

TRADE AND HUMAN RIGHTS: THE CASE OF CHINA

James A. Dorn

Vigorous economic development leads to independent thinking. People hope to be able to fully satisfy their free will and see their rights fully protected. And then demand ensues for political reform. . . . The model of our quiet revolution will eventually take hold on the Chinese mainland.

—Lee Teng-hui

The Path toward Freedom

The rise of democracy in South Korea and Taiwan attests to the power of the market in generating political liberalization. Both countries have moved from closed, authoritarian regimes to open-market democracies without bloody revolutions and without the threat of economic sanctions. The question is, will China follow?

China has created a vibrant economic space by discarding central planning and allowing experimentation with new ownership forms. Since 1979 China's economy has grown at an average annual rate of more than 9 percent and has the potential to become the world's largest economy during the 21st century. Although the Chinese Communist Party (CCP) has held onto its monopoly of political power, China is a more open society today than it was a decade or two ago. *There are still serious violations of human rights, but a case can be made that China is creeping along in the right direction and, in time, may follow Taiwan's "quiet revolution."*

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The critics of China's human rights record are justified in pointing out the abuses that are occurring in China. Yet, many of those critics (e.g., Rep. Nancy Pelosi [D-CA]) underestimate the importance of trade liberalization as a strategy for bringing about systemic change in China. They also fail to distinguish between those human rights that can be universalized and are consistent with individual freedom and those alleged rights that cannot be extended to everyone without violating fundamental rights to life, liberty, and property.

Article 25 of the U.N. Declaration of Human Rights states that each person "has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" (Ravitch and Thernstrom 1992: 204–5). If sanctions were imposed on China for failing to protect those alleged economic and social "human rights"—rights that cannot be found in the U.S. Bill of Rights, that cannot be universalized,¹ and that cannot be implemented in a world of scarcity—China would become less free and less prosperous. Before acting too hastily, human rights advocates need to think more clearly about the nature of human rights and how best to help China along the path toward a free society.²

The threat of using trade restrictions to advance human rights is fraught with danger. Free trade is itself a human right and rests on an individual's rights to life, liberty, and property—rights the U.S. Founding Fathers regarded as inalienable and self-evident. When the federal government closes U.S. markets to countries with governments that deny their citizens certain civil liberties, it robs those citizens of one more freedom and undermines the market dynamic that in the end is the best instrument for creating wealth and preserving freedom.

China serves as a case in point. Denying China most-favored-nation status or imposing sanctions would politicize trade, strengthen the CCP, and harm many innocent people. Sanctions also would violate Americans' rights to liberty and property by interfering with free trade.

Free Trade as a Human Right

The proper function of government is to cultivate a framework for freedom by protecting liberty and property, including freedom of contract (which includes free international trade), not to use the power of government to undermine one freedom in an attempt to

¹Unlike freedom of speech and the right to own property, the right to welfare entails positive obligations and violates the liberty and property of others.

²On the nature of human rights and their relation to freedom, see Pilon (1979, 1986).

secure others. The right to trade is an inherent part of our property rights and a civil right that should be protected as a fundamental human right.

The supposed dichotomy between the right to trade and human rights is a false one. Market exchange rests on private property, which is a natural right. As moral agents, individuals necessarily claim the right to liberty and property in order to live fully and to pursue their interests in a responsible manner.³ Without private property and freedom of contract, other rights—such as free speech and religious freedom—would have little meaning, because individuals would be at the mercy of the state. The human-rights fabric is not made stronger by unraveling economic liberties in the hope of enhancing other liberties.

Protectionism violates human rights. It is an act of plunder that deprives individuals of their autonomy—an autonomy that precedes any government and is the primary function of just governments to protect (see Bastiat [1849] 1964). The danger of buying into the argument that restricting trade with China will increase human rights is that such an argument diminishes the significance of the moral case for free trade, politicizes economic life, and weakens the market-liberal vision—a vision that needs to be strengthened in order to protect civil society and human liberty.

Commerce and Good Government

Those who argue that sanctions will damage a target country's economy enough to bring about political liberalization argue more from emotion than from reason. There is no logical connection between sanctions and liberty. Economic sanctions are really a “feel good” approach to promoting human rights without any chance of being effective.⁴ Indeed, sanctions antagonize the governments of target countries and radicalize those in power.

In contrast to the “feel good” approach of sanctions, the logic of trade liberalization posits a close link between increasing economic freedom and securing human rights. Unlike sanctions, trade liberalization weakens the power of government and civilizes nations. The institutional infrastructure of a market system is supportive of personal

³For a survey of the literature bearing on the sources of human rights, see Palmer (1996: sec. III).

⁴Bruce Bartlett (1985: 10), in his study of sanctions, concluded that economic sanctions “are a way of making ourselves feel that we are doing something substantive about a serious problem without really doing anything at all. The problem is that we are paying a heavy price for invoking this ‘feel good’ policy over and over again.”

freedom and good government. Free markets, based on private property and consent, encourage individual responsibility, self-esteem, social mobility, and tolerance—all of which are associated with human rights and democracy.

Even though free markets are neither necessary nor sufficient for democracy, there is much evidence to support the argument that economic liberalization breeds political liberalization. As markets spread, people acquire greater wealth and have a stronger interest in participating in the political process and protecting their property. Freer markets thus give rise to political regimes that are more tolerant of human rights and are more likely to safeguard them. Michael Novak (1996: 2) writes,

The capitalist preference for law and due process leads naturally enough to the . . . basic institutions of democracy: the rule of law, limited government, separated powers, and the protection of the rights of individuals and minorities.

The rule of law is a by-product of commercial society. Traders who were discriminated against by rulers found ways to circumvent the sovereign and increase their wealth. Montesquieu, in *The Spirit of the Laws* (*De l'esprit des lois* [1748]), explains how Jewish merchants invented the bill of exchange to prevent having their property subject to the whim of rulers (book XXI, 20), and how foreign exchange markets provided constraints on the ability of rulers to debase the currency (book XXII, 13). Today international capital markets put pressure on government policymakers to protect private property rights and to pursue prudent monetary, fiscal, and regulatory policies or face massive capital outflows. Global market competition helps good government crowd out bad government.

Montesquieu's observation that market innovations compel rulers "to govern with greater wisdom than they themselves might have intended" is based on his insight that "only good government brings prosperity" (book XXI, 20).⁵ The collapse of communism—first in Eastern Europe and then in the Soviet Union—is testimony to the power of Montesquieu's vision.

In *The Wealth of Nations*, Adam Smith ([1776] 1937: 385) describes how the development of commercial life in Europe "gradually introduced order and good government, and with them, the liberty and security of individuals." Likewise, French liberals Benjamin Constant and Alexis de Tocqueville emphasize how commerce creates a love

⁵Quoted in Hirschman (1977: 72). For a discussion of Montesquieu's views on the relation between markets and government, see Hirschman (*ibid.*: 70–80).

of liberty. According to Constant ([1819] 1988: 315), "Commerce inspires in men a vivid love of individual independence. Commerce supplies their needs, satisfies their desires, without the intervention of the authorities." And according to Tocqueville ([1835] 1969: 637), "Trade makes men independent of one another and gives them a high idea of their personal importance; it leads them to want to manage their own affairs and teaches them how to succeed therein."

Harvard economist Robert Barro's recent empirical work, summarized in *Getting It Right*, shows that earlier writers were correct in seeing a close connection between free trade and free people. Barro (1996, 11) finds "that improvements in the standard of living . . . substantially raise the probability that political institutions will become more democratic over time." He concludes,

The advanced Western countries would contribute more to the welfare of poor nations by exporting their economic systems, notably property rights and free markets, rather than their political systems, which typically developed after reasonable standards of living had been attained. If economic freedom can be established in a poor country, then growth would be encouraged, and the country would tend eventually to become more democratic on its own.⁶

Trade Liberalization and Democratization in China

China has passed the test of economic growth, but the world's fastest growing economy has yet to achieve a true market system with widespread private ownership and a political system that respects human rights. Even so, a strong case can be made that the gradual introduction of markets in China and the opening of China to the outside world have made the Chinese people freer and reduced the power of government.

The end of collectivized agriculture in 1978 and the return of farming to families under the household responsibility system (*baochan daohu*) changed the whole dynamic of economic, social, and political life in China. The state was no longer the master for 80 percent of China's population who lived in rural areas. Farmers became risk takers, created new markets, developed rural industries, and migrated to urban areas. Farmers were no longer slaves to the state: they sought alternatives to government employment and were driven to survive without state welfare support. They resisted state coercion and initiated what Kate Xiao Zhou (1996: 4) calls "a spontaneous, unorganized,

⁶For studies of the degree and scope of economic freedom, see Gwartney et al. (1996), Johnson and Sheehy (1996), and Messick (1996).

leaderless, nonideological, apolitical movement (SULNAM)" that transformed the old communist system and enhanced human rights.⁷

The quiet revolution that has been taking place in China's economy since 1978 is combining with the information revolution to strengthen the fabric of civil society, especially in China's southern coastal provinces. Commenting on China's cultural transformation, Jianying Zha (1995: 202) writes in her book *China Pop*,

The economic reforms have created new opportunities, new dreams, and to some extent, a new atmosphere and new mindsets. The old control system has weakened in many areas, especially in the spheres of economy and lifestyle. There is a growing sense of increased space for personal freedom.

Anyone who has visited China and seen the vibrancy of the market, the dynamism of the people, and the rapid growth of urban areas will concur with Zha's cautious optimism.

Commercial life in China is evolving naturally as people flee the countryside for improved living conditions and the chance to strike it rich in the growing nonstate sector.⁸ Villages that were once small fishing centers along the southern coast are now booming with the flow of trade and people. The new urban centers, such as Shishi in the province of Fujian, are characterized by the market, not the plan. Their model of development, writes Kathy Chen (1996) of the *Wall Street Journal*, is "*xiao zhenfu, da shehui*—small government, big society—which advocates less involvement by cash-strapped governments and more by society."

Ambitious young people want to become capitalists, not communists.⁹ A recent survey found that young people ranked being an entrepreneur first among 16 job choices and employment with the national government eighth (Kristof 1993). Freer labor markets have

⁷Zhou's book *How the Farmers Changed China* is a brilliant portrayal of how this process occurred. According to Zhou (1996: 10), "*baochan daohu*, markets, rural industry, and migration all reduced official control over peoples' lives, particularly rural people's lives. This great increase in autonomy surpassed anything experienced before in the People's Republic."

⁸The nonstate sector consists of all enterprises not directly controlled by the central government or by provincial governments. Nonstate enterprises include urban and rural collectives (of which township and village enterprises are particularly important), individually owned enterprises, foreign-owned enterprises, and joint ventures. Unlike state-owned enterprises, collectives face a hard budget constraint and are primarily market driven. If the current growth of the nonstate sector continues, by the year 2000 nonstate enterprises will account for more than two-thirds of China's industrial output and as much as 40 percent of China's GDP (Bell, Khor, and Kochhar 1993: 13).

⁹Joseph Kahn and Marcus Brauchli (1994) report, "Top university graduates used to consider party membership a career-gilding rite of passage, required for advancement through the ranks. Now, they scorn party recruiters."

led to a growing demand among college students for business courses, and universities are responding.¹⁰ The CCP has lost much of its credibility and is no longer the major route to success.

The freedom to trade is an important human right in China. As trade expands, there is a growing middle class with a large stake in China's future. Moreover, China's high savings rate gives all those who sacrifice current consumption and invest their earnings in the nonstate sector a strong incentive to further depoliticize economic life. The formation of economic and civil society will lead to a natural call for greater participation in political life. Yet as long as the CCP stands in the way of private property, thwarts the spontaneous market order, controls the flow of information, and prevents free association, the future of China's civil society will be in jeopardy.

If democratization is to proceed in China, the government needs to allow further experimentation with new forms of ownership. Writing in the Beijing press, Yuan Mu (1995: 64) emphasized the key role of ownership reform: "We should discover the best model for ownership by the whole people [notice the bias against privatization], so that they will genuinely become the main body of market competition and operate with vigor and vitality in accordance with the rules of the market economy."

Those rules will evolve as individuals grope for ways to lower the costs of exchange and expand markets. In *China Pop*, Zha (1995: 204) quotes Liu Ge, a lawyer trained in both China and the United States, as saying,

Gradually, there will be more laws and rules; the market will be more mature, more compatible with international standards, the competition more fair and open. Then, China will have been structurally transformed! Political change will come after that.

According to Zha, "A lot of the educated urban Chinese . . . echo this way of thinking." There is reason to believe, therefore, that institutional change in China will bring about what Princeton University professor Pei Minxin (1995) has called "creeping democratization."

Pei (1994) believes that the gradual development of China's legal system toward affording greater protection for persons and property, the growing independence and educational levels of members of the National People's Congress, and the recent experiments with self-government at the grassroots level will help transform China into a more open and democratic society. He points to the upward mobility

¹⁰Market-oriented business courses are replacing Marxist courses at the People's University of China in Beijing. Lack of interest has led to the canning of 17 courses heavy on communist ideology but of little use to career-minded students (Walker 1993).

of ordinary people, occasioned by the deepening of market reform, and to the positive impact of China's "open-door" policy on political norms. In his view, public opinion and knowledge of Western liberal traditions, such as the rule of law, "have set implicit limits on the state's use of power" and have promoted the democratization of the legal system. People are starting to use the court system to contest government actions that affect their lives, liberty, and property. There has been a sharp rise in the number of civil lawsuits against the state, and individuals are winning nearly 20 percent of the cases, according to official sources (Pei 1994: 12).

The opening of the legal system is important because it paves the way for the transition from "rule by law" to "rule of law." Marcus Brauchli (1995) of the *Wall Street Journal* writes,

The state's steel-clad monopoly on the legal process, which makes the courts just another arm of government, is corroding. China's economic liberalization . . . has spawned a parallel legal reform that raises the prospect of rule of, not merely by, law.

Unfortunately, as Brauchli recognizes, "legal ambiguity" remains "a ruthless weapon" for harassing the population. Until that facet of China's institutional structure changes, no one's rights will be secure.

The challenge for China is to get out of the way of the market and let it grow naturally along with civil society. Doing so, however, requires an understanding of the institutional infrastructure that makes the market system tick and an appreciation of the spontaneous order that emerges when private property and freedom of contract are protected by law.

Democracy is multi-dimensional; the right to vote is only one dimension, albeit an important one (Dom 1993). A free society requires constitutional constraints to limit the power of government so that the right to vote does not infringe on the right to property (Hayek 1960, Pilon 1992/93). China's future prosperity will depend increasingly on the development of a legal system that safeguards persons and property against the arbitrary force of the state and on the nation's commitment to comply with international commercial codes and customs.

The major impediment to China's freedom and long-run prosperity, of course, is the CCP. The crucial question is how to weaken the power of the CCP. Those who criticize the use of sanctions think that the surest route to China's freedom and prosperity is to keep trade open and develop China's civil society step by step. Greater economic freedom, they argue, will spill over into greater political freedom, as it has in other parts of Asia. Imposing economic sanctions, on the other hand, will destroy China's nascent market system and block the surest path toward freedom and democracy.

China has been willing to experiment, but it has not yet provided the climate of freedom necessary for growing market-liberal institutions. There is now an effort, in fact, to give the central government greater power by ending the system of fiscal federalism.¹¹ Putting more money into the pockets of Beijing bureaucrats by recentralizing the tax system, however, is not the answer to China's problems. Nor will improving the management of state-owned enterprises do anything to solve the problems of loss-ridden firms that have no real owners.

Real stability will come to China only when its leaders abandon their fatal conceit and realize that it is impossible to plan the market or society (Dorn 1996). Although the leadership is willing to tolerate gradual reform to keep the economy strong, there is no indication that they will tolerate political reform. The crackdown on dissidents, especially the arrest of Harry Wu and Wei Jingsheng; the vow to prevent Hong Kong from following Taiwan's path; and the blatant hostility toward Taiwan before the presidential elections are clear signals that China's aging rulers continue to find any movement toward democratic rule unacceptable. The West should not confuse economic liberalization with a desire for democratization.

Economic Sanctions: A Blunt Instrument

Economic sanctions may be legitimate in certain cases—for example, banning goods made with slave labor or prohibiting the importation of pirated goods—but in most cases sanctions are a blunt instrument that may end up doing more harm than good. Sanctions often interfere with legitimate (voluntary) exchange and fail to achieve their desired policy objectives. Markets normally find ways to circumvent sanctions as traders substitute nonsanctioned goods for sanctioned goods or move goods through black markets by bribing enforcement agents. Moreover, even if sanctions are effective in imposing a large economic cost on the target country, they may fail to change the political climate.¹² Rulers who have a monopoly of power and control the media—such as in China, Cuba, Iran, Iraq, and North Korea—will use that power to generate anti-Western sentiment and to reinforce their ideology. Indeed, sanctions may strengthen the government

¹¹On the nature of Chinese-style federalism, see Qian and Weingast (1995).

¹²According to William Kaempfer and Anton Lowenberg (1989, 713), "political studies have demonstrated that the political consequences [of sanctions] are quite often the opposite to those intended." The experience of Cuba, Iran, Iraq, Libya, and North Korea has demonstrated the futility of using sanctions against entrenched political elites holding rigid anti-capitalist views.

of the target country by giving hard-liners a foreign villain for domestic problems.

Two questions need to be addressed when considering the use of economic sanctions: First, are sanctions legitimate? Second, are they effective—that is, will sanctions promote a market economy and will the economic effects of sanctions promote freedom and democracy?

The Question of Legitimacy

Although the general rule is for governments not to interfere with free trade, there are several cases in which governments would be justified in using economic sanctions. In the following five “exceptions,” however, sanctions should be narrowly focused, not blanket bans on unrelated trade.

1. Sanctions would be legitimate in preventing trade with an enemy when such trade would directly enhance the enemy’s military capability. The U.S. government, for example, would be justified in preventing the sale of military technology and weaponry that could be used by an enemy to harm U.S. citizens.
2. Sanctions would be legitimate in preventing the use of slave labor. Goods made with slave labor should not be allowed into the United States. However, it would not be legitimate for the United States to ban all trade with a country if only a small part of its exports were made with slave labor. Private traders should have the right to trade as long as they adhere to the principles outlined in the preceding discussion. To ban all trade or to use sanctions to ban many products not directly connected with slave labor would harm many innocent people.
3. Sanctions would be legitimate in preventing the use of prison labor in the case of innocent parties wrongly imprisoned (i.e., political prisoners who have not violated anyone’s rights to life, liberty, or property). This case is analogous to the case of slave labor, except the slaves are behind bars.
4. Sanctions would be legitimate in protecting the rights of minors. The use of child labor is complicated, because in a poor country it may make sense for children to go to work at a much earlier age than in a rich country. There is no “bright line” to give an easy, clear-cut answer to when economic sanctions should be used to attempt to cut off trade in goods made by child labor. Only a short time ago in the United States, it was not uncommon for 12-year-olds to work long hours on a farm or in a factory to help their families survive. Should the United States now prevent

those children from working in poor countries to improve living standards? Economic sanctions would do just that.¹³

5. Sanctions would be legitimate in safeguarding intellectual property rights. The U.S. government has a legitimate right to ban the importation of pirated computer software or compact discs, and is justified in penalizing foreign producers for violating U.S. copyright laws. Intellectual property rights are no less important than other forms of private property. Allowing thieves to sell CDs at very low prices would only encourage consumers to buy from the illegal suppliers and increase the incentive to steal. The tactic of using sanctions to enforce compliance with U.S. copyright laws should be supplemented with multilateral agreements to protect intellectual property rights. Admitting China into the World Trade Organization should be a top priority for the United States and other developed countries.

The United States, however, has no right to interfere with free trade for the purpose of promoting democracy or because a foreign government violates human rights. An individual's freedom to trade is a natural right, not derived from the power of government. That right should not be curtailed by a sanctioning country simply because the target government is nondemocratic or because it violates civil liberties. Violations of human rights should be condemned, but they do not warrant the denial of most-favored-nation status or the use of sanctions to curb legitimately traded goods.

The Question of Effectiveness

Whether sanctions are legitimate or illegitimate, they may not be effective. Sanctions are likely to be effective only when all the following conditions are met: (1) they have the near-unanimous support of the target country's major trading partners; (2) the government of the target country is responsive to the concerns of its citizens; and (3) the benefits of the sanctions to the governments of the sanctioning countries exceed the costs. Few sanctions meet all three conditions.¹⁴ In particular, Gary Hufbauer, Jeffrey Schott, and Kimberly Elliott (1990: 92) found that economic sanctions "are of limited utility in

¹³During the May 1995 hearings on fast track issues, Rep. Philip Crane [R-IL] reminded his colleagues who wanted to impose U.S. labor standards on less developed countries that "historically, a child became a man at 12. Adolescence is a phenomenon of the 20th century, and it came about because we were affluent" (U.S. Congress 1995: 152).

¹⁴For a discussion of the difficulty of effectively implementing economic sanctions, see Hufbauer, Schott, and Elliott (1990: chap. 5) and Bartlett (1985).

achieving foreign policy goals that depend on compelling the target country to take actions it stoutly resists.”

The difficulty is to identify when trade is illegitimate and to target the relevant goods so that legitimate traders are not harmed. Sanctions may be justified in certain cases, but they are usually a poor means of promoting human rights and democracy. Instead of liberalizing a repressive regime, sanctions may in fact make the regime more repressive by banning exchanges that would extend markets and weaken the power of government. Trade restrictions also interfere with the economic liberty of Americans and harm U.S. consumers. Import restrictions presently cost the United States about \$70 billion a year (Junkins 1995: 69). Such restrictions increase prices of both foreign and domestic goods and lead to inefficient use of resources, which reduces overall wealth. Economic sanctions are a blunt instrument and should not be considered unless legitimate rights are violated, the sanctions are targeted directly on the rights' violators, and there is a high probability of success.

Four potential problems make it difficult to successfully use sanctions to further human rights:

1. Target countries may circumvent sanctions by substituting new sources of supply for sanctioned products. Historically, sanctions have not been very effective because the targeted countries have been able to find suitable substitutes.
2. The costs of monitoring the target country for violating human rights, or for violating intellectual property rights, rise with the size and complexity of transactions and with the extent of the market. Sanctions, therefore, may be very difficult to enforce in large countries such as China.
3. Economic sanctions may lead to political backlash in the targeted country and fail to have a positive impact. That problem may be especially acute in regimes with an entrenched political class, no freedom of the press, and a strong anti-West bias.
4. Sanctions are apt to politicize trade in the sanctioning country, because politicians seek to win votes by using the rhetoric of protectionism to retain jobs or investments in their districts. Politicians have a legitimate interest in using economic sanctions to discipline foreign governments for their violation of human rights. The danger is that once the question of sanctions arises, there will be strong pressure from special interest groups to erect trade barriers to protect their industries from foreign competition. Protectionist rhetoric also will include reference to the bogeyman of bilateral trade deficits. Using protectionist mea-

asures to try to achieve a balance of trade with a single country, however, is both foolish and a violation of human rights.

That economic sanctions hinge on self-interest should be no surprise.¹⁵ Those who favor linking U.S. trade policy to human rights are well-intended and have legitimate concerns, but those intentions and concerns are better addressed by trying to change the economic and political system of the foreign power not by imposing economic sanctions that have little chance of success. Restricting American businesses from investing and trading in China or other nondemocratic countries would weaken the nonstate sector and slow economic progress. As Stuart Anderson (1996) writes,

U.S. corporations act as a liberalizing force, helping to strengthen the private sector, establishing alternative centers of power, and creating subtle but important pressures for democratic reforms. They also tend to raise wages and labor standards in the countries in which they operate.

The fall of the Soviet Union was not the result of sanctions, it was the result of the internal contradictions and weaknesses of the system of central planning and communism. The information revolution, the opening of markets, a strong U.S. national defense, and pressure from the West to conform to the rule of law were instrumental in ending the Soviet regime. The Jackson-Vanik amendment, which was intended to liberalize Soviet emigration policy, was not an important factor.¹⁶

Too often those who strongly support human rights fall into the trap of moving from legitimate to illegitimate arguments for imposing economic sanctions. During the July 1994 congressional debate over using trade policy to promote human rights, for example, Rep. Gerald Solomon (R-NY) took the position that Americans "must apply leverage where we can in order to defend freedom, deter aggression,

¹⁵For a discussion of the "self-interest hypothesis," as applied to sanctions, see Kaempfer and Lowenberg (1989). They found in the case of South Africa that economic sanctions (imposed in 1986) were based more on the self-interest of the sanctioning countries than on the public interest of the targeted country. Sanctioning countries choose to restrict specific imports (especially those that directly competed with products in the sanctioning countries) rather than inflict maximum damage on South Africa by a complete embargo. Most countries, therefore, continued to export to (and import from) South Africa.

¹⁶The Jackson-Vanik amendment was part of the Trade Act of 1974. Under the amendment, communist countries could be denied most-favored-nation status if they did not allow relatively open emigration. The amendment necessitates annual renewal of China's MFN status. See Duffy and Harrold (1996: 3). Stuart Anderson (1996) points to the ineffectiveness of Jackson-Vanik in increasing Jewish emigration from the Soviet Union. Between 1973 and 1975, Jewish emigration from the USSR fell by 62 percent, and in the early 1980s fell below 1,000 a year.

and, yes, protect American jobs” (U.S. Congress 1994: H5948). If by “leverage,” he means voluntarily using the buying power of U.S. consumers to discipline countries that violate human rights, then such leverage would be consistent with Americans’ freedom of choice.¹⁷ Far more likely, he means using the power of government to impose sanctions on countries that, in the end, may threaten American jobs.¹⁸

When the case for using trade policy to further human rights moves beyond the legitimate protection of human rights to the protection of American jobs, the state gains and the market loses—government becomes stronger in both the target country and the sanctioning country. The resulting decline in economic liberty will harm rather than help the cause of freedom and good government.¹⁹ As Rep. David Dreier (R-CA) stated during the July 1994 congressional debate, “Denying trade is a violation of human rights and a reprehensible one” (U.S. Congress 1994: H5937).

The Case of China

China’s lack of respect for human rights, its use of political prisoners, and its failure to protect property rights (including those to intellectual property) stem primarily from the CCP’s monopoly of power—a monopoly that rests on the idea that rights do not belong to the people but are privileges conferred by the state and can be taken away at any time. Yet, the fact that China is a bad government does not justify the use of sanctions to prevent legitimate trade. In the event that China uses slave or prison labor, or violates U.S. copyright laws, the U.S. would be justified in penalizing the rights’ violators, as previously

¹⁷U.S. firms and consumers have the market power to penalize firms and governments that violate human rights without any involvement of the U.S. government. David Birnbaum (1996) notes, “[In America] the government is not the only force capable of shaping trade policy. Increasingly, key decisions are being made by the companies that import products—and by the consumers on whom all trade ultimately depends. And when consumers decide to do something for human rights, there’s nothing a presidential veto can do to stop them.”

¹⁸During the May 1995 congressional hearings on “fast track issues,” Rep. Bill Thomas (R-CA) recognized the danger of turning a legitimate concern for human rights into an agenda for protectionist policies that violate individual rights. Addressing his colleagues, he stated, “What concerns me is that, more recently, what I have seen as arguments on workers’ rights tend not to be so much for underscoring the international agreements that I think all of us would agree with in terms of fundamentals—the slave labor, prison labor, and the rest—but appear to me to be more and more actually the reverse of what their proponents would hope people would think they were. Frankly, I think a number of them have been protectionist” (U.S. Congress 1995: 155).

¹⁹Corruption is the natural by-product of protectionism, because once the government holds the power to dictate the terms of trade and is able to control entry, traders will have to do business with government agents before they can do business with each other. Thus, economic life becomes politicized and bribes take the place of direct market prices.

discussed. Before doing so, however, U.S. policymakers ought to consider the probability of success and consider alternative measures that may be more effective in the long run to change the nature of China's economic and political system.

In the case of China, economic sanctions have little chance of success. Although the United States accounts for more than 30 percent of China's export market, the threat of placing prohibitively high tariffs on a range of Chinese products is not politically feasible. American consumers would immediately see the higher prices and protest.²⁰ Even if such a policy were politically feasible, it would be difficult to implement because China could transship products through Hong Kong or other countries, and U.S. customs officials would find it hard to identify the point of origin. Likewise, restricting American exports to China, which amounted to \$11.7 billion in 1995, or curtailing the billions of dollars U.S. investors have poured into China would cause a political backlash from stakeholders and would be difficult to enforce.

But even if the U.S. government could block flows of goods and capital to China, there is no guarantee that other countries would not step in to fill the gap. Instead of buying from Boeing or looking to American investors, the Chinese would shift to Airbus Industrie and look to European and Asian trading partners for additional capital—and U.S. investors would try to reroute their funds into China rather than abandon their invested capital.

Finally, if America were to ban trade with China, China would retaliate. The ensuing trade war would harm both countries, as well as the Asian tigers, and do irreparable damage to the evolution of the market and civil society in China.

Monitoring the use of prison labor and tracing goods made by political prisoners in China would be difficult but not impossible.²¹ But even if the West were able to effectively monitor such activities, there is no guarantee that other countries would do the same. In fact, many countries have supported China against the United States when it comes to human rights. At the 52nd session of the U.N. Commission

²⁰It is estimated that revoking China's most-favored-nation status would cost U.S. consumers from \$16 billion to \$29 billion in higher prices and lead to the loss of up to 200,000 American jobs (Donghui 1996: 3; Duffy and Harrold 1996: 4–5).

²¹Harry Wu (1996) notes that there are "more than 1,100 labor reform camps called the *laogai*" in China. As he puts it, "The *laogai* is not simply a prison system. It is a political tool for maintaining the Communist Party's totalitarian rule. Many of the *laogai*'s 6 million to 8 million inmates are political prisoners." According to Wu, "forced labor from the *laogai* produces about one-third of China's tea and a significant amount of its cotton. About 60 percent of China's rubber vulcanizing chemicals are produced in a single *laogai* camp in Shanyang."

on Human Rights (April 1996), an attempt to pass a U.S. sponsored resolution critical of China's record on human rights—especially with regard to Tibet, the criminal justice system, and religious freedom—did not even get off the ground. China proposed a “no action” motion, meaning no discussion of the resolution and no vote on it. The motion passed by a vote of 27 to 20, with 6 countries (including Mexico, the Philippines, South Korea, and Russia—all major recipients of U.S. aid) abstaining (Weibin and Wei 1996: 3).

The piracy of intellectual property is a significant problem for Western firms. China has been a major offender of copyright laws and needs to comply with the rule of law. China's membership in the World Trade Organization should be conditioned on China's adherence to international law. If China cannot play by the rules, it should not be allowed to play with those who do.

The problem is that most less developed countries, and even some developed countries, violate intellectual property rights. More than 84 percent of Chile's software, for example, is pirated (Holleyman 1995: 114). Using economic sanctions to punish pirates sounds good in theory, but in practice sanctions are seldom effective. The real solution to piracy may have to wait for technological changes that make it very costly to steal intellectual property and for the rule of law to evolve in China and other less developed countries. Meanwhile, the United States should continue to criticize China and other countries for their violations of copyright laws and use the threat of sanctions to help protect intellectual property. If China signs agreements to police piracy and protect intellectual property rights, as it did with the United States in February 1995, then China should be held accountable.

As China develops its own intellectual property, there will be a demand for new laws to protect private entrepreneurs in China. The uncertainty created by China's failure to protect intellectual property rights can only harm China in the long run. Investors will not enter a market if they cannot reap the full benefits of their investment. Fan Gang, an economist at the Chinese Academy of Social Sciences, predicts that things will change in China as people discover that clearly defined and enforced property rights are to their advantage:

[People] are bound to find that all this cheating and protecting yourself from being cheated consume too much time and energy, and that the best way to do business is playing by a set of mutually respected rules. New rules and laws will be passed, and people will be ready to abide by them.²²

²²Quoted in Zha (1995: 203).

The foremost reason economic sanctions are unlikely to promote human rights in China is the resolve of the CCP. Hard-liners in the party will not tolerate any invasion of their stronghold of power, as the world witnessed in Tiananmen Square. They see sanctions as a capitalist tool designed to undermine China's rapid growth and weaken the CCP's hold on political power. Even if the sanctions disrupted economic life, they would have no lasting effect on China's political system—and may even serve to strengthen the ruling elite's resolve to promote communism at any cost. Closing China off from the outside world by means of sanctions would be more apt to play into the hands of the hard-liners than to overthrow them.

Directors of China's state-owned enterprises would support sanctions, because protectionism always benefits inefficient firms. Strengthening those enterprises would be bad for China and bad for the United States. Rapid export growth to China and investments in China have been due to the growth of the nonstate sector. Sanctions would harm that sector the most and slow export growth.²³

Political leaders in Taiwan and Hong Kong oppose sanctions against China. They favor delinking trade agreements and human rights, not because they do not care about human rights in China but because they recognize the importance of open markets for the stability and prosperity of the entire Asian-Pacific region. They also understand that trade liberalization is a prudent long-run strategy for promoting human rights in China.

According to an editorial in the *South China Sunday Morning Post* (1995: 10), President Clinton's 1994 decision to delink trade and human rights "was welcomed with a collective sigh of relief." If the United States were to deny China most-favored-nation status, the resulting punitive tariffs would destroy "the Hong Kong-Guangdong partnership, which has been the engine of China's economic growth." Moreover, "the political and economic focus would have shifted back towards the Centre." Human rights in China then would be nipped in the bud as the state sector gained ground and the nascent market sector diminished. Yet, as the *Post* notes, "For all the economic progress trade with the West has encouraged, China remains a harsh political dictatorship."

The final difficulty with using economic sanctions to force China's hand on human rights is that legitimate trade may become politicized as U.S. interest groups use sanctions to protect their markets or further their own political agendas. Rep. Solomon's statement is only the tip

²³State-owned enterprises accounted for only 20 percent of China's export growth in 1991–92 compared with over 80 percent in 1986–87 (Lardy 1996: 14).

of the iceberg when it comes to sliding from arguments in favor of human rights to protecting American jobs. The political drive to link China's progress on human rights to U.S. trade policy no doubt would dwindle if the United States were running a trade surplus with China.²⁴

In sum, even though one can make a legitimate case for limited sanctions in the case of China, those sanctions are unlikely to achieve their intended results. Indeed, imposing economic sanctions on China to advance human rights and promote democracy is likely to retard both and inflict substantial costs on legitimate traders in China and the United States. The millions of Chinese who now enjoy growing freedom and prosperity in the nonstate sector will be punished by sanctions while the state sector and the CCP gain ground.

A better alternative is to let markets and their supporting institutions evolve in China and keep China open to the outside world. Foreign firms now have more than 120,000 projects operating in China with a total investment of over \$135 billion (Melloan 1996). That amount of foreign investment will put pressure on regional and local leaders to protect the market and make the rulers in Beijing reluctant to reverse economic liberalization. Pressure may then mount for eventual political liberalization.

Western companies have already had an impact on China's civil society. They have increased business standards and demanded a legal infrastructure.²⁵ Continued economic liberalization is sure to raise business standards further and help cultivate an institutional infrastructure based on the rule of law. The changes will occur first in the nonstate sector (especially in the southern coastal provinces) and then spread throughout China as competition and openness become the norm.

The best strategy for the United States is to take steps to move China toward a market-liberal order. What China needs is a new system and a new way of thinking about human rights. Economic sanctions, as my colleague William Niskanen says, are rather like strategic bombing—they miss the main target but claim many innocent victims. Human rights will come to China only when property rights

²⁴Using the U.S. trade deficit with China to bash China is politically expedient. The fact that U.S. consumers gain from cheap imports goes by the board in the political pursuit of protecting American industry and big labor. The \$34 billion figure used to depict the U.S. bilateral trade deficit with China is itself suspect. Nicholas Lardy of the Brookings Institution estimates a trade deficit with China of \$22 billion. Beijing has estimated the deficit to be closer to \$10 billion when full account is taken of transshipments through Hong Kong (Greenberger 1996).

²⁵See Rep. Philip Crane's discussion of how U.S. firms increase standards in less developed countries (U.S. Congress 1995: 153).

are treated as fundamental civil rights and when civil rights are protected by law. As Harry Wu, a former political prisoner in China, wrote in the *Washington Post* (26 May 1996), "Until private ownership is allowed on a wide scale, genuine liberalization—representative government, free markets and individual rights—will remain elusive" in China.

Creating a Market-Liberal Order

To depoliticize economic life, China needs constitutional change and new thinking (*xin si wei*). Chinese scholar Jixuan Hu (1991: 44) writes, "By setting up a minimum group of constraints and letting human creativity work freely, we can create a better society without having to design it in detail. That is not a new idea, it is the idea of law, the idea of a constitution."

As the world's leading constitutional democracy, the United States should spread its ethos of liberty by keeping its markets open and by extolling the principles that made it great. America should not play the dangerous game of pitting human rights activists against free traders. American prosperity and global prosperity are better served by open markets than by well-intended economic sanctions. History has shown that the best route to freedom and prosperity is market liberalism not market socialism. China should be admitted to the World Trade Organization as soon as possible and be given unconditional most-favored-nation trade status, which should be renamed "normal trade relations."

Governments everywhere need to get out of the business of trade and leave markets alone. Western democratic governments, in particular, need to practice the principles of freedom they preach and recognize that free trade is not a privilege but a right.

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