alas, have not become demandeurs of good governance. China has a culture of non-compliance, where bad actors set the norm, where laws and regulations are often ignored or unevenly enforced, and where many citizens including workers don’t know their rights under the law.^{xxiv} Meanwhile, the Communist party often owns and operates or is tied to private enterprises in key sectors such as transportation, energy and banking. Political and economic decisions governing these firms are often made in an opaque and manipulative manner. Sometimes China’s laws are enforced; other times they are ignored. As one Chinese banker put it, “It’s quite hard to compete when you are playing against the referee.”^{xxv}

China’s inadequate governance at the provincial level is due to a wide range of reasons: corruption, a lack of uniformity among rules; and arbitrary abuse of power. Meanwhile, at the national level, the Communist Party is at times willing to ignore its international commitments in order to maintain power.^{xxvi} As the US Congressional Executive Commission on China reported in 2009, “the Communist Party rejects the notion that upholding the rule of law should preempt the Party’s role in guiding the functions of the state.”^{xxvii} China’s rulers are so

afraid of political upheaval that they subsidize inefficient factories to maintain employment and forestall social and political protest.

Since 2007, foreign investors have become increasingly anxious about China. With a wide range of food and product safety scandals, trade diplomats and investors have become increasingly worried about China's willingness to respect the rule of law.^{xxviii} European and American business groups investing in China have issued public warnings that they perceive that China is becoming more interventionist and protectionist.^{xxix} Other nations have responded to these concerns with policies that both single out Chinese exports and which may also distort trade.^{xxx}

China is in many ways an outlier. Its system of governance coupled with its inadequate governance should discourage foreign investors.^{xxxi} Nonetheless, many executives from the US and Europe claim they have no choice but to invest and produce there, given its huge market and productive workforce.^{xxxii} Some observers argue that because of its market power, China cannot be reined in by existing international institutions. However, China's participation in the WTO has given other countries leverage to insure that China adheres to internationally accepted trade norms of transparency, most favored nation and national treatment.

The Historic Albeit Implicit Link between Trade and Employment

The architects of the world trading system saw trade as a tool to stimulate economic growth and employment. They believed that "beggar thy neighbor trade policies" had not protected jobs, but in fact limited job creation and economic growth. Under the influence of Lord Keynes, Sir James Meade and others, they believed that governments had a

responsibility to create the conditions for expanded employment. But they also put forward a broader more radical paradigm: that by collaborating to regulate protectionism, the global and national economies could flourish, creating more jobs for more people *globally as well as nationally*. Thus, they designed the international system governing trade to link trade and employment. ^{xxxiii}

From 1946-1948, the postwar planners developed plans for a new organization, the International Trade Organization (ITO) to govern not only trade, but employment, competition policy, and other issues that could affect trade flows. Fifty four countries met at Havana Cuba from 1947-1948 to negotiate at the International Conference on Trade and Employment. Article 3 of the ITO Charter stated their approach: “Each Member shall take action designed to achieve and maintain full and productive employment and large and steadily growing demand within its own territory through measures appropriate to its political, economic and social institutions.... Measures to sustain employment, production and demand shall be consistent with the other objectives and provisions of this Charter.” Article 7 added an important caveat “The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.” ^{xxxiv}

However, the world never achieved clear rules on the relationship between trade and employment. The US Congress never voted on the Charter and appeared unlikely to approve it.^{xxxv} Ever so gradually,

without deliberate intent, policymakers relied on the GATT, the part of the ITO which governed commercial policies (border measures like tariffs and exchange controls). The GATT was supposed to be a temporary replacement, until GATT members could negotiate a new formal organization. Alas, that did not happen until the Uruguay Round 1986-1993.

In the decades that followed, some member states tried to include employment issues in the GATT. They were not able to convince other GATT member states that these issues belonged in the agreement. Many developing country policymakers feared enhanced language on labor issues would provide a subterfuge for protectionism. The proponents of a more explicit link consistently failed to convince the bulk of GATT member states to make sure a link.^{xxxvi} But from 1948-1993, GATT grew in scale and scope. Members negotiated new rules to govern the use of non-tariff trade barriers and subsidies. But the only mention of trade and employment was in GATT's preamble, which stated that trade relations *“should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand.”*^{xxxvii}

During the Uruguay Round of trade talks from 1986-1993, members agreed to create a formal international organization, the WTO. But the World Trade organization, which came into existence in 1995, had no explicit language on the relationship between employment policies and trade. As before, some members of the WTO posited trade could create a virtuous circle: by regulating protectionism, trade could expand. Firms

could achieve economic efficiencies—producing more goods and services at lower costs. More people would have jobs, access to new opportunities, and ultimately see improvements in economic welfare. By collaborating to regulate protection, the signatories could ensure that trade liberalization would essentially work for more of the world's workers. In this way trade would be mutually beneficial for all of the members of the WTO stimulating economic growth *and* creating jobs. ^{xxxviii}

But this supposedly virtual circle didn't come round for all countries. By the 1990s, it became increasingly clear that given global markets for capital, goods and labor, the world, especially industrialized countries, had a surplus of unskilled labor. Industrialized country policymakers feared they would lose their manufacturing capacity as well as manufacturing jobs. And many developing country policymakers worried that they could not compete with countries like China and to a lesser extent India, which have an advantage in labor intensive manufacturing.^{xxxix} In 1996, the OECD issued a study which examined the relationship of trade and labor standards. The researchers asserted that there is no correlation between real wage growth and labor rights or that countries with lower labor standards had an advantage in exporting.^{xl} But policymakers, scholars, and workers continued to express concerns about the relationship between trade, employment and labor standards. In 1998, the members of the ILO adopted a Declaration on Fundamental principles and rights at work. This declaration obligations ILO member states to respect four core rights: "freedom of association and recognition of the right to collective bargaining," the "elimination of all forms of forced or compulsory labor,"

the "effective abolition of child labor," and the "elimination of discrimination in respect of employment and occupation." In addition, member states were not to use labor standards for protectionist trade purposes (or to ignore such standards in the perceived interest of expanding trade.^{xli} Still the ILO and the WTO did not develop a formal working relationship until 2007, when the two organizations agreed to partner to examine the relationship between trade and employment; they issued their first report in 2008.^{xlii}

However, the two organizations began to collaborate at approximately the same time that the U.S. experienced a financial meltdown. The downturn quickly spread around the world. Trade shrank dramatically; and as noted earlier many people, particularly the most vulnerable, lost their jobs. This created a vicious cycle, as the example of Spain illuminates. In recent years, many immigrants from Latin America came to Spain, but not surprisingly these immigrants were among the first to experience unemployment with the downturn. Many left Spain, and that in turn furthered a decline in exports. According to Giovanni Peri and Francisco Requena, with fewer immigrants, Spanish exporters found fewer markets abroad. They concluded, "Such a negative impact on export may actually exacerbate the negative effect of recession on GDP."^{xliii}

The crisis also allowed more policymakers to go public with their concerns that domestic policies designed to stimulate employment could affect trade, just as trade policies could undermine employment at the national level. As the crisis began, the members of the G-20 (the world's 20 largest economies) met in Washington to develop a collaborative

response. In a summit declaration they stated, “reforms will only be successful if grounded in a commitment to free market principles, including the rule of law, respect for private property, open trade and investment.” They agreed to “refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports.”^{xliv}

In London, the G-20 agreed to continue to refrain from protectionism, and to “rectify promptly any such measures. We extend this pledge to the end of 2010.”^{xlv} At the behest of the G-20, the WTO agreed to use its trade policy review body to examine the behavior of member states in response to the global downturn. The members agreed to focus on domestic policies that could distort trade, such as the adoption of domestic stimuli.^{xlvi} These governments hoped to use “naming and shaming” to limit trade distortions from these policies and help the global economy recover.^{xlvii} In 2009, the WTO reported that the drop in global demand “seems to have prompted members whose growth was previously driven to a great extent by exports...to re-evaluate their economic development strategies.”^{xlviii}

At the most recent G-20 summit in Pittsburgh, USA the attendees agreed to collaborate to build “an employment-oriented framework for future economic growth....The international institutions should consider ILO standards and the goals of the Jobs Pact in their crisis and post-crisis analysis and policy-making activities...We direct our Ministers to assess the evolving employment situation, review reports from the ILO and other

organizations on the impact of policies we have adopted.”^{xlix} But neither the 20 biggest economies nor WTO members have directly addressed how the WTO might deal with a country or countries that might distort trade through domestic policies designed to preserve or create jobs.

Rule of Law, China and the WTO

The GATT/WTO was set up to ensure that when individuals or commercial interests trade, that process follows the rule of law. Scholars generally define the rule of law as a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power. The rule of law thus assures market participants that the government will adopt a hands-off approach to investments and production, allowing those participants to fully exercise their rights in relation to land, labor and capital.¹

The GATT/WTO agreements extend the rule of law across borders. These agreements allow nations with very different governance systems or levels of development to find common ground on the many rules (from health and safety standards to procurement and tax policies) that can affect trade flows. The WTO requires member states to follow norms of market access and nondiscrimination between domestic and foreign entities. In addition, by creating and transmitting norms of due process, predictability, and transparency, the WTO agreements help make member states accountable not only to foreign market actors, but also to their citizens.^{li}

The WTO’s agreements “provide the legal ground-rules for international commerce.”^{lii} As economists Kyle Bagwell, Petros Mavroidis,

and Robert Staiger have noted, the GATT agreements create “a system of property rights over negotiated market access commitments that are secure against unilateral government infringement.”^{liii} However, unilateral government infringement can include the failure of a country to enforce its own laws. Because the Chinese government often acts in an arbitrary, opaque and corrupt manner, the property rights established under WTO rules were not and are not always “secure” in China.^{liv} For this reason, the members of the WTO held China on a tight leash.

China’s accession agreement

When countries apply for WTO membership, they begin a process where other nations review not just their trade policies but their governance capacity. Some countries are required not only to change their laws to meet WTO norms, but how they make laws, so that the process is transparent, predictable, and follows norms of due process.^{lv} The members of the WTO set up a working party to review each potential member. The deliberations always began with a discussion of how these countries made public policy and promulgated trade policies.^{lvi} The process for China was similar.

The members of the WTO required that China make significant changes to its governance in order to join the WTO. The 2001 Protocol on the Accession of the People’s Republic of China explicitly calls on China to “apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures...pertaining to or affecting trade.... China shall establish a mechanism under which individuals and

enterprises can bring to the attention of the national authorities cases of non-uniform application.”^{lvii} Finally, it calls on China to ensure that “those laws, regulations and other measures pertaining to and affecting trade shall be enforced.”^{lviii} This obviously includes laws related to employment. WTO diplomats recognized that China, like many developing countries, would need help and time (as well as expertise, funds and will) to improve its governance.

China’s compliance with its WTO obligations

The members of the WTO have twice reviewed China’s compliance with its WTO commitments in 2006 and in 2008. These reviews reveal a mixed picture. China has generally taken a wide range of steps towards full compliance, but it has yet to meet many of its existing obligations. Moreover, members are not optimistic about China’s future behavior. Some observers note an unanticipated consequence of WTO membership is that the changes required by China to meet its obligations have created disaffected groups who are increasingly prominent and vocal. The Communist party may need to appease these groups to hold onto power.^{lix}

Legal Scholar Julia Ya Qin concluded that “China has shown a mixed record in implementing its Protocol obligations. It “met substantially all of its market access commitments in goods and services,” but “has not fully complied with its special rule obligations of the Protocol.” It delayed notification of its government subsidies and resisted the transitional review mechanism, at time refusing to answer questions posed by other members.^{lx}

The new labor contract law did not go into effect until January 1 2008, so it was too early for WTO member states to discuss it. However, China's failure to enforce the rule of law related to employment issues falls under its binding obligations under WTO rules, as set out in China's Protocol of Accession. The next section delineates China's recent labor practices, how they may affect China's trade and trade partners, and why they breach China's international obligations.

Labor Conditions and Issues in China

In China, people are plentiful, but the supply of jobs is insufficient. Chinese rulers must find jobs for the tens of millions of workers that enter the economy each year, and maintain a high rate of GDP growth. As a result, Chinese policies lurch between empowering workers and ensuring that both foreign and domestic employers find Chinese workers affordable, docile, and easy to hire or fire.

China's ability to create jobs for its people has global repercussions. China has more than 750 million workers—more than the workforce of the OECD nations combined. The World Bank has estimated China's labor force as of 2005 accounted for almost 26% of the world total of workers and 27% of employed workers. China also has some 800 million peasants many of whom are desperate for employment and other means of providing for their families. China also has some 230 million migrant workers who are not tethered to the land.^{lxi} During the period 1991-2005, the work force increased on average by some 10.29 million workers, but only 7.05 million of these workers found jobs.^{lxii} In recent years, the most educated students

have had an even harder time finding job including some 30% of university graduates.^{lxiii}

As a sovereign country, China is free to develop policies to maintain and increase employment. However, as a member of the WTO, when Chinese leaders make labor policies, the government must not do so in ways that distort trade or breach China's international obligations.

There is a growing scholarly and policymaker consensus that China's employment and trade practices have negatively affected employment levels and wages in other countries. For example, a 2009 study by Mion, Vandebussche, and Zhu found that China's imports have a stronger job displacement effect in Belgium than imports from other low-wage countries. Driffield and Chiang found that Taiwanese investment in China has contributed to rising unemployment in Taiwan.^{lxiv} R. Scott of the Economic Policy Institute asserts that from 2001-2007, Chinese exports displaced 2.3 million jobs in the U.S. and lowered average U.S. wages for workers without a college degree by \$1,400. (This analysis presumes that Chinese exports displace U.S. production, which may not always be true). Scott also notes that China has "suppressed the purchasing power of its own middle class with a weak currency," and encouraged inflation.^{lxv} Finally, a 2008 joint ILO/WTO study on the impact of trade upon employment speaks diplomatically and generically, about the impact of increased China trade on employment in other countries. The authors noted "increased openness in middle-income countries reduced the relative demand for unskilled workers by causing sectors of low-skill intensity to contract."^{lxvi}

While China's leaders endeavor to create jobs, many of China's people struggle to provide for their families. China is plagued by imbalances in development between urban and rural, between regions, between sexes and between different population groups. As these imbalances become increasingly visible to growing numbers of the Chinese people, they are taking to the streets.^{lxvii} Unofficial figures put the number of mass protests in 2008 at 127,000, almost 50 percent higher than the last officially released figure of 87,000 in 2005.^{lxviii} Such protests could threaten the informal compact between the Communist party and the Chinese people to deliver economic growth, social and technological progress while maintaining control. China's ruling elite recognize that they must provide more of their people with greater opportunities and access to education, credit, jobs and opportunities.

Not surprisingly China relies on trade to increase growth and to provide jobs. Trade official Wu Yi explained China's approach in 1998: "If we cannot keep exports and investment growing, our macroeconomic growth target will be at risk It's not exports for exports' sake. We have to help achieve an 8 per cent growth rate in GDP Proper export growth is critical in helping the nation reform State-owned enterprises, create jobs and promote social stability."^{lxix}

In 2002, the Chinese Communist Party made employment generation one of the government's main policy priorities, stressing that this goal could be achieved by promoting the market power of workers, increasing the protection of workers, and expanding social welfare.^{lxx} Labor law reforms as well as new programs were designed to achieve these goals.

Although a growing number of Chinese citizens have moved from abject poverty to working or middle class, wages have declined in real terms. In the period 1995-2005, Time Magazine reported that wages averaged approximately \$80 per month from 1995-2005. In 2008, the Ministry of Labor and Social Security admitted that average pay in real terms declined by some 30% for factory workers.^{lxxi} Wages have been suppressed by the inability of workers to demand higher wages; the large supply of individuals willing to work for these wages; and the constant pressure on managers to keep costs down.

In 2007-2008, the Chinese leadership developed several new laws designed to empower workers. The Labor Mediation and Arbitration Law went into effect May 1, 2008, and the Employment Promotion Law and the new Labor Contract law went into effect January 1 2008. The Labor Contract Law requires employers to provide employment contracts for all workers; minimum terms implied by law or collective agreement if no written contract; sets limits to casual employment; mandates firms to allow unions; and finally, mandates employers to consult with the union before adopting or changing policies that have a “direct bearing” on matters of interest to employees.^{lxxii} In contrast to the 1994 Labor Law which loosened state control over labor relations and gave broad discretion to employers, the new labor laws impose greater constraints on employer discretion and take a more protective stance towards workers.^{lxxiii} Article 4 of the Labor Contract Law requires all employers to consult with either a union or elected worker representatives before approving enterprise rules on work and employment conditions. Moreover, the law states that

employees who become worker representatives shall not be subject to discrimination and shall have access to management and co-workers in order to carry out their representative functions. These provisions redefined the obligations between employer and employee and obligate the government to make sure that employers pay their workers.^{lxxiv}

Analysis of the new labor law and China's commitment to enforcement

The Chinese government claims that the law is already helping workers and improving the work place. They assert that more firms have signed long-term contracts with employees and it has not driven up labor costs.^{lxxv} The *Wall Street Journal* reported that the new law had led to some 760,000 labor arbitrations in 2009. These arbitrations focus on contract violations or lost wages.^{lxxvi} However, there are no reliable statistics on enforcement of the law so we must rely on scholar, NGO, and government impressions.

Three legal scholars traveled to China to examine the impact of the legislation so far. Virginia Harper Ho believes the new law has already changed China by making it easier for workers to litigate in their interest and prodding employers to pay attention to workers demands. However, Aaron Halegua argues the law is insufficient to change the behavior of employers because it is not enforced and because the official union does not protect the interest of workers.^{lxxvii} Sean Cooney states that the legal “framework is undermined by a profusion of imprecise and sometimes contradictory legal rules, a bureaucratic ‘command and control’ approach to inspection and dispute resolution, and a narrow and ineffective range of

tools for inducing compliance.” He concludes that the culture of noncompliance impedes better compliance with the law.^{lxxviii}

The US Department of State also found little improvement for China’s workers. In its annual report on human rights, it found that workers are repeatedly harassed and intimidated by criminal elements (often hired by employers). State also noticed that in 2008, “auditors working for foreign buyers continued to report a low but increasing incidence of child labor in factories producing for export.” The labor law mandates a 40-hour standard workweek but standards were regularly violated. Inadequate and poorly enforced health and safety standards put workers’ well being and lives and lives at risk. Although workers were willing to use lawsuits to pursue employers who did not follow the law, access to legal aid was and remains limited.^{lxxix}

Independent NGOs both on and off the mainland also found major labor law abuses continue despite the law. The International Trade Union confederation annually surveys countries for their treatment of workers. It found that the law does not give Chinese workers the right to strike or form their own unions. Individuals who attempt to unionize groups of workers or organize protests are often arrested and sometimes sentenced to jail.^{lxxx}

In November 2009, China Labor Watch reported that several of Walmart supplier factories did not provide copies of contracts to their workers. Workers then were unable to quit and obtain full pay. It also found workers were not paid for overtime work violations as required under the law.^{lxxx} The NGO found even worse conditions for workers supplying

Dollar General, a low price retailer. Workers were not paid in time, frequently injured and paid illegally low wages.^{lxxxii} The Shenzhen Dagongzhe Migrant Worker Center surveyed workers in different areas of Shenzhen. Some 320 individuals (from 380 sent) responded to the questionnaire. The survey found workers had experienced violations of contracts (such as not writing them in Chinese); incomplete contracts; 28% of the contracts offered wages lower than the legal minimum wage. The authors claimed that the survey showed 79.2% of workers are dissatisfied with their work situation and wanted stronger implementation of the law.

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The central government has so far done little to clarify governmental and managerial obligations and to educate workers on their rights.^{lxxxiv} For example, European Business in China, a business organization, noted that authorities and courts throughout the country interpreted the law differently. In an assessment of Chinese labor policy, it concluded that the legislation widened the gap between law and reality, “while further discouraging enforcement and adherence to the law.”^{lxxxv}

Perhaps such uneven enforcement should not surprise us; China’s provincial governments have rarely been diligent in the enforcement of national labor legislation, particularly when it is in conflict with local economic interests.^{lxxxvi}

Taken in sum, the new law has done little to create a culture of compliance among firms manufacturing in China. Managers are often unaware of their obligations of the law. Secondly, managers are under even worse financial pressures as before the law. In order to maintain

export related jobs, they believe they must keep costs down and thereby suppress worker wages and workers' ability to challenge labor decisions. Finally, the law does nothing to rectify substandard practices among the firms most directly targeted by the new laws. ^{lxxxvii}

Recent Policy Developments to Maintain employment

The global financial crisis has increased pressure on the Chinese government to maintain jobs. Chinese workers have lost jobs. In a June 2009 survey of 100 foreign firms operating in China, 37 reduced employment of Chinese workers.^{lxxxviii} The Chinese government responded to this situation by maintaining artificially low labor costs and by stimulating domestic demand and production. These strategies were not always consistent with China's WTO obligations.

In 2009, the Chinese government reported that 20 million individuals in China's coastal areas had lost their jobs due to the global economic slowdown in 2009. They would soon be joined by a record 6.1 million college students preparing to graduate and join the army of jobseekers.^{lxxxix} Officials acknowledged that the newly unemployed and never-employed individuals could affect social stability, according to Zhang Xiaojing, director of the Macroeconomy Office of the Institute of Economics at the Chinese Academy of Social Sciences. In December 2008, the State Council, China's highest governing body, ordered local governments to create jobs for some 230 million migrant workers who had returned to their home towns. The *Financial Times* reported that the Communist party was particularly concerned about disgruntled students who might be willing to incite a rebellion, as in Tiananmen Square in 1989.^{xc}

Although the Chinese leadership freely acknowledged its concerns about social stability, it stated that the new labor laws would not be revised to maintain jobs. Senior legislative official Xin Chunying noted, “the labor contract law has nothing to do with the financial crisis.”^{xcii} But the government did take steps to prod employers to maintain employment. For example, in July 2008, the All-China Federation of Trade Unions (ACFTU) began trying to unionize large foreign companies operating in China. These companies must pay 2% of payroll to local and national union coffers. However, many of the firms surveyed by the US China business council in 2009 said that the union pressure had declined. The US China Business Council surmised that the government and union leadership decided not to push unionization while companies were “feeling the economic downturn.”^{xciii}

Moreover, the China Labor Bulletin claimed that with the onset of the global economic crisis, federal and provincial officials “became even more willing to turn a blind eye to routine violations of labor laws as long as enterprises did not lay off large numbers of employees at one time.” The China Labor Bulletin gave several examples of steps that employers had taken to reduce their labor costs. Some firms refused to give their employees pensions as required under the law for employees who had served ten year or more; other companies laid off long-serving staff or forced them to sign new short-term employment contracts.^{xciii} Other firms let workers go and then offered to rehire them as temporary workers. Such behavior is banned under the new labor law.^{xciv} Many migrant workers have become increasingly restive in response to the law. They

have staged strikes, road blockades and sometimes violent protests in an attempt to get local governments to enforce the law. According to the an international survey of trade union conditions in China, “Most companies that go bankrupt give no notice to the workers and leave them underpaid or unpaid with little hope of any form of compensation or redundancy payments. Most of the companies reducing staff are doing so with little regard for the Labor Contract Law which details compensation procedures and consultation process before layoffs. For example, Guangdong Provincial authorities stated that between September and October 2008, in Dongguan alone, 117 employers of Hong Kong origin went into hiding owing unpaid wages to some 20,000 workers.”^{xcv}

The central government resolved to stimulate domestic demand. In 2009 China put in place a large (\$586 billion) stimuli program, which includes requirements that "government-funded projects should purchase domestic products unless they cannot be obtained under reasonable business conditions." It also seemed designed to discourage imports because it stipulated that imports paid for from the government's \$586 billion stimulus plan must be approved in advance.^{xcvi}

China continued to focus on exports to maintain and create jobs. In 2008, policy makers increased VAT rebates several times in 2008 on labor-intensive products such as clothing, textiles, and high value added electrical machinery products. The products affected represent approximately one quarter of China's total exports. The government then again increased the scope of products eligible for such rebates in November and December 2008.^{xcvii} Economist Eswar Prasad observed that “China's

focus on maintaining export competitiveness to prevent job losses is clearly trumping longer-term considerations of rebalancing growth and reducing reliance on exports.”^{xcviii} In a study of China’s protective measures for global trade alert, Yunxia Yue found that by maintaining and increasing protectionism of labor intensive products, export growth quickly resumed.^{xcix}

Conclusion and Recommendations

On November 15, 2008, Chinese President Hu Jintao attended the summit meeting of the Group of 20 (G-20) countries in Washington, D.C. to discuss the global financial crisis. Hu stated that “steady and relatively fast growth in China is in itself an important contribution to international financial stability and world economic growth.”^c Hu might also argue that China had done more to provide jobs for its people than any other nation. However, as noted in the introduction, China’s “cheap exchange rate” has depressed wages and boosted savings and investment. The ever growing supply of labor has thwarted the ability of labor in China and abroad to demand higher wages. And the Chinese leadership’s determination to maintain jobs in China is also distorting trade.

A growing number of analysts and diplomats, including economist Paul Krugman argue that it has deliberately achieved an export surplus by manipulating its currency and its workers. Krugman wrote, “Chinese mercantilism may end up reducing U.S. employment by around 1.4 million

jobs.” But as Krugman well knows, trade is not a zero sum game. With its efficient and productive workers, Chinese factories have churned out more goods at affordable prices. In so doing, China has increased demand for wide range of traded goods and services and thereby created and maintained jobs overseas as well.^{ci}

I am making a different point. China’s trade and employment practices are inconsistent with its WTO obligations. By joining the WTO, China’s domestic policies can be subject to the scrutiny of the WTO.^{cii} China’s new labor law was supposed to empower workers and set clearer standards for employers. Labor law violations such as violating labor sub-contracting rules and bonded labor were clearly made illegal. But there is growing evidence the law has been at best unevenly enforced and at worst ignored.^{ciii} The failure to enforce the law is distorting trade.

Governments have tried to use both the carrot and stick to change China’s behavior. The EU is China’s largest trading partner. It has long relied on dialogue and capacity building projects to improve the rule of law in China. But EU member states recognize this approach has not changed Chinese practices. Germany, Britain, Sweden and the Netherlands are willing to challenge China for its labor law practices, while other EU member states prefer to use anti-dumping regulations.^{civ} Given this divide, they are unlikely to develop an effective strategy.

Meanwhile, the US has also adopted a bifurcated strategy, reflecting differences among Congress and the Executive, as well as Republicans and Democrats. Like the EU, the US government relies on bilateral dialogue and capacity building. However, U.S. policymakers are much more willing

to act unilaterally. For example, the U.S. uses the web and publications to discuss, “name and shame” China for its failure to enforce its own laws and internationally accepted labor rights. China has responded to these reports by saying on one hand, “China is still a developing country,” and on the other by pointing out America’s own labor law deficiencies (which are plentiful).

In addition, both the EU and the US have tried to encourage their firms to act responsibly in China by using voluntary corporate social responsibility initiatives. CSR strategies can include codes of conduct, social audits or factory certifications designed to voluntarily promote labor rights. However, firms that act to protect labor rights find it difficult to compete with employers that violate China’s labor norms.^{cv} In fact many manufacturers sourcing in China complained about China’s new labor laws as they were developed.^{cvi}

Taken in sum, these strategies probably won’t change China’s behavior because they are not sufficient incentives to the government to improve enforcement; nor are these strategies effective at helping workers demand the rights delineated in the labor law. As the founders of the ILO and the GATT recognized, nations are more likely to be effective—*to change market conditions by collaborating*. The WTO is the appropriate venue for such action. First, we should make better use of the trade policy review process to hold China to account for its domestic policies that can distort trade—whether these policies are domestic stimuli or the failure to enforce provincial and national leaders to fully enforce Chinese labor laws.

This issue should also be addressed generically as part of the larger G-20 mandate to examine WTO member responses to the global financial crisis.

Moreover, it is important to note that China is not the only country which has changed its labor practices in response to the global downturn. The International Confederation of trade unions noted that in many countries workers have been threatened by employers with relocation, outsourcing and downsizing. These problems are not confined to the developing world. Meanwhile, in industrialized countries, the ICFTU found that employers are increasingly relying on contract labor, third-party” labour agency employment which has eroded incomes, conditions and rights at work.^{cvii}

The relationship between trade employment and labor rights is made more challenging by policy incoherence at the global and national levels. As noted in the introduction, policymakers are charged with addressing the employment needs of their citizens, not the global community, just as they are charged with making trade policy for the benefits of their citizens. This should signal that we need a more honest and fuller discussion of the relationship between trade and employment and labor rights.

The WTO offers avenues to address this lack of coherence between trade, employment and labor rights. Under GATT Article XXIII, any country in the WTO is entitled to a "right of redress" for changes in domestic policy that systematically erode market access commitments even if no explicit GATT rule has been violated. Such a “non-violation” complaint entitles the aggrieved party either to compensation in the form

of other tariff concessions to “rebalance” market access commitments or the complaining partner may withdraw equivalent concessions of its own.^{cviii} According to legal scholar Joost Pauwelyn, "In non-violation cases a WTO panel could, indeed, be called upon to refer to non-WTO rules [...] in its assessment of whether certain governmental measures, though not in violation of WTO rules, have affected the ‘legitimate expectations’ that could have been derived from a trade concession.” Thus a complainant could invoke these non-WTO rules along the following lines: ‘when we obtained your trade concession (duty free access for our IPODs), we did so with the expectation that you would continue to respect international labor standards and your own labor laws. But as noted by international observers, Chinese NGOs, scholars and others, it is clear that you are ignoring international labor obligations and your own labor laws in factories that produce for export (such as those that supply foreign companies such as Apple). Thus, your country has violated these non-WTO rules. “This violation of labor standards does not violate WTO rules as such, but it does nullify the trade value of your concession, a nullification that we could not have foreseen [...] so as per WTO rules, we are requesting compensation for this nullification under the heading of non-violation’.”^{cix}

Such a trade dispute may not succeed. Law professor Simon Lester notes, “It would be hard to prove that lack of enforcement could not reasonably have been anticipated; and proving causation in relation to undermining market access for specific products could be difficult.”^{cx} But a multilateral approach would bring the issue to global attention. Merely by

taking this approach, China might be moved to do a better job of educating managers, policymakers and workers on the new law and of monitoring its enforcement at the local level. Such a strategy would provide incentives to China to enforce its own laws, which could allow China to do a better job of reconciling the imperative of full employment with its obligations not to distort trade and to enforce its own laws.

China's membership in the WTO has no doubt provided benefits for the people of the world. But China is exporting its inadequate governance: its unsafe food, toys, and medicines; corruption; its failure to protect intellectual property, and the failure to sufficiently enforce its own labor laws. China's governance problems have become our problems. We are complicit in this problem unless we act to address it. After all, The GATT/WTO, and its sister institutions—the UN and the Bretton Woods Institutions were built on a radical idea—that at the national levels nations had a responsibility to their citizens to create conditions for economic growth and job creation and that nations had a responsibility to collaborate in the fields of trade and investment to create employment.

Endnotes

ⁱ An early version of this article was prepared for Professor Petros Mavroidis, [China in the WTO: An Early Harvest](#).

ⁱⁱ Hubert Escaith, Nannette Lindenberg, and Sebastien Miroudot, "International supply Chains and Trade Elasticity in times of global Crisis," 2/2010, 3, 5 at <http://mpra.ub.uni->

muenchen.de/20478/1/MPRA_paper_20478.pdf; for an interesting overview of the crisis, see the individual chapters in Richard Baldwin, "The Great Trade Collapse: Causes, Consequences and Prospects," at <http://www.voxeu.org/index.php?q=node/4297>

iii ILO, "Global Employment Trends," January 2009, 7, 9, at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_101461.pdf and Somovia quote at <http://www.stwr.org/global-financial-crisis/financial-crisis-unemployment-working-poor-and-vulnerable-employment-to-increase.html>

iv Policymakers struggle to get out of a recession with high unemployment. Credit defaults are highly correlated with the unemployment rate, so as unemployment rises, defaults rise, and defaults impair bank capital, causing a further tightening of credit. Tight credit makes it harder for business to invest in people or technologies, and the failure to do so, will keep unemployment high.

v For an interesting analysis of this, see, Gunter Schucher, "China's Employment Crisis-A Stimulus for Polic Change?" *Journal of current Chinese Affairs* 38, 2, 121-144.

vi Information Office of the State Council, "China's Employment Situation and Policies," 4/26/2004, http://www.chinadaily.com.cn/english/doc/2004-04/26/content_326356.htm

vii Geoff Dyer, "China Sets Sights on 8% Economic Growth," *Financial Times*, 3/5/2009, <http://www.ft.com/cms/s/47bce284-0929-11de-b8b0-0000779fd2ac>. China Daily, "China Pledges More Measures to Promote Employment, 3/5/2009,

http://www.chinadaily.com.cn/china/2009npc/2009-03/05/content_7538891.htm

viii On labor law, <http://encyclopedia2.thefreedictionary.com/labor+law>

ix These rights are delineated under the Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/>

x http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm

xi Drusilla K. Brown, "Labor Standards: Where do they Belong on the International Trade Agenda," Tufts University Working Paper, 2001, pp. 29-31, <http://ase.tufts.edu/econ/papers/200113.pdf> ; and Kyle Bagwell and Robert W. Staiger, "The Simple Economics of Labor Standards and the GATT," NBER Working Paper No. 6604, 1998.

xii Negotiating Group on dispute Settlement, "Non-violation complaints Under GATT Article XXIII:2, Note by the Secretariat, MTN.GNG/NG13/W/31, at <http://www.worldtradelaw.net/history/urdsu/w31.pdf>; and Jean Monnet Center, Evolution of Non-violation Cases, [centers.law.nyu.edu/jeanmonnet/papers98/98-9 – html](http://centers.law.nyu.edu/jeanmonnet/papers98/98-9.html).

xiii The accession agreement is at <http://www.mac.doc.gov/China/WTOAccessionPackage.htm>.

xiv Kenneth Dam, "China as a Test Case: Is the Rule of law Essential for Economic Growth?"

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=880125. See especially fn. 205.

^{xv} <http://wss.hkcampus.net/~wss-6489/en/02/020126.html>; Nicholas Lardy, "China and the World Trade Organization: Problems on the road to Liberalization," <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan003154.pdf>; Martin G. Hu, "WTO's Impact on the Rule of Law in China," *Mansfield Dialogues in Asia*; and WTO, "WTO Ministerial Conference Approves China's Accession," http://www.wto.org/english/news_e/pres01_e/pr252_e.htm.

^{xvi} According to Bloomberg news, "Foreign direct investment surged 103 percent from a year earlier in December to \$12.1 billion, the Ministry of Commerce reported in Beijing today. The value was the second highest on record, according to Bloomberg data." Investment in China fell 2.6 percent in all of 2009 to \$90.03 billion as the global crisis sapped companies' finances. China's non-financial outbound investment rose 6.5 percent to \$43.3 billion. Bloomberg, "China Says U.S. Is Backsliding on Trade, Warns on Google (Update 2), 1/15/2010," <http://www.businessweek.com/news/2010-01-15/china-says-u-s-backsliding-on-trade-warns-on-google-update2-.html>

^{xvii} Testimony of John Frisbie, President, U.S.-China Business Council, "China's Implementation of Its World Trade Organization Commitments," Trade Policy Staff Committee Hearing, 10/2/2009, http://www.uschina.org/public/documents/2009/10/wto_testimony.pdf.

For an overview of china's imports and exports, see

www.uschina.org/statistics/tradetable.html, up to date for 2008.

^{xviii} Commission on Growth, "The Growth Report: Strategies for Sustained Growth and Inclusive Development," 2009, 93-94, The Commission on Growth and Development was set up to examine the policies and strategies that underlie rapid and sustained growth and poverty reduction. It was chaired by Nobel Laureate Michael Spence, and Danny Leipziger, Vice-President, World Bank, was the Commission's Vice-Chair.

http://www.growthcommission.org/index.php?option=com_content&task=view&id=13&Itemid=58

^{xix} In 2005 China officially removed the peg to the dollar, and the yuan gradually became stronger, moving from 8.35 to the dollar to about 6.8 in July 2008. But with the financial crisis they again made the link and tried to prevent the yuan from strengthening. The yuan has fallen against the Euro since 2005. Wayne M. Morrison and Mark Labonte, "China's Currency: A Summary of the Economic Issues," CRS Report, 12/7/2009, RS21625; Ernest Preeg, "Free Trade Agreements in Asia: US Exports at Risk and Much More," *Manufacturers Alliance*, 2/2009,

<http://www.aei.org/docLib/Asian%20FTAs.pdf>; Stephen Castle and Carter Dougherty, "EU to Press China Over Yuan," *New York Times*, 11/23/2007, <http://www.nytimes.com/2007/11/23/business/worldbusiness/23iht-currency.5.8461214.html>;

and James A. Reddy, "EU voices Frustration with China's Currency Policy," *Wall Street Journal*, 12/28/2009, <http://online.wsj.com/article/SB10001424052748703939404574565271054376320.html>

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- ^{xx} On a bilateral basis, the yuan is undervalued by 41 percent against the U.S. dollar, according to a January 2010 study by the Institute for International Economics. John Williamson and William Cline, "Notes on Equilibrium Exchange Rates," PB 10-2, <http://www.iie.com/publications/pb/pb10-02.pdf> Also see <http://blogs.ft.com/economistsforum/2009/12/why-china%E2%80%99s-exchange-rate-policy-concerns-us/>; and Knowledge at Wharton, "The Costs of China's Currency policy," 1/21/10 at <http://www.forbes.com/2010/01/21/china-currency-policy-entrepreneurs-finance-wharton.html?boxes=Homepagechannels>
- ^{xxi} Dani Rodrik, "What's so Special About China's Exports?" paper prepared for China and the global Economy, 2010; Pranab Bardhan, 'Challenges for China at sixty-Part I,' Yaleglobal, <http://yaleglobal.yale.edu/content/challenges-china-sixty-%E2%80%93-part-i>; and Paul Krugman, "Chinese New Year," New York Times, 12/31/2009 <http://www.nytimes.com/2010/01/01/opinion/01krugman.html>.
- ^{xxii} Michael Dooley, David Folkerts-Landau and Peter Garber "An Essay on the Revived Bretton-Woods System", NBER Working Paper No. 9971, September, 2003; and Michael Wines, "China's Economic Power Unsettles the Neighbors," New York Times, 12/9/2009, <http://www.nytimes.com/2009/12/10/world/asia/10jakarta.html>. The recent revelations that Chinese hackers had hacked into Google have led some companies to consider (or reconsider) abandoning China despite its huge potential market. Steven Mufson and Peter Whoriskey, "Does China's big market come with a bigger headache?" Washington Post, 1/15/2010, A14.
- ^{xxiii} Shaun Breslin, "Capitalism with Chinese Characteristics: the Public, the Private and the International," Working Paper 104, 2004, 3, <http://wwwarc.murdoch.edu.au/wp/wp104.pdf>; Niall Ferguson and Moritz Schularick, "The End of Chimerica," Harvard Business School Working Paper, 10-037, 2009, p. 14-15; on labor costs see Judith Banister, "Manufacturing in China today: Employment and labor compensation," EPWP, The Conference Board, September 2007, pp.4-5 <http://www.conference-board.org/worldwide/china.cfm>.
- ^{xxiv} Global brands and retailers put tremendous pressure on manufacturers and suppliers to keep costs from rising. AFL CIO, Representative Benjamin L. Cardin and Christopher Smith, Section 301 Petition before the US Trade Representative, 6/8/2006, 44-47; and Department of State, 2008 Human Rights Report: China, www.state.gov/drl/rls/hrrpt/2008/eap/119037.htm#.
- ^{xxv} Quotation from Jamil Anderlini, "Rule of the Iron Rooster," Financial Times, 8/25/2009, http://www.ft.com/cms/s/0/f41d5786-910d-11de-bc99-00144feabdc0.html?nclick_check=1
- ^{xxvi} Gregory C. Chow, "The Impact of Joining WTO on China's Economic, Legal and Political Institution," Speech at City University of Hong Kong, 3/22/2001, www.princeton.edu/~gchow/WTO.pdf
- ^{xxvii} Congressional Executive Commission on China, 2009 Annual Report, 1, quotation p. 5.
- ^{xxviii} European Business in China "Position Paper 2009-2010," Executive summary, 9-13; at <http://www.euccc.com.cn/view/media/publications>; and

U.S. China Business Council 2009 Member Priorities Survey Results, "US Companies China Outlook," 14-17,
http://www.uschina.org/public/documents/2009/10/uscbc_member_survey.pdf

^{xxix} European Business in China "Position Paper 2009-2010," Executive Summary; USTR, 2009 National Trade Estimates Report, http://www.ustr.gov/sites/default/files/uploads/reports/2009/NTE/asset_upload_file868_15464.pdf; and U.S. China Business Council 2009 Member Priorities Survey Results, "US Companies China Outlook, 2009" 9-13.

^{xxx} Chad P. Bown, "the global Resort to Antidumping, Safeguards and other Trade Remedies Amidst the Economic Crisis, World Bank Policy Research working Paper 50158, September 2009, http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/09/14/000158349_20090914083619/Rendered/PDF/WPS5051.pdf

^{xxxi} In indicators of the rule of law, China ranks relatively low. See as example, World Trade Indicators at <http://info.worldbank.org/etools/wti/2b1.asp?pillarID=1&indList=66,118,152,156,157,158,159,410,161,190&cid=41&comparator=i2&vr=Value&timeperiod1=t1&timeperiod2=t2&timeperiod3=t3&timeperiod4=16> or for rankings, <http://info.worldbank.org/etools/wti/2b1.asp?pillarID=1&indList=66,118,152,156,157,158,159,410,161,190&cid=41&comparator=i2&vr=Rank&timeperiod1=t1&timeperiod2=t2&timeperiod3=t3&timeperiod4=16>.

^{xxxii} European Business in China "Position Paper 2009-2010" <http://www.euccc.com.cn/view/media/publications>; David Barbuda and Brad Stone, "China, Where U.S. Internet Companies Often Fail," *New York Times* 1/15/2010, <http://www.nytimes.com/2010/01/16/technology/16failure.html>; and Steven Mufson and Peter Whoriskey, "Does China's Big market Come with a bigger headache?"

^{xxxiii} Susan Ariel Aaronson, *Trade and the American Dream: A Social History of Postwar Trade Policy* (Lexington: University of Kentucky, 1996), pp. 17-40. The ITO was the most comprehensive international economic agreement ever negotiated; it had provisions setting rules of behavior for the use of import quotas, exchange controls, state trading, commodity agreements, policies to achieve full employment; and rules to regulate investment and economic development. This is an archival history of the ITO, GATT, and WTO. See pp. 17-40.

^{xxxiv} The Havana Charter at <http://www.worldtradelaw.net/misc/havana.pdf>

^{xxxv} Aaronson, *Trade and the American Dream*, 5, 114-132 and William Diebold, Jr. "The End of the I.T. O," *Essays in International Finance* 16, (October 1952), 1-37. Many factors contributed to the demise of the ITO including changing international circumstances, party politics, special interest opposition and Truman Administration ambivalence.

^{xxxvi} Susan Ariel Aaronson, *Taking Trade to the Streets: The Lost History of Public Efforts to shape Globalization* (Ann Arbor: Michigan, 2001), pp 54-55, fns. 110-112.

^{xxxvii} http://www.wto.org/english/docs_e/legal_e/index_g_e.htm

^{xxxviii} Steve Charnovitz, "The (Neglected) Employment dimension of the World Trade Organization," Accepted Paper, at ssrn.com/abstract=680141.

Charnovitz notes the preamble is actionable. He says that "In its decision in the *Tariff Preferences* case, the Appellate Body stated that the Preamble "informs" all WTO covered agreements. " European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries, Report of the Appellate Body, WT/DS246/AB/R, para. 161 (adopted 20 April 2004).

^{xxxix} Commission on Growth and Development, "The Growth Report: Strategies for Sustained Growth and Inclusive Development, 2009, 93-94. For an excellent overview of the debate, see Mita Aggarwal, International Trade, Labor Standards and Labor Market Conditions: An Evaluation of the Linkages, US International Trade Commission Working Paper 95-06-C, 1995; David Kucera, "The Effect of Core Workers Rights on labour costs and foreign Direct Investment: Evaluating the Conventional Wisdom," International Institute for Labour Studies Discussion Paper 130, 2001; and Drusilla Brown, "International Trade and Core Labor Standards: A Review of the Literature," Department of Economics, Tufts Discussion Paper, 2000-05 <http://ase.tufts.edu/econ/papers/200005.pdf>

^{xl} OECD, "Trade, Employment and Labour Standards: A Study of Core Workers Rights and International Trade," 1996.

^{xli} Article 2, ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 86th Session, Geneva, 1998. [/www.ilo.org/declaration/lang--en/index.htm](http://www.ilo.org/declaration/lang--en/index.htm)

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http://www.wto.org/english/res_e/reser_e/wkshop_aug09_e/wkshop_aug09_e.htm

^{xliii} Peri, Giovanni and Francisco Requena (2009) "[The Trade Creation Effect of Immigrants: Evidence from the Remarkable Case of Spain](#)", NBER Working Paper # 15625, November, 2009..

^{xliv} G-20, Declaration, "Summit on Financial Markets and the World Economy," 11/15/2008, http://www.g20.org/Documents/g20_summit_declaration.pdf

^{xlv} London Summit Communiqué: A Plan for Global Recovery and Reform," 4/2/2009, <http://www.pittsburghsummit.gov/resources/125131.htm>

^{xlvi} According Trade Alert, an international monitoring organization, the US has 46 such measures (either proposed or adopted) while China has 29. The difference in the number of "protectionist" measures may reflect greater democracy and transparency in the US rather than greater protectionist intent or actions.

http://www.globaltradealert.org/measure?tid=All&tid_1=494&tid_3=All

^{xlvii} WTO, "Report on G20 Trade and Investment Measures," 9/14/2009, See Annex 1 and 2. See pp. 26-27 for China's measures.

^{xlviii} WTO Trade Policy Review Body, WT/TPR/OV/12, p. A-35.

^{xlix} G-20, "Leaders Statement: The Pittsburgh Summit," 9/24-25/2009, <http://www.pittsburghsummit.gov/mediacenter/129639.htm>

¹ http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml. The rule of law helps set the “rules of the game” in critical areas such as investments, property, and contracts. The rule of law also serves as an important assurance of social rights and government accountability. Governmental restraint is especially critical for many transitioning economies where a previously planned economy is to be transformed into one that is market-based. When the government is no longer the sole owner of land, capital, and labor, the rule of law guarantees that the crucial elements of the economy will be free from arbitrary governmental actions

^{li} Robert Keohane, Andrew Moravcsik, and Stephen Macedo, "[Democracy: Enhancing Multilateralism](#)," *International Organization* (Winter 2009), 18.

^{lii} WTO, “Understanding the WTO,”

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm; and Address by James Bacchus, Chairman, Appellate Body, WTO, “Groping Towards Grotius: the WTO and the International Rule of Law,”

^{liii} While complaints based upon an alleged "failure of another contracting party to carry out its obligations under this Agreement" (Article XXIII:1(a)) are sometimes referred to as "violation complaints", complaints invoking Article XXIII:1(b) have in a few instances been denoted as "non-violation complaints"¹ or as being based on "the well-established principle of non-violation nullification or impairment".² But the term "non-violation complaint" has never been precisely defined by GATT contracting parties.

^{liv} Breslin, “Capitalism with Chinese,” 15-19.

^{lv} Julia Ya Qin, “China, India, and the Law of the World Trade Organization,” Wayne State Law School Legal Studies Research Paper Series, No. 07-31, 2008, 14-8, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1016208

^{lvi} From 1995- April 2009, some 25 countries have acceded to the WTO-- [Albania](#), Republic of Armenia, Bulgaria, [Cambodia](#), Cape Verde, [China](#), [Croatia](#), [Ecuador](#), [Estonia](#), [Former Yugoslav Republic of Macedonia](#), [Georgia](#), [Jordan](#), [Kyrgyz Republic](#), [Latvia](#), [Lithuania](#), [Moldova](#), [Mongolia](#), [Nepal](#), [Oman](#), [Panama](#), [Saudi Arabia](#), [Chinese Taipei](#), [Tonga](#), [Ukraine](#), and Vietnam. Aaronson reviewed the accession process of 9 countries including China.

^{lvii} WTO, “Accession of the People’s Republic of China, Decision of 10 November 2001,” WT/L/432, (A) 1, 2, <http://www.wto.org>.

^{lviii} Ibid. Sections (B), (C), 3.

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